

**ORAL ARGUMENT NOT YET SCHEDULED****IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**No. 11-1189 (and consolidated cases)

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SOLVAY USA INC.,  
*Petitioner,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
*Respondent.*

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Petition for Review of Final Administrative Actions of the  
United States Environmental Protection Agency

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**FINAL OPENING BRIEF FOR ENVIRONMENTAL PETITIONERS**

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James S. Pew  
Seth L. Johnson  
Earthjustice  
1625 Massachusetts Ave., N.W.  
Suite 702  
Washington, D.C. 20036-2212  
(202) 667-4500  
jpew@earthjustice.org  
sjohnson@earthjustice.org*Counsel for Louisiana Environmental  
Action Network, Sierra Club, Clean Air  
Council, Desert Citizens Against  
Pollution, Montanans Against Toxic  
Burning, Huron Environmental Activist  
League, Downwinders at Risk,  
Partnership for Policy Integrity, and  
Environmental Integrity Project***DATED: November 12, 2014**

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<i>Petitioner,</i>	)	
v.	)	
	)	Case No. 11-1189
U.S. ENVIRONMENTAL	)	(and consolidated cases)
PROTECTION AGENCY,	)	
<i>Respondent.</i>	)	

**ENVIRONMENTAL PETITIONERS' CERTIFICATE AS TO PARTIES,  
RULINGS, AND RELATED CASES**

Pursuant to D.C. Circuit Rule 28(a)(1), Louisiana Environmental Action Network, Sierra Club, Clean Air Council, Desert Citizens Against Pollution, Montanans Against Toxic Burning, Huron Environmental Activist League, Downwinders At Risk, Partnership for Policy Integrity, and Environmental Integrity Project (collectively, "Environmental Petitioners") hereby certify as follows:

**(A) Parties and Amici**

**(i) Parties, Intervenors, and Amici Who Appeared in the District Court**

This case is a petition for review of final agency action, not an appeal from the ruling of a district court.

**(ii) Parties to This Case**

Petitioners:

11-1189 Solvay USA Inc.

11-1192 American Petroleum Institute

11-1202 American Chemistry Council

11-1214 Council of Industrial Boiler Owners

11-1216 Association of American Railroads

11-1217 Treated Wood Council and Railway Tie Association

11-1220 National Association of Clean Water Agencies

11-1221 Sierra Club, Montanans Against Toxic Burning, Huron  
Environmental Activist League, and Downwinders At Risk

11-1223 American Forest & Paper Association, American Wood Council,  
Biomass Power Association, Construction Materials Recycling  
Association Issues and Education Fund, Hardwood Plywood &  
Veneer Association, and National Association of Manufacturers

11-1224 Utility Solid Waste Activities Group, Edison Electric Institute,  
National Rural Electric Cooperative Association, and American  
Gas Association

11-1226 Cement Kiln Recycling Coalition

11-1227 LaFarge North America, Inc.

11-1228 Portland Cement Association

11-1232 Composite Panel Association

11-1233 CEMEX, Inc.

11-1235 Hatfield Township Municipal Authority

11-1238 Rubber Manufacturers Association

13-1152 National Association of Clean Water Agencies

13-1156 Portland Cement Association

13-1157 Cement Kiln Recycling Coalition

13-1158 American Forest & Paper Association, American Wood Council, Biomass Power Association, and National Association of Manufacturers

13-1159 Treated Wood Council

13-1160 CEMEX, Inc. and CEMEX Construction Materials Florida

13-1162 Louisiana Environmental Action Network, Sierra Club, Clean Air Council, Desert Citizens Against Pollution, Montanans Against Toxic Burning, Huron Environmental Activist League, Downwinders At Risk, Partnership for Policy Integrity, and Environmental Integrity Project

13-1164 American Chemistry Council and American Petroleum Institute

13-1165 Holcim (US) Inc.

Respondents:

The respondent in all cases is the United States Environmental Protection Agency. Also named as a respondent in case nos. 11-1216, 11-1220, 11-1221, 11, 1226, 11-1228, 11-1235, 11-1238, 13-1152, 13-1156, 13-1157, 13-1162, and 13-1164 is Regina McCarthy,<sup>1</sup> in her official capacity as Administrator of the U.S. Environmental Protection Agency. The United States of America is also named as a respondent in case no. 11-1238.

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<sup>1</sup> Regina McCarthy is automatically substituted for Lisa Perez Jackson, who resigned, and Robert Perciasepe. Fed. R. App. P. 43(c)(2).



Intervenors:

Metal Industries Recycling Coalition and Rubber Manufacturers Association have intervened on behalf of petitioner in these consolidated cases.

American Gas Association, Coalition for Responsible Waste Incineration, Edison Electric Institute, National Rural Electric Cooperative Association, Utility Solid Waste Activities Group, ARIPPA, American Forest & Paper Association, American Home Furnishings Alliance, Inc., American Petroleum Institute, American Wood Council, Biomass Power Association, Cement Kiln Recycling Coalition, Construction Materials Recycling Association Issues and Education Fund, Council of Industrial Boiler Owners, Downwinders At Risk, Hardwood Plywood & Veneer Association, Huron Environmental Activist League, LaFarge Building Materials, Inc., LaFarge Midwest Inc., LaFarge North America, Inc., Montanans Against Toxic Burning, National Association of Manufacturers, Portland Cement Association, Rubber Manufacturers Association, Sierra Club, American Chemistry Council, Brayton Point Holdings, Clean Air Council, Desert Citizens Against Pollution, Brayton Point Energy, Environmental Integrity Project, JELD-WEN, Inc., Louisiana Environmental Action Network, Partnership for Policy Integrity, Steel Manufacturers Association, Treated Wood Council, WM Organic Growth, Inc., and WM Renewable Energy have intervened on behalf of respondent in these consolidated cases.

**(iii) Amici in This Case**

There are currently no *amici*.

**(iv) Circuit Rule 26.1 Disclosures for Environmental Petitioners**

See disclosure form filed below.

**(B) Rulings Under Review**

Environmental Petitioners seek review of final actions taken by EPA under the Resource Conservation and Recovery Act at 76 Fed. Reg. 15,456 (Mar. 21, 2011), titled “Identification of Non-Hazardous Secondary Materials That Are Solid Waste,” and 78 Fed. Reg. 9112 (Feb. 7, 2013), titled “Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Final Amendments; Non-Hazardous Secondary Materials That Are Solid Waste.”

**(C) Related Cases**

Apart from the consolidated cases, Environmental Petitioners are unaware of currently pending related cases. The Court has ordered these cases be heard by the same panel as will hear the following currently pending challenges in this Court to rules related to the rules challenged herein:

*U.S. Sugar Corporation v. EPA*, No. 11-1108 (and consolidated cases)

*American Forest & Paper Association v. EPA*, No. 11-1125 (and consolidated cases)

*American Chemistry Council v. EPA*, No. 11-1141 (and consolidated cases)

DATED: November 12, 2014

Respectfully submitted,

/s/James S. Pew

James S. Pew

Seth L. Johnson

Earthjustice

1625 Massachusetts Ave., NW

Suite 702

Washington, D.C. 20036-2212

(202) 667-4500

jpew@earthjustice.org

sjohnson@earthjustice.org

*Counsel for Environmental Petitioners*

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PROTECTION AGENCY,	)	
<i>Respondent.</i>	)	

**ENVIRONMENTAL PETITIONERS' RULE 26.1 DISCLOSURE  
STATEMENT**

**Louisiana Environmental Action Network**

Non-Governmental Corporate Party to this Action: Louisiana Environmental Action Network ("LEAN").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: LEAN is a corporation organized and existing under the laws of the State of Louisiana. LEAN is a nonprofit organization which works with citizens' groups throughout the state of Louisiana to develop, implement, protect, and enforce legislative and regulatory environmental safeguards.

**Sierra Club**

Non-Governmental Corporate Party to this Action: Sierra Club.

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Sierra Club, a corporation organized and existing under the laws of the State of California, is a national nonprofit organization dedicated to the protection and enjoyment of the environment.

### **Clean Air Council**

Non-Governmental Corporate Party to this Action: Clean Air Council ("CAC").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: CAC is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. CAC is a not-for-profit organization focused on protection of public health and the environment.

### **Desert Citizens Against Pollution**

Non-Governmental Corporate Party to this Action: Desert Citizens Against Pollution.

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Desert Citizens Against Pollution is a corporation organized and existing under the laws of the State of California to protect the communities of the desert from pollution and its threat to human health and the environment.

### **Montanans Against Toxic Burning**

Non-Governmental Corporate Party to this Action: Montanans Against Toxic Burning.

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Montanans Against Toxic Burning, a corporation registered and existing under the laws of the State of Montana, is a nonprofit, grassroots citizens' advocacy group of health professionals, small business owners, farmers, ranchers, builders, and other concerned citizens focused on air quality issues in Montana. Their goal is to educate the public about the human health and environmental risks of toxic waste incineration. They oppose the burning of hazardous, toxic, and solid wastes in industrial facilities not specifically designed for that purpose. They support the responsible disposal of wastes, including true recycling and other alternatives, and the reduction of hazardous air pollutants through the use of best available control technology.

### **Huron Environmental Activist League**

Non-Governmental Corporate Party to this Action: Huron Environmental Activist League.

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Huron Environmental Activist League, certified and existing as a non-profit educational corporation under the laws of the State of Michigan, was formed by the residents of Alpena County to educate and protect residents of Alpena County (and other counties as dictated by the Board of Directors) from human and environmental contaminants and their impact on the environment and public health and safety; to work with environmental organizations, regulatory agencies, corporations, and lawmakers in seeking solutions and alternatives to human and environmental contamination; and to monitor the activities of companies that generate human and environmental contaminants in Alpena, Michigan (and elsewhere as dictated by the Board of Directors), as well as the regulatory agencies that oversee such companies.

### **Downwinders at Risk**

Non-Governmental Corporate Party to this Action: Downwinders at Risk.

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Downwinders at Risk, a nonprofit corporation organized and existing under the laws of the State of Texas, is a diverse grassroots citizens' group dedicated to reducing toxic industrial air pollution in North Texas and to continued education and advocacy concerning cement plant pollution.

### **Partnership for Policy Integrity**

Non-Governmental Corporate Party to this Action: Partnership for Policy Integrity (“PFPI”).

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party’s Stock: None.

Party’s General Nature and Purpose: PFPI, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, is a nonprofit organization that uses science, policy analysis, and strategic communications to promote sound energy policy.

### **Environmental Integrity Project**

Non-Governmental Corporate Party to this Action: Environmental Integrity Project (“EIP”).

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party’s Stock: None.

Party’s General Nature and Purpose: EIP, a corporation organized and existing under the laws of the District of Columbia, is a national nonprofit organization that advocates for more effective enforcement of environmental laws.



DATED: November 12, 2014

Respectfully submitted,

/s/James S. Pew

James S. Pew

Seth L. Johnson

Earthjustice

1625 Massachusetts Ave., NW

Suite 702

Washington, D.C. 20036-2212

(202) 667-4500

jpew@earthjustice.org

sjohnson@earthjustice.org

*Counsel for Environmental Petitioners*

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**GLOSSARY OF ACRONYMS AND ABBREVIATIONS**

Pursuant to Circuit Rule 28(a)(3), the following is a glossary of acronyms and abbreviations used in this brief:

AMC	American Mining Congress
API	American Petroleum Institute
EPA	Respondents U.S. Environmental Protection Agency and Gina McCarthy, Administrator
NRDC	Natural Resources Defense Council
RCRA	Resource Conservation and Recovery Act

## **PRELIMINARY STATEMENT**

This case challenges EPA's effort to deem various solid wastes to be non-wastes, so that facilities which choose to burn them do not have to control, monitor, or report the resulting emissions. The newly excluded "non-wastes" include materials that produce especially toxic pollution when they are burned: whole tires, construction and demolition debris, debris from paper mills, and used oil, to name just a few.

## **JURISDICTIONAL STATEMENT**

**(A) Agency.** Respondents U.S. Environmental Protection Agency and Gina McCarthy, Administrator (collectively, "EPA" or "the agency") have jurisdiction to issue rules implementing the Resource Conservation and Recovery Act ("RCRA"). RCRA §§1004, 2002(a)(1), 42 U.S.C. §§6903, 6912(a)(1).

**(B) Court of Appeals.** Under 42 U.S.C. §6976(a)(1), this Court has jurisdiction to review the final EPA actions, taken at 76 Fed. Reg. 15,456 (Mar. 21, 2011), JA0072, and 78 Fed. Reg. 9112 (Feb. 7, 2013), JA0195, challenged here.

**(C) Timeliness.** The petitions for review were timely filed within the 90-day window of RCRA §7006(a)(1), 42 U.S.C. §6976(a)(1), on June 16, 2011 (No. 11-1221), and May 8, 2013 (No. 13-1162).

## STATUTES AND REGULATIONS

Pertinent statutes and regulations appear in an addendum to this brief.

## STATEMENT OF ISSUES

Though RCRA and the Clean Air Act make “discard” the sole criterion for determining if a material is solid waste, not whether the material is burned as fuel, EPA defined solid waste to exclude materials like scrap tires and “clean” construction and demolition wood when those materials are burned as fuel. EPA’s definition also allows discarded material to be burned without being considered solid waste if it was “sufficiently processed” and satisfies certain conditions.

1. Does EPA’s definition violate RCRA by
  - a. Excluding materials that are discarded?
  - b. Excluding discarded materials that have been processed?
2. Does EPA’s definition violate the Clean Air Act and frustrate Congress’s purpose in linking RCRA and the Clean Air Act into a comprehensive regulatory scheme?
3. Is EPA’s definition an unreasonable interpretation of RCRA and the Clean Air Act and arbitrary?

## STATEMENT OF THE CASE

### I. CONGRESS'S COMPREHENSIVE FRAMEWORK FOR REGULATING SOLID WASTE.

“RCRA is a comprehensive environmental statute that governs the treatment, storage, and disposal of solid and hazardous waste.” *Meghrig v. KFC Western, Inc.*, 516 U.S. 479, 483 (1996); accord, e.g., *Military Toxics Project v. EPA*, 146 F.3d 948, 950 (D.C. Cir. 1998) (“RCRA establishes a comprehensive program to regulate the handling of ‘solid waste[.]’”). It gives EPA authority to regulate solid waste. *Am. Mining Cong. (“AMC”) v. EPA*, 824 F.2d 1177, 1178 (D.C. Cir. 1987) (“*AMC I*”). Key to this case, Congress defined “solid waste” in RCRA §1004(27) to mean “any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities,” with certain exceptions not relevant here. 42 U.S.C. §6903(27) (emphasis added). Thus, by definition, if a material is “discarded,” it is solid waste. Solid waste is “hazardous waste” if it has certain characteristics. *Id.*

§6903(5); *e.g.*, *AMC I*, 824 F.2d at 1179. Only non-hazardous solid waste is at issue in this case.<sup>1</sup>

Congress addressed solid waste management and landfilling within RCRA,<sup>2</sup> 42 U.S.C. §§6942-6949a (requiring EPA to work with states on solid waste management plans and to establish standards for municipal landfills, and banning open dumping), and addressed solid waste burning under the Clean Air Act. RCRA directs EPA to integrate RCRA and the Clean Air Act “to the maximum extent practicable,” giving effect to the goals and policies of each statute. *Id.* §6905(b)(1). The Clean Air Act directs EPA to set emission standards for facilities that burn solid waste and provides that “solid waste” has “the meaning[] established by the Administrator pursuant to the Solid Waste Disposal Act.”<sup>3</sup> *Id.* §7429(g)(6).

The Clean Air Act’s incinerator provision, §129, requires EPA to set stringent, numerical air emissions standards for particulate matter, sulfur dioxide,

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<sup>1</sup> Unless expressly noted, the term “solid waste” herein refers only to non-hazardous solid waste. EPA has another regulatory definition of “solid waste” that it says applies only for regulations addressing RCRA’s hazardous waste provisions. 40 C.F.R. §§261.1(b)(1), 261.2.

<sup>2</sup> RCRA defines “disposal” to cover land and water dumping of solid waste; the definition does not address burning it. 42 U.S.C. §6903(3).

<sup>3</sup> RCRA was a major revision of the Solid Waste Disposal Act, and is commonly used to refer to it. *Chem. Mfrs. Ass’n v. EPA*, 673 F.2d 507, 509 & n.3 (D.C. Cir. 1982); 74 Fed. Reg. 41, 43/2 n.1 (Jan. 2, 2009), JA0003.

hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins emitted from solid waste incineration units. 42 U.S.C. §7429(a).

Section 129 standards must cover existing and new incinerators, and must require “the maximum degree of reduction in emissions” that is “achievable,” considering various factors, including cost. *Id.* §7429(a)(2). Regardless of cost or the other statutory factors, Congress mandated that what would be deemed “achievable” must be at least as stringent as the results “achieved in practice” by the best performing sources (the single best performer for new and modified units; the average of the best-performing 12% for existing units). *Id.* In addition, incinerator operators must undergo training, incinerators are subject to monitoring requirements, and incinerators must obtain federal Title V operating permits. *Id.* §7429(c)-(e).

Section 129 applies to all “solid waste incineration unit[s].” These are any “distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public,” except for units burning hazardous waste; metals recovery facilities; certain power production and cogeneration facilities that “burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel)”; and “air curtain incinerators” that “only burn wood wastes, yard wastes and clean lumber.” *Id.* §7429(g)(1). As noted above, §129(g)(6) defines “solid waste” to have the



meaning established by EPA under RCRA. *Id.* §7429(g)(6). Thus, EPA’s definition of “solid waste” under RCRA is integral to how it regulates combustors under the Clean Air Act, and that definition of solid waste hinges on the term “discarded.”

This Court has held and reiterated that in RCRA §1004(27), “discarded” unambiguously has its ordinary, everyday meaning of “disposed of, abandoned, or thrown away.” *AMC I*, 824 F.2d at 1193; *accord Am. Petroleum Inst. (“API”) v. EPA*, 216 F.3d 50, 55-56 (D.C. Cir. 2000) (“*API II*”); *Ass’n of Battery Recyclers v. EPA*, 208 F.3d 1047, 1055-56 (D.C. Cir. 2000) (“*ABR*”). Once a material is discarded, it and any material derived from it remain solid waste “even if it might be reclaimed and reused at some future time.” *ABR*, 208 F.3d at 1056; *accord United States v. ILCO*, 996 F.2d 1126, 1132 (11th Cir. 1993) (“Previously discarded solid waste, although it may at some point be recycled, nonetheless remains solid waste.”);<sup>4</sup> *API I*, 906 F.2d at 741 (once material is discarded, “it has ‘become part of the waste disposal problem’” and is subject to RCRA) (quoting *AMC I*, 824 F.2d at 1186; emphasis in original).

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<sup>4</sup> The 11th Circuit relied on this Circuit’s caselaw for this point, citing *AMC v. EPA*, 907 F.2d 1179, 1186-87 (D.C. Cir. 1990) (“*AMC II*”); *API v. EPA*, 906 F.2d 729, 741 (D.C. Cir. 1990) (“*API I*”); and *AMC I*, 824 F.2d at 1187 n.14. Moreover, this Court cited the 11th Circuit’s language approvingly in *API II*, 216 F.3d at 56.

## II. THE WASTES AT ISSUE.

**Scrap tires** are tires that cannot be used anymore as tires or are somehow defective so that they cannot be used on vehicles. EPA-HQ-RCRA-2008-0329-1822 at 1, JA0565. When passenger vehicle and light-duty truck tires wear out, or the vehicles themselves no longer work, their owners discard them. *Id.*, JA0565. Similarly, tire manufacturers discard “off-specification” tires and factory scraps. 78 Fed. Reg. 9154/2-3, JA0237. Most of these tires and tire scraps eventually get shipped to processors who may shred them and remove metal from them to make tire-derived fuel. EPA-HQ-RCRA-2008-0329-1822 at 9-10, JA0573-74. Historically, tires have also been dumped in tire piles, and these long-discarded tires can also find their way to processors. *Id.* 8-9, JA0572-73.

Many scrap tires are burned, with the percent increasing to about 50%. *Id.* 7 & ex.6, JA0571. Some industries, like the cement industry, usually burn them whole. *Id.* 4-5, JA0568-69. Others, like pulp and paper manufacturers and industrial boilers, burn them after they have been shredded and sometimes have wires removed. *Id.* 10, JA0574. Though plants pay for shredded tires, cement plants that take whole tires almost always get paid to take them, with a few taking them for free. *Id.* 14, JA0578. “No kilns pay for whole tires.” EPA-HQ-RCRA-2008-0329-0507 at 1, JA0351.

Scrap tires contain cadmium, sulfur, lead, and fluoride. EPA-HQ-RCRA-2008-0329-1822 at 13 ex.9, JA0577. They also contain chlorine-containing compounds, which can result in formation of pollutants like dioxins during combustion. EPA-HQ-RCRA-2008-0329-0444 (attached amici brief) 9-10, JA0343-44. Studies of the impacts of burning tires are limited, showing emissions of some pollutants increase and others decrease, though not all pollutants are measured. EPA-HQ-RCRA-2008-0329-1822 at 15-17 & ex.11, JA0579-81. Further, though EPA says that “well-designed, well-operated and well-maintained” plants can have emissions levels of some pollutants when burning tires that are comparable to emissions levels without tires, it warns that “little data exists for” plants that “are not well-designed,” and suggests caution before such plants burn tires. *Id.* 16, JA0580. Indeed, experience shows that burning scrap tires can lead to increases in emissions of pollutants like dioxins, cadmium, and lead, as well as particulate matter and mercury. EPA-HQ-RCRA-2008-0329-0004 at 3, JA0299; EPA-HQ-RCRA-2008-0329-0444 at 2, 7, JA0330, 0335; *see also id.* 7 (explaining why badly combusted tires burn so poorly and emit carcinogens), JA0335.

Scrap tires can be reused in a variety of ways. For example, they can be retreaded and returned to use. [epa.gov/solidwaste/conservation/materials/tires/markets.htm#reuse](http://epa.gov/solidwaste/conservation/materials/tires/markets.htm#reuse) (last updated Sept. 13, 2013), JA0882-83. They can also be used in civil engineering, for example, as

fill in construction, and they can be used as ground rubber in asphalt or in rubber products, including new tires. EPA-HQ-RCRA-2008-0329-1822 at 8, JA0572; [epa.gov/solidwaste/conservation/materials/tires/ground.htm](http://epa.gov/solidwaste/conservation/materials/tires/ground.htm) (last updated Aug. 2, 2013), JA0879-81; [epa.gov/solidwaste/conservation/materials/tires/civil\\_eng.htm](http://epa.gov/solidwaste/conservation/materials/tires/civil_eng.htm) (last updated Nov. 14, 2013), JA0885-87.

**Used oil** is oil that is refined from crude oil or a synthetic oil and that has been used, for example, as motor oil, heat transfer fluid, or hydraulic fluid; as a result of its use, it is contaminated by physical or chemical impurities. EPA-HQ-RCRA-2008-0329-1827 at 1, JA0594; *see also* 40 C.F.R. §279.1 (defining used oil). Used motor oil contains lead, cadmium, arsenic, and sulfur. EPA-HQ-RCRA-2008-0329-1827 at 7-8, 10 ex.7, JA0600-01, 0603. Other additives found in used oil include phenols, chlorinated waxes, and organic compounds. *Id.* 8 ex.5, JA0601. If a used oil's contaminant concentrations are lower than certain EPA-established criteria, the agency deems it "on-spec"; if higher, it is "off-spec." *Id.* 3, JA0596. Under EPA's criteria, between 0.7-4% is off-spec. *Id.* 4, JA0597.

After an oil becomes contaminated and the original user gets rid of it, that oil is "typically collect[ed]..., distill[ed], and [sold] for use as fuel in boilers." *ABR*, 208 F.3d at 1054-55; *accord* EPA-HQ-RCRA-2008-0329-1827 at 6, JA0599. Thus, a significant amount of used oil (70-90%) is burned, particularly in boilers. EPA-HQ-RCRA-2008-0329-1827 at 2, 5, JA0595, 0598. Burning used oil can

result in increased emissions of particulate matter and lead. *Id.* 11, JA0604. EPA acknowledges that “other uses for used oil may be environmentally preferable.” *Id.*, JA0604. Used oil can be re-refined into lubricating oil or for use in phosphate beneficiation. *Id.* 2, 5, JA0595, 0598.

“**Clean cellulosic biomass**” is an EPA-invented category that includes waste woods from several sources. 78 Fed. Reg. 9211/2-12/1 (codified at 40 C.F.R. §241.2), JA0294-95. One is **wood from construction and demolition debris**, which comes from building and dismantling buildings.<sup>5</sup> EPA-HQ-RCRA-2008-0329-1811 at 1, JA0550. Construction yields scrap or excess materials, including wallboard, plastic, metal, insulation, and wood, that must be disposed of. *Id.*, JA0550. Demolition debris similarly consists of a variety of materials, and the wood in it “is often painted or chemically treated or is fastened to other materials, making separation difficult.” *Id.*, JA0550.

Much of this material is burned in boilers. *Id.* 3, JA0552. Processors get paid to take the construction and demolition debris. *Id.* 8, JA0557. Usually, processors claim to remove non-wood materials, and they may also chip or shred the wood into hog fuel. *Id.* 6, JA0555. It is difficult to distinguish “clean” construction and demolition wood from other materials, including contaminated wood. EPA-HQ-

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<sup>5</sup> EPA also discusses railroad ties and utility poles, EPA-HQ-RCRA-2008-0329-1811 at 1, JA0550, but they are not at issue in this brief.

RCRA-2008-0329-1974 (“Comments of Partnership for Policy Integrity”) 10-11, 14, JA0712-13, 0716; EPA-HQ-RCRA-2008-0329-1393, JA0494.



**Fig.1:** Boiler fuel made from “forest industry waste, shredded construction wood waste, and demolition debris.”<sup>6</sup>

Construction and demolition wood can also be productively reused, for example, as lumber, for engineered wood, or as mulch. EPA-HQ-RCRA-2008-0329-1811 at 4, JA0553. When reused as lumber, it can fetch 20-32 times the

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<sup>6</sup> Comments of Partnership for Policy Integrity 11-12 (quoting and using picture from case study), JA0713-14.



revenue as selling it for fuel or mulch. *Id.*, JA0553. Wood that is recycled for engineered wood is also worth more than wood sold for fuel or mulch. *Id.*, JA0553.

Finally, **pulp and paper residuals** cover wastes from the pulp and paper manufacturing industry; such wastes include refuse and rejects from pulping and recycling, kraft pulp fibers, and paper pellets, separate from the sludges from wastewater treatment at mills. EPA-HQ-RCRA-2008-0329-1809 at 1, 3 n.4, JA0534, 0536. These rejects are “paper fiber that is unusable (due to impurities, fibers too small for recycling process) resulting from the recycling process,” including old corrugated cardboard rejects, which EPA calls “OCC rejects.” EPA-HQ-RCRA-2008-0329-2007 at 1-2, JA0739-40; 76 Fed. Reg. 15,472/1, 15,486/2 JA0088, 0102. Like wood wastes, pulp and paper wastes are often burned. EPA-HQ-RCRA-2008-0329-1809 at 3, 5-6, JA0536, 0538-39.

### **III. EPA’S EFFORTS TO EXEMPT CERTAIN BURNING FROM CONGRESS’S FRAMEWORK.**

In 2000, EPA promulgated standards under Clean Air Act §129 for commercial and industrial solid waste incinerators. 65 Fed. Reg. 75,338 (2000). Claiming that §129 covered only units that burn solid waste without energy recovery, EPA defined “commercial and industrial waste” to exclude solid waste burned for energy recovery and excluded units burning such waste from regulation under §129. *Id.* 75,342/2-43/2, JA0783-84. Sierra Club petitioned for review.

*Sierra Club v. EPA*, No. 01-1048 (D.C. Cir. filed Jan. 30, 2001). Among other flaws in the rule, EPA had not proposed any such definitions, so this Court granted an unopposed EPA motion for voluntary remand so it could reconsider the rule. Order, *Sierra Club*, No. 01-1048 (D.C. Cir. Sept. 6, 2001). On reconsideration, EPA reaffirmed it would exempt units that combusted solid waste from regulation under §129 but did so by defining “commercial or industrial solid waste incineration unit” to exclude units that recover energy from the combustion of waste. See *Natural Res. Def. Council (“NRDC”) v. EPA*, 489 F.3d 1250, 1256 (D.C. Cir. 2007) (definitions in reconsideration rule were “substantively the same as before reconsideration”). EPA’s definitions “substantially reduce[d] the number of commercial or industrial waste combustors subject to section 129’s standards by exempting from coverage any commercial or industrial incinerator” recovering energy from solid waste combustion. *Id.* 1258. This Court found that EPA’s definitions were contrary to the Clean Air Act’s plain language. *Id.* 1257; see also *id.* 1260 (specifically rejecting EPA’s attempt to exempt energy recovery units).

The Clean Air Act avenue closed, EPA turned its attention to RCRA’s definition. EPA already has a multitude of regulatory definitions of solid waste. *E.g.*, 40 C.F.R. §§258.2, 261.2. It began working on another, requesting comment in 2009 on an approach to “secondary materials”—like post-consumer, post-industrial, and scrap materials, 74 Fed. Reg. 44/1 n.2, JA0004—that would



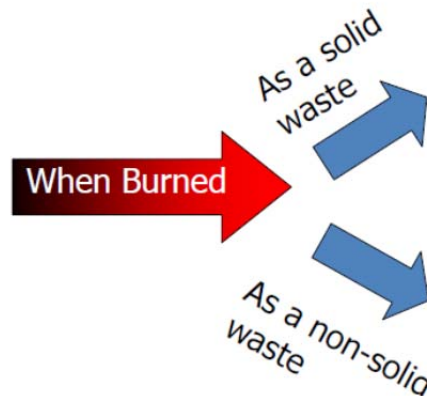
determine whether such materials were solid waste “when combusted.” *Id.* 53/1-2, JA0013. EPA then proposed, 75 Fed. Reg. 31,844 (June 4, 2010), JA0022, and finalized a new Part in the Code of Federal Regulations, titled “Solid Wastes Used as Fuels or Ingredients in Combustion Units,” 76 Fed. Reg. 15,549/3-51/3 (codified as amended at 40 C.F.R. pt.241), JA0165-67. In response to industry concerns, EPA swiftly moved to amend the just-promulgated rule. 76 Fed. Reg. 80,452, 80,469/2-3 (Dec. 23, 2011), JA0173. The agency finalized its amendments to the rule, expanding the categories of materials that EPA deemed not solid wastes when burned and establishing and adjusting processes for exempting more materials from being solid waste. 78 Fed. Reg. 9136/1-38/1, JA0219-21; *id.* 9211/1-13/3 (codified at 40 C.F.R. pt.241), JA0294-96.

EPA illustrated, in the following graphic, how its rule focused on determining whether materials are wastes when burned:

## SECONDARY MATERIALS

Like...

Biomass  
Construction debris  
Scrap tires  
Scrap plastics  
Spent solvents  
Used tires  
Coal Refuse  
Foundry Sand  
Sewage Sludge  
Wood manufacturing material



The Combustion Unit is regulated under...

**CAA 129**

**CAA 112**

**FYI:** "Secondary materials" are the byproducts of a manufacturing or commercial process. They also include both consumer and industrial materials that are no longer used for their original purpose.

**Fig.2.**<sup>7</sup>

EPA established that secondary materials are solid wastes by default, except for materials that are excluded. 78 Fed. Reg. 9212/2 (codified at 40 C.F.R. §241.3(a)), JA0295; *see also* 76 Fed. Reg. 15,550/2 (codified at 40 C.F.R. §241.2) (defining "secondary material"), JA0166. One exclusion is an EPA-created category of materials it called "traditional fuels." All "traditional" fuels are defined not to be solid wastes, unless discarded. 76 Fed. Reg. 15,459/1, JA0075. EPA

<sup>7</sup> EPA-HQ-RCRA-2008-0329-0599 slide 17, JA0356.

explained it used the word “traditional” not in the sense that ordinary people use it, but “more in the sense that we have a product that is created for its use as a fuel.” *Id.* 15,477/1, JA0093. Despite that explanation, the “traditional fuels” exclusion covers “alternative” fuels that are not produced for fuel, like used oil and the “clean” wood in demolition debris. *Id.* 15,478/3-79/1, JA0094-95; 78 Fed. Reg. 9211/2-3 (codified at 40 C.F.R. §241.2), JA0294. “Clean” means the material cannot contain EPA-listed contaminants, a list that relies exclusively on the pollutants listed in Clean Air Act §§112 and 129, “at concentrations not normally associated with virgin biomass materials.” 78 Fed. Reg. 9211/3-12/1, JA0294-95.

EPA also categorically excluded from waste status materials that include scrap tires collected by tire collection programs, but only “when used as a fuel in a combustion unit.” *Id.* 9213/2 (codified at 40 C.F.R. §241.4(a)), JA0296. Though acknowledging that “tires are not produced for their fuel value,” 76 Fed. Reg. 15,495/3, JA0111, EPA claimed that such programs do not “allow for an opportunity for scrap tires intended as a fuel to be discarded in the first place,” *id.* 15,534/2, JA0150. Under EPA’s rule, likely “[f]ar less than 10% of the tires that are used every year for fuel” are waste. EPA-HQ-RCRA-2008-0329-1822 at 11, JA0575.

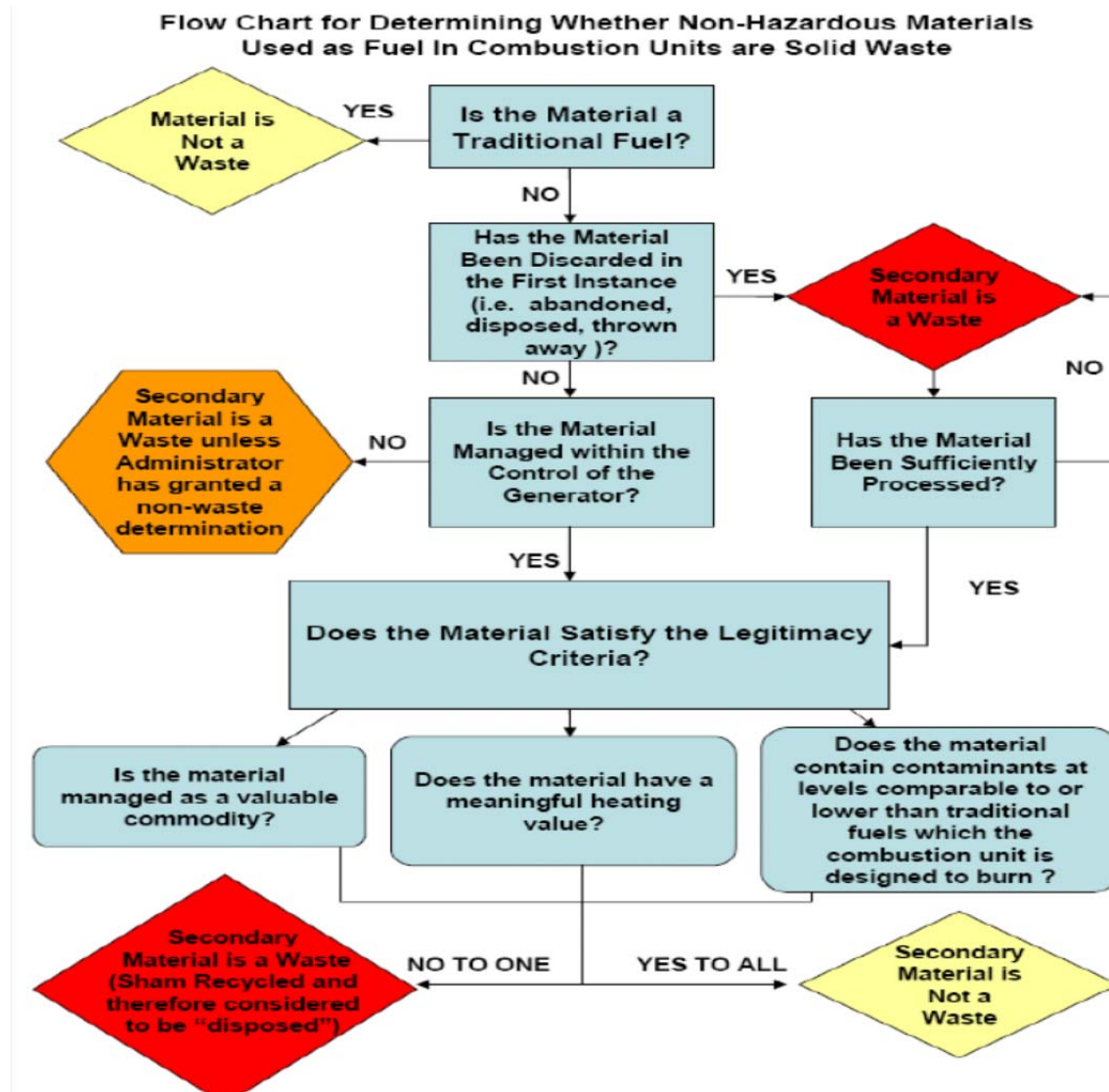
Also, EPA excluded “OCC rejects”—materials from old corrugated cardboard rejected as unrecyclable—when burned at pulp and paper mills. Ignoring

that old cardboard is initially thrown out before arriving at a paper mill, it deemed the parts that cannot be recycled “not discarded when used within the control of the generator, such as at pulp and paper mills.” 76 Fed. Reg. 15,486/3-87/1, JA0102-03.

Finally, EPA allowed materials that were undisputedly discarded to shed that status so long as the facility burning them determines for itself that they are “sufficiently processed” and used as a “legitimate fuel” under EPA’s “legitimacy criteria.” *Id.* 15,460/1, JA0076; *see also id.* 15,550/2-51/3 (codified as amended at 40 C.F.R. §§241.2, 241.3(b)(4), (d)), JA0166-67; 78 Fed. Reg. 9213/1-2 (amending 40 C.F.R. §241.3(d)), JA0296. This exclusion allows any tire that has been shredded with “a significant portion of the metal...removed,” “specific to the combustion unit,” to be burned without triggering Clean Air Act §129. 76 Fed. Reg. 15,472/1, 15,498/3-99/1, JA0088, 0114-15. Similarly, any construction and demolition wood that has been sorted to remove contaminants and then sized is no longer solid waste. *Id.* 15,498/1-2, JA0114. Other materials EPA has since indicated are sufficiently processed and legitimate include processed poultry litter, “fuel cubes” made from paper and plastic, and an “engineered fuel” made from municipal solid waste. [epa.gov/osw/nonhaz/define/pdfs/wellons\\_energy\\_letter.pdf](http://epa.gov/osw/nonhaz/define/pdfs/wellons_energy_letter.pdf), JA0874; [epa.gov/epawaste/nonhaz/define/pdfs/roaring-spring-fuel-cubes.pdf](http://epa.gov/epawaste/nonhaz/define/pdfs/roaring-spring-fuel-cubes.pdf), JA0868; [epa.gov/epawaste/nonhaz/define/pdfs/entsorga\\_srf\\_signed.pdf](http://epa.gov/epawaste/nonhaz/define/pdfs/entsorga_srf_signed.pdf), JA0888;

see also [epa.gov/epawaste/nonhaz/define/index.htm#gc](http://epa.gov/epawaste/nonhaz/define/index.htm#gc) (list of EPA determinations for specific waste processing activities), JA0915-16.

The following flowchart illustrates, with some simplification, EPA's basic approach:



**Fig.3.**<sup>8</sup>

<sup>8</sup> EPA-HQ-RCRA-2008-0329-0599 slide 21, JA0357.

#### IV. PRACTICAL EFFECTS OF EPA'S EXCLUSIONS.

The Clean Air Act requires EPA to regulate all facilities that combust any solid waste material, *NRDC*, 489 F.3d at 1258-60, but, despite repeated efforts, EPA has not established lawful standards for units “combusting commercial or industrial waste,” 42 U.S.C. §7429(a)(1)(D). Units combusting commercial or industrial waste largely comprise industrial boilers and process heaters that are used to generate power and heat at industrial facilities like refineries, chemical plants, and paper mills. 75 Fed. Reg. 31,845-46, JA0023-24. They also include some waste-burning cement plants and other facilities. *Id.*, JA0023-24. According to EPA, there are approximately 13,000 industrial boilers operating at “major sources,” 78 Fed. Reg. 7138, 7155-56 tbl.5 (Jan. 31, 2013), JA0795-96, and almost 200,000 operating at “area sources,” 76 Fed. Reg. 15,554, 15,579 tbl.4 (Mar. 21, 2011), JA0790. The Clean Air Act defines as “major” any source with the potential to emit at least 10 tons per year of any one listed pollutant or 25 tons per year of any combination of listed pollutants, and defines an “area” source as any source that is not “major.” 42 U.S.C. §7412(a)(1)-(2).

For major sources, Clean Air Act §112 requires standards that are similar to those required by §129. Although they apply to different sets of pollutants, their stringency provisions are “virtually identical.” *Nat’l Ass’n of Clean Water Agencies v. EPA*, 734 F.3d 1115, 1119-20 (D.C. Cir. 2013). For area sources,

however, §112(d)(5) allows EPA to set less stringent standards that merely “provide for the use of generally available control technologies or management practices.” 42 U.S.C. §7412(d)(5). Further, the Clean Air Act allows EPA to exempt area sources from permitting requirements if the agency finds that compliance with permitting requirements is “impracticable, infeasible, or unnecessarily burdensome.” *Id.* §7661a(a). Thus, whereas Congress determined that incinerators warrant the Clean Air Act’s most protective emission standards, regardless of their size, it allowed EPA to set much less protective standards for non-incinerators operating at sources below the major source threshold. The extent to which a combustion unit’s emissions must be controlled depends heavily on whether it burns waste and is therefore an incinerator. *See, e.g.*, 75 Fed. Reg. 31,848/3, JA0026.

EPA’s emission standards for area source industrial boilers require very little in the way of controls. If they burn oil, their only obligation is to conduct initial and biennial “tune-up.” 78 Fed. Reg. 7488, 7518 tbl.2 (Feb. 1, 2013), JA0798-99. Likewise, boilers that burn solid fuel need only conduct tune-ups if they burn at least 15% biomass. *Id.*, JA0798-99; 76 Fed. Reg. 15,599/3 (defining “biomass” and “biomass subcategory”), JA0791. Thus, under EPA’s rules, almost 200,000 area source boilers can burn used oil, tires, and “clean” demolition debris without any limit on their resulting emissions. In addition, these facilities will not have to

monitor their emissions or obtain Title V permits. Many large industrial plants are area sources. *See, e.g.*, EPA-HQ-OAR-2008-0334-0011 at 2 (1700 chemical manufacturing facilities are area sources), JA0848. Further, even boilers and cement plants that are major sources of hazardous air pollutants will be allowed to emit more of dangerous pollutants like particulate matter, sulfur dioxide, dioxins, and precursors to ozone pollution than they would be if those materials were properly considered solid wastes. *Compare, e.g.*, 78 Fed. Reg. 9118 tbl.2, 9122-23 tbl.4 (waste-burning cement plants), JA0201, 0205-06, *with* 40 C.F.R. §63.1343 tbl.1 (non-waste-burning cement plants).

As a result of the rule at issue here, the number of commercial and industrial waste incinerators has been “substantially reduce[d],” just as it was by the definition of incinerator that this Court rejected in *NRDC*, 489 F.3d at 1258. Of almost 200,000 industrial boilers and cement plants, only about 175 would have been considered incinerators when EPA proposed the definition, and, after EPA expanded exclusions from it, now only 106 are. EPA-HQ-RCRA-2008-0329-1260 (Sierra Club Comments on 2010 proposal) 1, JA0424; [epa.gov/airquality/combustion/docs/20121221\\_ciswi\\_recon\\_fs.pdf](http://epa.gov/airquality/combustion/docs/20121221_ciswi_recon_fs.pdf) at 2, JA0866; *cf. NRDC*, 489 F.3d at 1261 (noting that EPA’s definition shifted thousands of units from being considered incinerators). The now-exempted facilities will avoid the stringent standards that Congress intended to govern units that burn solid



waste, even when they burn tires, used oil, scrap wood from construction and demolition debris, the unrecyclable remnants of paper and cardboard sent to be recycled, and materials they themselves deem processed enough and used legitimately. All these materials can contain heavy metals that can be emitted into the air when burned, and can contain other constituents that can lead to the air emission of other pollutants, including dioxins. The pollutants ultimately emitted can cause cancer, liver problems, neurological problems, eye and skin irritation, and a range of harms to the heart and lungs, including heart attacks, asthma attacks, and other respiratory symptoms that can require emergency room visits and hospitalization. EPA-HQ-RCRA-2008-0329-1973 at 6-13, JA0688-95.

### **SUMMARY OF ARGUMENT**

EPA's definition of waste excludes materials that are "discarded" within the ordinary meaning of that term. It also excludes materials that are undisputedly discarded but then "processed" and burned as fuel. These exclusions contravene RCRA, which defines the term "solid waste" to include "any" discarded material, and this Court's precedent, which makes clear that once-discarded materials remain solid waste regardless of whether they are subsequently processed and burned as fuel.

EPA's exclusions also defeat Congress's purpose in linking RCRA and the Clean Air Act with a common definition of solid waste. Rather than promulgating

a single definition that would support a coherent statutory scheme, EPA has promulgated a definition for Clean Air Act purposes that conflicts with the definition it uses under RCRA.

Further, this new definition turns primarily on whether or not a material is burned for energy—a distinction that is irrelevant under the Clean Air Act. The Clean Air Act recognizes that the emissions from waste-burning are just as dangerous whether or not the waste is burned for energy; as this Court has already held, the Act’s incinerator provisions apply to energy-recovery units and non-energy-recovery units alike. Rather than harmonizing RCRA and the Clean Air Act, EPA reads RCRA in a way that effectively recreates its unlawful exemption for energy-recovery units and defeats Congress’s intent to protect the public from the toxic emissions that waste-burning produces. EPA’s reading also renders language in the Clean Air Act insignificant, if not superfluous,

Finally, EPA’s rationale for the exclusions is riddled with internal contradictions and non-sequiturs. For example, EPA rejected comments urging it to consider the Clean Air Act in developing its definition of solid waste, but relied solely on the Clean Air Act to determine what count as “contaminants” that can render a material discarded under the definition. Elsewhere, the agency claims that because fewer scrap tires are being sent to dumps, fewer tires are being discarded—conveniently ignoring its own assertion that tires are discarded if they

are discarded “in the first instance,” regardless of whether they are subsequently dumped or burned. EPA’s failure to provide a rational and internally consistent basis for the exclusions is unlawful and arbitrary.

## STANDING

Petitioners have members who live, work, and recreate near facilities that burn the materials at issue in this suit. *See* declarations. As a result of the rules at issue here, those facilities are allowed to emit greater quantities of pollutants, like particulate matter, hydrogen chloride, and cadmium, than they otherwise would, and Petitioners’ members will suffer harms to their health and welfare interests; a ruling in their favor would “help alleviate” those harms by more effectively limiting those facilities’ emissions. *NRDC v. EPA*, No. 10-1371, slip op. 14 (D.C. Cir. Apr. 18, 2014); *see* declarations.

In addition, because the rules at issue allow area sources that affect Petitioners’ members to burn solid wastes without getting federal Title V permits addressing the pollutants regulated under §129 (if they have to get any Title V permit at all), they harm Petitioners procedurally by denying them the right to participate in public permitting processes governing facilities’ emissions that affect them. *See* declarations. Moreover, the rules harm Petitioners by depriving them of information, including from monitoring, about emissions from such sources that

the Clean Air Act's monitoring and permitting provisions would afford them if the materials were solid waste. *Id.*

### STANDARD OF REVIEW

At issue is whether EPA's action was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706(2)(A); *see also* 42 U.S.C. §6976(a). For matters of statutory interpretation, *Chevron* governs: "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837, 842-43 (1984). Thus, if the intent of Congress is clear, the agency's interpretation is accorded no deference. *Id.* If the statute is ambiguous, at *Chevron* step two, a reviewing court defers to the agency's interpretation of the statute only if (among other things) "the agency has offered a reasoned explanation for why it chose that interpretation," *Vill. of Barrington v. Surface Transp. Bd.*, 636 F.3d 650, 660 (D.C. Cir. 2011), and the interpretation does not "diverge[] from any realistic meaning of the statute," *Massachusetts v. DOT*, 93 F.3d 890, 893 (D.C. Cir. 1996). EPA's action is arbitrary and capricious if it relies on irrelevant factors, fails "to consider an important aspect of the problem," or rests on an explanation that fails to give "a rational connection between the facts found and the choice made," "runs counter to the evidence before the agency," or is wildly "implausible." *Motor Vehicle Mfrs. Ass'n of U.S.*

*v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks omitted). In particular, “agency action is arbitrary when the agency offered insufficient reasons for treating similar situations differently.” *Transactive Corp. v. United States*, 91 F.3d 232, 237 (D.C. Cir. 1996).

## ARGUMENT

### I. EPA’S RULE IS INCONSISTENT WITH RCRA AND THE CLEAN AIR ACT.

In comprehensively regulating solid waste, Congress deliberately linked the Clean Air Act’s incinerator provisions with RCRA’s definition of solid waste. Clean Air Act §129(g) defines an incinerator as “any facility which combusts any solid waste material from commercial or industrial establishments or the general public,” with certain narrow and specific exceptions. 42 U.S.C. §7429(g)(1); *see NRDC*, 489 F.3d at 1257-58. It then provides that “the term[] ‘solid waste’ ...shall have the meaning[] established by the Administrator pursuant to [RCRA].” 42 U.S.C. §7429(g)(6). RCRA itself reinforces this express tie, for Congress there required EPA to “integrate” RCRA “with the appropriate provisions of the Clean Air Act,” among other statutes, as practicable, and “to the extent that [such integration] can be done in a manner consistent with the goals and policies” in RCRA and the other statutes. *Id.* §6905(b)(1). Thus, the general obligation EPA and this Court have to respect both RCRA and the Clean Air Act, “regard each as

effective,” and provide a “careful accommodation of one statutory scheme to another” applies here with particular force. *Morton v. Mancari*, 417 U.S. 535, 551 (1974); *Southern S.S. Co. v. NLRB*, 316 U.S. 31, 47 (1942); *see also Boumediene v. Bush*, 553 U.S. 723, 776 (2008) (“When interpreting a statute, we examine related provisions in other parts of the U.S. Code.”).

**A. EPA’s Rule Is Inconsistent with RCRA.**

**1. EPA Unlawfully Deems Discarded Materials Not to Be Discarded.**

EPA’s definition of solid waste excludes materials that have been “discarded” within the ordinary meaning of that term. 42 U.S.C. §6903(27). For example, EPA claims that “scrap tires removed from vehicles and managed under the oversight of state and other established tire collection programs are not ‘discarded in the first instance.’” 76 Fed. Reg. 15,534/1, JA0150. Thus, according to EPA, when the owner of a car determines that her tires are worn out, drives to the tire store, and has her old tires removed and taken away, she has not “discarded” her old tires. *Id.*, JA0150. Similarly, when she decides that her engine oil needs to be replaced, drives to a service station, and has her old oil drained and replaced, she has not “discarded” the old oil. *Id.* 15,502/2, JA0118. If the owner of a building decides to knock her building down and have the debris hauled away, she has not “discarded” all the wood in that debris, only the wood that, in EPA’s view, is not “clean.” *Id.* 15,485/2, JA0101.

EPA categorically excludes all these materials, and others, from the definition of solid waste. 40 C.F.R. §§241.2-241.4. But, as this Court already has held, the term “discarded” in RCRA’s definition of solid waste unambiguously has its ordinary plain meaning of “disposed of, abandoned, or thrown away.” *AMC I*, 824 F.2d at 1193. When a car owner gets rid of her old, worn-out tires and leaves them at the tire store, she has disposed of them, abandoned them, or thrown them away. Thus, those tires are “discarded” within the ordinary meaning of that word, just as the waste left at the curb for trash collectors to pick up is discarded. It is “an extraordinary distortion of the English language” to say that when something is thrown away, it is not discarded. *ABR*, 208 F.3d at 1053.

Consistent precedent in this Court confirms that material discarded by its original owner is discarded within the ordinary meaning of the term. This Court has made clear that “once material qualifies as ‘solid waste,’”—*i.e.*, has been discarded—“something derived from it retains that designation even if it might be reclaimed and reused at some future time.” *ABR*, 208 F.3d at 1056 (discussing *API I*, 906 F.2d 729, and *AMC II*, 907 F.2d 1179). This commonsense principle stems from this Court’s first decision construing RCRA’s definition of solid waste. In *AMC I*, this Court expressly recognized EPA’s RCRA authority to regulate “used oil.” 824 F.2d at 1187 n.14. The *AMC I* Court found that although regulating “undiscarded oils at petroleum refineries” would exceed EPA’s RCRA authority to

regulate solid waste, regulating “‘used oil’ collected by and utilized in the ‘oil recycling industry’” is “consistent with an everyday reading of the term discarded.” *Id.* The Court could not have meant that used oil has been discarded by the oil recyclers, which “collect discarded used oils, distill them, and sell the resulting material for use as fuel in boilers.” *Id.* Rather, used oil falls within the ordinary meaning of “discarded” because it is discarded by its original owner before it ever gets “collected.” *Id.* Having been discarded once, that oil is “discarded” within the ordinary meaning of the word. *ABR*, 208 F.3d at 1054-55 (quoting *AMC I*, 824 F.2d at 1187 n.14).

Relying on this Circuit’s caselaw, the Eleventh and Fourth Circuits have made the same point. *ILCO*, 996 F.2d at 1131-32; *Owen Elec. Steel Co. of S.C. v. Browner*, 37 F.3d 146, 150 (4th Cir. 1994). *ILCO* addressed the status of spent car batteries that a lead smelting company had purchased so that it could extract certain components and recycle the lead they contained. 996 F.2d at 1128-29. The company argued that “it has never ‘discarded’ the [battery components] and, therefore the material it recycles is not ‘solid waste’ as defined in RCRA §6903(27).” *Id.* 1131 (emphasis added). The Court disagreed:

Somebody has discarded the battery in which these components are found. This fact does not change just because a reclaimer has purchased or finds value in the components.

*Id.*; accord *Owen Elec. Steel*, 37 F.3d at 150 (quoting *ILCO*).



At various points in the rule, EPA acknowledges that a once-discarded material is a waste. For example, EPA states that “the statutory definition of solid waste turns on whether or not a material has been discarded in the first instance.” 76 Fed. Reg. 15,508/2 (emphasis added), JA0124. Nonetheless, EPA takes the position that worn-out tires discarded by their owners at tire stores “are not ‘discarded in the first instance’” so long as they are subsequently “managed under the oversight of state and other established tire collection programs.” *Id.* 15,534/1, JA0150. Likewise, it evidently takes the position that motor oil discarded by its owner at service stations is not discarded in the first instance, so long as it is subsequently collected and distilled by oil recyclers, and that the wooden parts of demolished buildings that are discarded by the buildings’ owners and hauled away are not discarded in the first instance, so long as they are subsequently found to be “clean.” *See* 40 C.F.R. §241.2 (including both materials in definition of “traditional fuels”). EPA evidently also does not view paper and cardboard that people discard as being discarded in the first instance, so long as it subsequently makes its way to recycling facilities where recycling operations separate out the unrecyclable parts and burn them. *See* 76 Fed. Reg. 15,486/2-87/1 (deeming cardboard rejects non-waste when burned at pulp and paper mills), JA0102-03; EPA-HQ-RCRA-2008-0329-2007 at 1-2 (“recycling process residuals,” including cardboard rejects, are

“paper fiber that is unusable (due to impurities, fibers too small for recycling process) resulting from the recycling process”), JA0739-40.

Whatever EPA might mean by “first instance,” materials discarded by their original owners have been “discarded” within that term’s ordinary meaning. Therefore, such materials are solid waste.<sup>9</sup> *ABR*, 208 F.3d at 1056; *AMC I*, 824 F.2d at 1193. Nor does it matter how a discarded material is handled after it has been discarded. *ABR*, 208 F.3d at 1054-55 (quoting *AMC I*, 824 F.2d at 1187 n.14); *ILCO*, 996 F.2d at 1129, 1131-32. As explained above, because such materials are already “discarded,” they are already “waste.” *See also ABR*, 208 F.3d at 1052 (“Once we have determined a statute’s clear meaning, we adhere to that determination under the doctrine of *stare decisis*, and we judge an agency’s later interpretation of the statute against our prior determination of the statute’s meaning.”). Indeed, if mere collection of a material sufficed to keep it from being discarded, then virtually nothing would be waste. For example, because the garbage that people leave at the curb is “collected,” even ordinary household garbage would not be waste. As a result, RCRA’s ban on disposing solid waste

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<sup>9</sup> *ABR* makes clear that “something derived from” solid waste remains solid waste “even if it might be reclaimed and reused at some future time.” 208 F.3d at 1056. Thus, cardboard rejects are even more plainly solid waste because they are derived from discarded cardboard and are rejected from the recycling process because they cannot be reused.

into “open dumps,” *see* 42 U.S.C. §§6903(14), 6944(b), 6945(a), would not prevent the sanitation departments that collect garbage and run dumps from operating the open dumps RCRA banned. *See Greenlaw v. United States*, 554 U.S. 237, 251 (2008) (“We resist attributing to Congress an intention to render a statute so internally inconsistent.”).

*A fortiori*, it is irrelevant under RCRA that scrap tires, used oil, and construction debris are “used as a fuel in a combustion unit,” 78 Fed. Reg. 9153/3, JA0236. That argument, which is EPA’s primary rationale for excluding them categorically from the definition of solid waste, *see id.* 9153/3-54/1, JA0236-37, goes exclusively to the last thing that happens to these materials, not to whether they are discarded in the first instance. Burning tires that have been collected does not prevent tires from being discarded in the first instance any more than burning municipal garbage that has been collected prevents garbage from being discarded in the first instance.

**2. Once Discarded, a Secondary Material Cannot Be Processed into a Non-Waste Fuel Under RCRA.**

EPA’s rule creates a separate exclusion from the definition of solid waste for secondary materials that are undisputedly “discarded” and therefore within the statutory definition of “solid waste,” 42 U.S.C. §6903(27). Specifically, it exempts discarded materials that are subsequently “processed to produce a fuel.” 40 C.F.R.

§241.3(b)(4). For example, discarded tires “that have been shredded/chipped into [tire-derived fuel] with the wire removed” are excluded. 76 Fed. Reg. 15,537/3, JA0153. Similarly, EPA states that “contaminated [construction and demolition] wood that has been processed to remove contaminants” would “likely” be excluded. 78 Fed. Reg. 9138/2, JA0221.

A once-discarded material may be processed and burned for fuel, but that does not change the fact that it is waste. In *ABR*, this Court affirmed that EPA has RCRA authority to regulate oil recyclers, which “typically collect discarded used oils, distill them, and sell the resulting material for use in boilers.” 208 F.3d at 1054 (quoting *AMC I*, 824 F.2d at 1187 n.14). It further affirmed that RCRA regulation of all these activities is “consistent with an everyday reading of the term ‘discarded.’” *Id.* 1054-55. Because EPA has RCRA authority only over materials that are “solid waste,” *AMC I*, 824 F.2d at 1178, *ABR* necessarily affirms that used oils themselves continue to be “discarded” within the ordinary sense of the word when they are subsequently “collect[ed],” “distill[ed],” and sold “for use as fuel in boilers” by oil recyclers. 208 F.3d at 1054-55. Otherwise, EPA would not have RCRA authority to regulate the collection, distillation, and sale of used oil for fuel—as this Court has repeatedly explained it does. *Id.*; *API I*, 906 F.2d at 741 n.16; *AMC I*, 824 F.2d at 1187 n.14.

EPA argues that *ABR* was addressing only the “processing activity” and “in no way opines on whether the resulting fuel is waste.” 76 Fed. Reg. 15,475/2, JA0091. But *ABR* affirmed that EPA has RCRA authority over all the oil recyclers’ activities, from collecting the used oil, to distilling it, to selling it for fuel. 208 F.3d at 1054-55. When used oil is sold for fuel, all processing is complete. Thus, used oil remains “discarded” within “an everyday reading of the term” after it is processed, *i.e.*, when it is sold “for use as fuel in boilers.” *Id.* Contrary to EPA’s claim, *ABR* makes clear that processing used oil does not make it any less discarded.

EPA also argues that *ABR* and *AMC I* “do not stand for the proposition that any product resulting from recycling must be a waste” because “[s]uch a view would make almost every aluminum can from which we drink our sodas or newspapers on which we read the news ‘solid wastes.’” 76 Fed. Reg. 15,475/1-2, JA0091. EPA is correct to a point: *ABR* and *AMC I* stand for the narrower proposition that discarded materials remain waste when they are processed for use as a fuel. Because this case does not address the processing of waste into aluminum cans or newspapers, the Court can follow *ABR* and *AMC I* here without reaching the status of those products.

In any event, RCRA shows that, unlike EPA, Congress did not equate burning waste for energy with recycling waste into products. Congress deliberately

separated its findings on materials recovered from waste from its findings on energy recovered from waste, noting in the energy subsection that “solid waste represents a potential source of solid fuel, oil, or gas that can be converted into energy.” 42 U.S.C. §6901(c), (d); *see also id.* §6941a(2)-(5) (similar findings). Similarly, Congress took care in RCRA’s definitions section to draw a distinction between “material” recovered from solid waste and “energy” recovered from solid waste. *Id.* §6903(20) (defining “recovered resources” as “material or energy recovered from solid waste” (emphasis added)), (22) (similar definition of “resource recovery”);<sup>10</sup> *see* 42 U.S.C. §6903(19) (defining “recovered material” without once referring to energy or fuel); *e.g.*, *North Carolina v. EPA*, 531 F.3d 896, 910 (D.C. Cir. 2008) (“Canons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings, unless the context dictates otherwise....” (ellipsis in original)); *In re Espy*, 80 F.3d 501, 505 (D.C. Cir. 1996) (use of disjunctive indicates “separate and distinct alternatives” (internal quotation marks omitted)). And, when Congress directed EPA how to prioritize research on resource recovery, it ordered EPA to study “techniques of energy recovery from

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<sup>10</sup> “Recovery” and “recover” are statutorily undefined and thus in this context have their ordinary meaning of reclaiming or to reclaim. *See, e.g., Hamilton v. Lanning*, 560 U.S. 505, 513 (2010); *Bluewater Network v. EPA*, 370 F.3d 1, 13 (D.C. Cir. 2004); *Webster’s New Universal Unabridged Dictionary* 1509 (deluxe 2d ed. 1983); *Webster’s Seventh New Collegiate Dictionary* 716 (1969).

solid waste” that specifically included “dry shredded fuel systems, pyrolysis, densified refuse-derived fuel systems, anerobic digestion, and fuel and feedstock preparation systems”—all forms of processing solid waste. 42 U.S.C. §6982(c). Thus, under RCRA, when solid waste is physically, chemically, biologically, or otherwise processed before being burned, the energy recovered is nonetheless recovered from solid waste.

By equating energy recovered from solid waste with material recovered from solid waste, 76 Fed. Reg. 15,475/3, 15,537/2, JA0091, 0153, EPA nullifies the distinction Congress drew between the two. EPA’s interpretation thus contravenes Congress’s intent that there be a line between recovered material and recovered energy, and allows waste to be turned to energy without being subject to the protections Congress intended RCRA and the Clean Air Act working together to provide. *See Chevron*, 467 U.S. at 842-43.

**B. EPA’s Rule Contravenes the Clean Air Act and Defeats Congress’s Purpose in Linking RCRA with the Clean Air Act.**

Both EPA’s contention that scrap tires and other discarded materials are not solid waste and the agency’s claim that materials that are undisputedly discarded cease to be waste if processed as fuel conflict with the Clean Air Act as well as RCRA, further thwarting Congress’s comprehensive regulatory scheme.

On the most specific level, EPA's rule conflicts with §129(g)(1)(B), which excludes from the definition of solid waste incinerator

qualifying small power production facilities, as defined in section 796(17)(C) of Title 16, or qualifying cogeneration facilities, as defined in section 796(18)(B) of Title 16, which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes.

42 U.S.C. §7429(g)(1)(B) (emphasis added). Although the Clean Air Act narrowly limits what facilities can burn tires or used oil without being incinerators, EPA now says any facility can burn them without being a “solid waste incineration unit” under Clean Air Act §129. Further, under EPA's rule, virtually all scrap tires burned as fuel and used oil are not solid waste. EPA-HQ-RCRA-2008-0329-1822 at 11 (“[f]ar less than 10%” of scrap tires burned as fuel would likely be waste), JA0575; EPA-HQ-RCRA-2008-0329-1827 at 4, 6 (under 4% of, or “nearly all,” used oil is on-spec), JA0597, 0599. Thus, EPA's categorical exclusion of scrap tires and used oil from the RCRA definition of solid waste renders “insignificant, if not wholly superfluous,” the specific and narrow exemption that Congress crafted for just some units that burn these wastes, contrary to repeated holdings that the Supreme Court and this Court have long been “reluctant to treat statutory terms as surplusage in any setting.” *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (internal



quotation marks omitted); *accord, e.g., City of Roseville v. Norton*, 348 F.3d 1020, 1028 (D.C. Cir. 2003) (rejecting reading under which statutory “exception would be virtually bereft of meaning”).

Moreover, Congress made plain in §129 that units burning refuse-derived fuel are not eligible for the limited exemption it chose to provide. 42 U.S.C. §7429(g)(1)(B). By allowing any unit to burn fuel derived from solid waste without being a waste-burner if the fuel is “sufficiently processed,” EPA unlawfully overrides Congress’s deliberate choice not to provide any exemption for refuse-derived fuel. *E.g., Shays v. FEC*, 528 F.3d 914, 933 (D.C. Cir. 2008) (“the regulation fails because it allows what [the statute] directly prohibits.”).

Further, §129 uses tires and used oil as examples of “waste.” 42 U.S.C. §7429(g)(1)(B). Thus, Congress plainly thought that these two materials are wastes within the meaning of RCRA §1004(27), 42 U.S.C. §6903(27), when it enacted the Clean Air Act. Issuing a regulatory definition of waste under RCRA that excludes even these two materials that are specifically called out as wastes in the Clean Air Act is the antithesis of a “careful accommodation of one statutory scheme to another.” *Southern S.S.*, 316 U.S. at 47; *accord W. Va. Univ. Hospitals v. Casey*, 499 U.S. 83, 88-92, 100-01 (1991) (superseded by statute) (rejecting reading of statutory term where reading would render use of terms in other statutes “an inexplicable exercise in redundancy”).

Moreover, §129(g)(6) makes clear that Congress wanted the same definition of solid waste to apply under both RCRA and the Clean Air Act. 42 U.S.C. §7429(g)(6) (“‘solid waste’...shall have the meaning[] established by the Administrator” under RCRA) (emphasis added); *see Am. Bus Ass’n v. Slater*, 231 F.3d 1, 4-5 (D.C. Cir. 2000) (“‘[i]t is a rule of law well established that the definite article “the” particularizes the subject which it precedes.’”) (citation omitted; alteration in original). Similarly, RCRA provides that EPA must integrate RCRA and Clean Air Act provisions “to the maximum extent practicable,” giving effect to the goals and policies in both statutes. 42 U.S.C. §6905(b)(1). Yet EPA has given the term “solid waste” two completely different meanings for RCRA and Clean Air Act purposes.

In an analogous situation, the Supreme Court addressed a statutory term that applied “without differentiation” to three categories. *Clark v. Martinez*, 543 U.S. 371, 378 (2005). It held that “[t]o give these same words a different meaning for each category would be to invent a statute rather than interpret one.” *Id.*; *accord Holmes Grp. v. Vornado Air Circulation Sys.*, 535 U.S. 826, 833-34 (2002) (warning against such “interpretive necromancy”). In RCRA, the term “solid waste” applies without differentiation to all waste, whether it is hazardous or non-hazardous, and Clean Air Act §129 indicates that Congress wanted the same definition to apply under the Clean Air Act. *E.g., AMC I*, 824 F.2d at 1179. For the

purpose of RCRA's hazardous waste provisions, EPA has long defined "solid waste" to include materials that are "burned to recover energy." 40 C.F.R. §261.2(c)(2) (emphasis added). Yet, for the purpose of Clean Air Act regulation only, EPA now defines this same statutory term to exclude materials because they are burned to recover energy. By giving the same statutory term, "solid waste," two conflicting meanings, EPA has "invent[ed] a statute rather than interpret[ed] one." *Clark*, 543 U.S. at 378. Further, by giving the term different meanings for regulation under RCRA and under the Clean Air Act, EPA has frustrated congressional intent—plainly expressed in both Clean Air Act §129 and RCRA §1006—that Clean Air Act and RCRA provisions be integrated.<sup>11</sup>

On a more general level, Congress knew full well that many incinerators recover energy from burning waste. Many municipal waste combustors are known as "waste-to-energy" facilities because they were designed to recover energy from burning municipal garbage. *E.g.*, Energy Recovery Council, About Us, <http://www.wte.org/about> (last accessed Apr. 25, 2014), JA0918. Likewise, some

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<sup>11</sup> In fact, EPA has only ever provided fragmentary meanings for "solid waste": one that applies by its terms only to hazardous waste regulation under RCRA, 40 C.F.R. §261.1(b)(1); another that applies only to "non-hazardous secondary materials that are combusted" and that was written exclusively "for purposes of [Clean Air Act] sections 112 and 129," 76 Fed. Reg. 15,502/2-3, JA0118; *accord*, *e.g.*, *id.* 15,495/1, JA0111; and five others that apply in various ways to non-hazardous solid waste, *see id.* 15,462/1-2 (listing 40 C.F.R. §§240.101(y), 243.101(y), 246.101(bb), 257.2, 258.2), JA0078.

medical waste incinerators recover energy from burning medical waste. 74 Fed. Reg. 51,368, 51,376/3 (Oct. 6, 2009), JA0786. Nonetheless, §129 makes clear that Congress wanted these facilities to be regulated as incinerators. 42 U.S.C. §7429(a)(1)(A)-(B). As this Court held in *NRDC*, Congress intended that all facilities that burn “any solid waste material at all” are incinerators regardless of whether they recover energy, unless they are among the small set of units that §129(g)(1) expressly exempts from the definition of incinerator. 489 F.3d at 1258-60.

Having tried but failed to insert an exemption for energy-recovery units into the Clean Air Act, EPA now seeks to insert one into RCRA. Instead of defining incinerator under the Clean Air Act to exclude combustion facilities that burn waste for energy, it now defines solid waste under RCRA to exclude discarded materials when they are burned for energy in combustion units. For example, EPA excludes scrap tires gathered by tire collection programs “when used as fuel in a combustion unit.” 40 C.F.R. §241.4. But it declines to determine whether they are discarded if ultimately used for any other purpose: “we are not making any determination that non-hazardous secondary materials are or are not solid wastes for other possible beneficial uses.” 76 Fed. Reg. 15,495/1, JA0111. The distinction EPA draws between units that burn waste with energy recovery and those that burn waste without energy recovery is irrelevant under the Clean Air Act. Making Clean

Air Act regulation of combustion units turn on this irrelevant distinction is scarcely “careful accommodation” of the two statutes. *Southern S.S.*, 316 U.S. at 47. EPA must “minimize[] the impact of its actions on the policies of the” Clean Air Act, not increase them. *Can-Am Plumbing v. NLRB*, 321 F.3d 145, 153-54 (D.C. Cir. 2003) (internal quotation marks omitted); *accord* 42 U.S.C. §6905(b)(1).

Ultimately, Congress intended RCRA and the Clean Air Act to work together, and EPA must harmonize them—especially here, where its rule governs an interaction between the two statutes that Congress expressly created. *See Roberts v. Sea-Land Servs.*, 132 S. Ct. 1350, 1356 (2012) (phrase was unambiguous in context because only one reading of it “makes [provision] a working part of the statutory scheme...and avoids gamesmanship in [relevant] process”); *FDA v. Brown & Williamson Tobacco*, 529 U.S. 120, 133 (2000) (court must interpret statute “as a symmetrical and coherent regulatory scheme” and look at Congress’s choices in related statutes). Instead, EPA misreads both RCRA and the Clean Air Act in a way that conflicts with each statute and impermissibly “permit[s] an end-run around” the statutory scheme. *Hays v. Sebelius*, 589 F.3d 1279, 1282 (D.C. Cir. 2009).

## II. EPA'S RULE IS AN UNREASONABLE INTERPRETATION OF RCRA AND THE CLEAN AIR ACT AND IS ARBITRARY.

Even if EPA's rule did not contravene RCRA and the Clean Air Act, it would still be unlawful and arbitrary<sup>12</sup> because, as discussed below, it takes inconsistent positions on interpreting RCRA and the Clean Air Act and on addressing different materials, as well as relying on non-sequiturs or, in some cases, on nothing at all.

### Interpreting RCRA and the Clean Air Act.

EPA's interpretation of RCRA and the Clean Air Act taken together is irrational and arbitrary in three ways. First, the agency was inconsistent about the scope of its rulemaking. On the one hand, it said that the rule only establishes "a framework for determining whether a non-hazardous secondary material is or is not a solid waste when burned as a fuel or ingredient in a combustion unit," 76 Fed. Reg. 15,515/2, JA0131,<sup>13</sup> and thus "is limited for purposes of determining [Clean Air Act] 129 applicability." *Id.* 15,529/3, JA0145. On the other, it said that

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<sup>12</sup> See *Gen. Instrument Corp. v. FCC*, 213 F.3d 724, 732 (D.C. Cir. 2000) ("we have recognized that an arbitrary and capricious claim and a *Chevron* step two argument overlap, and because of that we have not been sticky as to whether an argument in the area of overlap is characterized as a *Chevron* step two claim or as an arbitrary and capricious challenge.").

<sup>13</sup> *Accord id.* 15,458/3, 15,462/2, 15,473/3, 15,495/1, 15,545/1, 15,546/1, /3, 15,549/3-50/1 (codified at 40 C.F.R. §241.1), JA0074, 0078, 0089, 0111, 0161, 0162, 0165-66.

the rule “determines whether non-hazardous secondary materials are a solid waste, or not under RCRA,” regardless of whether a material is combusted. *Id.* 15,536/2, JA0152.<sup>14</sup> Either the rule is limited to determining the applicability of Clean Air Act §129 (itself an unlawful and arbitrary position), or the rule is defining what materials are non-hazardous solid waste under RCRA, regardless of whether they will ultimately be burned. It cannot be both. The incoherence of EPA’s two positions makes the rule they undergird unlawful and arbitrary. *See Business Roundtable v. SEC*, 647 F.3d 1144, 1153-54 (D.C. Cir. 2011) (agency reasoning is arbitrary where it is “internally inconsistent”); *Rettig v. Pension Benefit Guar. Corp.*, 744 F.2d 133, 151 (D.C. Cir. 1984) (interpretation fails under *Chevron* step two where agency failed to “consider[] matter in a detailed and reasoned fashion”).

Second, when EPA asserted that it was only determining whether materials were waste “when burned” in a stationary source, the agency fundamentally misconceived its task. As discussed above, Congress made plain that it wanted the same definition of solid waste to apply to the Clean Air Act as applies to RCRA. The question EPA needed to answer was thus not whether a material is waste when burned, but whether a material is a waste, *i.e.*, has been discarded. EPA claims to

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<sup>14</sup> *Accord, e.g., id.* 15,472/3 (“In this rule, EPA needs to decide whether secondary material is discarded in the first instance, and whether [a] transfer represents a legitimate non-waste activity.”), JA0088.

recognize that once a material has been discarded, it remains solid waste even if it is ultimately burned, *e.g.*, 76 Fed. Reg. 15,508/2, JA0124, but its rule excludes materials that are plainly discarded by their original owner. *See supra* pp.27-32. Because EPA's fragmented definitions of solid waste rely on handling and combustion after discard—factors that are irrelevant under RCRA—and “leads to irrational results in practice,” it is “unreasonable under *Chevron* step two” and arbitrary. *Int'l Alliance v. NLRB*, 334 F.3d 27, 35 (D.C. Cir. 2003); *see State Farm*, 463 U.S. at 43.

Third, the agency rejected a comment urging it to “consider the [Clean Air Act] when defining solid waste under RCRA.” 76 Fed. Reg. 15,470/1-2, JA0086. But EPA then proceeded to rely on the Clean Air Act in determining what counts as a “contaminant” that renders a secondary material more like a solid waste than like a fuel. *Id.* 15,523/3-24/1, /3, JA0139-40. Indeed, EPA rejected a broader definition of “contaminant” on the basis that Clean Air Act §129 defines the contaminants that matter. *Id.* 15,524/3-25/1, JA0140-41. EPA's selective and inconsistent reliance on the Clean Air Act to justify its RCRA interpretation is unlawful. *See Business Roundtable*, 647 F.3d at 1153-54; *Rettig*, 744 F.2d at 151.

### **Specific Materials.**

EPA's explanation for including “alternative fuels developed from virgin materials that can now be used as fuel products” in the category “traditional fuels,”



76 Fed. Reg. 15,478/1, JA0094, is internally inconsistent. EPA claimed that “it is using the term, ‘traditional,’ more in the sense that we have a product that is created for its use as a fuel.” *Id.* 15,477/1, JA0093; *accord id.* 15,478/1 (“‘Traditional fuels’ is defined in today’s final rule as materials that are produced as fuels and are unused products that have not been discarded and therefore, are not solid waste....”), JA0094. Yet in rejecting industry’s request that scrap tires be deemed a traditional fuel, EPA explained (correctly) that “[c]ement kiln users do not ask tire manufacturers to produce tires for burning in the kilns” and that “tires are not produced for their fuel value.” *Id.* 15,495/3, 15,507/3, JA0111, 0123. The same point applies equally to construction and demolition wood, used oil, crop residues, urban wood, and the other “alternative fuels” EPA deems “traditional,” but which are also “not produced for their fuel value,” regardless of whether they are clean, on-spec, or in another condition. EPA’s claim that these materials were “produced as fuels” is implausible and inconsistent with its treatment of similar materials, and thus arbitrary. *See State Farm*, 463 U.S. at 43; *Transactive*, 91 F.3d at 237.

For tires, EPA’s analysis is irrational because its conclusion that scrap tires were not initially discarded is not supported by the record, as discussed above. *See State Farm*, 463 U.S. at 43. Further, it is based on a non-sequitur. EPA concludes that “the annually generated scrap tires that are removed from vehicles under

established tire collection programs shows that they are not being discarded, as evidenced by the dramatic decrease in the number of tires in waste tire dumps.” 76 Fed. Reg. 15,534/2, JA0150. This does not follow. In fact, all the “dramatic decrease” shows is that more discarded tires are being burned instead of dumped. It says nothing about whether the tires are being discarded in the first instance. Only by pretending that the only form of discard is dumping can EPA reach its preferred conclusion. But discard goes beyond dumping. Congress defined “disposal” to mean placing solid waste on land or in water, but used a different, broader term—“discarded”—in defining solid waste. 42 U.S.C. §6903(3), (27); *see AMC I*, 824 F.2d at 1193 (discarded means “disposed of, abandoned, or thrown away”). EPA has failed to rationally consider whether scrap tires have been discarded when their owners throw them away. *See Fox v. Clinton*, 684 F.3d 67, 79-80 (D.C. Cir. 2012).

On used oil, EPA’s analysis is irrational in two ways. First, it relies extensively on its regulations applying to used oil, 40 C.F.R. pt.279, in determining that on-spec used oil is not solid waste, *see* 76 Fed. Reg. 15,538/1, JA0154,<sup>15</sup> but simultaneously asserts that those regulations “do not discuss or address whether used oil has been discarded, as commenters have claimed,” *id.* 15,506/1, JA0122.

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<sup>15</sup> EPA also relies on these regulations to claim, *inter alia*, that EPA historically has viewed on-spec oil as non-waste and that off-spec oil can be rendered non-waste by processing into on-spec oil. *Id.* 15,503/2, 15,506/1, JA0119, 0122.

EPA cannot rationally say the regulations are determinative of discard status but do not address discard. *See Business Roundtable*, 647 F.3d at 1153-54; *Rettig*, 744 F.2d at 151.

Second, EPA did not rationally consider the question of whether used oil was initially discarded. It says that on-spec oil is not discarded, but off-spec oil is. 76 Fed. Reg. 15,502/2, 15,503/1 & n.108, JA0118, 0119. In fact, both are discarded in the same way, by drivers replacing their oil at service stations. Per EPA's research, used oil is tested to see whether it is on- or off-spec when it is processed into fuel, not before. *See* EPA-HQ-RCRA-2008-0329-1827 at 6, JA0599. The driver who comes in for an oil change does not know or care whether his used motor oil is on- or off-spec: he just wants to dispose of his used oil and get fresh oil. Thus, EPA contends that used oil has different discard statuses depending on whether it is on- or off-spec even though the car owner does not know the answer to that question. There is no rational connection between the facts and the conclusion EPA drew. *State Farm*, 463 U.S. at 43.

EPA's treatment of cardboard rejects from paper recycling is also irrational, for it is inconsistent. EPA "believes materials, [*sic*] such as ... paper residues ... typically have been discarded." 76 Fed. Reg. 15,478/3, JA0094. But EPA claims that these materials were generated at the paper mill and are "part of the industrial process," and thus not discarded. *Id.* 15,487/1, JA0103; *see also* 78 Fed. Reg.

9173/1-2 (summarizing), JA0256. EPA had it right the first time, but, in any event, its analysis is internally inconsistent and cannot stand. *See Business Roundtable*, 647 F.3d at 1153-54; *Rettig*, 744 F.2d at 151.

### **Legitimacy Criteria and Processing.**

EPA's approach to the "legitimacy criteria" was irrational. First, EPA rejected comments calling on EPA to consider a range of contaminants, like heavy metals and pathogens, that go beyond those pollutants listed in Clean Air Act §§112 and 129, because the listed pollutants are the ones for which EPA sets air emission standards. 76 Fed. Reg. 15,524/3-25/1, JA0140-41; *see also* 78 Fed. Reg. 9142/2-3, JA0225. Assuming that the contaminants in a material are relevant to whether it has been discarded, EPA has provided no record basis for assuming contaminants for which emission standards are required under §129 and §112 are relevant but other contaminants are not. *Transactive*, 91 F.3d at 237. Further, EPA's conclusion that non-Clean Air Act contaminants are irrelevant does not follow from the fact that they are not regulated under the Clean Air Act. *See State Farm*, 463 U.S. at 43.

Second, part of EPA's requirement that a material "be managed as a valuable commodity," 76 Fed. Reg. 15,551/2-3 (codified at 40 C.F.R. §241.3(d)(1)(i), (2)(i)), JA0167, does no work at all in distinguishing solid waste from non-solid waste. One condition is that the material "be adequately contained

to prevent releases to the environment.”<sup>16</sup> *Id.* (codified at 40 C.F.R.

§241.3(d)(1)(i)(B)-(C), (2)(i)(B)-(C)), JA0167. But in distinguishing non-wastes

from waste, EPA claimed that solid wastes are held “in a way that protects the surrounding environment from the material.” *Id.* 15,522/1, JA0138; *accord id.*

15,526/2, JA0142. Thus, the adequate containment condition requires only that the material be held as though the material is a solid waste. It says nothing about whether the material is being “legitimately” used as a non-waste. *State Farm*, 463 U.S. at 43.

Finally, EPA provides no record support for its presumption that “self-implementing” tests will be effective in preventing abuse of its exclusions. EPA made the legitimacy criteria (for materials used on-site) and the processing test “self-implementing,” meaning the combustor alone determines whether what it is combusting is waste. *See* 76 Fed. Reg. 15,481/1-2 & n.32, JA0097. The facility need not actually test the contaminant levels in the materials it burns, but can instead rely on “expert or process knowledge,” without revisiting that reliance so long as the facility continues to burn “the same type of [non-hazardous secondary material] as when the original assessment was made.” 78 Fed. Reg. 9144/3, 9146/2, 9152/2 (emphasis added), JA0227, 0229, 0235; *see also id.* 9139/1 (facility

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<sup>16</sup> Another condition is that the material not be held for an unreasonably long time. *Id.* (codified at 40 C.F.R. §241.3(d)(1)(i)(A), (2)(i)(A)), JA0167.

need not actually test for contaminant levels when determining that “cellulosic biomass” it burns is “clean”), JA0222. This puts the fox in control of the henhouse. EPA-HQ-RCRA-2008-0329-1038 at 3, JA0381; *cf. NetCoalition v. SEC*, 615 F.3d 525, 541 (D.C. Cir. 2010) (superseded by statute) (“self-serving views of the regulated entities” do not support rule); *NSTAR Elec. & Gas Corp. v. FERC*, 481 F.3d 794, 803 (D.C. Cir. 2007) (rate-making held arbitrary where entity on which FERC relied lacked “incentives” that would render it reliable). Further, EPA’s abdication of oversight arbitrarily allows facilities to assume away contamination on the basis that they don’t expect contaminants, without checking to see if there are contaminants. *See New York v. EPA*, 413 F.3d 3, 34 (D.C. Cir. 2005) (rejecting exemption from recordkeeping requirement because “EPA has failed to explain how, absent recordkeeping, it will be able to determine whether sources have accurately concluded that they have no ‘reasonable possibility’ of significantly increased emissions”); *U.S. Telecom Ass’n v. FCC*, 359 F.3d 554, 577 (D.C. Cir. 2004) (rejecting “circular” agency reasoning).

### **CONCLUSION AND RELIEF REQUESTED**

For the reasons given above, Petitioners request that the Court vacate the definitions of “traditional fuel” and “clean cellulosic biomass” in 40 C.F.R. §241.2 and the exceptions from EPA’s definition of solid waste given in 40 C.F.R. §§241.3(b)(4) and 241.4(a)(1), and remand the entirety of the challenged rules for

EPA to promulgate a new definition of solid waste that is consistent with RCRA and the Clean Air Act.

DATED: November 12, 2014

Respectfully Submitted,

/s/James S. Pew

James S. Pew

Seth L. Johnson

Earthjustice

1625 Massachusetts Ave., NW

Suite 702

Washington, DC 20036-2212

(202) 667-4500

jpew@earthjustice.org

sjohnson@earthjustice.org

*Counsel for Petitioners*

**CERTIFICATE REGARDING WORD LIMITATION**

Counsel hereby certifies that, in accordance with Federal Rule of Appellate Procedure 32(a)(7)(C), the foregoing Final Opening Brief for Environmental Petitioners contains 11,181 words, as counted by counsel's word processing system, and thus complies with the applicable word limit established by the Court.

DATED: November 12, 2014

/s/ James S. Pew

James S. Pew



**CERTIFICATE OF SERVICE**

I hereby certify that on this 12th day of November, 2014, I have served the foregoing **Final Opening Brief for Environmental Petitioners** on all registered counsel through the Court's electronic filing system (ECF).

/s/ James S. Pew  
James S. Pew

# DECLARATIONS

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### DECLARATION OF GLEN BESA

1. I have been a member of the Sierra Club since 1988, and have worked for Sierra Club since 1996. I am currently the Director of Sierra Club in Virginia and have held this position since March 14, 2008. I enjoy my work, which helps protect Virginia's natural environment and communities from harmful threats such as industrial pollution. In particular, my work allows me to protect beautiful natural regions of Virginia, including unique Eastern Shore treasures like Chincoteague Island; Chincoteague Bay and the many state parks, preserves, and beaches in the surrounding area.
2. As its Director, I am aware that Sierra Club in Virginia is actively involved with environmental issues throughout the state, including air and water quality on the Eastern Shore.
3. I reside in Richmond, VA 23234. I have lived at this address for approximately 10 years.
4. Professionally, I am engaged in environmental issues, and have a strong interest in air and water quality. I work directly with Sierra Club's air and water quality efforts in Virginia, including other efforts concerned with toxic pollution in Radford and Hopewell, Virginia.
5. Personally, I spend significant time outdoors, enjoy outdoor recreational areas, and am concerned about air pollution because I have asthma. I also make efforts to reduce my own impact on the environment. I take measures to reduce my consumption of energy and water resources, I purchase renewable electricity for my home, and drive a hybrid Toyota Prius.
6. For both professional and personal reasons, I am on an email mailing list to receive, and I regularly review, Virginia Department of Environmental Quality permits. I keep myself informed of new and ongoing regulatory oversight of facilities throughout the state, including those within areas I frequent such as the Eastern Shore.
7. I travel to Chincoteague regularly with my family. I have made five or six trips in the last decade, typically in the spring. My most recent trips were between March 12-16, 2012 and May 4-6, 2013. My family and I stay at the Refuge Inn, adjacent to the Chincoteague National Wildlife Refuge, and we plan to continue our regular trips indefinitely into the future.
8. While visiting Chincoteague, my family and I enjoy recreating in and around the refuge by spending extensive time outdoors. We enjoy hiking, birdwatching, and seeing the many plants and animals in the refuge and surrounding area.
9. My wife and I also enjoy the many inlets and bays around Chincoteague, and have taken a tour of Chincoteague Bay.
10. While in the area, my family enjoys dining in local Chincoteague restaurants, and I in particular enjoy eating locally caught seafood. I also drink tap water, and do so whenever visiting Chincoteague.

11. I am aware that the KmX Chemical ("KmX") plant in New Church, VA is located less than six miles from the waters at Horntown Bay, and less than nine miles from Chincoteague Island.

12. From its state operating permit, I understand that KmX has a boiler that burns distillate fuel, on-spec used oil, and so-called comparable fuels (a separate regulatory exemption that Sierra Club is also challenging). The KmX plant is allowed to burn used oil that contains such pollutants as arsenic, cadmium, lead, and mercury.

13. For regulatory purposes, the boiler is an area source of hazardous air pollutants, so is subject to EPA's standards for area source boilers, which impose no numerical standards on an existing oil-fueled boiler like this. The boiler is not subject to any numerical standards for hydrogen chloride, cadmium, mercury, or dioxins and dibenzofurans.

14. I am aware that EPA has defined solid waste to exclude on-spec used oil. If EPA's definition of solid waste included on-spec used oil, I understand that the KmX plant's boiler would be subject to numerical standards for hydrogen chloride, cadmium, mercury, and dioxins and dibenzofurans that would reflect the maximum degree of reduction that similar plants have achieved and that is achievable. Similarly, although the boiler is currently subject to numerical standards for pollutants like particulate matter, sulfur dioxide, oxides of nitrogen, carbon monoxide, and lead, if EPA's definition of solid waste included used oil, those standards would also have to reflect the maximum degree of reduction that similar plants have achieved and that is achievable—a high standard.

15. I am also aware that with a broader definition of solid waste, the boiler would be subject to monitoring and reporting requirements, as well as operator training standards. In addition, it would have to get a Title V operating permit, per the requirements of the federal Clean Air Act. Members of the public, like Sierra Club and me, could participate in the permitting process, and information about the plant and its compliance with standards would also be made available to the public.

16. I am personally and professionally concerned that EPA's definition of solid waste allows KmX to harm both human health and the environment on Chincoteague Island, the Chincoteague National Wildlife Refuge, and in the Chincoteague Bay. I am also concerned that EPA's definition deprives me of rights and information I would otherwise have.

17. Because I suffer from asthma, I am concerned that I will experience respiratory problems stemming from KmX's burning of waste without emissions testing or oversight and under conditions insufficient to protect my health. In addition, I am concerned that my exposure and my family's exposure to emissions from KmX's waste combustion put us at risk of suffering other serious adverse effects associated with toxic emissions that waste combustors such as KmX emit. Therefore, KmX's actions injure my enjoyment of being outdoors, lessening both the aesthetic and recreational value of my time on Chincoteague Island and Chincoteague Bay.



18. Because I enjoy local seafood and drink tap water in Chincoteague, I am concerned about ingesting toxins originating from KmX as a result of its burning of waste without otherwise applicable health and environmental protections under the Clean Air Act.

19. Because EPA's definition of solid waste allows KmX to bypass otherwise applicable permit and monitoring requirements, I am concerned that Sierra Club is hindered in its ability to gather information about KmX's conduct and is unable to be involved in permitting and enforcement proceedings where appropriate. Therefore, I am concerned that the definition of solid waste prevents Sierra Club from educating its members and the public regarding KmX's conduct, and causes procedural injuries because Sierra Club is unable to contribute to permitting and enforcement actions under the Clean Air Act.

20. If EPA's definition of solid waste were broader, I understand that KmX's boiler would become subject to the full range of standards and other requirements that benefit me, as Congress originally intended. Accordingly, a broader definition that encompassed wastes like used oil would redress my concerns over my and my family's health; would restore my aesthetic and recreational enjoyment of Chincoteague Island and its natural environment; and can help protect human health and the environment in Chincoteague, Chincoteague Bay, and the many parks, preserves, and beaches of the Eastern Shore. It would also redress the injuries to Sierra Club's educational programs and procedural participation in permitting and enforcement actions under the Clean Air Act.

21. Similarly, I am aware from its Title V permitting papers that Dominion Energy recently converted a power station in Hopewell from burning coal to burning so-called "clean cellulosic biomass," which includes wood wastes, from, for example, land clearing.

22. This power station is about 15 miles from my home. In addition, my work for Sierra Club takes me to Hopewell from time to time, and I plan to go there again shortly for work. When I am there, I breathe the air.

23. Because in its definition of solid waste, EPA has deemed the wood wastes that the power station burns not to be wastes, the power station is not considered an incinerator. Instead, it is subject to emissions limits as a major source boiler.

24. I am aware that if the power station were an incinerator, it would have to be subject to stringent numerical limits on its emissions of cadmium, lead, dioxins and furans, sulfur dioxide, and oxides of nitrogen. As a major source boiler, it is not. Similarly, from a recent Partnership for Public Integrity report, <http://www.pfpi.net/wp-content/uploads/2014/04/PFPI-Biomass-is-the-New-Coal-April-2-2014.pdf>, I am aware that the standards that apply to boilers' emissions of particulate matter, carbon monoxide, and hydrogen chloride are laxer than the standards that apply to incinerators' emissions.

25. If EPA's definition of solid waste were broader, I understand that the power station would be subject to tougher limits on emissions of the pollutants I discussed above. As a result, it would be able to emit less of them into the air that I breathe. I would take less of them into my body, and risks to my health would be reduced. Further, my enjoyment of my everyday activities

would be enhanced because I would have fewer concerns about the impacts of the power station's pollution on me.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 9<sup>th</sup>, 2014.

A handwritten signature in cursive script, appearing to read "Glen Besa", written over a horizontal line.

Glen Besa

## DECLARATION OF MARY S. BOOTH

1. I am the Director and lead analyst at the Partnership for Policy Integrity (PFPI), and have held this position since 2010. Prior to that, I was director of the Massachusetts Environmental Energy Alliance (MEEA).
2. PFPI is a non-profit environmental organization that operates as a branch of the Civil Society Institute, in Boston, MA.
3. PFPI's mission is to use science, policy analysis, and strategic communications to promote sound energy policy. A large proportion of PFPI's staff time and resources are dedicated to work that reduces emissions from industrial boilers and improves air quality. PFPI has a strong commitment to ensuring that the most effective technologies and strategies for pollution control are employed to reduce emissions, especially for the vulnerable populations that tend to live and work in the vicinity of industrial boilers.
4. My work requires that I be familiar with EPA's efforts to reduce emissions of air pollution from numerous sources, including industrial boilers and waste incinerators.
5. Both as Director of MEEA and Director of PFPI, I have worked on numerous matters involving federal air pollution regulations and rulemakings promulgated by the U.S. Environmental Protection Agency ("EPA") under the Clean Air Act. My work has particularly focused on biomass energy and the emissions from burning biomass in commercial and industrial boilers.
6. I am aware that the EPA recently promulgated air-toxics standards governing commercial boilers at area and major sources and commercial and industrial solid waste incinerators (CISWI), as well as a waste definition rule governing the applicability of those standards.
7. A substantial portion of PFPI's time has been devoted to analyzing emissions from biomass energy facilities, including examining multiple air permits from recently proposed facilities. Our work has given me a strong background to critically evaluate emissions from bioenergy and other fuel-burning facilities and the relevance of EPA's rules on emissions from boilers and the definition of waste versus biomass fuels.
8. In collaboration with other groups, I have submitted extensive written



comments, including detailed technical analysis, during the public notice and comment period on EPA's proposed air toxics standards for commercial boilers and area and major sources, CISWI, and the waste-definition rule. Specifically, I contributed technical analysis to comments submitted on the June 4, 2010 version of the rules submitted by Clean Air Task Force et al, and PFPI joined comments submitted by Earthjustice in December 2011, as well as submitting our own comments to EPA.

9. PFPI recently released a report entitled "Trees, Trash, and Toxics: How Biomass Energy Has Become the New Coal." The report addresses, among other things, area sources of hazardous air pollutants that burn various secondary materials as fuel.

10. In the course of preparing this report, I reviewed 88 facilities that purport to burn "biomass" for energy in their boilers.

11. Of these facilities, at least 50 were "synthetic" minor sources of hazardous air pollutants. That is, although these sources have the potential to emit either 10 tons per year of a single hazardous air pollutant or 25 tons per year of a combination of hazardous air pollutants, they have been granted "synthetic" area source status by their state permitting authority.

12. Because these plants are considered area sources, the only numerical emission limit they have to meet for hazardous air pollutants is a standard for filterable particulate matter. That standard is supposed to be a surrogate standard for the non-mercury metal hazardous air pollutants they emit. There are no standards for the other hazardous standards these plants emit, including organic hazardous air pollutants (such as benzene, formaldehyde and dioxins), mercury, or hydrochloric acid.

13. The area source boilers rule does not require these plants to monitor or report their emissions. Therefore, people who live or work near these plants and are affected by their emissions cannot find out how much toxic pollution they are being exposed to.

14. The area source boilers rule also exempts area source boilers from having to have Title V permits. Because many industrial boilers operate at area sources, many do not have to go through a public process to obtain a permit for their emissions of hazardous air pollutants. As a result, PFPI and I cannot comment on the adequacy of such permits or use them to determine whether such boilers are in

compliance with all applicable requirements for their emissions of hazardous air pollutants.

15. Many of these plants burn materials that an ordinary person would consider waste, such as construction and demolition debris. For example, a new plant in Plainfield, Connecticut is permitted to burn “wood waste from industries.” Another plant in Reading, Pennsylvania purports to burn clean wood, but the Department of Energy has reported that it actually burns significant amounts of paper, plastic, and other foreign debris.

16. If the plants that burn wood waste and other materials that an ordinary person would consider waste were subject to EPA’s Clean Air Act emission standards for incinerators, they would have to meet numerical emission standards for mercury, lead, cadmium, dioxins, hydrogen chloride, particulate matter, oxides of nitrogen, sulfur dioxide, and carbon monoxide. They would also have to monitor their emissions and report their emissions and their compliance status. All of this information would be collected in a Title V permit that each plant would have to obtain as a condition for operating.

17. The reason that many of the plants I have reviewed escape any obligation to control, monitor, or report their toxic emissions is EPA’s definition of non-hazardous secondary materials, which excludes a wide variety of materials that an ordinary person would consider waste. These materials include scrap tires and tire chips, demolition waste, used oil, and other solid wastes.

18. In addition, EPA’s standards for plants that are not considered area sources, but are major sources, are weaker in key ways than the standards for waste-burning incinerators of the same type. Take for example a stoker boiler generating 50 megawatts of electricity by burning biomass. (This is a common scenario.) Regulated as a boiler, it is allowed to emit 10 times as much particulate matter, twice as much carbon monoxide, and 55 times as much hydrogen chloride than it would be if regulated as an incinerator. When regulated as boilers, these plants also do not have to meet the incinerator rule’s strict standards for cadmium, lead, dioxins, oxides of nitrogen, and sulfur dioxide.

DATED: April 25, 2014

  
\_\_\_\_\_  
Mary S. Booth

**DECLARATION OF MARTHA FISHER BRIGGS**

1. I have been a member of the Sierra Club since 1993. My husband is the Outings Chair for the Maine Chapter of the Club, and I coordinate a book club for the Club. I joined the Club because I really value the outdoors and wilderness and having clean and pristine areas that everyone (including me) can enjoy.
2. I live in Windham, Maine, about 5 miles from the S.D. Warren/Sappi paper mill in Westbrook. I have lived at this address for approximately 13 1/2 years.
3. I spend lots of time every day outside near my home. I regularly ride my bike in my neighborhood. There is a large woods behind our house, which is owned by several neighbors. In the warm months, my husband and I enjoy hiking, and in winter, we cross-country ski there. We also have a big garden where we grow a variety of fruits and vegetables, including asparagus, strawberries, raspberries, blueberries, peas, beans, tomatoes, carrots, and broccoli, and we regularly tend to it.
4. I am careful about what I eat. I enjoy eating the fruits and vegetables I grow. When I buy fish, I try to buy fish that is sustainable, and I like to buy fish that is caught in the local seas.
5. From its permitting documents, I am aware that the S.D. Warren/Sappi paper mill has a boiler that can and does incinerate, among other things, wood from construction and demolition debris, waste paper, wood waste, and sludge.
6. I am aware that air emissions from the mill can harm me and can harm vegetation and harm ecosystems. These ecosystems include the areas where I enjoy hiking, biking, skiing, and growing some of my food.
7. I am concerned about the impact of air pollution, including from the mill, on my health. I spend a lot of time outdoors, and when I am outdoors, I breathe the air. I do not want to breathe in air pollution. Also, I do not want to ingest air pollution that falls to the earth.
8. I am also concerned about the impact of air pollution, including from the mill, on the environment around me. Being able to spend time outdoors in a natural setting, with a fully functioning ecosystem, is important to me, and air pollution threatens that, which diminishes my enjoyment of my recreational activities.
9. I am aware that EPA has issued regulations that would exempt the incinerator at the S.D. Warren/Sappi paper mill from having to comply with the Clean Air Act's highly protective emission standards for incinerators despite the fact that it burns waste. As a result, it will not have to meet the highly protective emission standards that the Clean Air Act requires for incinerators' emissions for sulfur dioxide, oxides of nitrogen, carbon monoxide, hydrogen chloride, and particulate matter.
10. If EPA's definition of solid waste were broader, I understand that the paper mill's incinerator would be subject to tougher limits on emissions of air pollutants. As a result, it would

be able to emit less of them into the air that I breathe. I would take less of them into my body, and risks to my health would be reduced. Further, my enjoyment of my everyday activities would be enhanced because I would have fewer concerns about the impacts of the mill's pollution on the outdoor areas where I hike, bike, ski, and garden.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 21, 2014.

  
Martha Fisher Briggs



**DECLARATION OF MAXINE CENTALA**

1. I am a member of the Sierra Club, which I joined in December, 2003.
2. I live in Seal Rock, OR, approximately 10 miles southwest of the town of Toledo, OR, and the Georgia-Pacific kraft unbleached pulp mill located there.
3. I moved here about 13 years ago from Seattle, intending to enjoy the Oregon Coast in my retirement and grow a large garden that would include organic vegetables, fruits and berries for my own consumption on the nearly 3 acres of land I purchased with my home.
4. After moving here and spending much time the first summer preparing several large garden beds, I realized that during nice days in spring and summer, my house and garden were often in the plume of pollution from the pulp mill in Toledo, and that the emissions affected my health.
5. I usually experience headache, fatigue, difficulty concentrating, chest congestion and a raspy voice when mill emissions are in the air. At these times I usually notice the rotten egg or rotten cabbage smell of the mill.
6. Other local residents, including one of my neighbors, have reported health effects that they also attribute to the pulp mill pollution. I am acquainted with two people who moved farther away from the mill in order to avoid exposure to the emissions.
7. I gave up my plans for growing my own vegetables and fruit because of the health effects I continue to experience from the mill emissions. I was also concerned that the pollutants from the mill are deposited on the soil and might be taken up by food plants.
8. On the days when the mill emissions are strong I refrain from drying my laundry because the odor from the mill lingers in the fabric.
9. The typical air flow pattern is this: during sunny weather the wind blows hard from the north during the day, and at night it is calm. With no wind at night, the cool air flows downhill from the land following the river valleys toward the ocean and accumulates along the coastline. In the morning when the north wind begins to rise, the polluted air mass (which flows from the Toledo pulp mill down the Yaquina River to the coast during the night) moves southward toward Seal Rock in the morning on the north wind. Sometimes the polluted air mass reaches here just after dark and hangs in all night. The health effects from the pollution are especially bad then, and also during foggy weather.
10. I spend some time outdoors at all seasons, walking, beachcombing and birdwatching. I also spend up to a few hours a week doing yard maintenance during the growing season. I generally stay indoors and avoid these activities when the mill emissions are present. They enter the house anyway and I experience symptoms, although less than I would outdoors.
11. The Georgia-Pacific Toledo pulp mill contributed over 10 million pounds of pollutants to our air in 2011, according to the EPA. Some emissions from the mill are sulfur dioxide,

particulates, nitrogen oxides, volatile organic compounds (VOCs), and carbon monoxide. The mill also emits lead, mercury, polycyclic aromatic hydrocarbons, and hydrogen chloride.

12. From the mill's Title V permit, I am aware that the mill's incinerators burn various wastes, including wood chips, tire-derived fuel, old corrugated cardboard rejects, rejects from other wastepapers, the rejected wood pulps and fibers and other wastewater treatment plant sludges from the mill's repulping operations, used oil, and wood waste. I am aware from conversations with the Oregon Department of Environmental Quality that the residues from cardboard recycling that get burned include many tons of plastic per day.
13. The mill also has boilers that burn only fossil fuel.
14. Lincoln County, Oregon, where I live far from large cities, has some of the highest cancer rates of all the counties in Oregon, according to the Oregon Cancer Registry. No one has given a satisfactory explanation for this.
15. Georgia-Pacific Toledo is by far the largest industry and the largest polluter in the county.
16. I am exposed to emissions from the Georgia Pacific Toledo mill by breathing air, by eating locally grown produce, and by dermal contact with items in my house and on my property on which emissions from the mill have been deposited. These exposures threaten my health.
17. Because of emissions from the Georgia Pacific Toledo mill, I have had to alter my lifestyle and refrain from recreational activities that I would otherwise engage in. For example, I refrain from gardening and I stay indoors when mill emissions are present.
18. I am aware that EPA has issued regulations that would exempt the incinerator at the Georgia Pacific Toledo mill from having to comply with the Clean Air Act's highly protective emission standards for incinerators despite the fact that it burns wastes. As a result, it will not have to meet the highly protective emission standards that the Clean Air Act requires for incinerators' emissions for sulfur dioxide, oxides of nitrogen, and carbon monoxide.
19. I am also aware that EPA has issued regulations that apply to the hazardous air pollutants the mill's boilers emit and that these regulations are less protective than the Clean Air Act requires.
20. For the reasons given above, EPA's regulations prolong and increase my exposure to pollution and the resulting threat to my health. In addition, these regulations prolong and increase the harm to my aesthetic and recreational interests.
21. If EPA were compelled to revise its regulations to require combustors that burn wastes be subject to the standards that apply to incinerators, pollution from the Georgia Pacific Toledo mill would be reduced, and the resulting harm to my health and recreational interests would be reduced as well.



22. Similarly, if EPA were compelled to revise its regulations to provide the protective emission standards that the Clean Air Act requires for industrial boilers and process heaters, pollution from the Georgia Pacific Toledo mill would be reduced, and the resulting harm to my health and recreational interests would also be reduced.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7<sup>th</sup> day of April, 2014.



Maxine Centala

## DECLARATION OF WILLIAM FONTENOT

1. I am 71 years old. I currently reside in Baton Rouge, LA 70806. I have lived at the same home here since June 1975, and have lived in Louisiana nearly my whole life.
2. I am a Sierra Club member and I have been actively involved with the Club since the early 1970s. From 1973 to 1974 I served as the Chairman of the New Orleans Group of Sierra Club. In 1974, I was Chairman of Sierra Club's Delta Chapter. I am currently the Conservation Chair of the Delta Chapter and have served in that position since 2011. As of February 2014, I was elected to the Executive Committee of the Delta Chapter. I also helped found the Louisiana Environmental Action Network and have been a member of it since its founding in the 1980s. I have also served in leadership positions at many other environmental organizations, including the Louisiana Environmental Action Network, the Mississippi River Basin Alliance, Clean Water Fund, Clean Water Action, and Friends of Atchafalaya. Over the last 40 years, I have advocated on behalf of poor and minority communities and individuals, as well as industrial facility workers in and outside of Louisiana to demand protections from harmful pollution.
3. I am retired, which allows me to devote the majority of my time to volunteering for Sierra Club and other environmental groups. I also conduct Toxic Tours at least a dozen times a year of pollution-ridden communities, inside and outside of Baton Rouge, including the area known as "Cancer Alley," to help individuals understand where pollution comes from, its impacts, and how to address environmental problems and injustice through advocacy.
4. I am familiar with EPA's definition of non-hazardous secondary materials that are solid wastes when burned, which I believe provides yet another dangerous excuse for industrial facilities to evade compliance with human health and environmental protections Congress put in place. I understand that EPA has allowed industrial facilities to incinerate certain non-hazardous wastes without having to meeting the stringent standards the Clean Air Act requires for emissions of pollutants like sulfur dioxide, oxides of nitrogen, and carbon monoxide. If the EPA's definition were broader, facilities that chose to burn the exempted materials would have to comply with EPA's Clean Air Act rules for incinerators, which establishes more protective requirements. I am very familiar with EPA's use of "linguistic detoxification" to call wastes something different in order to give Industry a free pass from such regulation necessary to protect human health and the environment.
5. I am aware that the Exxon Chemical Baton Rouge Plastics Plant (BRPP), which is located approximately 8 miles from my home, has boilers that are allowed to burn and historically have burned waste oil, according to its Title V permit application. I also live within 10 miles of the ExxonMobil Refining and Supply, Formosa Plastics Corporation, and Honeywell International plants, which also have boilers.
6. I am also familiar with the Georgia-Pacific Port Hudson paper mill, in Zachary, LA, about 15 miles from my home. I can occasionally smell hydrogen sulfide—rotten eggs—from the mill, when the wind blows from the north. I regularly go there on Toxics Tours and was last there at the beginning of April. I am aware from the mill's Title V permit that it has a boiler that burns waste wood and paper sludge.



7. I am further aware that EPA has issued regulations that would exempt the incinerators at the ExxonMobil Chemical Baton Rouge Plastics Plant and the Georgia-Pacific Port Hudson paper mill, from having to comply with the Clean Air Act's highly protective emission standards for incinerators. As a result, none of these incinerators will have to meet the highly protective emission standards that the Clean Air Act requires for incinerators' emissions of sulfur dioxide and oxides of nitrogen.

8. In addition, I am aware that EPA has issued regulations that allow plants to seek "non-waste" determinations for materials they burn that would otherwise be considered wastes.

9. I am concerned that I am exposed to emissions from BRPP and the paper mill, and other nearby facilities, every day because I live close to them. There are many industrial facilities located near BRPP, including the Exxon oil refinery and the Exxon chemical plant, and I have smelled the pollution they spew into the air. Emissions from BRPP in particular have been of concern for me ever since 1997 when I read about an incident in which a plane from a major airline flew through a massive cloud of chemical pollution released from BRPP prompting serious discussions about chemical accidents and disasters. This incident helped me understand that air pollution can have profound impacts.

10. Knowing that EPA's rule allows BRPP and the paper mill to avoid having to meet standards for incinerators diminishes my ability to enjoy being outside in my neighborhood and engaging in every day activities. Every day when I leave my home to walk my dog, I worry about harmful air pollution from the many industrial facilities in Baton Rouge, as well as the risk that a major accident like the 1989 Christmas Eve explosion at Exxon's Baton Rouge oil refinery will occur at any one of them and will harm me and the people in the community. Sometimes I can smell a rotten egg smell from the mill's operations. BRPP and the paper mill's exemption from control makes this worry worse. I believe that Baton Rouge would be a safer, more enjoyable place for me and my wife, and everyone in the community if BRPP and the paper mill were not allowed to burn wastes without adhering to otherwise applicable, protective Clean Air Act standards.

11. I am also concerned that EPA's rule allows the plants near me to obtain non-waste determinations for materials they burn, which opens the door to them calling still more materials non-waste and releasing more pollutants that affect me.

12. If EPA's definition of non-hazardous solid waste were broader, I understand that units at BRPP and the paper mill would be regulated as incinerators. This will lessen my concerns about harmful air pollution and the associated impacts that may have on me, my wife, and the people of Baton Rouge. If EPA's non-waste determination processes were more protective, my concerns about additional wastes being burned would also be allayed.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on April 21, 2014



William A. Fontenot

## DECLARATION OF ROBERT J. PALZER

1. I am a member of the Sierra Club, and have been for most of the last 54 years.
2. My wife and I live in Ashland, Oregon. We live within 20 miles of several plywood and composite wood products manufacturing facilities, including SierraPine Limited and Boise Building Solutions Manufacturing in Medford.
3. My wife and I moved here in 1986 because we love to hike, bike, fish, ski, canoe and kayak. We spend significant time outdoors in and around our home in Ashland and elsewhere in the Rogue Valley. When we are outside, we breathe the ambient air.
4. My wife and I raise vegetables in our garden and eat the vegetables that we grow. When we work in our garden, we come into direct contact with the soil there.
5. I enjoy fishing recreationally in our local waters. Because the Oregon Department of Human Services has advised all persons to avoid or limit consumption of some species of fish caught in local waters because they have high levels of mercury, PCBS, dioxins, or pesticides, I am not able to eat as many locally-caught fish as I otherwise would like. Oregon Department of Human Services, Oregon Fish Advisories (2009). The contamination of our local waterways from industrial pollution has negatively impacted my ability to enjoy fishing and other similar recreational activities.
6. My wife and I make regular trips near the SierraPine and Boise Solutions facilities on a weekly basis to shop, attend meetings and other events, visit friends, or run errands.
7. I am Senior Technical Advisor for the Sierra Club Clean Air Team, am currently the Vice Chair of the Rogue Group of the Club's Oregon Chapter, and have served as the Air Quality Coordinator for both the Rogue Group and the Oregon Chapter of the Sierra Club for the past 24 years.
8. Because air toxics in the Medford region are similar to those in Portland, I served as an ex-offio member of the Portland Air Toxics Solutions Advisory Committee, made up of diverse stakeholders, to consider a technical study and develop a framework for an air toxics reduction plan. Together with DEQ we developed a ground-breaking analysis and understanding of air toxics problems



and potential solutions in the Portland region. The committee met August 2009 to October 2011.

9. I co-founded the Coalition to Improve Air Quality in 1988 and the Rogue Valley Citizens for Clean Air in 2004 and have been a spokesperson for these groups.
10. For more than twenty years I have worked on behalf of the Sierra Club and other civic and conservation organizations to improve efforts by EPA and Oregon to control and reduce emissions of air pollutants from industrial sources in the Rogue Valley. For example, I have represented the Sierra Club as a member of the EPA FACA on Integrated Combustion Control Regulations, the EPA FACA on Ozone, PM, and Regional Haze Implementation Programs, the EPA FACA on Wildland Fires Issues Group, EPA's Title V Task Force, the Western Regional Air Partnership and numerous Oregon Departmental Quality advisory committees. I have reviewed, attended hearings on, and commented on the Title V permits for the SierraPine and Boise Building Solutions Manufacturing facilities, among others.
11. I am aware of air toxics monitoring EPA and the Oregon Department of Environmental Quality have done in the Medford area. When last done in 2008-2010, it showed numerous hazardous air pollutants you get from plants like SierraPine and Boise's at levels up to tenfold above recommended exposure thresholds.
12. My family and I are deeply concerned about the damage that is being done and will be done by emissions from the plywood and composite wood products facilities near us and other plywood and composite wood products facilities to our area's parks, to the Rogue River, Ashland and Bear Creeks and other rivers and streams that flow through them and to the plant and animal species that inhabit these water bodies and lands. The pollution deposited on our property and surrounding area diminishes our enjoyment of recreational activities there.
13. My wife and I drink water from Reeder Reservoir in Ashland that is supplemented by water from other higher elevation reservoirs that is transported by open canals of the Talent Irrigation District (TID). Air pollutants deposited in these water bodies adversely affect my wife and I both by drinking the water and also by consuming locally grown fruits and vegetables irrigated by water from the TID in this very arid area during much of the growing season.

14. Based on my having reviewed their Title V permitting documents, I am aware that the SierraPine facility has a incinerator that burns sanderdust and that the Boise Building Solutions Manufacturing facility has a incinerator that burns hogged fuels consisting of wood residues, oil products, wood debris, glue waste, and wood from other sources.
15. I am aware that incinerators like these emit, among other things, particulate matter, carbon monoxide, hydrogen chloride, oxides of nitrogen, and sulfur dioxide. And I am aware that these pollutants pose serious health risks, especially to older people like me, and harm the environment.
16. My family and I are exposed to the pollutants emitted by the Boise Building Solutions Manufacturing and SierraPine facilities by breathing air, drinking water, eating food and through dermal contact with water and soil. Therefore, emissions from these plants threaten our health.
17. I am aware that EPA has issued regulations that would exempt the incinerators at the SierraPine and Boise Building Solutions Manufacturing facilities from having to comply with the Clean Air Act's highly protective emission standards for incinerators despite the fact that they burn waste. As a result, it will not have to meet the highly protective emission standards that the Clean Air Act requires for incinerators' emissions for sulfur dioxide, oxides of nitrogen, carbon monoxide, hydrogen chloride, and particulate matter.
18. For the reasons given above, EPA's regulations prolong and increase my exposure to pollution and the resulting threat to my health. In addition, these regulations prolong and increase the harm to my aesthetic and recreational interests.
19. If EPA were compelled to revise its regulations to require combustors that burn wastes be subject to the standards that apply to incinerators, pollution from the SierraPine and Boise Building Solutions Manufacturing facilities would be reduced, and the resulting harm to my health and recreational interests would be reduced as well.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18<sup>th</sup> day of April, 2014.

*Robert J. Palzer*

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Robert J. Palzer, PhD



**DECLARATION OF SUE POPE**

1. I am one of the founders of Downwinders At Risk and am still a member, as I have been since it was organized in 1993 and 1994.
2. I live in Midlothian, Texas. I am 73 years old.
3. I live on land that has been in my family for about 100 years. It is about 70 acres. On it, I have about 40 cattle (the number varies) and 2 horses. I know I should move, but all my memories are here. This land was my grandfather's.
4. My property is about 7.5 miles from the TXI cement plant in Midlothian. I am downwind of it. It is also about 4 miles from the Ash Grove plant and under a mile from the Holcim cement plant property. All the plants are right near schools, too.
5. From my work with Downwinders, I am aware that the TXI plant burns both whole and chipped tires. I am aware that EPA has made regulations that say these tires are not solid wastes, so the TXI plant is not an incinerator. If the TXI plant were an incinerator, it would be subject to stricter standards for pollutants like particulate matter, dioxins, sulfur dioxide, and oxides of nitrogen than it is now. I am also aware that the TXI plant would be subject directly to standards for its emissions of carbon monoxide and of metals like cadmium and lead that it now isn't subject to.
6. My family and I have long had to deal with the emissions from the plants in the area. In the 1990s, our cattle and horses started suffering birth deformities, and in 1997, I had to quit breeding horses. In the mid 1990s, tests showed that my husband had high levels of cadmium. He developed prostate cancer and after four bouts with it, he died in January 2011. Everyone one around got sick when the kilns started.

7. I have serious heart and lung problems. I am on oxygen continually and regularly go to a lung doctor. I have only about 1/3<sup>rd</sup> of my lung function remaining. I have asthma; but because of my heart problems, I cannot regularly take my asthma medication, which raises my blood pressure.

8. I am aware from EPA documents that particulate matter is especially dangerous for older adults, like me, and those with heart and/or lung conditions. I am very concerned about the effects of particulate matter on my health. I am also aware from EPA documents that sulfur dioxide and oxides of nitrogen are dangerous on their own, particularly for people with breathing problems, and that they can also form particulate matter in the air. I am also aware that oxides of nitrogen can form smog, which is dangerous for older adults and those with lung conditions, and that Midlothian is part of an area that has unhealthily high ozone levels.

9. When I sense odors which are not natural or normal, and the wind direction is towards the farm, I must go inside to try and prevent attacks. Just recently, I was outside planting flowers when a concerned friend called to tell me that she smelled an abnormal odor coming from the closest plant and suggested I go indoors. We can see the stacks of one of the plants from our property and we are downwind of all particulate sources in Midlothian the greater part of the time.

10. I am also aware from my work on fighting against the pollution that affects my community that particulate matter and other pollutants that cement plants emit, like mercury and heavy metals, harm the environment. I live in the country. I see what's so important about the environment. What the Lord has given us is too precious to destroy. I just feel real strongly about it. When the environment around me is harmed, it does damage to my property and it affects my enjoyment of my everyday life.

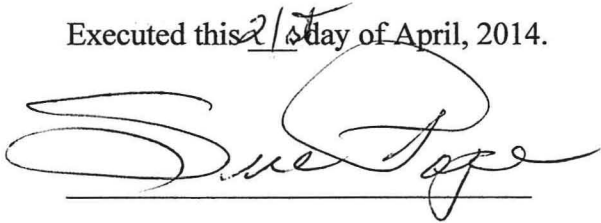


11. I had two little girls visit me with their aunt when the air was bad—I could feel it. They both had asthma attacks while they were here. One had to go to the hospital later that night. They live in the area. Two other children moved to the farm 8 years ago. They have developed learning disabilities that I am concerned are related to the cement plants in the area. I am also concerned that their continual respiratory problems are related to the plants' emissions.

12. If EPA's definition of solid waste were broader, I understand that the TXI plant would be subject to tougher limits on emissions of air pollutants. It would be able to emit less of them into the air that I breathe. I would take less of them into my body, and risks to my health would be reduced. My concerns about damage to my property and my livestock would also be lessened, and I would be able to spend more time outside. My enjoyment of my everyday activities would be improved, too.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21<sup>st</sup> day of April, 2014.

A handwritten signature in cursive script, appearing to read "Sue Pope", written over a horizontal line.

Sue Pope

**DECLARATION OF JANE WILLIAMS**

1. I am a member of the Sierra Club, and have been since 1997.
2. I am a member of the Sierra Club's Clean Air Team, which is responsible for air toxics litigation, air toxics policy, and providing direct support to communities facing air toxics problems.
3. I also am the executive director of California Communities Against Toxics, an environmental justice network in California and an active member of Desert Citizens Against Pollution, a nonprofit environmental health group that works on desert pollution issues.
4. Since 1992, I have worked on behalf of Desert Citizens Against Pollution to improve efforts by EPA to control and reduce emissions of air pollutants from cement kilns in California. For example, I commented on EPA's proposed regulations on hazardous waste combustors, which included cement kilns that burn hazardous waste. I also worked with the EPA on developing air permits for the Calaveras (now the Lehigh Southwest Cement Company) Cement Kiln in Tehachapi, California. I was party to a suit against the Kern County Air Pollution Control District regarding a cement kiln (now the CalPortland kiln) in Mojave that wanted to burn tires. Desert Citizens Against Pollution also threatened to sue the Mojave Air District for its actions at the Oro Grande kiln in San Bernardino because the local air district was going to allow that kiln to burn tires and industrial waste without an environmental review. In the 1990s, Desert Citizens Against Pollution sued the National Cement Company, which operates a kiln in Gorman/Lebec, under RCRA. Desert Citizens Against Pollution was also involved in bringing about EPA's intervention when the kiln in Tehachapi made illegal permit modifications.

5. Because I am aware that cement kilns emit vast quantities of air pollutants and that waste-burning at kilns can yield even more toxic emissions, I have worked on behalf of Desert Citizens Against Pollution for 22 years specifically to ensure that federal regulations contain provisions limiting toxic pollution from cement kilns and waste-burning kilns in particular.

6. I am aware that EPA's new definition of "solid waste" has the effect of exempting many waste-burning cement kilns, including the kilns near my home, from compliance with regulatory requirements under Section 129 of the Clean Air Act. I am aware that EPA has finalized critically important new standards for commercial and industrial solid waste incinerator ("CISWI") units including waste-burning kilns. These standards require stricter protections against particulate matter, dioxin, sulfur dioxide, and oxides of nitrogen emissions than EPA's cement kiln standards do. *Compare* 78 Fed. Reg. 9112, 9118 tbl.2, 9122-23 tbl.4 (Feb. 7, 2013) (CISWI rule), *with* 40 C.F.R. §63.1343 tbl.1. However, the "solid waste" definition rule renders the new CISWI standards largely inapplicable.

7. My family and I live on our ranch in Rosamond, CA.

8. Our ranch in Rosamond is approximately 12 miles from the CalPortland cement kiln in Mojave, 20 miles from the Lehigh cement kiln in Tehachapi, and 25 miles from the National Cement Company cement kiln in Gorman/Lebec. I see the CalPortland kiln whenever I am out riding my horse.

9. I am aware from EPA documents (EPA-HQ-OAR-2002-0051-3582) that the National Cement Company's kiln burns tire-derived fuel (shredded tires and tire fluff) and that EPA does not consider it as burning waste. I am also aware from its most recent federal Title V permit that the CalPortland plant is allowed to burn whole tires.

[yosemite.epa.gov/R9/air/EPSS.NSF/6924c72e5ea10d5e882561b100685e04/8d13f263d5ac98f1882569ae00789f16!OpenDocument](http://yosemite.epa.gov/R9/air/EPSS.NSF/6924c72e5ea10d5e882561b100685e04/8d13f263d5ac98f1882569ae00789f16!OpenDocument); *see also*

[www.arb.ca.gov/ei/tire/2013\\_tire\\_burning\\_report.pdf](http://www.arb.ca.gov/ei/tire/2013_tire_burning_report.pdf) at 5 tbl.1 (plant is allowed to burn tires).

10. In addition, I am aware that Lehigh has applied for a conditional use permit that would allow it to burn "alternative waste-derived fuels, including: tire-derived fuels (TDF), refuse-derived fuels (RDF) and biomass." *See*

[www.co.kern.ca.us/planning/pdfs/eirs/lehigh/lehigh\\_deir\\_vol1.pdf](http://www.co.kern.ca.us/planning/pdfs/eirs/lehigh/lehigh_deir_vol1.pdf) at 1-1. The biomass would include agricultural waste. *Id.* 3-20.

11. I am aware from reports on cement plants' test burns of tires that tire burning can increase plants' emissions of toxic air pollution like cadmium, lead, hexavalent chromium, and dioxins. In particular, I am aware that the Kern County Air Pollution Control District's report on the test tire burns for the National Cement Company plant showed that the plant's emissions of cadmium and dioxins increased when it was burning tires.

12. I regularly see kiln upsets at the Tehachapi kiln. I drive by it a couple times a month, and roughly every three times I drive by I see visible emissions. During normal operations, emissions are not supposed to be visible. During upsets, I see a giant cloud of light grey smoke. There is a nasty smell, like something is burning; it is acrid. My throat gets really dry. If I am too close, my eyes start to water. If I drive by the kiln and see that there is an upset, I do not engage in activities outdoors near my home.

13. I observe visible emissions at the Tehachapi kiln more often than at the other kilns. I occasionally pass by the National Cement Company kiln in Gorman, but have not seen visible emissions there.

14. Every day I can, I spend a significant amount of time outside. I walk outside for at least thirty minutes every day during the week. My family and I spend significant time outdoors in and around my home/ranch in Rosamond, CA, where we ride horses, ride bikes, swim, hike, and recreate outdoors. When I am outside, I breathe the air. When my family is outside, they breathe the air.

15. One of my children, who is 13 years old, and my nephew who is 15 years old are often outdoors with me breathing outdoor air. My son and nephew are more susceptible to air pollution because they breathe more air per pound of body weight than adults, and their bodies are still developing. As a result, they have a greater sensitivity and are more at risk to air pollution than the population in general.

16. By breathing, my family and I are exposed to air pollutants, including fine particulate matter, oxides of nitrogen, and hazardous air pollutants, emitted by cement kilns operating in the Gorman/Mojave/Rosamond area. I have a heart murmur and have been told to avoid strenuous activities on bad air days.

17. I am aware that hazardous air pollutants can be transported great distances by air currents. Therefore, by breathing, my family and I also are exposed to hazardous air pollutants emitted by sources that operate outside the immediate area of my residence. These other sources also contribute to my family's cumulative exposure to persistent, bioaccumulative toxins.

18. I am aware that hazardous air pollutants such as dioxins, mercury, and polychlorinated biphenyls (PCBs) are deposited on water and soil, where they persist for long periods of time and bioaccumulate in wildlife and livestock. By eating fish, meat, and dairy products, my family and I are exposed to hazardous air pollutants emitted by sources in the Gorman/Mojave/Rosamond area and also to hazardous air pollutants emitted elsewhere and transported to areas where the food we eat is raised or caught. I am a vegetarian due to health concerns about, among other things, bioaccumulation of pollutants. If it were safe to eat local fish, I would like to eat them. My son, nephew, and I go fishing about half a dozen times a year at Bryce Lake, but we have to throw the fish back because there is a fish consumption warning there due to mercury. The mercury contamination in the lake diminishes my enjoyment of fishing. And, if it were safe to eat the fish, we would go more often (and eat them, too).

19. I am aware that EPA has designated where I live as nonattainment for the national ambient air quality standards for ozone, and I am aware that oxides of nitrogen can turn into ozone in the air.

20. My family and I are deeply concerned about the damage that is being done and will be done by emissions from the three cement plants near us and other cement plants to our area's parks and our ranch land, to the rivers and streams that flow through them, and to the plant and animal species that inhabit these water bodies and lands. In particular, we are concerned that persistent and bioaccumulative pollutants, such as mercury, cadmium, and dioxins, contaminate the air, water, wildlife, and food sources on our property and in the community where we live and recreate. In addition, I am aware that particulate matter that falls to earth can harm vegetation and ecosystems, particularly near sources like cement kilns. The pollution deposited on our land diminishes our enjoyment of recreational activities there.

21. Because mercury and other persistent and bioaccumulative pollutants persist in the environment, any of them that are emitted into the air and fall back to the ground stay in the environment without breaking down. Thus, it is difficult if not impossible to take the emitted mercury (and other similar toxins) back out of the environment once they come out of a kiln's smoke stack.

22. Based on the sources indicated, I am aware of the following:

- a. Portland cement kilns emit, among other things, mercury, dioxins, cadmium, lead, oxides of nitrogen, sulfur dioxide, total hydrocarbons, polycyclic organic matter (POM), hydrochloric acid, and particulate matter. 75 Fed. Reg. 54,970, 54,970 (Sept. 9, 2010); 63 Fed. Reg. 14,182, 14,183 (Mar. 24, 1998).
- b. Exposure to these pollutants can cause adverse health effects including cancer, liver disease, reproductive disorders, immune disorders, respiratory disease, asthma attacks, heart problems, kidney disease, and death. 75 Fed. Reg. at 54,979; 63 Fed. Reg. at 14184-14185.
- c. Emissions from Portland cement kilns are preferentially deposited on land and water bodies located near their source, and are also transported over great distances. EPA, Deposition of Air Pollutants to the Great Waters, First Report to Congress (1994) ("Great Waters Report"), Executive Summary at x-xi.
- d. Some emissions from Portland cement kilns, including mercury, dioxins, cadmium, and lead, persist in soil and water for long periods of time. In addition, they are absorbed by plants and bioaccumulate in fish and animals. Great Waters Report, Executive Summary at ix-x.

e. Mercury inhalation can affect the central nervous system, kidneys, and heart.

CalEPA, OEHHA, *Technical Support Document For the Derivation of Noncancer Reference Exposure Levels* app. D, at Mercury-7 to -8.

f. Particulate matter likely harms vegetation and ecosystems, especially near cement kilns. 78 Fed. Reg. 3086, 3203 (Jan. 15, 2013).

g. Ozone harms the lungs and can cause various breathing problems, and also has harmful effects on vegetation and ecosystems. 72 Fed. Reg. 37,818, 37,827, 37,827-29, 37,832, 37,883 (July 11, 2007).

23. My family and I, and our property, are exposed to pollutants emitted by the Tehachapi, Mojave, and Gorman plants, including mercury, cadmium, dioxins, total hydrocarbons, hydrochloric acid, oxides of nitrogen, sulfur dioxide, and particulate matter. We are also exposed to ozone formed by some of these pollutants in the atmosphere. These emissions enter our bodies when we breathe. We are also exposed to these substances by drinking water, eating food, and touching water and soil. Pollutants from these plants threaten our health, cause us concern about their impact on our health and property, and prevent me from engaging in activities I otherwise would engage in, like jogging. They also cause irreparable damage to the natural environment around me, diminishing my enjoyment of it.

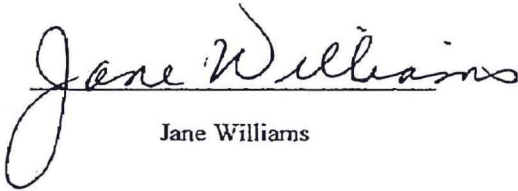
24. If EPA's definition of "solid waste" were broader and didn't exempt materials like tires and tire-derived fuel, the National Cement Company plant near me would be an incinerator, the Lehigh plant near me would be unable to burn the new wastes it seeks to burn without being an



incinerator, and the CalPortland plant near me would be unable to burn tires without being an incinerator. For many pollutants they emit, they would thus be subject to stronger standards than they otherwise would be, providing additional protection to me against its emissions of pollutants like dioxins, sulfur dioxide, oxides of nitrogen (and thus ozone), and particulate matter. My concerns for my health would be alleviated and my enjoyment of my activities and my surroundings would be enhanced.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of April, 2014.

  
Jane Williams

**ORAL ARGUMENT NOT YET SCHEDULED****IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**No. 11-1189 (and consolidated cases)

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SOLVAY USA INC.,  
*Petitioner,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
*Respondent.*

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Petition for Review of Final Administrative Actions of the  
United States Environmental Protection Agency

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**STATUTORY AND REGULATORY ADDENDUM TO THE FINAL  
OPENING BRIEF FOR ENVIRONMENTAL PETITIONERS**

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James S. Pew  
Seth L. Johnson  
Earthjustice  
1625 Massachusetts Ave., N.W.  
Suite 702  
Washington, D.C. 20036-2212  
(202) 667-4500  
jpew@earthjustice.org  
sjohnson@earthjustice.org*Counsel for Louisiana Environmental  
Action Network, Sierra Club, Clean Air  
Council, Desert Citizens Against  
Pollution, Montanans Against Toxic  
Burning, Huron Environmental Activist  
League, Downwinders at Risk,  
Partnership for Policy Integrity, and  
Environmental Integrity Project***DATED: November 12, 2014**

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# STATUTES

United States Code Annotated

Title 5. Government Organization and Employees (Refs & Annos)

Part I. The Agencies Generally

Chapter 7. Judicial Review (Refs & Annos)

5 U.S.C.A. § 706

§ 706. Scope of review

Currentness

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be--
  - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
  - (B) contrary to constitutional right, power, privilege, or immunity;
  - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
  - (D) without observance of procedure required by law;
  - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
  - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

**CREDIT(S)**

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

Notes of Decisions (3339)

5 U.S.C.A. § 706, 5 USCA § 706

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## United States Code Annotated

## Title 42. The Public Health and Welfare

## Chapter 82. Solid Waste Disposal (Refs &amp; Annos)

## Subchapter I. General Provisions

## 42 U.S.C.A. § 6901

## § 6901. Congressional findings

## Currentness

## (a) Solid waste

The Congress finds with respect to solid waste--

(1) that the continuing technological progress and improvement in methods of manufacture, packaging, and marketing of consumer products has resulted in an ever-mounting increase, and in a change in the characteristics, of the mass material discarded by the purchaser of such products;

(2) that the economic and population growth of our Nation, and the improvements in the standard of living enjoyed by our population, have required increased industrial production to meet our needs, and have made necessary the demolition of old buildings, the construction of new buildings, and the provision of highways and other avenues of transportation, which, together with related industrial, commercial, and agricultural operations, have resulted in a rising tide of scrap, discarded, and waste materials;

(3) that the continuing concentration of our population in expanding metropolitan and other urban areas has presented these communities with serious financial, management, intergovernmental, and technical problems in the disposal of solid wastes resulting from the industrial, commercial, domestic, and other activities carried on in such areas;

(4) that while the collection and disposal of solid wastes should continue to be primarily the function of State, regional, and local agencies, the problems of waste disposal as set forth above have become a matter national in scope and in concern and necessitate Federal action through financial and technical assistance and leadership in the development, demonstration, and application of new and improved methods and processes to reduce the amount of waste and unsalvageable materials and to provide for proper and economical solid waste disposal practices.

## (b) Environment and health

The Congress finds with respect to the environment and health, that--

(1) although land is too valuable a national resource to be needlessly polluted by discarded materials, most solid waste is disposed of on land in open dumps and sanitary landfills;



(2) disposal of solid waste and hazardous waste in or on the land without careful planning and management can present a danger to human health and the environment;

(3) as a result of the Clean Air Act [42 U.S.C.A. § 7401 et seq.], the Water Pollution Control Act [33 U.S.C.A. § 1251 et seq.], and other Federal and State laws respecting public health and the environment, greater amounts of solid waste (in the form of sludge and other pollution treatment residues) have been created. Similarly, inadequate and environmentally unsound practices for the disposal or use of solid waste have created greater amounts of air and water pollution and other problems for the environment and for health;

(4) open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies, and pollutes the air and the land;

(5) the placement of inadequate controls on hazardous waste management will result in substantial risks to human health and the environment;

(6) if hazardous waste management is improperly performed in the first instance, corrective action is likely to be expensive, complex, and time consuming;

(7) certain classes of land disposal facilities are not capable of assuring long-term containment of certain hazardous wastes, and to avoid substantial risk to human health and the environment, reliance on land disposal should be minimized or eliminated, and land disposal, particularly landfill and surface impoundment, should be the least favored method for managing hazardous wastes; and

(8) alternatives to existing methods of land disposal must be developed since many of the cities in the United States will be running out of suitable solid waste disposal sites within five years unless immediate action is taken.

(c) Materials

The Congress finds with respect to materials, that--

(1) millions of tons of recoverable material which could be used are needlessly buried each year;

(2) methods are available to separate usable materials from solid waste; and

(3) the recovery and conservation of such materials can reduce the dependence of the United States on foreign resources and reduce the deficit in its balance of payments.

(d) Energy

The Congress finds with respect to energy, that--

(1) solid waste represents a potential source of solid fuel, oil, or gas that can be converted into energy;

(2) the need exists to develop alternative energy sources for public and private consumption in order to reduce our dependence on such sources as petroleum products, natural gas, nuclear and hydroelectric generation; and

(3) technology exists to produce usable energy from solid waste.

**CREDIT(S)**

(Pub.L. 89-272, Title II, § 1002, as added Pub.L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2796; amended Pub.L. 95-609, § 7(a), Nov. 8, 1978, 92 Stat. 3081; Pub.L. 98-616, Title I, § 101(a), Nov. 8, 1984, 98 Stat. 3224.)

Notes of Decisions (15)

42 U.S.C.A. § 6901, 42 USCA § 6901

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## United States Code Annotated

## Title 42. The Public Health and Welfare

## Chapter 82. Solid Waste Disposal (Refs &amp; Annos)

## Subchapter I. General Provisions

## 42 U.S.C.A. § 6903

## § 6903. Definitions

## Currentness

As used in this chapter:

(1) The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) The term “construction,” with respect to any project of construction under this chapter, means (A) the erection or building of new structures and acquisition of lands or interests therein, or the acquisition, replacement, expansion, remodeling, alteration, modernization, or extension of existing structures, and (B) the acquisition and installation of initial equipment of, or required in connection with, new or newly acquired structures or the expanded, remodeled, altered, modernized or extended part of existing structures (including trucks and other motor vehicles, and tractors, cranes, and other machinery) necessary for the proper utilization and operation of the facility after completion of the project; and includes preliminary planning to determine the economic and engineering feasibility and the public health and safety aspects of the project, the engineering, architectural, legal, fiscal, and economic investigations and studies, and any surveys, designs, plans, working drawings, specifications, and other action necessary for the carrying out of the project, and (C) the inspection and supervision of the process of carrying out the project to completion.

(2A) The term “demonstration” means the initial exhibition of a new technology process or practice or a significantly new combination or use of technologies, processes or practices, subsequent to the development stage, for the purpose of proving technological feasibility and cost effectiveness.

(3) The term “disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(4) The term “Federal agency” means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

(5) The term “hazardous waste” means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may--

(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

- (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.
- (6) The term “hazardous waste generation” means the act or process of producing hazardous waste.
- (7) The term “hazardous waste management” means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.
- (8) For purposes of Federal financial assistance (other than rural communities assistance), the term “implementation” does not include the acquisition, leasing, construction, or modification of facilities or equipment or the acquisition, leasing, or improvement of land.
- (9) The term “intermunicipal agency” means an agency established by two or more municipalities with responsibility for planning or administration of solid waste.
- (10) The term “interstate agency” means an agency of two or more municipalities in different States, or an agency established by two or more States, with authority to provide for the management of solid wastes and serving two or more municipalities located in different States.
- (11) The term “long-term contract” means, when used in relation to solid waste supply, a contract of sufficient duration to assure the viability of a resource recovery facility (to the extent that such viability depends upon solid waste supply).
- (12) The term “manifest” means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.
- (13) The term “municipality” (A) means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law, with responsibility for the planning or administration of solid waste management, or an Indian tribe or authorized tribal organization or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.
- (14) The term “open dump” means any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 6944 of this title and which is not a facility for disposal of hazardous waste.
- (15) The term “person” means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.
- (16) The term “procurement item” means any device, good, substance, material, product, or other item whether real or personal property which is the subject of any purchase, barter, or other exchange made to procure such item.

(17) The term “procuring agency” means any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

(18) The term “recoverable” refers to the capability and likelihood of being recovered from solid waste for a commercial or industrial use.

(19) The term “recovered material” means waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.

(20) The term “recovered resources” means material or energy recovered from solid waste.

(21) The term “resource conservation” means reduction of the amounts of solid waste that are generated, reduction of overall resource consumption, and utilization of recovered resources.

(22) The term “resource recovery” means the recovery of material or energy from solid waste.

(23) The term “resource recovery system” means a solid waste management system which provides for collection, separation, recycling, and recovery of solid wastes, including disposal of nonrecoverable waste residues.

(24) The term “resource recovery facility” means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(25) The term “regional authority” means the authority established or designated under section 6946 of this title.

(26) The term “sanitary landfill” means a facility for the disposal of solid waste which meets the criteria published under section 6944 of this title.

(26A) The term “sludge” means any solid, semisolid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.

(27) The term “solid waste” means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342 of Title 33, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) [42 U.S.C.A. § 2011 et seq.].

(28) The term “solid waste management” means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste.

(29) The term “solid waste management facility” includes--

(A) any resource recovery system or component thereof,

(B) any system, program, or facility for resource conservation, and

(C) any facility for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid wastes, including hazardous wastes, whether such facility is associated with facilities generating such wastes or otherwise.

(30) The terms “solid waste planning”, “solid waste management”, and “comprehensive planning” include planning or management respecting resource recovery and resource conservation.

(31) The term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(32) The term “State authority” means the agency established or designated under section 6947 of this title.

(33) The term “storage”, when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

(34) The term “treatment”, when used in connection with hazardous waste, means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(35) The term “virgin material” means a raw material, including previously unused copper, aluminum, lead, zinc, iron, or other metal or metal ore, any undeveloped resource that is, or with new technology will become, a source of raw materials.

(36) The term “used oil” means any oil which has been--

(A) refined from crude oil,

(B) used, and

(C) as a result of such use, contaminated by physical or chemical impurities.

(37) The term “recycled oil” means any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes oil which is re-refined, reclaimed, burned, or reprocessed.

(38) The term “lubricating oil” means the fraction of crude oil which is sold for purposes of reducing friction in any industrial or mechanical device. Such term includes re-refined oil.

(39) The term “re-refined oil” means used oil from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.

(40) Except as otherwise provided in this paragraph, the term “medical waste” means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. Such term does not include any hazardous waste identified or listed under subchapter III of this chapter or any household waste as defined in regulations under subchapter III of this chapter.

(41) The term “mixed waste” means waste that contains both hazardous waste and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

#### **CREDIT(S)**

(Pub.L. 89-272, Title II, § 1004, as added Pub.L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2798; amended Pub.L. 95-609, § 7(b), Nov. 8, 1978, 92 Stat. 3081; Pub.L. 96-463, § 3, Oct. 15, 1980, 94 Stat. 2055; Pub.L. 96-482, § 2, Oct. 21, 1980, 94 Stat. 2334; Pub.L. 100-582, § 3, Nov. 1, 1988, 102 Stat. 2958; Pub.L. 102-386, Title I, §§ 103, 105(b), Oct. 6, 1992, 106 Stat. 1507, 1512.)

Notes of Decisions (90)

42 U.S.C.A. § 6903, 42 USCA § 6903

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United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 82. Solid Waste Disposal (Refs & Annos)

Subchapter I. General Provisions

42 U.S.C.A. § 6905

§ 6905. Application of chapter and integration with other Acts

Currentness

(a) Application of chapter

Nothing in this chapter shall be construed to apply to (or to authorize any State, interstate, or local authority to regulate) any activity or substance which is subject to the Federal Water Pollution Control Act [33 U.S.C.A. § 1251 et seq.], the Safe Drinking Water Act [42 U.S.C.A. § 300f et seq.], the Marine Protection, Research and Sanctuaries Act of 1972 [16 U.S.C.A. §§ 1431 et seq., 1447 et seq., 33 U.S.C.A. §§ 1401 et seq., 2801 et seq.], or the Atomic Energy Act of 1954 [42 U.S.C.A. § 2011 et seq.] except to the extent that such application (or regulation) is not inconsistent with the requirements of such Acts.

(b) Integration with other Acts

(1) The Administrator shall integrate all provisions of this chapter for purposes of administration and enforcement and shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of the Clean Air Act [42 U.S.C.A. § 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C.A. § 1251 et seq.], the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C.A. § 136 et seq.], the Safe Drinking Water Act [42 U.S.C.A. § 300f et seq.], the Marine Protection, Research and Sanctuaries Act of 1972 [16 U.S.C.A. §§ 1431 et seq., 1447 et seq., 33 U.S.C.A. §§ 1401 et seq., 2801 et seq.], and such other Acts of Congress as grant regulatory authority to the Administrator. Such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in this chapter and in the other acts referred to in this subsection.

(2)(A) As promptly as practicable after November 8, 1984, the Administrator shall submit a report describing--

- (i) the current data and information available on emissions of polychlorinated dibenzo-p-dioxins from resource recovery facilities burning municipal solid waste;
- (ii) any significant risks to human health posed by these emissions; and
- (iii) operating practices appropriate for controlling these emissions.

(B) Based on the report under subparagraph (A) and on any future information on such emissions, the Administrator may publish advisories or guidelines regarding the control of dioxin emissions from such facilities. Nothing in this paragraph shall be construed to preempt or otherwise affect the authority of the Administrator to promulgate any regulations under the Clean Air Act [42 U.S.C.A. § 7401 et seq.] regarding emissions of polychlorinated dibenzo-p-dioxins.

(3) Notwithstanding any other provisions of law, in developing solid waste plans, it is the intention of this chapter that in determining the size of a waste-to-energy facility, adequate provisions shall be given to the present and reasonably anticipated future needs, including those needs created by thorough implementation of section 6962(h) of this title, of the recycling and resource recovery interests within the area encompassed by the solid waste plan.

(c) Integration with the Surface Mining Control and Reclamation Act of 1977

(1) No later than 90 days after October 21, 1980, the Administrator shall review any regulations applicable to the treatment, storage, or disposal of any coal mining wastes or overburden promulgated by the Secretary of the Interior under the Surface Mining and Reclamation Act of 1977 [30 U.S.C.A. § 1201 et seq.]. If the Administrator determines that any requirement of final regulations promulgated under any section of subchapter III of this chapter relating to mining wastes or overburden is not adequately addressed in such regulations promulgated by the Secretary, the Administrator shall promptly transmit such determination, together with suggested revisions and supporting documentation, to the Secretary.

(2) The Secretary of the Interior shall have exclusive responsibility for carrying out any requirement of subchapter III of this chapter with respect to coal mining wastes or overburden for which a surface coal mining and reclamation permit is issued or approved under the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C.A. § 1201 et seq.]. The Secretary shall, with the concurrence of the Administrator, promulgate such regulations as may be necessary to carry out the purposes of this subsection and shall integrate such regulations with regulations promulgated under the Surface Mining Control and Reclamation Act of 1977.

**CREDIT(S)**

(Pub.L. 89-272, Title II, § 1006, as added Pub.L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2802; amended Pub.L. 96-482, § 3, Oct. 21, 1980, 94 Stat. 2334; Pub.L. 98-616, Title I, § 102, Title V, § 501(f)(2), Nov. 8, 1984, 98 Stat. 3225, 3276.)

Notes of Decisions (12)

42 U.S.C.A. § 6905, 42 USCA § 6905

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United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 82. Solid Waste Disposal (Refs & Annos)

Subchapter II. Office of Solid Waste; Authorities of the Administrator

42 U.S.C.A. § 6912

§ 6912. Authorities of Administrator

Currentness

(a) Authorities

In carrying out this chapter, the Administrator is authorized to--

- (1) prescribe, in consultation with Federal, State, and regional authorities, such regulations as are necessary to carry out his functions under this chapter;
- (2) consult with or exchange information with other Federal agencies undertaking research, development, demonstration projects, studies, or investigations relating to solid waste;
- (3) provide technical and financial assistance to States or regional agencies in the development and implementation of solid waste plans and hazardous waste management programs;
- (4) consult with representatives of science, industry, agriculture, labor, environmental protection and consumer organizations, and other groups, as he deems advisable;
- (5) utilize the information, facilities, personnel and other resources of Federal agencies, including the National Institute of Standards and Technology and the National Bureau of the Census, on a reimbursable basis, to perform research and analyses and conduct studies and investigations related to resource recovery and conservation and to otherwise carry out the Administrator's functions under this chapter; and
- (6) to delegate to the Secretary of Transportation the performance of any inspection or enforcement function under this chapter relating to the transportation of hazardous waste where such delegation would avoid unnecessary duplication of activity and would carry out the objectives of this chapter and of chapter 51 of Title 49.

(b) Revision of regulations

Each regulation promulgated under this chapter shall be reviewed and, where necessary, revised not less frequently than every three years.

(c) Criminal investigations

In carrying out the provisions of this chapter, the Administrator, and duly-designated agents and employees of the Environmental Protection Agency, are authorized to initiate and conduct investigations under the criminal provisions of this chapter, and to refer the results of these investigations to the Attorney General for prosecution in appropriate cases.

**CREDIT(S)**

(Pub.L. 89-272, Title II, § 2002, as added Pub.L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2804; amended Pub.L. 96-482, § 5, Oct. 21, 1980, 94 Stat. 2335; Pub.L. 98-616, Title IV, § 403(d)(4), Nov. 8, 1984, 98 Stat. 3272; Pub.L. 100-418, Title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

Notes of Decisions (6)

42 U.S.C.A. § 6912, 42 USCA § 6912

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United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 82. Solid Waste Disposal (Refs & Annos)

Subchapter IV. State or Regional Solid Waste Plans

42 U.S.C.A. § 6941a

§ 6941a. Energy and materials conservation and recovery; Congressional findings

Currentness

The Congress finds that--

- (1) significant savings could be realized by conserving materials in order to reduce the volume or quantity of material which ultimately becomes waste;
- (2) solid waste contains valuable energy and material resources which can be recovered and used thereby conserving increasingly scarce and expensive fossil fuels and virgin materials;
- (3) the recovery of energy and materials from municipal waste, and the conservation of energy and materials contributing to such waste streams, can have the effect of reducing the volume of the municipal waste stream and the burden of disposing of increasing volumes of solid waste;
- (4) the technology to conserve resources exists and is commercially feasible to apply;
- (5) the technology to recover energy and materials from solid waste is of demonstrated commercial feasibility; and
- (6) various communities throughout the nation have different needs and different potentials for conserving resources and for utilizing techniques for the recovery of energy and materials from waste, and Federal assistance in planning and implementing such energy and materials conservation and recovery programs should be available to all such communities on an equitable basis in relation to their needs and potential.

**CREDIT(S)**

(Pub.L. 96-482, § 32(a), Oct. 21, 1980, 94 Stat. 2353.)

42 U.S.C.A. § 6941a, 42 USCA § 6941a

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## United States Code Annotated

## Title 42. The Public Health and Welfare

## Chapter 82. Solid Waste Disposal (Refs &amp; Annos)

## Subchapter IV. State or Regional Solid Waste Plans

## 42 U.S.C.A. § 6942

## § 6942. Federal guidelines for plans

## Currentness

## (a) Guidelines for identification of regions

For purposes of encouraging and facilitating the development of regional planning for solid waste management, the Administrator, within one hundred and eighty days after October 21, 1976, and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which have common solid waste management problems and are appropriate units for planning regional solid waste management services. Such guidelines shall consider--

- (1) the size and location of areas which should be included,
- (2) the volume of solid waste which should be included, and
- (3) the available means of coordinating regional planning with other related regional planning and for coordination of such regional planning into the State plan.

## (b) Guidelines for State plans

Not later than eighteen months after October 21, 1976, and after notice and hearing, the Administrator shall, after consultation with appropriate Federal, State, and local authorities, promulgate regulations containing guidelines to assist in the development and implementation of State solid waste management plans (hereinafter in this chapter referred to as "State plans"). The guidelines shall contain methods for achieving the objectives specified in section 6941 of this title. Such guidelines shall be reviewed from time to time, but not less frequently than every three years, and revised as may be appropriate.

## (c) Considerations for State plan guidelines

The guidelines promulgated under subsection (b) of this section shall consider--

- (1) the varying regional, geologic, hydrologic, climatic, and other circumstances under which different solid waste practices are required in order to insure the reasonable protection of the quality of the ground and surface waters from leachate contamination, the reasonable protection of the quality of the surface waters from surface runoff contamination, and the reasonable protection of ambient air quality;

(2) characteristics and conditions of collection, storage, processing, and disposal operating methods, techniques and practices, and location of facilities where such operating methods, techniques, and practices are conducted, taking into account the nature of the material to be disposed;

(3) methods for closing or upgrading open dumps for purposes of eliminating potential health hazards;

(4) population density, distribution, and projected growth;

(5) geographic, geologic, climatic, and hydrologic characteristics;

(6) the type and location of transportation;

(7) the profile of industries;

(8) the constituents and generation rates of waste;

(9) the political, economic, organizational, financial, and management problems affecting comprehensive solid waste management;

(10) types of resource recovery facilities and resource conservation systems which are appropriate; and

(11) available new and additional markets for recovered material and energy and energy resources recovered from solid waste as well as methods for conserving such materials and energy.

**CREDIT(S)**

(Pub.L. 89-272, Title II, § 4002, as added Pub.L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2813; amended Pub.L. 96-482, § 32(c), Oct. 21, 1980, 94 Stat. 2353.)

42 U.S.C.A. § 6942, 42 USCA § 6942

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## United States Code Annotated

## Title 42. The Public Health and Welfare

## Chapter 82. Solid Waste Disposal (Refs &amp; Annos)

## Subchapter IV. State or Regional Solid Waste Plans

## 42 U.S.C.A. § 6943

## § 6943. Requirements for approval of plans

## Currentness

## (a) Minimum requirements

In order to be approved under section 6947 of this title, each State plan must comply with the following minimum requirements--

(1) The plan shall identify (in accordance with section 6946(b) of this title) (A) the responsibilities of State, local, and regional authorities in the implementation of the State plan, (B) the distribution of Federal funds to the authorities responsible for development and implementation of the State plan, and (C) the means for coordinating regional planning and implementation under the State plan.

(2) The plan shall, in accordance with sections 6944(b) and 6945(a) of this title, prohibit the establishment of new open dumps within the State, and contain requirements that all solid waste (including solid waste originating in other States, but not including hazardous waste) shall be (A) utilized for resource recovery or (B) disposed of in sanitary landfills (within the meaning of section 6944(a) of this title) or otherwise disposed of in an environmentally sound manner.

(3) The plan shall provide for the closing or upgrading of all existing open dumps within the State pursuant to the requirements of section 6945 of this title.

(4) The plan shall provide for the establishment of such State regulatory powers as may be necessary to implement the plan.

(5) The plan shall provide that no State or local government within the State shall be prohibited under State or local law from negotiating and entering into long-term contracts for the supply of solid waste to resource recovery facilities, from entering into long-term contracts for the operation of such facilities, or from securing long-term markets for material and energy recovered from such facilities or for conserving materials or energy by reducing the volume of waste.

(6) The plan shall provide for such resource conservation or recovery and for the disposal of solid waste in sanitary landfills or any combination of practices so as may be necessary to use or dispose of such waste in a manner that is environmentally sound.

## (b) Discretionary plan provisions relating to recycled oil

Any State plan submitted under this subchapter may include, at the option of the State, provisions to carry out each of the following:

(1) Encouragement, to the maximum extent feasible and consistent with the protection of the public health and the environment, of the use of recycled oil in all appropriate areas of State and local government.

(2) Encouragement of persons contracting with the State to use recycled oil to the maximum extent feasible, consistent with protection of the public health and the environment.

(3) Informing the public of the uses of recycled oil.

(4) Establishment and implementation of a program (including any necessary licensing of persons and including the use, where appropriate, of manifests) to assure that used oil is collected, transported, treated, stored, reused, and disposed of, in a manner which does not present a hazard to the public health or the environment.

Any plan submitted under this chapter before October 15, 1980, may be amended, at the option of the State, at any time after such date to include any provision referred to in this subsection.

(c) Energy and materials conservation and recovery feasibility planning and assistance

(1) A State which has a plan approved under this subchapter or which has submitted a plan for such approval shall be eligible for assistance under section 6948(a)(3) of this title if the Administrator determines that under such plan the State will--

(A) analyze and determine the economic and technical feasibility of facilities and programs to conserve resources which contribute to the waste stream or to recover energy and materials from municipal waste;

(B) analyze the legal, institutional, and economic impediments to the development of systems and facilities for conservation of energy or materials which contribute to the waste stream or for the recovery of energy and materials from municipal waste and make recommendations to appropriate governmental authorities for overcoming such impediments;

(C) assist municipalities within the State in developing plans, programs, and projects to conserve resources or recover energy and materials from municipal waste; and

(D) coordinate the resource conservation and recovery planning under subparagraph (C).

(2) The analysis referred to in paragraph (1)(A) shall include--

(A) the evaluation of, and establishment of priorities among, market opportunities for industrial and commercial users of all types (including public utilities and industrial parks) to utilize energy and materials recovered from municipal waste;

(B) comparisons of the relative costs of energy recovered from municipal waste in relation to the costs of energy derived from fossil fuels and other sources;

(C) studies of the transportation and storage problems and other problems associated with the development of energy and materials recovery technology, including curbside source separation;

(D) the evaluation and establishment of priorities among ways of conserving energy or materials which contribute to the waste stream;

(E) comparison of the relative total costs between conserving resources and disposing of or recovering such waste; and

(F) studies of impediments to resource conservation or recovery, including business practices, transportation requirements, or storage difficulties.

Such studies and analyses shall also include studies of other sources of solid waste from which energy and materials may be recovered or minimized.

(d) Size of waste-to-energy facilities

Notwithstanding any of the above requirements, it is the intention of this chapter and the planning process developed pursuant to this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs of the recycling and resource recovery interest within the area encompassed by the planning process.

**CREDIT(S)**

(Pub.L. 89-272, Title II, § 4003, as added Pub.L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2814; amended Pub.L. 96-463, § 5(a), (b), Oct. 15, 1980, 94 Stat. 2056; Pub.L. 96-482, §§ 18, 32(d), Oct. 21, 1980, 94 Stat. 2345, 2353; Pub.L. 98-616, Title III, § 301(b), Title V, § 502(h), Nov. 8, 1984, 98 Stat. 3267, 3277.)

Notes of Decisions (2)

42 U.S.C.A. § 6943, 42 USCA § 6943

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United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 82. Solid Waste Disposal (Refs & Annos)

Subchapter IV. State or Regional Solid Waste Plans

42 U.S.C.A. § 6944

§ 6944. Criteria for sanitary landfills; sanitary landfills required for all disposal

Currentness

(a) Criteria for sanitary landfills

Not later than one year after October 21, 1976, after consultation with the States, and after notice and public hearings, the Administrator shall promulgate regulations containing criteria for determining which facilities shall be classified as sanitary landfills and which shall be classified as open dumps within the meaning of this chapter. At a minimum, such criteria shall provide that a facility may be classified as a sanitary landfill and not an open dump only if there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility. Such regulations may provide for the classification of the types of sanitary landfills.

(b) Disposal required to be in sanitary landfills, etc.

For purposes of complying with section 6943(2) of this title each State plan shall prohibit the establishment of open dumps and contain a requirement that disposal of all solid waste within the State shall be in compliance with such section 6943(2) of this title.

(c) Effective date

The prohibition contained in subsection (b) of this section shall take effect on the date six months after the date of promulgation of regulations under subsection (a) of this section.

**CREDIT(S)**

(Pub.L. 89-272, Title II, § 4004, as added Pub.L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2815; amended Pub.L. 98-616, Title III, § 302(b), Nov. 8, 1984, 98 Stat. 3268.)

42 U.S.C.A. § 6944, 42 USCA § 6944

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## United States Code Annotated

## Title 42. The Public Health and Welfare

## Chapter 82. Solid Waste Disposal (Refs &amp; Annos)

## Subchapter IV. State or Regional Solid Waste Plans

## 42 U.S.C.A. § 6945

## § 6945. Upgrading of open dumps

## Currentness

## (a) Closing or upgrading of existing open dumps

Upon promulgation of criteria under section 6907(a)(3) of this title, any solid waste management practice or disposal of solid waste or hazardous waste which constitutes the open dumping of solid waste or hazardous waste is prohibited, except in the case of any practice or disposal of solid waste under a timetable or schedule for compliance established under this section. The prohibition contained in the preceding sentence shall be enforceable under section 6972 of this title against persons engaged in the act of open dumping. For purposes of complying with section 6943(a)(2) and 6943(a)(3) of this title, each State plan shall contain a requirement that all existing disposal facilities or sites for solid waste in such State which are open dumps listed in the inventory under subsection (b) of this section shall comply with such measures as may be promulgated by the Administrator to eliminate health hazards and minimize potential health hazards. Each such plan shall establish, for any entity which demonstrates that it has considered other public or private alternatives for solid waste management to comply with the prohibition on open dumping and is unable to utilize such alternatives to so comply, a timetable or schedule for compliance for such practice or disposal of solid waste which specifies a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with the prohibition on open dumping of solid waste within a reasonable time (not to exceed 5 years from the date of publication of criteria under section 6907(a)(3) of this title).

## (b) Inventory

To assist the States in complying with section 6943(a)(3) of this title, not later than one year after promulgation of regulations under section 6944 of this title, the Administrator, with the cooperation of the Bureau of the Census shall publish an inventory of all disposal facilities or sites in the United States which are open dumps within the meaning of this chapter.

## (c) Control of hazardous disposal

**(1)(A)** Not later than 36 months after November 8, 1984, each State shall adopt and implement a permit program or other system of prior approval and conditions to assure that each solid waste management facility within such State which may receive hazardous household waste or hazardous waste due to the provision of section 6921(d) of this title for small quantity generators (otherwise not subject to the requirement for a permit under section 6925 of this title) will comply with the applicable criteria promulgated under section 6944(a) and 6907(a)(3) of this title.

**(B)** Not later than eighteen months after the promulgation of revised criteria under subsection <sup>1</sup> 6944(a) of this title (as required by section 6949a(c) of this title), each State shall adopt and implement a permit program or other system or <sup>2</sup> prior approval and conditions, to assure that each solid waste management facility within such State which may receive hazardous household waste

or hazardous waste due to the provision of section 6921(d) of this title for small quantity generators (otherwise not subject to the requirement for a permit under section 6925 of this title) will comply with the criteria revised under section 6944(a) of this title.

(C) The Administrator shall determine whether each State has developed an adequate program under this paragraph. The Administrator may make such a determination in conjunction with approval, disapproval or partial approval of a State plan under section 6947 of this title.

(2)(A) In any State that the Administrator determines has not adopted an adequate program for such facilities under paragraph (1)(B) by the date provided in such paragraph, the Administrator may use the authorities available under sections 6927 and 6928 of this title to enforce the prohibition contained in subsection (a) of this section with respect to such facilities.

(B) For purposes of this paragraph, the term “requirement of this subchapter” in section 6928 of this title shall be deemed to include criteria promulgated by the Administrator under sections 6907(a)(3) and 6944(a) of this title, and the term “hazardous wastes” in section 6927 of this title shall be deemed to include solid waste at facilities that may handle hazardous household wastes or hazardous wastes from small quantity generators.

#### CREDIT(S)

(Pub.L. 89-272, Title II, § 4005, as added Pub.L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2815; amended Pub.L. 96-482, § 19(a), (b), Oct. 21, 1980, 94 Stat. 2345; Pub.L. 98-616, Title III, § 302(c), Title IV, § 403(c), Title V, § 502(c), Nov. 8, 1984, 98 Stat. 3268, 3272, 3276.)

#### Notes of Decisions (16)

#### Footnotes

1 So in original. Probably should be “section”.

2 So in original. Probably should be “of”.

42 U.S.C.A. § 6945, 42 USCA § 6945

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## United States Code Annotated

## Title 42. The Public Health and Welfare

## Chapter 82. Solid Waste Disposal (Refs &amp; Annos)

## Subchapter IV. State or Regional Solid Waste Plans

## 42 U.S.C.A. § 6946

## § 6946. Procedure for development and implementation of State plan

## Currentness

## (a) Identification of regions

Within one hundred and eighty days after publication of guidelines under section 6942(a) of this title (relating to identification of regions), the Governor of each State, after consultation with local elected officials, shall promulgate regulations based on such guidelines identifying the boundaries of each area within the State which, as a result of urban concentrations, geographic conditions, markets, and other factors, is appropriate for carrying out regional solid waste management. Such regulations may be modified from time to time (identifying additional or different regions) pursuant to such guidelines.

## (b) Identification of State and local agencies and responsibilities

(1) Within one hundred and eighty days after the Governor promulgates regulations under subsection (a) of this section, for purposes of facilitating the development and implementation of a State plan which will meet the minimum requirements of section 6943 of this title, the State, together with appropriate elected officials of general purpose units of local government, shall jointly (A) identify an agency to develop the State plan and identify one or more agencies to implement such plan, and (B) identify which solid waste management activities will, under such State plan, be planned for and carried out by the State and which such management activities will, under such State plan, be planned for and carried out by a regional or local authority or a combination of regional or local and State authorities. If a multi-functional regional agency authorized by State law to conduct solid waste planning and management (the members of which are appointed by the Governor) is in existence on October 21, 1976, the Governor shall identify such authority for purposes of carrying out within such region clause (A) of this paragraph. Where feasible, designation of the agency for the affected area designated under section 1288 of Title 33 shall be considered. A State agency identified under this paragraph shall be established or designated by the Governor of such State. Local or regional agencies identified under this paragraph shall be composed of individuals at least a majority of whom are elected local officials.

(2) If planning and implementation agencies are not identified and designated or established as required under paragraph (1) for any affected area, the governor shall, before the date two hundred and seventy days after promulgation of regulations under subsection (a) of this section, establish or designate a State agency to develop and implement the State plan for such area.

## (c) Interstate regions

(1) In the case of any region which, pursuant to the guidelines published by the Administrator under section 6942(a) of this title (relating to identification of regions), would be located in two or more States, the Governors of the respective States, after consultation with local elected officials, shall consult, cooperate, and enter into agreements identifying the boundaries of such region pursuant to subsection (a) of this section.



(2) Within one hundred and eighty days after an interstate region is identified by agreement under paragraph (1), appropriate elected officials of general purpose units of local government within such region shall jointly establish or designate an agency to develop a plan for such region. If no such agency is established or designated within such period by such officials, the Governors of the respective States may, by agreement, establish or designate for such purpose a single representative organization including elected officials of general purpose units of local government within such region.

(3) Implementation of interstate regional solid waste management plans shall be conducted by units of local government for any portion of a region within their jurisdiction, or by multijurisdictional agencies or authorities designated in accordance with State law, including those designated by agreement by such units of local government for such purpose. If no such unit, agency, or authority is so designated, the respective Governors shall designate or establish a single interstate agency to implement such plan.

(4) For purposes of this subchapter, so much of an interstate regional plan as is carried out within a particular State shall be deemed part of the State plan for such State.

**CREDIT(S)**

(Pub.L. 89-272, Title II, § 4006, as added Pub.L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2816; amended Pub.L. 96-482, § 19(b), Oct. 21, 1980, 94 Stat. 2345.)

Notes of Decisions (2)

42 U.S.C.A. § 6946, 42 USCA § 6946

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United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 82. Solid Waste Disposal (Refs & Annos)

Subchapter IV. State or Regional Solid Waste Plans

42 U.S.C.A. § 6947

§ 6947. Approval of State plan; Federal assistance

Effective: March 26, 1996

Currentness

(a) Plan approval

The Administrator shall, within six months after a State plan has been submitted for approval, approve or disapprove the plan. The Administrator shall approve a plan if he determines that--

(1) it meets the requirements of paragraphs (1), (2), (3), and (5) of section 6943(a) of this title; and

(2) it contains provision for revision of such plan, after notice and public hearing, whenever the Administrator, by regulation, determines--

(A) that revised regulations respecting minimum requirements have been promulgated under paragraphs (1), (2), (3), and (5) of section 6943(a) of this title with which the State plan is not in compliance;

(B) that information has become available which demonstrates the inadequacy of the plan to effectuate the purposes of this subchapter; or

(C) that such revision is otherwise necessary.

The Administrator shall review approved plans from time to time and if he determines that revision or corrections are necessary to bring such plan into compliance with the minimum requirements promulgated under section 6943 of this title (including new or revised requirements), he shall, after notice and opportunity for public hearing, withdraw his approval of such plan. Such withdrawal of approval shall cease to be effective upon the Administrator's determination that such complies with such minimum requirements.

(b) Eligibility of States for Federal financial assistance

(1) The Administrator shall approve a State application for financial assistance under this subchapter, and make grants to such State, if such State and local and regional authorities within such State have complied with the requirements of section 6946 of this title within the period required under such section and if such State has a State plan which has been approved by the Administrator under this subchapter.

(2) The Administrator shall approve a State application for financial assistance under this subchapter, and make grants to such State, for fiscal years 1978 and 1979 if the Administrator determines that the State plan continues to be eligible for approval under subsection (a) of this section and is being implemented by the State.

(3) Upon withdrawal of approval of a State plan under subsection (a) of this section, the Administrator shall withhold Federal financial and technical assistance under this subchapter (other than such technical assistance as may be necessary to assist in obtaining the reinstatement of approval) until such time as such approval is reinstated.

(c) Existing activities

Nothing in this subchapter shall be construed to prevent or affect any activities respecting solid waste planning or management which are carried out by State, regional, or local authorities unless such activities are inconsistent with a State plan approved by the Administrator under this subchapter.

**CREDIT(S)**

(Pub.L. 89-272, Title II, § 4007, as added Pub.L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2817; amended Pub.L. 95-609, § 7(l), Nov. 8, 1978, 92 Stat. 3082; Pub.L. 104-119, § 4(8), Mar. 26, 1996, 110 Stat. 833.)

Notes of Decisions (2)

42 U.S.C.A. § 6947, 42 USCA § 6947

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## United States Code Annotated

## Title 42. The Public Health and Welfare

## Chapter 82. Solid Waste Disposal (Refs &amp; Annos)

## Subchapter IV. State or Regional Solid Waste Plans

## 42 U.S.C.A. § 6948

## § 6948. Federal assistance

## Currentness

## (a) Authorization of Federal financial assistance

(1) There are authorized to be appropriated \$30,000,000 for fiscal year 1978, \$40,000,000 for fiscal year 1979, \$20,000,000 for fiscal year 1980, \$15,000,000 for fiscal year 1981, \$20,000,000 for the fiscal year 1982, and \$10,000,000 for each of the fiscal years 1985 through 1988 for purposes of financial assistance to States and local, regional, and interstate authorities for the development and implementation of plans approved by the Administrator under this subchapter (other than the provisions of such plans referred to in section 6943(b) of this title, relating to feasibility planning for municipal waste energy and materials conservation and recovery).

(2)(A) The Administrator is authorized to provide financial assistance to States, counties, municipalities, and intermunicipal agencies and State and local public solid waste management authorities for implementation of programs to provide solid waste management, resource recovery, and resource conservation services and hazardous waste management. Such assistance shall include assistance for facility planning and feasibility studies; expert consultation; surveys and analyses of market needs; marketing of recovered resources; technology assessments; legal expenses; construction feasibility studies; source separation projects; and fiscal or economic investigations or studies; but such assistance shall not include any other element of construction, or any acquisition of land or interest in land, or any subsidy for the price of recovered resources. Agencies assisted under this subsection shall consider existing solid waste management and hazardous waste management services and facilities as well as facilities proposed for construction.

(B) An applicant for financial assistance under this paragraph must agree to comply with respect to the project or program assisted with the applicable requirements of section 6945 of this title and subchapter III of this chapter and apply applicable solid waste management practices, methods, and levels of control consistent with any guidelines published pursuant to section 6907 of this title. Assistance under this paragraph shall be available only for programs certified by the State to be consistent with any applicable State or areawide solid waste management plan or program. Applicants for technical and financial assistance under this section shall not preclude or foreclose consideration of programs for the recovery of recyclable materials through source separation or other resource recovery techniques.

(C) There are authorized to be appropriated \$15,000,000 for each of the fiscal years 1978 and 1979 for purposes of this section. There are authorized to be appropriated \$10,000,000 for fiscal year 1980, \$10,000,000 for fiscal year 1981, \$10,000,000 for fiscal year 1982, and \$10,000,000 for each of the fiscal years 1985 through 1988 for purposes of this paragraph.

(D) There are authorized--

(i) to be made available \$15,000,000 out of funds appropriated for fiscal year 1985, and

(ii) to be appropriated for each of the fiscal years 1986 through<sup>1</sup> 1988, \$20,000,000<sup>2</sup>

for grants to States (and where appropriate to regional, local, and interstate agencies) to implement programs requiring compliance by solid waste management facilities with the criteria promulgated under section 6944(a) of this title and section 6907(a)(3) of this title and with the provisions of section 6945 of this title. To the extent practicable, such programs shall require such compliance not later than thirty-six months after November 8, 1984.

(3)(A) There is authorized to be appropriated for the fiscal year beginning October 1, 1981, and for each fiscal year thereafter before October 1, 1986, \$4,000,000 for purposes of making grants to States to carry out section 6943(b) of this title. No amount may be appropriated for such purposes for the fiscal year beginning on October 1, 1986, or for any fiscal year thereafter.

(B) Assistance provided by the Administrator under this paragraph shall be used only for the purposes specified in section 6943(b) of this title. Such assistance may not be used for purposes of land acquisition, final facility design, equipment purchase, construction, startup or operation activities.

(C) Where appropriate, any State receiving assistance under this paragraph may make all or any part of such assistance available to municipalities within the State to carry out the activities specified in section 6943(b)(1)(A) and (B) of this title.

(b) State allotment

The sums appropriated in any fiscal year under subsection (a)(1) of this section shall be allotted by the Administrator among all States, in the ratio that the population in each State bears to the population in all of the States, except that no State shall receive less than one-half of 1 per centum of the sums so allotted in any fiscal year. No State shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than non-recurrent expenditures for solid waste management control programs will be less than its expenditures were for such programs during fiscal year 1975, except that such funds may be reduced by an amount equal to their proportionate share of any general reduction of State spending ordered by the Governor or legislature of such State. No State shall receive any grant for solid waste management programs unless the Administrator is satisfied that such grant will be so used as to supplement and, to the extent practicable, increase the level of State, local, regional, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such programs.

(c) Distribution of Federal financial assistance within the State

The Federal assistance allotted to the States under subsection (b) of this section shall be allocated by the State receiving such funds to State, local, regional, and interstate authorities carrying out planning and implementation of the State plan. Such allocation shall be based upon the responsibilities of the respective parties as determined pursuant to section 6946(b) of this title.

(d) Technical assistance

(1) The Administrator may provide technical assistance to State and local governments for purposes of developing and implementing State plans. Technical assistance respecting resource recovery and conservation may be provided through resource recovery and conservation panels, established in the Environmental Protection Agency under subchapter II of this chapter, to assist the State and local governments with respect to particular resource recovery and conservation projects under consideration and to evaluate their effect on the State plan.

(2) In carrying out this subsection, the Administrator may, upon request, provide technical assistance to States to assist in the removal or modification of legal, institutional, economic, and other impediments to the recycling of used oil. Such impediments may include laws, regulations, and policies, including State procurement policies, which are not favorable to the recycling of used oil.

(3) In carrying out this subsection, the Administrator is authorized to provide technical assistance to States, municipalities, regional authorities, and intermunicipal agencies upon request, to assist in the removal or modification of legal, institutional, and economic impediments which have the effect of impeding the development of systems and facilities to recover energy and materials from municipal waste or to conserve energy or materials which contribute to the waste stream. Such impediments may include--

(A) laws, regulations, and policies, including State and local procurement policies, which are not favorable to resource conservation and recovery policies, systems, and facilities;

(B) impediments to the financing of facilities to conserve or recover energy and materials from municipal waste through the exercise of State and local authority to issue revenue bonds and the use of State and local credit assistance; and

(C) impediments to institutional arrangements necessary to undertake projects for the conservation or recovery of energy and materials from municipal waste, including the creation of special districts, authorities, or corporations where necessary having the power to secure the supply of waste of a project, to conserve resources, to implement the project, and to undertake related activities.

(e) Special communities

(1) The Administrator, in cooperation with State and local officials, shall identify local governments within the United States (A) having a solid waste disposal facility (i) which is owned by the unit of local government, (ii) for which an order has been issued by the State to cease receiving solid waste for treatment, storage, or disposal, and (iii) which is subject to a State-approved end-use recreation plan, and (B) which are located over an aquifer which is the source of drinking water for any person or public water system and which has serious environmental problems resulting from the disposal of such solid waste, including possible methane migration.

(2) There is authorized to be appropriated to the Administrator \$2,500,000 for the fiscal year 1980 and \$1,500,000 for each of the fiscal years 1981 and 1982 to make grants to be used for containment and stabilization of solid waste located at the disposal sites referred to in paragraph (1). Not more than one community in any State shall be eligible for grants under this paragraph and not more than one project in any State shall be eligible for such grants. No unit of local government shall be eligible for grants under this paragraph with respect to any site which exceeds 65 acres in size.

(f) Assistance to States for discretionary program for recycled oil

(1) The Administrator may make grants to States, which have a State plan approved under section 6947 of this title, or which have submitted a State plan for approval under such section, if such plan includes the discretionary provisions described in section 6943(b) of this title. Grants under this subsection shall be for purposes of assisting the State in carrying out such discretionary provisions. No grant under this subsection may be used for construction or for the acquisition of land or equipment.

(2) Grants under this subsection shall be allotted among the States in the same manner as provided in the first sentence of subsection (b) of this section.

(3) No grant may be made under this subsection unless an application therefor is submitted to, and approved by, the Administrator. The application shall be in such form, be submitted in such manner, and contain such information as the Administrator may require.

(4) For purposes of making grants under this subsection, there are authorized to be appropriated \$5,000,000 for fiscal year 1982, \$5,000,000 for fiscal year 1983, and \$5,000,000 for each of the fiscal years 1985 through 1988.

(g) Assistance to municipalities for energy and materials conservation and recovery planning activities

(1) The Administrator is authorized to make grants to municipalities, regional authorities, and intermunicipal agencies to carry out activities described in subparagraphs (A) and (B) of section 6943(b)(1) of this title. Such grants may be made only pursuant to an application submitted to the Administrator by the municipality which application has been approved by the State and determined by the State to be consistent with any State plan approved or submitted under this subchapter or any other appropriate planning carried out by the State.

(2) There is authorized to be appropriated for the fiscal year beginning October 1, 1981, and for each fiscal year thereafter before October 1, 1986, \$8,000,000 for purposes of making grants to municipalities under this subsection. No amount may be appropriated for such purposes for the fiscal year beginning on October 1, 1986, or for any fiscal year thereafter.

(3) Assistance provided by the Administrator under this subsection shall be used only for the purposes specified in paragraph (1). Such assistance may not be used for purposes of land acquisition, final facility design, equipment purchase, construction, startup or operation activities.

#### **CREDIT(S)**

(Pub.L. 89-272, Title II, § 4008, as added Pub.L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2818; amended Pub.L. 96-463, §§ 5(b), 6, Oct. 15, 1980, 94 Stat. 2057; Pub.L. 96-482, §§ 20, 31(c), (d), 32(e), (f), Oct. 21, 1980, 94 Stat. 2345, 2352, 2354, 2355; Pub.L. 98-616, § 2(d) to (g), (k), Title V, § 502(d), (e), Nov. 8, 1984, 98 Stat. 3222, 3223, 3276.)

#### **Footnotes**

1 So in original. Probably should be “through”.

2 So in original. Probably should be followed by a comma.



42 U.S.C.A. § 6948, 42 USCA § 6948

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## United States Code Annotated

## Title 42. The Public Health and Welfare

## Chapter 82. Solid Waste Disposal (Refs &amp; Annos)

## Subchapter IV. State or Regional Solid Waste Plans

## 42 U.S.C.A. § 6949

## § 6949. Rural communities assistance

## Currentness

## (a) In general

The Administrator shall make grants to States to provide assistance to municipalities with a population of five thousand or less, or counties with a population of ten thousand or less or less than twenty persons per square mile and not within a metropolitan area, for solid waste management facilities (including equipment) necessary to meet the requirements of section 6945 of this title or restrictions on open burning or other requirements arising under the Clean Air Act [42 U.S.C.A. § 7401 et seq.] or the Federal Water Pollution Control Act [33 U.S.C.A. § 1251 et seq.]. Such assistance shall only be available--

- (1) to any municipality or county which could not feasibly be included in a solid waste management system or facility serving an urbanized, multijurisdictional area because of its distance from such systems;
- (2) where existing or planned solid waste management services or facilities are unavailable or insufficient to comply with the requirements of section 6945 of this title; and
- (3) for systems which are certified by the State to be consistent with any plans or programs established under any State or areawide planning process.

## (b) Allotment

The Administrator shall allot the sums appropriated to carry out this section in any fiscal year among the States in accordance with regulations promulgated by him on the basis of the average of the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States, the ratio which the population of counties in each State having less than twenty persons per square mile bears to the total population of such counties in all the States, and the ratio which the population of such low-density counties in each State having 33 per centum or more of all families with incomes not in excess of 125 per centum of the poverty level bears to the total population of such counties in all the States.

## (c) Limit

The amount of any grant under this section shall not exceed 75 per centum of the costs of the project. No assistance under this section shall be available for the acquisition of land or interests in land.

## (d) Authorization of appropriations

There are authorized to be appropriated \$25,000,000 for each of the fiscal years 1978 and 1979 to carry out this section. There are authorized to be appropriated \$10,000,000 for the fiscal year 1980 and \$15,000,000 for each of the fiscal years 1981 and 1982 to carry out this section.

(e) Additional appropriations

(1) In general

There are authorized to be appropriated to carry out this section for the Denali Commission to provide assistance to municipalities in the State of Alaska \$1,500,000 for each of fiscal years 2008 through 2012.

(2) Administration

For the purpose of carrying out this subsection, the Denali Commission shall--

(A) be considered a State; and

(B) comply with all other requirements and limitations of this section.

**CREDIT(S)**

(Pub.L. 89-272, Title II, § 4009, as added Pub.L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2819; amended Pub.L. 96-482, § 31(e), Oct. 21, 1980, 94 Stat. 2353; Pub.L. 110-234, Title VI, § 6009(b), May 22, 2008, 122 Stat. 1163; Pub.L. 110-246, § 4(a), Title VI, § 6009(b), June 18, 2008, 122 Stat. 1664, 1924.)

42 U.S.C.A. § 6949, 42 USCA § 6949

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United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 82. Solid Waste Disposal (Refs & Annos)

Subchapter IV. State or Regional Solid Waste Plans

42 U.S.C.A. § 6949a

§ 6949a. Adequacy of certain guidelines and criteria

Effective: March 26, 1996

Currentness

(a) Study

The Administrator shall conduct a study of the extent to which the guidelines and criteria under this chapter (other than guidelines and criteria for facilities to which subchapter III of this chapter applies) which are applicable to solid waste management and disposal facilities, including, but not limited to landfills and surface impoundments, are adequate to protect human health and the environment from ground water contamination. Such study shall include a detailed assessment of the degree to which the criteria under section 6907(a) of this title and the criteria under section 6944 of this title regarding monitoring, prevention of contamination, and remedial action are adequate to protect ground water and shall also include recommendation with respect to any additional enforcement authorities which the Administrator, in consultation with the Attorney General, deems necessary for such purposes.

(b) Report

Not later than thirty-six months after November 8, 1984, the Administrator shall submit a report to the Congress setting forth the results of the study required under this section, together with any recommendations made by the Administrator on the basis of such study.

(c) Revisions of guidelines and criteria

(1) In general

Not later than March 31, 1988, the Administrator shall promulgate revisions of the criteria promulgated under paragraph (1) of section 6944(a) of this title and under section 6907(a)(3) of this title for facilities that may receive hazardous household wastes or hazardous wastes from small quantity generators under section 6921(d) of this title. The criteria shall be those necessary to protect human health and the environment and may take into account the practicable capability of such facilities. At a minimum such revisions for facilities potentially receiving such wastes should require ground water monitoring as necessary to detect contamination, establish criteria for the acceptable location of new or existing facilities, and provide for corrective action as appropriate.

(2) Additional revisions

Subject to paragraph (3), the requirements of the criteria described in paragraph (1) relating to ground water monitoring shall not apply to an owner or operator of a new municipal solid waste landfill unit, an existing municipal solid waste landfill unit,

or a lateral expansion of a municipal solid waste landfill unit, that disposes of less than 20 tons of municipal solid waste daily, based on an annual average, if--

(A) there is no evidence of ground water contamination from the municipal solid waste landfill unit or expansion; and

(B) the municipal solid waste landfill unit or expansion serves--

(i) a community that experiences an annual interruption of at least 3 consecutive months of surface transportation that prevents access to a regional waste management facility; or

(ii) a community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation.

(3) Protection of ground water resources

(A) Monitoring requirement

A State may require ground water monitoring of a solid waste landfill unit that would otherwise be exempt under paragraph (2) if necessary to protect ground water resources and ensure compliance with a State ground water protection plan, where applicable.

(B) Methods

If a State requires ground water monitoring of a solid waste landfill unit under subparagraph (A), the State may allow the use of a method other than the use of ground water monitoring wells to detect a release of contamination from the unit.

(C) Corrective action

If a State finds a release from a solid waste landfill unit, the State shall require corrective action as appropriate.

(4) No-migration exemption

(A) In general

Ground water monitoring requirements may be suspended by the Director of an approved State for a landfill operator if the operator demonstrates that there is no potential for migration of hazardous constituents from the unit to the uppermost aquifer during the active life of the unit and the post-closure care period.

(B) Certification

A demonstration under subparagraph (A) shall be certified by a qualified ground-water scientist and approved by the Director of an approved State.

(C) Guidance

Not later than 6 months after March 26, 1996, the Administrator shall issue a guidance document to facilitate small community use of the no migration<sup>1</sup> exemption under this paragraph.

(5) Alaska Native villages

Upon certification by the Governor of the State of Alaska that application of the requirements described in paragraph (1) to a solid waste landfill unit of a Native village (as defined in section 1602 of Title 43) or unit that is located in or near a small, remote Alaska village would be infeasible, or would not be cost-effective, or is otherwise inappropriate because of the remote location of the unit, the State may exempt the unit from some or all of those requirements. This paragraph shall apply only to solid waste landfill units that dispose of less than 20 tons of municipal solid waste daily, based on an annual average.

(6) Further revisions of guidelines and criteria

Recognizing the unique circumstances of small communities, the Administrator shall, not later than two years after March 26, 1996, promulgate revisions to the guidelines and criteria promulgated under this subchapter to provide additional flexibility to approved States to allow landfills that receive 20 tons or less of municipal solid waste per day, based on an annual average, to use alternative frequencies of daily cover application, frequencies of methane gas monitoring, infiltration layers for final cover, and means for demonstrating financial assurance: Provided, That such alternative requirements take into account climatic and hydrogeologic conditions and are protective of human health and environment.

**CREDIT(S)**

(Pub.L. 89-272, Title II, § 4010, as added Pub.L. 98-616, Title III, § 302(a)(1), Nov. 8, 1984, 98 Stat. 3267; amended Pub.L. 104-119, § 3(a), Mar. 26, 1996, 110 Stat. 831.)

Notes of Decisions (2)

Footnotes

<sup>1</sup> So in original. Probably should be “no-migration”.

42 U.S.C.A. § 6949a, 42 USCA § 6949a

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## United States Code Annotated

## Title 42. The Public Health and Welfare

## Chapter 82. Solid Waste Disposal (Refs &amp; Annos)

## Subchapter VII. Miscellaneous Provisions

## 42 U.S.C.A. § 6976

## § 6976. Judicial review

## Currentness

## (a) Review of final regulations and certain petitions

Any judicial review of final regulations promulgated pursuant to this chapter and the Administrator's denial of any petition for the promulgation, amendment, or repeal of any regulation under this chapter shall be in accordance with sections 701 through 706 of Title 5, except that--

(1) a petition for review of action of the Administrator in promulgating any regulation, or requirement under this chapter or denying any petition for the promulgation, amendment or repeal of any regulation under this chapter may be filed only in the United States Court of Appeals for the District of Columbia, and such petition shall be filed within ninety days from the date of such promulgation or denial, or after such date if such petition for review is based solely on grounds arising after such ninetieth day; action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement; and

(2) in any judicial proceeding brought under this section in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if a party seeking review under this chapter applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the information is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper; the Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

## (b) Review of certain actions under sections 6925 and 6926 of this title

Review of the Administrator's action (1) in issuing, denying, modifying, or revoking any permit under section 6925 of this title (or in modifying or revoking any permit which is deemed to have been issued under section 6935(d)(1) of this title), or (2) in granting, denying, or withdrawing authorization or interim authorization under section 6926 of this title, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person. Any such application shall be made within ninety days from the date of such issuance, denial, modification, revocation, grant, or withdrawal, or after such date only if such application is based solely on grounds which arose after such ninetieth day. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement. Such review shall be in accordance with sections 701 through 706 of Title 5.



**CREDIT(S)**

(Pub.L. 89-272, Title II, § 7006, as added Pub.L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2827; amended Pub.L. 96-482, § 27, Oct. 21, 1980, 94 Stat. 2349; Pub.L. 98-616, Title II, § 241(b)(1), Title IV, § 403(d)(5), Nov. 8, 1984, 98 Stat. 3259, 3273.)

Notes of Decisions (61)

42 U.S.C.A. § 6976, 42 USCA § 6976

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United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 82. Solid Waste Disposal (Refs & Annos)

Subchapter VIII. Research, Development, Demonstration, and Information

42 U.S.C.A. § 6982

§ 6982. Special studies; plans for research, development, and demonstrations

Currentness

(a) Glass and plastic

The Administrator shall undertake a study and publish a report on resource recovery from glass and plastic waste, including a scientific, technological, and economic investigation of potential solutions to implement such recovery.

(b) Composition of waste stream

The Administrator shall undertake a systematic study of the composition of the solid waste stream and of anticipated future changes in the composition of such stream and shall publish a report containing the results of such study and quantitatively evaluating the potential utility of such components.

(c) Priorities study

For purposes of determining priorities for research on recovery of materials and energy from solid waste and developing materials and energy recovery research, development, and demonstration strategies, the Administrator shall review, and make a study of, the various existing and promising techniques of energy recovery from solid waste (including, but not limited to, waterwall furnace incinerators, dry shredded fuel systems, pyrolysis, densified refuse-derived fuel systems, anerobic digestion, and fuel and feedstock preparation systems). In carrying out such study the Administrator shall investigate with respect to each such technique--

(1) the degree of public need for the potential results of such research, development, or demonstration,

(2) the potential for research, development, and demonstration without Federal action, including the degree of restraint on such potential posed by the risks involved, and

(3) the magnitude of effort and period of time necessary to develop the technology to the point where Federal assistance can be ended.

(d) Small-scale and low technology study

The Administrator shall undertake a comprehensive study and analysis of, and publish a report on, systems of small-scale and low technology solid waste management, including household resource recovery and resource recovery systems which have

special application to multiple dwelling units and high density housing and office complexes. Such study and analysis shall include an investigation of the degree to which such systems could contribute to energy conservation.

(e) Front-end source separation

The Administrator shall undertake research and studies concerning the compatibility of front-end source separation systems with high technology resource recovery systems and shall publish a report containing the results of such research and studies.

(f) Mining waste

The Administrator, in consultation with the Secretary of the Interior, shall conduct a detailed and comprehensive study on the adverse effects of solid wastes from active and abandoned surface and underground mines on the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources, and on the adequacy of means and measures currently employed by the mining industry, Government agencies, and others to dispose of and utilize such solid wastes and to prevent or substantially mitigate such adverse effects. Such study shall include an analysis of--

- (1) the sources and volume of discarded material generated per year from mining;
- (2) present disposal practices;
- (3) potential dangers to human health and the environment from surface runoff of leachate and air pollution by dust;
- (4) alternatives to current disposal methods;
- (5) the cost of those alternatives in terms of the impact on mine product costs; and
- (6) potential for use of discarded material as a secondary source of the mine product.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal agencies concerning such wastes with a view toward avoiding duplication of effort and the need to expedite such study. Not later than thirty-six months after October 21, 1980, the Administrator shall publish a report of such study and shall include appropriate findings and recommendations for Federal and non-Federal actions concerning such effects. Such report shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(g) Sludge

The Administrator shall undertake a comprehensive study and publish a report on sludge. Such study shall include an analysis of--

(1) what types of solid waste (including but not limited to sewage and pollution treatment residues and other residues from industrial operations such as extraction of oil from shale, liquefaction and gasification of coal and coal slurry pipeline operations) shall be classified as sludge;

(2) the effects of air and water pollution legislation on the creation of large volumes of sludge;

(3) the amounts of sludge originating in each State and in each industry producing sludge;

(4) methods of disposal of such sludge, including the cost, efficiency, and effectiveness of such methods;

(5) alternative methods for the use of sludge, including agricultural applications of sludge and energy recovery from sludge; and

(6) methods to reclaim areas which have been used for the disposal of sludge or which have been damaged by sludge.

(h) Tires

The Administrator shall undertake a study and publish a report respecting discarded motor vehicle tires which shall include an analysis of the problems involved in the collection, recovery of resources including energy, and use of such tires.

(i) Resource recovery facilities

The Administrator shall conduct research and report on the economics of, and impediments, to the effective functioning of resource recovery facilities.

(j) Resource Conservation Committee

(1) The Administrator shall serve as Chairman of a Committee composed of himself, the Secretary of Commerce, the Secretary of Labor, the Chairman of the Council on Environmental Quality, the Secretary of Treasury, the Secretary of the Interior, the Secretary of Energy, the Chairman of the Council of Economic Advisors, and a representative of the Office of Management and Budget, which shall conduct a full and complete investigation and study of all aspects of the economic, social, and environmental consequences of resource conservation with respect to--

(A) the appropriateness of recommended incentives and disincentives to foster resource conservation;

(B) the effect of existing public policies (including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives) upon resource conservation, and the likely effect of the modification or elimination of such incentives and disincentives upon resource conservation;

(C) the appropriateness and feasibility of restricting the manufacture or use of categories of consumer products as a resource conservation strategy;

(D) the appropriateness and feasibility of employing as a resource conservation strategy the imposition of solid waste management charges on consumer products, which charges would reflect the costs of solid waste management services, litter pickup, the value of recoverable components of such product, final disposal, and any social value associated with the nonrecycling or uncontrolled disposal of such product; and

(E) the need for further research, development, and demonstration in the area of resource conservation.

(2) The study required in paragraph (1)(D) may include pilot scale projects, and shall consider and evaluate alternative strategies with respect to--

(A) the product categories on which such charges would be imposed;

(B) the appropriate state in the production of such consumer product at which to levy such charge;

(C) appropriate criteria for establishing such charges for each consumer product category;

(D) methods for the adjustment of such charges to reflect actions such as recycling which would reduce the overall quantities of solid waste requiring disposal; and

(E) procedures for amending, modifying, or revising such charges to reflect changing conditions.

(3) The design for the study required in paragraph (1) of this subsection shall include timetables for the completion of the study. A preliminary report putting forth the study design shall be sent to the President and the Congress within six months following October 21, 1976, and followup reports shall be sent six months thereafter. Each recommendation resulting from the study shall include at least two alternatives to the proposed recommendation.

(4) The results of such investigation and study, including recommendations, shall be reported to the President and the Congress not later than two years after October 21, 1976.

(5) There are authorized to be appropriated not to exceed \$2,000,000 to carry out this subsection.

(k) Airport landfills

The Administrator shall undertake a comprehensive study and analysis of and publish a report on systems to alleviate the hazards to aviation from birds congregating and feeding on landfills in the vicinity of airports.

(l) Completion of research and studies

The Administrator shall complete the research and studies, and submit the reports, required under subsections (b), (c), (d), (e), (f), (g), and (k) of this section not later than October 1, 1978. The Administrator shall complete the research and studies, and submit the reports, required under subsections (a), (h), and (i) of this section not later than October 1, 1979. Upon completion, each study specified in subsections (a) through (k) of this section, the Administrator shall prepare a plan for research, development, and demonstration respecting the findings of the study and shall submit any legislative recommendations resulting from such study to appropriate committees of Congress.

(m) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy

(1) The Administrator shall conduct a detailed and comprehensive study and submit a report on the adverse effects, if any, of drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy on human health and the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources and on the adequacy of means and measures currently employed by the oil and gas and geothermal drilling and production industry, Government agencies, and others to dispose of and utilize such wastes and to prevent or substantially mitigate such adverse effects. Such study shall include an analysis of--

(A) the sources and volume of discarded material generated per year from such wastes;

(B) present disposal practices;

(C) potential danger to human health and the environment from the surface runoff or leachate;

(D) documented cases which prove or have caused danger to human health and the environment from surface runoff or leachate;

(E) alternatives to current disposal methods;

(F) the cost of such alternatives; and

(G) the impact of those alternatives on the exploration for, and development and production of, crude oil and natural gas or geothermal energy.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal agencies concerning such wastes with a view toward avoiding duplication of effort and the need to expedite such study. The Administrator shall publish a report of such study and shall include appropriate findings and recommendations for Federal and non-Federal actions concerning such effects.

(2) The Administrator shall complete the research and study and submit the report required under paragraph (1) not later than twenty-four months from October 21, 1980. Upon completion of the study, the Administrator shall prepare a summary of the findings of the study, a plan for research, development, and demonstration respecting the findings of the study, and shall submit the findings and the study, along with any recommendations resulting from such study, to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(3) There are authorized to be appropriated not to exceed \$1,000,000 to carry out the provisions of this subsection.

(n) Materials generated from the combustion of coal and other fossil fuels

The Administrator shall conduct a detailed and comprehensive study and submit a report on the adverse effects on human health and the environment, if any, of the disposal and utilization of fly ash waste, bottom ash waste, slag waste, flue gas emission control waste, and other byproduct materials generated primarily from the combustion of coal or other fossil fuels. Such study shall include an analysis of--

- (1) the source and volumes of such material generated per year;
- (2) present disposal and utilization practices;
- (3) potential danger, if any, to human health and the environment from the disposal and reuse of such materials;
- (4) documented cases in which danger to human health or the environment from surface runoff or leachate has been proved;
- (5) alternatives to current disposal methods;
- (6) the costs of such alternatives;
- (7) the impact of those alternatives on the use of coal and other natural resources; and
- (8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such material and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report on such study, which shall include appropriate findings, not later than twenty-four months after October 21, 1980. Such study and findings shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(o) Cement kiln dust waste

The Administrator shall conduct a detailed and comprehensive study of the adverse effects on human health and the environment, if any, of the disposal of cement kiln dust waste. Such study shall include an analysis of--

- (1) the source and volumes of such materials generated per year;
- (2) present disposal practices;
- (3) potential danger, if any, to human health and the environment from the disposal of such materials;
- (4) documented cases in which danger to human health or the environment has been proved;
- (5) alternatives to current disposal methods;
- (6) the costs of such alternatives;
- (7) the impact of those alternatives on the use of natural resources; and
- (8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such waste or materials and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report of such study, which shall include appropriate findings, not later than thirty-six months after October 21, 1980. Such report shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(p) Materials generated from extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from uranium mining

The Administrator shall conduct a detailed and comprehensive study on the adverse effects on human health and the environment, if any, of the disposal and utilization of solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from uranium mining. Such study shall be conducted in conjunction with the study of mining wastes required by subsection (f) of this section and shall include an analysis of--

- (1) the source and volumes of such materials generated per year;
- (2) present disposal and utilization practices;
- (3) potential danger, if any, to human health and the environment from the disposal and reuse of such materials;



- (4) documented cases in which danger to human health or the environment has been proved;
- (5) alternatives to current disposal methods;
- (6) the costs of such alternatives;
- (7) the impact of those alternatives on the use of phosphate rock and uranium ore, and other natural resources; and
- (8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such waste or materials and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report of such study, which shall include appropriate findings, in conjunction with the publication of the report of the study of mining wastes required to be conducted under subsection (f) of this section. Such report and findings shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(q) Authorization of appropriations

There are authorized to be appropriated not to exceed \$8,000,000 for the fiscal years 1978 and 1979 to carry out this section other than subsection (j) of this section.

(r) Minimization of hazardous waste

The Administrator shall compile, and not later than October 1, 1986, submit to the Congress, a report on the feasibility and desirability of establishing standards of performance or of taking other additional actions under this chapter to require the generators of hazardous waste to reduce the volume or quantity and toxicity of the hazardous waste they generate, and of establishing with respect to hazardous wastes required management practices or other requirements to assure such wastes are managed in ways that minimize present and future risks to human health and the environment. Such report shall include any recommendations for legislative changes which the Administrator determines are feasible and desirable to implement the national policy established by section 6902 of this title.

(s) Extending landfill life and reusing landfilled areas

The Administrator shall conduct detailed, comprehensive studies of methods to extend the useful life of sanitary landfills and to better use sites in which filled or closed landfills are located. Such studies shall address--

- (1) methods to reduce the volume of materials before placement in landfills;
- (2) more efficient systems for depositing waste in landfills;

- (3) methods to enhance the rate of decomposition of solid waste in landfills, in a safe and environmentally acceptable manner;
- (4) methane production from closed landfill units;
- (5) innovative uses of closed landfill sites, including use for energy production such as solar or wind energy and use for metals recovery;
- (6) potential for use of sewage treatment sludge in reclaiming landfilled areas; and
- (7) methods to coordinate use of a landfill owned by one municipality by nearby municipalities, and to establish equitable rates for such use, taking into account the need to provide future landfill capacity to replace that so used.

The Administrator is authorized to conduct demonstrations in the areas of study provided in this subsection. The Administrator shall periodically report on the results of such studies, with the first such report not later than October 1, 1986. In carrying out this subsection, the Administrator need not duplicate other studies which have been completed and may rely upon information which has previously been compiled.

**CREDIT(S)**

(Pub.L. 89-272, Title II, § 8002, as added Pub.L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2831; amended Pub.L. 95-609, § 7(t), Nov. 8, 1978, 92 Stat. 3083; H.Res. 549, Mar. 25, 1980; Pub.L. 96-482, § 29, Oct. 21, 1980, 94 Stat. 2349; Pub.L. 98-616, Title II, § 224(c), Title VII, § 702, Nov. 8, 1984, 98 Stat. 3253, 3289.)

Notes of Decisions (4)

42 U.S.C.A. § 6982, 42 USCA § 6982

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United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 85. Air Pollution Prevention and Control (Refs & Annos)

Subchapter I. Programs and Activities

Part A. Air Quality and Emissions Limitations (Refs & Annos)

42 U.S.C.A. § 7412

§ 7412. Hazardous air pollutants

Effective: August 5, 1999

Currentness

**(a) Definitions**

For purposes of this section, except subsection (r) of this section--

**(1) Major source**

The term “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The Administrator may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source than that specified in the previous sentence, on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

**(2) Area source**

The term “area source” means any stationary source of hazardous air pollutants that is not a major source. For purposes of this section, the term “area source” shall not include motor vehicles or nonroad vehicles subject to regulation under subchapter II of this chapter.

**(3) Stationary source**

The term “stationary source” shall have the same meaning as such term has under section 7411(a) of this title.

**(4) New source**

The term “new source” means a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source.

**(5) Modification**

The term “modification” means any physical change in, or change in the method of operation of, a major source which increases the actual emissions of any hazardous air pollutant emitted by such source by more than a de minimis amount or which results in the emission of any hazardous air pollutant not previously emitted by more than a de minimis amount.

**(6) Hazardous air pollutant**

The term “hazardous air pollutant” means any air pollutant listed pursuant to subsection (b) of this section.

**(7) Adverse environmental effect**

The term “adverse environmental effect” means any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

**(8) Electric utility steam generating unit**

The term “electric utility steam generating unit” means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

**(9) Owner or operator**

The term “owner or operator” means any person who owns, leases, operates, controls, or supervises a stationary source.

**(10) Existing source**

The term “existing source” means any stationary source other than a new source.

**(11) Carcinogenic effect**

Unless revised, the term “carcinogenic effect” shall have the meaning provided by the Administrator under Guidelines for Carcinogenic Risk Assessment as of the date of enactment. Any revisions in the existing Guidelines shall be subject to notice and opportunity for comment.

**(b) List of pollutants****(1) Initial list**

The Congress establishes for purposes of this section a list of hazardous air pollutants as follows:

CAS number	Chemical name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile

107051 Allyl chloride

92671 4-Aminobiphenyl

62533 Aniline

90040 o-Anisidine

1332214 Asbestos

71432 Benzene (including benzene from gasoline)

92875 Benzidine

98077 Benzotrichloride

100447 Benzyl chloride

92524 Biphenyl

117817 Bis(2-ethylhexyl)phthalate (DEHP)

542881 Bis(chloromethyl)ether

75252 Bromoform

106990 1,3-Butadiene

156627 Calcium cyanamide

105602 Caprolactam

133062 Captan

63252 Carbaryl

75150 Carbon disulfide

56235 Carbon tetrachloride

463581 Carbonyl sulfide

120809 Catechol

133904 Chloramben

57749 Chlordane

7782505 Chlorine

79118 Chloroacetic acid

532274 2-Chloroacetophenone

108907 Chlorobenzene

510156 Chlorobenzilate

67663 Chloroform

107302 Chloromethyl methyl ether

126998 Chloroprene

1319773 Cresols/Cresylic acid (isomers and mixture)

95487 o-Cresol

108394 m-Cresol

106445 p-Cresol

98828 Cumene

94757 2,4-D, salts and esters

3547044 DDE

334883 Diazomethane

132649 Dibenzofurans

96128 1,2-Dibromo-3-chloropropane

84742 Dibutylphthalate

106467 1,4-Dichlorobenzene(p)

91941 3,3-Dichlorobenzidine

111444 Dichloroethyl ether (Bis(2-chloroethyl)ether)

542756 1,3-Dichloropropene

62737 Dichlorvos

111422 Diethanolamine

121697 N,N-Diethyl aniline (N,N-Dimethylaniline)

64675 Diethyl sulfate

119904 3,3-Dimethoxybenzidine

60117 Dimethyl aminoazobenzene

119937 3,3'-Dimethyl benzidine

79447 Dimethyl carbamoyl chloride

68122 Dimethyl formamide

57147 1,1-Dimethyl hydrazine

131113 Dimethyl phthalate

77781 Dimethyl sulfate

534521 4,6-Dinitro-o-cresol, and salts

51285 2,4-Dinitrophenol

121142 2,4-Dinitrotoluene

123911 1,4-Dioxane (1,4-Diethyleneoxide)

122667 1,2-Diphenylhydrazine

106898 Epichlorohydrin (1-Chloro-2,3-epoxypropane)

106887 1,2-Epoxybutane

140885 Ethyl acrylate

100414 Ethyl benzene

51796 Ethyl carbamate (Urethane)

75003 Ethyl chloride (Chloroethane)

106934 Ethylene dibromide (Dibromoethane)

107062 Ethylene dichloride (1,2-Dichloroethane)

107211 Ethylene glycol

151564 Ethylene imine (Aziridine)

75218 Ethylene oxide

96457 Ethylene thiourea

75343 Ethylidene dichloride (1,1-Dichloroethane)

50000 Formaldehyde

76448 Heptachlor

118741 Hexachlorobenzene

87683 Hexachlorobutadiene

77474 Hexachlorocyclopentadiene

67721 Hexachloroethane

822060 Hexamethylene-1,6-diisocyanate

680319 Hexamethylphosphoramide

110543 Hexane

302012 Hydrazine

7647010 Hydrochloric acid

7664393 Hydrogen fluoride (Hydrofluoric acid)

123319 Hydroquinone

78591 Isophorone

58899 Lindane (all isomers)

108316 Maleic anhydride

67561 Methanol

72435 Methoxychlor

74839 Methyl bromide (Bromomethane)

74873 Methyl chloride (Chloromethane)

71556 Methyl chloroform (1,1,1-Trichloroethane)

78933 Methyl ethyl ketone (2-Butanone)

60344 Methyl hydrazine

74884 Methyl iodide (Iodomethane)

108101 Methyl isobutyl ketone (Hexone)

624839 Methyl isocyanate

80626 Methyl methacrylate

1634044 Methyl tert butyl ether

101144 4,4-Methylene bis(2-chloroaniline)

75092 Methylene chloride (Dichloromethane)

101688 Methylene diphenyl diisocyanate (MDI)

101779 4,4'-Methylenedianiline

91203 Naphthalene

98953 Nitrobenzene

92933 4-Nitrobiphenyl

100027 4-Nitrophenol

79469 2-Nitropropane

684935 N-Nitroso-N-methylurea

62759 N-Nitrosodimethylamine



59892 N-Nitrosomorpholine

56382 Parathion

82688 Pentachloronitrobenzene (Quintobenzene)

87865 Pentachlorophenol

108952 Phenol

106503 p-Phenylenediamine

75445 Phosgene

7803512 Phosphine

7723140 Phosphorus

85449 Phthalic anhydride

1336363 Polychlorinated biphenyls (Aroclors)

1120714 1,3-Propane sultone

57578 beta-Propiolactone

123386 Propionaldehyde

114261 Propoxur (Baygon)

78875 Propylene dichloride (1,2-Dichloropropane)

75569 Propylene oxide

75558 1,2-Propylenimine (2-Methyl aziridine)

91225 Quinoline

106514 Quinone

100425 Styrene

96093 Styrene oxide

1746016 2,3,7,8-Tetrachlorodibenzo-p-dioxin

79345 1,1,2,2-Tetrachloroethane

127184 Tetrachloroethylene (Perchloroethylene)

7550450 Titanium tetrachloride

108883 Toluene

95807 2,4-Toluene diamine

584849 2,4-Toluene diisocyanate

95534 o-Toluidine

8001352 Toxaphene (chlorinated camphene)

120821 1,2,4-Trichlorobenzene

79005 1,1,2-Trichloroethane

79016 Trichloroethylene

95954 2,4,5-Trichlorophenol

88062 2,4,6-Trichlorophenol

121448 Triethylamine

1582098 Trifluralin

540841 2,2,4-Trimethylpentane

108054 Vinyl acetate

593602 Vinyl bromide

75014 Vinyl chloride

75354 Vinylidene chloride (1,1-Dichloroethylene)

1330207 Xylenes (isomers and mixture)

95476 o-Xylenes

108383 m-Xylenes

106423 p-Xylenes

0 Antimony Compounds

0 Arsenic Compounds (inorganic including arsine)

0 Beryllium Compounds

0 Cadmium Compounds

0 Chromium Compounds

0 Cobalt Compounds

0 Coke Oven Emissions

0 Cyanide Compounds<sup>1</sup>

0 Glycol ethers<sup>2</sup>

0 Lead Compounds

- 0 Manganese Compounds
- 0 Mercury Compounds
- 0 Fine mineral fibers<sup>3</sup>
- 0 Nickel Compounds
- 0 Polycyclic Organic Matter<sup>4</sup>
- 0 Radionuclides (including radon)<sup>5</sup>
- 0 Selenium Compounds

NOTE: For all listings above which contain the word “compounds” and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical's infrastructure.

<sup>1</sup> X#CN where X = H# or any other group where a formal dissociation may occur. For example KCN or Ca(CN)<sub>2</sub>

<sup>2</sup> Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH<sub>2</sub>CH<sub>2</sub>)<sub>n</sub>-OR# where n = 1, 2, or 3

R = alkyl or aryl groups

R# = R, H, or groups which, when removed, yield glycol ethers with the structure: R-(OCH<sub>2</sub>CH)<sub>n</sub>-OH. Polymers are excluded from the glycol category.

<sup>3</sup> Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

<sup>4</sup> Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

<sup>5</sup> A type of atom which spontaneously undergoes radioactive decay.

## (2) Revision of the list

The Administrator shall periodically review the list established by this subsection and publish the results thereof and, where appropriate, revise such list by rule, adding pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise, but not including releases subject to regulation under subsection (r) of this section as a result of emissions to the air. No air pollutant which is listed under section 7408(a) of this title may be added to the list under this section, except that the prohibition of this sentence shall not apply to any pollutant which independently meets the listing criteria of this paragraph and is a precursor to a pollutant which is listed under section 7408(a) of this title or to any pollutant which is in a class of pollutants listed under such section. No substance, practice, process or activity regulated under subchapter VI of this chapter shall be subject to regulation under this section solely due to its adverse effects on the environment.

**(3) Petitions to modify the list**

(A) Beginning at any time after 6 months after November 15, 1990, any person may petition the Administrator to modify the list of hazardous air pollutants under this subsection by adding or deleting a substance or, in case of listed pollutants without CAS numbers (other than coke oven emissions, mineral fibers, or polycyclic organic matter) removing certain unique substances. Within 18 months after receipt of a petition, the Administrator shall either grant or deny the petition by publishing a written explanation of the reasons for the Administrator's decision. Any such petition shall include a showing by the petitioner that there is adequate data on the health or environmental defects<sup>1</sup> of the pollutant or other evidence adequate to support the petition. The Administrator may not deny a petition solely on the basis of inadequate resources or time for review.

(B) The Administrator shall add a substance to the list upon a showing by the petitioner or on the Administrator's own determination that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects.

(C) The Administrator shall delete a substance from the list upon a showing by the petitioner or on the Administrator's own determination that there is adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

(D) The Administrator shall delete one or more unique chemical substances that contain a listed hazardous air pollutant not having a CAS number (other than coke oven emissions, mineral fibers, or polycyclic organic matter) upon a showing by the petitioner or on the Administrator's own determination that such unique chemical substances that contain the named chemical of such listed hazardous air pollutant meet the deletion requirements of subparagraph (C). The Administrator must grant or deny a deletion petition prior to promulgating any emission standards pursuant to subsection (d) of this section applicable to any source category or subcategory of a listed hazardous air pollutant without a CAS number listed under subsection (b) of this section for which a deletion petition has been filed within 12 months of November 15, 1990.

**(4) Further information**

If the Administrator determines that information on the health or environmental effects of a substance is not sufficient to make a determination required by this subsection, the Administrator may use any authority available to the Administrator to acquire such information.

**(5) Test methods**

The Administrator may establish, by rule, test measures and other analytic procedures for monitoring and measuring emissions, ambient concentrations, deposition, and bioaccumulation of hazardous air pollutants.

**(6) Prevention of significant deterioration**

The provisions of part C of this subchapter (prevention of significant deterioration) shall not apply to pollutants listed under this section.

**(7) Lead**

The Administrator may not list elemental lead as a hazardous air pollutant under this subsection.

**(c) List of source categories****(1) In general**

Not later than 12 months after November 15, 1990, the Administrator shall publish, and shall from time to time, but no less often than every 8 years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b) of this section. To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 7411 of this title and part C of this subchapter. Nothing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate.

**(2) Requirement for emissions standards**

For the categories and subcategories the Administrator lists, the Administrator shall establish emissions standards under subsection (d) of this section, according to the schedule in this subsection and subsection (e) of this section.

**(3) Area sources**

The Administrator shall list under this subsection each category or subcategory of area sources which the Administrator finds presents a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this section. The Administrator shall, not later than 5 years after November 15, 1990, and pursuant to subsection (k)(3)(B) of this section, list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under this section. Such regulations shall be promulgated not later than 10 years after November 15, 1990.

**(4) Previously regulated categories**

The Administrator may, in the Administrator's discretion, list any category or subcategory of sources previously regulated under this section as in effect before November 15, 1990.

**(5) Additional categories**

In addition to those categories and subcategories of sources listed for regulation pursuant to paragraphs (1) and (3), the Administrator may at any time list additional categories and subcategories of sources of hazardous air pollutants according to the same criteria for listing applicable under such paragraphs. In the case of source categories and subcategories listed after publication of the initial list required under paragraph (1) or (3), emission standards under subsection (d) of this section for the category or subcategory shall be promulgated within 10 years after November 15, 1990, or within 2 years after the date on which such category or subcategory is listed, whichever is later.

**(6) Specific pollutants**

With respect to alkylated lead compounds, polycyclic organic matter, hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzofurans and 2,3,7,8-tetrachlorodibenzo-p-dioxin, the Administrator shall, not later than 5 years after November 15, 1990, list categories and subcategories of sources assuring that sources accounting for not less than 90 per centum of the aggregate emissions of each such pollutant are subject to standards under subsection (d)(2) or (d)(4) of this section. Such standards shall be promulgated not later than 10 years after November 15, 1990. This paragraph shall not be construed to require the Administrator to promulgate standards for such pollutants emitted by electric utility steam generating units.

**(7) Research facilities**

The Administrator shall establish a separate category covering research or laboratory facilities, as necessary to assure the equitable treatment of such facilities. For purposes of this section, “research or laboratory facility” means any stationary source whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.

**(8) Boat manufacturing**

When establishing emissions standards for styrene, the Administrator shall list boat manufacturing as a separate subcategory unless the Administrator finds that such listing would be inconsistent with the goals and requirements of this chapter.

**(9) Deletions from the list**

(A) Where the sole reason for the inclusion of a source category on the list required under this subsection is the emission of a unique chemical substance, the Administrator shall delete the source category from the list if it is appropriate because of action taken under either subparagraphs (C) or (D) of subsection (b)(3) of this section.

(B) The Administrator may delete any source category from the list under this subsection, on petition of any person or on the Administrator's own motion, whenever the Administrator makes the following determination or determinations, as applicable:

(i) In the case of hazardous air pollutants emitted by sources in the category that may result in cancer in humans, a determination that no source in the category (or group of sources in the case of area sources) emits such hazardous air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source (or group of sources in the case of area sources).

(ii) In the case of hazardous air pollutants that may result in adverse health effects in humans other than cancer or adverse environmental effects, a determination that emissions from no source in the category or subcategory concerned (or group of sources in the case of area sources) exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from any source (or from a group of sources in the case of area sources).

The Administrator shall grant or deny a petition under this paragraph within 1 year after the petition is filed.

**(d) Emission standards****(1) In general**

The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c) of this section in accordance with the schedules provided in subsections (c) and (e) of this section. The Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards except that, there shall be no delay in the compliance date for any standard applicable to any source under subsection (i) of this section as the result of the authority provided by this sentence.

**(2) Standards and methods**

Emissions standards promulgated under this subsection and applicable to new or existing sources of hazardous air pollutants shall require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies, through application of measures, processes, methods, systems or techniques including, but not limited to, measures which--

(A) reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications,

(B) enclose systems or processes to eliminate emissions,

(C) collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,

(D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h) of this section, or

(E) are a combination of the above.

None of the measures described in subparagraphs (A) through (D) shall, consistent with the provisions of section 7414(c) of this title, in any way compromise any United States patent or United States trademark right, or any confidential business information, or any trade secret or any other intellectual property right.

**(3) New and existing sources**

The maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator. Emission standards promulgated under this subsection for existing sources in a category or subcategory may be less stringent than standards for new sources in the same category or subcategory but shall not be less stringent, and may be more stringent than--

(A) the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined by section 7501 of this title) applicable to the source category and prevailing at the time, in the category or subcategory for categories and subcategories with 30 or more sources, or

(B) the average emission limitation achieved by the best performing 5 sources (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory for categories or subcategories with fewer than 30 sources.

**(4) Health threshold**

With respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under this subsection.

**(5) Alternative standard for area sources**

With respect only to categories and subcategories of area sources listed pursuant to subsection (c) of this section, the Administrator may, in lieu of the authorities provided in paragraph (2) and subsection (f) of this section, elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

**(6) Review and revision**

The Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years.

**(7) Other requirements preserved**

No emission standard or other requirement promulgated under this section shall be interpreted, construed or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section 7411 of this title, part C or D of this subchapter, or other authority of this chapter or a standard issued under State authority.

**(8) Coke ovens**

(A) Not later than December 31, 1992, the Administrator shall promulgate regulations establishing emission standards under paragraphs (2) and (3) of this subsection for coke oven batteries. In establishing such standards, the Administrator shall evaluate--

(i) the use of sodium silicate (or equivalent) luting compounds to prevent door leaks, and other operating practices and technologies for their effectiveness in reducing coke oven emissions, and their suitability for use on new and existing coke oven batteries, taking into account costs and reasonable commercial door warranties; and

(ii) as a basis for emission standards under this subsection for new coke oven batteries that begin construction after the date of proposal of such standards, the Jewell design Thompson non-recovery coke oven batteries and other non-recovery coke oven technologies, and other appropriate emission control and coke production technologies, as to their effectiveness in reducing coke oven emissions and their capability for production of steel quality coke.

Such regulations shall require at a minimum that coke oven batteries will not exceed 8 per centum leaking doors, 1 per centum leaking lids, 5 per centum leaking oftakes, and 16 seconds visible emissions per charge, with no exclusion for emissions during the period after the closing of self-sealing oven doors. Notwithstanding subsection (i) of this section, the compliance date for such emission standards for existing coke oven batteries shall be December 31, 1995.

(B) The Administrator shall promulgate work practice regulations under this subsection for coke oven batteries requiring, as appropriate--



(i) the use of sodium silicate (or equivalent) luting compounds, if the Administrator determines that use of sodium silicate is an effective means of emissions control and is achievable, taking into account costs and reasonable commercial warranties for doors and related equipment; and

(ii) door and jam cleaning practices.

Notwithstanding subsection (i) of this section, the compliance date for such work practice regulations for coke oven batteries shall be not later than the date 3 years after November 15, 1990.

(C) For coke oven batteries electing to qualify for an extension of the compliance date for standards promulgated under subsection (f) of this section in accordance with subsection (i)(8) of this section, the emission standards under this subsection for coke oven batteries shall require that coke oven batteries not exceed 8 per centum leaking doors, 1 per centum leaking lids, 5 per centum leaking offtakes, and 16 seconds visible emissions per charge, with no exclusion for emissions during the period after the closing of self-sealing doors. Notwithstanding subsection (i) of this section, the compliance date for such emission standards for existing coke oven batteries seeking an extension shall be not later than the date 3 years after November 15, 1990.

#### **(9) Sources licensed by the Nuclear Regulatory Commission**

No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act [42 U.S.C.A. § 2011 et seq.] for such category or subcategory provides an ample margin of safety to protect the public health. Nothing in this subsection shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation in effect under section 7411 of this title or this section.

#### **(10) Effective date**

Emission standards or other regulations promulgated under this subsection shall be effective upon promulgation.

#### **(e) Schedule for standards and review**

##### **(1) In general**

The Administrator shall promulgate regulations establishing emission standards for categories and subcategories of sources initially listed for regulation pursuant to subsection (c)(1) of this section as expeditiously as practicable, assuring that--

(A) emission standards for not less than 40 categories and subcategories (not counting coke oven batteries) shall be promulgated not later than 2 years after November 15, 1990;

(B) emission standards for coke oven batteries shall be promulgated not later than December 31, 1992;

(C) emission standards for 25 per centum of the listed categories and subcategories shall be promulgated not later than 4 years after November 15, 1990;

(D) emission standards for an additional 25 per centum of the listed categories and subcategories shall be promulgated not later than 7 years after November 15, 1990; and

(E) emission standards for all categories and subcategories shall be promulgated not later than 10 years after November 15, 1990.

## **(2) Priorities**

In determining priorities for promulgating standards under subsection (d) of this section, the Administrator shall consider--

(A) the known or anticipated adverse effects of such pollutants on public health and the environment;

(B) the quantity and location of emissions or reasonably anticipated emissions of hazardous air pollutants that each category or subcategory will emit; and

(C) the efficiency of grouping categories or subcategories according to the pollutants emitted, or the processes or technologies used.

## **(3) Published schedule**

Not later than 24 months after November 15, 1990, and after opportunity for comment, the Administrator shall publish a schedule establishing a date for the promulgation of emission standards for each category and subcategory of sources listed pursuant to subsection (c)(1) and (3) of this section which shall be consistent with the requirements of paragraphs (1) and (2). The determination of priorities for the promulgation of standards pursuant to this paragraph is not a rulemaking and shall not be subject to judicial review, except that, failure to promulgate any standard pursuant to the schedule established by this paragraph shall be subject to review under section 7604 of this title.

## **(4) Judicial review**

Notwithstanding section 7607 of this title, no action of the Administrator adding a pollutant to the list under subsection (b) of this section or listing a source category or subcategory under subsection (c) of this section shall be a final agency action subject to judicial review, except that any such action may be reviewed under such section 7607 of this title when the Administrator issues emission standards for such pollutant or category.

## **(5) Publicly owned treatment works**

The Administrator shall promulgate standards pursuant to subsection (d) of this section applicable to publicly owned treatment works (as defined in title II of the Federal Water Pollution Control Act [33 U.S.C.A. § 1281 et seq.] ) not later than 5 years after November 15, 1990.

## **(f) Standard to protect health and environment**

### **(1) Report**

Not later than 6 years after November 15, 1990, the Administrator shall investigate and report, after consultation with the Surgeon General and after opportunity for public comment, to Congress on--

(A) methods of calculating the risk to public health remaining, or likely to remain, from sources subject to regulation under this section after the application of standards under subsection (d) of this section;

(B) the public health significance of such estimated remaining risk and the technologically and commercially available methods and costs of reducing such risks;

(C) the actual health effects with respect to persons living in the vicinity of sources, any available epidemiological or other health studies, risks presented by background concentrations of hazardous air pollutants, any uncertainties in risk assessment methodology or other health assessment technique, and any negative health or environmental consequences to the community of efforts to reduce such risks; and

(D) recommendations as to legislation regarding such remaining risk.

## (2) Emission standards

(A) If Congress does not act on any recommendation submitted under paragraph (1), the Administrator shall, within 8 years after promulgation of standards for each category or subcategory of sources pursuant to subsection (d) of this section, promulgate standards for such category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990) or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. Emission standards promulgated under this subsection shall provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990), unless the Administrator determines that a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. If standards promulgated pursuant to subsection (d) of this section and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for such source category.

(B) Nothing in subparagraph (A) or in any other provision of this section shall be construed as affecting, or applying to the Administrator's interpretation of this section, as in effect before November 15, 1990, and set forth in the Federal Register of September 14, 1989 (54 Federal Register 38044).

(C) The Administrator shall determine whether or not to promulgate such standards and, if the Administrator decides to promulgate such standards, shall promulgate the standards 8 years after promulgation of the standards under subsection (d) of this section for each source category or subcategory concerned. In the case of categories or subcategories for which standards under subsection (d) of this section are required to be promulgated within 2 years after November 15, 1990, the Administrator shall have 9 years after promulgation of the standards under subsection (d) of this section to make the determination under the preceding sentence and, if required, to promulgate the standards under this paragraph.

## (3) Effective date

Any emission standard established pursuant to this subsection shall become effective upon promulgation.

## (4) Prohibition

No air pollutant to which a standard under this subsection applies may be emitted from any stationary source in violation of such standard, except that in the case of an existing source--

(A) such standard shall not apply until 90 days after its effective date, and

(B) the Administrator may grant a waiver permitting such source a period of up to 2 years after the effective date of a standard to comply with the standard if the Administrator finds that such period is necessary for the installation of controls and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment.

**(5) Area sources**

The Administrator shall not be required to conduct any review under this subsection or promulgate emission limitations under this subsection for any category or subcategory of area sources that is listed pursuant to subsection (c)(3) of this section and for which an emission standard is promulgated pursuant to subsection (d)(5) of this section.

**(6) Unique chemical substances**

In establishing standards for the control of unique chemical substances of listed pollutants without CAS numbers under this subsection, the Administrator shall establish such standards with respect to the health and environmental effects of the substances actually emitted by sources and direct transformation byproducts of such emissions in the categories and subcategories.

**(g) Modifications**

**(1) Offsets**

(A) A physical change in, or change in the method of operation of, a major source which results in a greater than de minimis increase in actual emissions of a hazardous air pollutant shall not be considered a modification, if such increase in the quantity of actual emissions of any hazardous air pollutant from such source will be offset by an equal or greater decrease in the quantity of emissions of another hazardous air pollutant (or pollutants) from such source which is deemed more hazardous, pursuant to guidance issued by the Administrator under subparagraph (B). The owner or operator of such source shall submit a showing to the Administrator (or the State) that such increase has been offset under the preceding sentence.

(B) The Administrator shall, after notice and opportunity for comment and not later than 18 months after November 15, 1990, publish guidance with respect to implementation of this subsection. Such guidance shall include an identification, to the extent practicable, of the relative hazard to human health resulting from emissions to the ambient air of each of the pollutants listed under subsection (b) of this section sufficient to facilitate the offset showing authorized by subparagraph (A). Such guidance shall not authorize offsets between pollutants where the increased pollutant (or more than one pollutant in a stream of pollutants) causes adverse effects to human health for which no safety threshold for exposure can be determined unless there are corresponding decreases in such types of pollutant(s).

**(2) Construction, reconstruction and modifications**

(A) After the effective date of a permit program under subchapter V of this chapter in any State, no person may modify a major source of hazardous air pollutants in such State, unless the Administrator (or the State) determines that the maximum

achievable control technology emission limitation under this section for existing sources will be met. Such determination shall be made on a case-by-case basis where no applicable emissions limitations have been established by the Administrator.

(B) After the effective date of a permit program under subchapter V of this chapter in any State, no person may construct or reconstruct any major source of hazardous air pollutants, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for new sources will be met. Such determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator.

### (3) Procedures for modifications

The Administrator (or the State) shall establish reasonable procedures for assuring that the requirements applying to modifications under this section are reflected in the permit.

### (h) Work practice standards and other requirements

#### (1) In general

For purposes of this section, if it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu thereof, promulgate a design, equipment, work practice, or operational standard, or combination thereof, which in the Administrator's judgment is consistent with the provisions of subsection (d) or (f) of this section. In the event the Administrator promulgates a design or equipment standard under this subsection, the Administrator shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

#### (2) Definition

For the purpose of this subsection, the phrase "not feasible to prescribe or enforce an emission standard" means any situation in which the Administrator determines that--

(A) a hazardous air pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State or local law, or

(B) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

#### (3) Alternative standard

If after notice and opportunity for comment, the owner or operator of any source establishes to the satisfaction of the Administrator that an alternative means of emission limitation will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such pollutant achieved under the requirements of paragraph (1), the Administrator shall permit the use of such alternative by the source for purposes of compliance with this section with respect to such pollutant.

#### (4) Numerical standard required

Any standard promulgated under paragraph (1) shall be promulgated in terms of an emission standard whenever it is feasible to promulgate and enforce a standard in such terms.

**(i) Schedule for compliance****(1) Preconstruction and operating requirements**

After the effective date of any emission standard, limitation, or regulation under subsection (d), (f) or (h) of this section, no person may construct any new major source or reconstruct any existing major source subject to such emission standard, regulation or limitation unless the Administrator (or a State with a permit program approved under subchapter V of this chapter) determines that such source, if properly constructed, reconstructed and operated, will comply with the standard, regulation or limitation.

**(2) Special rule**

Notwithstanding the requirements of paragraph (1), a new source which commences construction or reconstruction after a standard, limitation or regulation applicable to such source is proposed and before such standard, limitation or regulation is promulgated shall not be required to comply with such promulgated standard until the date 3 years after the date of promulgation if--

(A) the promulgated standard, limitation or regulation is more stringent than the standard, limitation or regulation proposed; and

(B) the source complies with the standard, limitation, or regulation as proposed during the 3-year period immediately after promulgation.

**(3) Compliance schedule for existing sources**

(A) After the effective date of any emissions standard, limitation or regulation promulgated under this section and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation except, in the case of an existing source, the Administrator shall establish a compliance date or dates for each category or subcategory of existing sources, which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard, except as provided in subparagraph (B) and paragraphs (4) through (8).

(B) The Administrator (or a State with a program approved under subchapter V of this chapter) may issue a permit that grants an extension permitting an existing source up to 1 additional year to comply with standards under subsection (d) of this section if such additional period is necessary for the installation of controls. An additional extension of up to 3 years may be added for mining waste operations, if the 4-year compliance time is insufficient to dry and cover mining waste in order to reduce emissions of any pollutant listed under subsection (b) of this section.

**(4) Presidential exemption**

The President may exempt any stationary source from compliance with any standard or limitation under this section for a period of not more than 2 years if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so. An exemption under this paragraph may be extended for 1 or more additional periods, each period not to exceed 2 years. The President shall report to Congress with respect to each exemption (or extension thereof) made under this paragraph.

**(5) Early reduction**

(A) The Administrator (or a State acting pursuant to a permit program approved under subchapter V of this chapter) shall issue a permit allowing an existing source, for which the owner or operator demonstrates that the source has achieved a reduction of 90 per centum or more in emissions of hazardous air pollutants (95 per centum in the case of hazardous air pollutants which are particulates) from the source, to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated under subsection (d) of this section for a period of 6 years from the compliance date for the otherwise applicable standard, provided that such reduction is achieved before the otherwise applicable standard under subsection (d) of this section is first proposed. Nothing in this paragraph shall preclude a State from requiring reductions in excess of those specified in this subparagraph as a condition of granting the extension authorized by the previous sentence.

(B) An existing source which achieves the reduction referred to in subparagraph (A) after the proposal of an applicable standard but before January 1, 1994, may qualify under subparagraph (A), if the source makes an enforceable commitment to achieve such reduction before the proposal of the standard. Such commitment shall be enforceable to the same extent as a regulation under this section.

(C) The reduction shall be determined with respect to verifiable and actual emissions in a base year not earlier than calendar year 1987, provided that, there is no evidence that emissions in the base year are artificially or substantially greater than emissions in other years prior to implementation of emissions reduction measures. The Administrator may allow a source to use a baseline year of 1985 or 1986 provided that the source can demonstrate to the satisfaction of the Administrator that emissions data for the source reflects verifiable data based on information for such source, received by the Administrator prior to November 15, 1990, pursuant to an information request issued under section 7414 of this title.

(D) For each source granted an alternative emission limitation under this paragraph there shall be established by a permit issued pursuant to subchapter V of this chapter an enforceable emission limitation for hazardous air pollutants reflecting the reduction which qualifies the source for an alternative emission limitation under this paragraph. An alternative emission limitation under this paragraph shall not be available with respect to standards or requirements promulgated pursuant to subsection (f) of this section and the Administrator shall, for the purpose of determining whether a standard under subsection (f) of this section is necessary, review emissions from sources granted an alternative emission limitation under this paragraph at the same time that other sources in the category or subcategory are reviewed.

(E) With respect to pollutants for which high risks of adverse public health effects may be associated with exposure to small quantities including, but not limited to, chlorinated dioxins and furans, the Administrator shall by regulation limit the use of offsetting reductions in emissions of other hazardous air pollutants from the source as counting toward the 90 per centum reduction in such high-risk pollutants qualifying for an alternative emissions limitation under this paragraph.

#### **(6) Other reductions**

Notwithstanding the requirements of this section, no existing source that has installed--

(A) best available control technology (as defined in section 7479(3) of this title), or

(B) technology required to meet a lowest achievable emission rate (as defined in section 7501 of this title),

prior to the promulgation of a standard under this section applicable to such source and the same pollutant (or stream of pollutants) controlled pursuant to an action described in subparagraph (A) or (B) shall be required to comply with such



standard under this section until the date 5 years after the date on which such installation or reduction has been achieved, as determined by the Administrator. The Administrator may issue such rules and guidance as are necessary to implement this paragraph.

**(7) Extension for new sources**

A source for which construction or reconstruction is commenced after the date an emission standard applicable to such source is proposed pursuant to subsection (d) of this section but before the date an emission standard applicable to such source is proposed pursuant to subsection (f) of this section shall not be required to comply with the emission standard under subsection (f) of this section until the date 10 years after the date construction or reconstruction is commenced.

**(8) Coke ovens**

(A) Any coke oven battery that complies with the emission limitations established under subsection (d)(8)(C) of this section, subparagraph (B), and subparagraph (C), and complies with the provisions of subparagraph (E), shall not be required to achieve emission limitations promulgated under subsection (f) of this section until January 1, 2020.

(B)(i) Not later than December 31, 1992, the Administrator shall promulgate emission limitations for coke oven emissions from coke oven batteries. Notwithstanding paragraph (3) of this subsection, the compliance date for such emission limitations for existing coke oven batteries shall be January 1, 1998. Such emission limitations shall reflect the lowest achievable emission rate as defined in section 7501 of this title for a coke oven battery that is rebuilt or a replacement at a coke oven plant for an existing battery. Such emission limitations shall be no less stringent than--

(I) 3 per centum leaking doors (5 per centum leaking doors for six meter batteries);

(II) 1 per centum leaking lids;

(III) 4 per centum leaking offtakes; and

(IV) 16 seconds visible emissions per charge,

with an exclusion for emissions during the period after the closing of self-sealing oven doors (or the total mass emissions equivalent). The rulemaking in which such emission limitations are promulgated shall also establish an appropriate measurement methodology for determining compliance with such emission limitations, and shall establish such emission limitations in terms of an equivalent level of mass emissions reduction from a coke oven battery, unless the Administrator finds that such a mass emissions standard would not be practicable or enforceable. Such measurement methodology, to the extent it measures leaking doors, shall take into consideration alternative test methods that reflect the best technology and practices actually applied in the affected industries, and shall assure that the final test methods are consistent with the performance of such best technology and practices.

(ii) If the Administrator fails to promulgate such emission limitations under this subparagraph prior to the effective date of such emission limitations, the emission limitations applicable to coke oven batteries under this subparagraph shall be--

(I) 3 per centum leaking doors (5 per centum leaking doors for six meter batteries);



(II) 1 per centum leaking lids;

(III) 4 per centum leaking offtakes; and

(IV) 16 seconds visible emissions per charge,

or the total mass emissions equivalent (if the total mass emissions equivalent is determined to be practicable and enforceable), with no exclusion for emissions during the period after the closing of self-sealing oven doors.

(C) Not later than January 1, 2007, the Administrator shall review the emission limitations promulgated under subparagraph (B) and revise, as necessary, such emission limitations to reflect the lowest achievable emission rate as defined in section 7501 of this title at the time for a coke oven battery that is rebuilt or a replacement at a coke oven plant for an existing battery. Such emission limitations shall be no less stringent than the emission limitation promulgated under subparagraph (B). Notwithstanding paragraph (2) of this subsection, the compliance date for such emission limitations for existing coke oven batteries shall be January 1, 2010.

(D) At any time prior to January 1, 1998, the owner or operator of any coke oven battery may elect to comply with emission limitations promulgated under subsection (f) of this section by the date such emission limitations would otherwise apply to such coke oven battery, in lieu of the emission limitations and the compliance dates provided under subparagraphs (B) and (C) of this paragraph. Any such owner or operator shall be legally bound to comply with such emission limitations promulgated under subsection (f) of this section with respect to such coke oven battery as of January 1, 2003. If no such emission limitations have been promulgated for such coke oven battery, the Administrator shall promulgate such emission limitations in accordance with subsection (f) of this section for such coke oven battery.

(E) Coke oven batteries qualifying for an extension under subparagraph (A) shall make available not later than January 1, 2000, to the surrounding communities the results of any risk assessment performed by the Administrator to determine the appropriate level of any emission standard established by the Administrator pursuant to subsection (f) of this section.

(F) Notwithstanding the provisions of this section, reconstruction of any source of coke oven emissions qualifying for an extension under this paragraph shall not subject such source to emission limitations under subsection (f) of this section more stringent than those established under subparagraphs (B) and (C) until January 1, 2020. For the purposes of this subparagraph, the term “reconstruction” includes the replacement of existing coke oven battery capacity with new coke oven batteries of comparable or lower capacity and lower potential emissions.

**(j) Equivalent emission limitation by permit**

**(1) Effective date**

The requirements of this subsection shall apply in each State beginning on the effective date of a permit program established pursuant to subchapter V of this chapter in such State, but not prior to the date 42 months after November 15, 1990.

**(2) Failure to promulgate a standard**

In the event that the Administrator fails to promulgate a standard for a category or subcategory of major sources by the date established pursuant to subsection (e)(1) and (3) of this section, and beginning 18 months after such date (but not prior to the effective date of a permit program under subchapter V of this chapter), the owner or operator of any major source in such category or subcategory shall submit a permit application under paragraph (3) and such owner or operator shall also comply with paragraphs (5) and (6).

### **(3) Applications**

By the date established by paragraph (2), the owner or operator of a major source subject to this subsection shall file an application for a permit. If the owner or operator of a source has submitted a timely and complete application for a permit required by this subsection, any failure to have a permit shall not be a violation of paragraph (2), unless the delay in final action is due to the failure of the applicant to timely submit information required or requested to process the application. The Administrator shall not later than 18 months after November 15, 1990, and after notice and opportunity for comment, establish requirements for applications under this subsection including a standard application form and criteria for determining in a timely manner the completeness of applications.

### **(4) Review and approval**

Permit applications submitted under this subsection shall be reviewed and approved or disapproved according to the provisions of section 7661d of this title. In the event that the Administrator (or the State) disapproves a permit application submitted under this subsection or determines that the application is incomplete, the applicant shall have up to 6 months to revise the application to meet the objections of the Administrator (or the State).

### **(5) Emission limitation**

The permit shall be issued pursuant to subchapter V of this chapter and shall contain emission limitations for the hazardous air pollutants subject to regulation under this section and emitted by the source that the Administrator (or the State) determines, on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d) of this section. In the alternative, if the applicable criteria are met, the permit may contain an emissions limitation established according to the provisions of subsection (i)(5) of this section. For purposes of the preceding sentence, the reduction required by subsection (i)(5)(A) of this section shall be achieved by the date on which the relevant standard should have been promulgated under subsection (d) of this section. No such pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources and, as expeditiously as practicable, but not later than the date 3 years after the permit is issued for existing sources or such other compliance date as would apply under subsection (i) of this section.

### **(6) Applicability of subsequent standards**

If the Administrator promulgates an emission standard that is applicable to the major source prior to the date on which a permit application is approved, the emission limitation in the permit shall reflect the promulgated standard rather than the emission limitation determined pursuant to paragraph (5), provided that the source shall have the compliance period provided under subsection (i) of this section. If the Administrator promulgates a standard under subsection (d) of this section that would be applicable to the source in lieu of the emission limitation established by permit under this subsection after the date on which the permit has been issued, the Administrator (or the State) shall revise such permit upon the next renewal to reflect the standard promulgated by the Administrator providing such source a reasonable time to comply, but no longer than 8 years after such standard is promulgated or 8 years after the date on which the source is first required to comply with the emissions limitation established by paragraph (5), whichever is earlier.

### **(k) Area source program**

**(1) Findings and purpose**

The Congress finds that emissions of hazardous air pollutants from area sources may individually, or in the aggregate, present significant risks to public health in urban areas. Considering the large number of persons exposed and the risks of carcinogenic and other adverse health effects from hazardous air pollutants, ambient concentrations characteristic of large urban areas should be reduced to levels substantially below those currently experienced. It is the purpose of this subsection to achieve a substantial reduction in emissions of hazardous air pollutants from area sources and an equivalent reduction in the public health risks associated with such sources including a reduction of not less than 75 per centum in the incidence of cancer attributable to emissions from such sources.

**(2) Research program**

The Administrator shall, after consultation with State and local air pollution control officials, conduct a program of research with respect to sources of hazardous air pollutants in urban areas and shall include within such program--

(A) ambient monitoring for a broad range of hazardous air pollutants (including, but not limited to, volatile organic compounds, metals, pesticides and products of incomplete combustion) in a representative number of urban locations;

(B) analysis to characterize the sources of such pollution with a focus on area sources and the contribution that such sources make to public health risks from hazardous air pollutants; and

(C) consideration of atmospheric transformation and other factors which can elevate public health risks from such pollutants.

Health effects considered under this program shall include, but not be limited to, carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive dysfunction and other acute and chronic effects including the role of such pollutants as precursors of ozone or acid aerosol formation. The Administrator shall report the preliminary results of such research not later than 3 years after November 15, 1990.

**(3) National strategy**

(A) Considering information collected pursuant to the monitoring program authorized by paragraph (2), the Administrator shall, not later than 5 years after November 15, 1990, and after notice and opportunity for public comment, prepare and transmit to the Congress a comprehensive strategy to control emissions of hazardous air pollutants from area sources in urban areas.

(B) The strategy shall--

(i) identify not less than 30 hazardous air pollutants which, as the result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas and that are or will be listed pursuant to subsection (b) of this section, and

(ii) identify the source categories or subcategories emitting such pollutants that are or will be listed pursuant to subsection (c) of this section. When identifying categories and subcategories of sources under this subparagraph, the Administrator

shall assure that sources accounting for 90 per centum or more of the aggregate emissions of each of the 30 identified hazardous air pollutants are subject to standards pursuant to subsection (d) of this section.

(C) The strategy shall include a schedule of specific actions to substantially reduce the public health risks posed by the release of hazardous air pollutants from area sources that will be implemented by the Administrator under the authority of this or other laws (including, but not limited to, the Toxic Substances Control Act [15 U.S.C.A. § 2601 et seq.], the Federal Insecticide, Fungicide and Rodenticide Act [7 U.S.C.A. § 136 et seq.] and the Resource Conservation and Recovery Act [42 U.S.C.A. § 6901 et seq.] ) or by the States. The strategy shall achieve a reduction in the incidence of cancer attributable to exposure to hazardous air pollutants emitted by stationary sources of not less than 75 per centum, considering control of emissions of hazardous air pollutants from all stationary sources and resulting from measures implemented by the Administrator or by the States under this or other laws.

(D) The strategy may also identify research needs in monitoring, analytical methodology, modeling or pollution control techniques and recommendations for changes in law that would further the goals and objectives of this subsection.

(E) Nothing in this subsection shall be interpreted to preclude or delay implementation of actions with respect to area sources of hazardous air pollutants under consideration pursuant to this or any other law and that may be promulgated before the strategy is prepared.

(F) The Administrator shall implement the strategy as expeditiously as practicable assuring that all sources are in compliance with all requirements not later than 9 years after November 15, 1990.

(G) As part of such strategy the Administrator shall provide for ambient monitoring and emissions modeling in urban areas as appropriate to demonstrate that the goals and objectives of the strategy are being met.

#### **(4) Areawide activities**

In addition to the national urban air toxics strategy authorized by paragraph (3), the Administrator shall also encourage and support areawide strategies developed by State or local air pollution control agencies that are intended to reduce risks from emissions by area sources within a particular urban area. From the funds available for grants under this section, the Administrator shall set aside not less than 10 per centum to support areawide strategies addressing hazardous air pollutants emitted by area sources and shall award such funds on a demonstration basis to those States with innovative and effective strategies. At the request of State or local air pollution control officials, the Administrator shall prepare guidelines for control technologies or management practices which may be applicable to various categories or subcategories of area sources.

#### **(5) Report**

The Administrator shall report to the Congress at intervals not later than 8 and 12 years after November 15, 1990, on actions taken under this subsection and other parts of this chapter to reduce the risk to public health posed by the release of hazardous air pollutants from area sources. The reports shall also identify specific metropolitan areas that continue to experience high risks to public health as the result of emissions from area sources.

#### **(I) State programs**

##### **(1) In general**

Each State may develop and submit to the Administrator for approval a program for the implementation and enforcement (including a review of enforcement delegations previously granted) of emission standards and other requirements for air pollutants subject to this section or requirements for the prevention and mitigation of accidental releases pursuant to subsection (r) of this section. A program submitted by a State under this subsection may provide for partial or complete delegation of the Administrator's authorities and responsibilities to implement and enforce emissions standards and prevention requirements but shall not include authority to set standards less stringent than those promulgated by the Administrator under this chapter.

## **(2) Guidance**

Not later than 12 months after November 15, 1990, the Administrator shall publish guidance that would be useful to the States in developing programs for submittal under this subsection. The guidance shall also provide for the registration of all facilities producing, processing, handling or storing any substance listed pursuant to subsection (r) of this section in amounts greater than the threshold quantity. The Administrator shall include as an element in such guidance an optional program begun in 1986 for the review of high-risk point sources of air pollutants including, but not limited to, hazardous air pollutants listed pursuant to subsection (b) of this section.

## **(3) Technical assistance**

The Administrator shall establish and maintain an air toxics clearinghouse and center to provide technical information and assistance to State and local agencies and, on a cost recovery basis, to others on control technology, health and ecological risk assessment, risk analysis, ambient monitoring and modeling, and emissions measurement and monitoring. The Administrator shall use the authority of section 7403 of this title to examine methods for preventing, measuring, and controlling emissions and evaluating associated health and ecological risks. Where appropriate, such activity shall be conducted with not-for-profit organizations. The Administrator may conduct research on methods for preventing, measuring and controlling emissions and evaluating associated health and environment risks. All information collected under this paragraph shall be available to the public.

## **(4) Grants**

Upon application of a State, the Administrator may make grants, subject to such terms and conditions as the Administrator deems appropriate, to such State for the purpose of assisting the State in developing and implementing a program for submittal and approval under this subsection. Programs assisted under this paragraph may include program elements addressing air pollutants or extremely hazardous substances other than those specifically subject to this section. Grants under this paragraph may include support for high-risk point source review as provided in paragraph (2) and support for the development and implementation of areawide area source programs pursuant to subsection (k) of this section.

## **(5) Approval or disapproval**

Not later than 180 days after receiving a program submitted by a State, and after notice and opportunity for public comment, the Administrator shall either approve or disapprove such program. The Administrator shall disapprove any program submitted by a State, if the Administrator determines that--

(A) the authorities contained in the program are not adequate to assure compliance by all sources within the State with each applicable standard, regulation or requirement established by the Administrator under this section;

(B) adequate authority does not exist, or adequate resources are not available, to implement the program;

(C) the schedule for implementing the program and assuring compliance by affected sources is not sufficiently expeditious; or

(D) the program is otherwise not in compliance with the guidance issued by the Administrator under paragraph (2) or is not likely to satisfy, in whole or in part, the objectives of this chapter.

If the Administrator disapproves a State program, the Administrator shall notify the State of any revisions or modifications necessary to obtain approval. The State may revise and resubmit the proposed program for review and approval pursuant to the provisions of this subsection.

**(6) Withdrawal**

Whenever the Administrator determines, after public hearing, that a State is not administering and enforcing a program approved pursuant to this subsection in accordance with the guidance published pursuant to paragraph (2) or the requirements of paragraph (5), the Administrator shall so notify the State and, if action which will assure prompt compliance is not taken within 90 days, the Administrator shall withdraw approval of the program. The Administrator shall not withdraw approval of any program unless the State shall have been notified and the reasons for withdrawal shall have been stated in writing and made public.

**(7) Authority to enforce**

Nothing in this subsection shall prohibit the Administrator from enforcing any applicable emission standard or requirement under this section.

**(8) Local program**

The Administrator may, after notice and opportunity for public comment, approve a program developed and submitted by a local air pollution control agency (after consultation with the State) pursuant to this subsection and any such agency implementing an approved program may take any action authorized to be taken by a State under this section.

**(9) Permit authority**

Nothing in this subsection shall affect the authorities and obligations of the Administrator or the State under subchapter V of this chapter.

**(m) Atmospheric deposition to Great Lakes and coastal waters**

**(1) Deposition assessment**

The Administrator, in cooperation with the Under Secretary of Commerce for Oceans and Atmosphere, shall conduct a program to identify and assess the extent of atmospheric deposition of hazardous air pollutants (and in the discretion of the Administrator, other air pollutants) to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters. As part of such program, the Administrator shall--

(A) monitor the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters, including monitoring of the Great Lakes through the monitoring network established pursuant to paragraph (2) of this subsection and designing and deploying an atmospheric monitoring network for coastal waters pursuant to paragraph (4);

(B) investigate the sources and deposition rates of atmospheric deposition of air pollutants (and their atmospheric transformation precursors);

(C) conduct research to develop and improve monitoring methods and to determine the relative contribution of atmospheric pollutants to total pollution loadings to the Great Lakes, the Chesapeake Bay, Lake Champlain, and coastal waters;

(D) evaluate any adverse effects to public health or the environment caused by such deposition (including effects resulting from indirect exposure pathways) and assess the contribution of such deposition to violations of water quality standards established pursuant to the Federal Water Pollution Control Act [33 U.S.C.A. § 1251 et seq.] and drinking water standards established pursuant to the Safe Drinking Water Act [42 U.S.C.A. § 300f et seq.]; and

(E) sample for such pollutants in biota, fish, and wildlife of the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters and characterize the sources of such pollutants.

## **(2) Great Lakes monitoring network**

The Administrator shall oversee, in accordance with Annex 15 of the Great Lakes Water Quality Agreement, the establishment and operation of a Great Lakes atmospheric deposition network to monitor atmospheric deposition of hazardous air pollutants (and in the Administrator's discretion, other air pollutants) to the Great Lakes.

(A) As part of the network provided for in this paragraph, and not later than December 31, 1991, the Administrator shall establish in each of the 5 Great Lakes at least 1 facility capable of monitoring the atmospheric deposition of hazardous air pollutants in both dry and wet conditions.

(B) The Administrator shall use the data provided by the network to identify and track the movement of hazardous air pollutants through the Great Lakes, to determine the portion of water pollution loadings attributable to atmospheric deposition of such pollutants, and to support development of remedial action plans and other management plans as required by the Great Lakes Water Quality Agreement.

(C) The Administrator shall assure that the data collected by the Great Lakes atmospheric deposition monitoring network is in a format compatible with databases sponsored by the International Joint Commission, Canada, and the several States of the Great Lakes region.

## **(3) Monitoring for the Chesapeake Bay and Lake Champlain**

The Administrator shall establish at the Chesapeake Bay and Lake Champlain atmospheric deposition stations to monitor deposition of hazardous air pollutants (and in the Administrator's discretion, other air pollutants) within the Chesapeake Bay and Lake Champlain watersheds. The Administrator shall determine the role of air deposition in the pollutant loadings of the Chesapeake Bay and Lake Champlain, investigate the sources of air pollutants deposited in the watersheds, evaluate the health and environmental effects of such pollutant loadings, and shall sample such pollutants in biota, fish and wildlife within the watersheds, as necessary to characterize such effects.

## **(4) Monitoring for coastal waters**



The Administrator shall design and deploy atmospheric deposition monitoring networks for coastal waters and their watersheds and shall make any information collected through such networks available to the public. As part of this effort, the Administrator shall conduct research to develop and improve deposition monitoring methods, and to determine the relative contribution of atmospheric pollutants to pollutant loadings. For purposes of this subsection, “coastal waters” shall mean estuaries selected pursuant to section 320(a)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C.A. § 1330(a)(2)(A) ] or listed pursuant to section 320(a)(2)(B) of such Act [33 U.S.C.A. § 1330(a)(2)(B) ] or estuarine research reserves designated pursuant to section 1461 of Title 16.

#### **(5) Report**

Within 3 years of November 15, 1990, and biennially thereafter, the Administrator, in cooperation with the Under Secretary of Commerce for Oceans and Atmosphere, shall submit to the Congress a report on the results of any monitoring, studies, and investigations conducted pursuant to this subsection. Such report shall include, at a minimum, an assessment of--

(A) the contribution of atmospheric deposition to pollution loadings in the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters;

(B) the environmental and public health effects of any pollution which is attributable to atmospheric deposition to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters;

(C) the source or sources of any pollution to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters which is attributable to atmospheric deposition;

(D) whether pollution loadings in the Great Lakes, the Chesapeake Bay, Lake Champlain or coastal waters cause or contribute to exceedances<sup>2</sup> of drinking water standards pursuant to the Safe Drinking Water Act [42 U.S.C.A. § 300f et seq.] or water quality standards pursuant to the Federal Water Pollution Control Act [33 U.S.C.A. § 1251 et seq.] or, with respect to the Great Lakes, exceedances<sup>2</sup> of the specific objectives of the Great Lakes Water Quality Agreement; and

(E) a description of any revisions of the requirements, standards, and limitations pursuant to this chapter and other applicable Federal laws as are necessary to assure protection of human health and the environment.

#### **(6) Additional regulation**

As part of the report to Congress, the Administrator shall determine whether the other provisions of this section are adequate to prevent serious adverse effects to public health and serious or widespread environmental effects, including such effects resulting from indirect exposure pathways, associated with atmospheric deposition to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters of hazardous air pollutants (and their atmospheric transformation products). The Administrator shall take into consideration the tendency of such pollutants to bioaccumulate. Within 5 years after November 15, 1990, the Administrator shall, based on such report and determination, promulgate, in accordance with this section, such further emission standards or control measures as may be necessary and appropriate to prevent such effects, including effects due to bioaccumulation and indirect exposure pathways. Any requirements promulgated pursuant to this paragraph with respect to coastal waters shall only apply to the coastal waters of the States which are subject to section 7627(a) of this title.

#### **(n) Other provisions**



**(1) Electric utility steam generating units**

(A) The Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) of this section after imposition of the requirements of this chapter. The Administrator shall report the results of this study to the Congress within 3 years after November 15, 1990. The Administrator shall develop and describe in the Administrator's report to Congress alternative control strategies for emissions which may warrant regulation under this section. The Administrator shall regulate electric utility steam generating units under this section, if the Administrator finds such regulation is appropriate and necessary after considering the results of the study required by this subparagraph.

(B) The Administrator shall conduct, and transmit to the Congress not later than 4 years after November 15, 1990, a study of mercury emissions from electric utility steam generating units, municipal waste combustion units, and other sources, including area sources. Such study shall consider the rate and mass of such emissions, the health and environmental effects of such emissions, technologies which are available to control such emissions, and the costs of such technologies.

(C) The National Institute of Environmental Health Sciences shall conduct, and transmit to the Congress not later than 3 years after November 15, 1990, a study to determine the threshold level of mercury exposure below which adverse human health effects are not expected to occur. Such study shall include a threshold for mercury concentrations in the tissue of fish which may be consumed (including consumption by sensitive populations) without adverse effects to public health.

**(2) Coke oven production technology study**

(A) The Secretary of the Department of Energy and the Administrator shall jointly undertake a 6-year study to assess coke oven production emission control technologies and to assist in the development and commercialization of technically practicable and economically viable control technologies which have the potential to significantly reduce emissions of hazardous air pollutants from coke oven production facilities. In identifying control technologies, the Secretary and the Administrator shall consider the range of existing coke oven operations and battery design and the availability of sources of materials for such coke ovens as well as alternatives to existing coke oven production design.

(B) The Secretary and the Administrator are authorized to enter into agreements with persons who propose to develop, install and operate coke production emission control technologies which have the potential for significant emissions reductions of hazardous air pollutants provided that Federal funds shall not exceed 50 per centum of the cost of any project assisted pursuant to this paragraph.

(C) On completion of the study, the Secretary shall submit to Congress a report on the results of the study and shall make recommendations to the Administrator identifying practicable and economically viable control technologies for coke oven production facilities to reduce residual risks remaining after implementation of the standard under subsection (d) of this section.

(D) There are authorized to be appropriated \$5,000,000 for each of the fiscal years 1992 through 1997 to carry out the program authorized by this paragraph.

**(3) Publicly owned treatment works**

The Administrator may conduct, in cooperation with the owners and operators of publicly owned treatment works, studies to characterize emissions of hazardous air pollutants emitted by such facilities, to identify industrial, commercial and residential discharges that contribute to such emissions and to demonstrate control measures for such emissions. When promulgating any standard under this section applicable to publicly owned treatment works, the Administrator may provide for control measures that include pretreatment of discharges causing emissions of hazardous air pollutants and process or product substitutions or limitations that may be effective in reducing such emissions. The Administrator may prescribe uniform sampling, modeling and risk assessment methods for use in implementing this subsection.

#### **(4) Oil and gas wells; pipeline facilities**

(A) Notwithstanding the provisions of subsection (a) of this section, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, and in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under this section.

(B) The Administrator shall not list oil and gas production wells (with its associated equipment) as an area source category under subsection (c) of this section, except that the Administrator may establish an area source category for oil and gas production wells located in any metropolitan statistical area or consolidated metropolitan statistical area with a population in excess of 1 million, if the Administrator determines that emissions of hazardous air pollutants from such wells present more than a negligible risk of adverse effects to public health.

#### **(5) Hydrogen sulfide**

The Administrator is directed to assess the hazards to public health and the environment resulting from the emission of hydrogen sulfide associated with the extraction of oil and natural gas resources. To the extent practicable, the assessment shall build upon and not duplicate work conducted for an assessment pursuant to section 8002(m) of the Solid Waste Disposal Act [42 U.S.C.A. § 6982(m)] and shall reflect consultation with the States. The assessment shall include a review of existing State and industry control standards, techniques and enforcement. The Administrator shall report to the Congress within 24 months after November 15, 1990, with the findings of such assessment, together with any recommendations, and shall, as appropriate, develop and implement a control strategy for emissions of hydrogen sulfide to protect human health and the environment, based on the findings of such assessment, using authorities under this chapter including sections<sup>3</sup> 7411 of this title and this section.

#### **(6) Hydrofluoric acid**

Not later than 2 years after November 15, 1990, the Administrator shall, for those regions of the country which do not have comprehensive health and safety regulations with respect to hydrofluoric acid, complete a study of the potential hazards of hydrofluoric acid and the uses of hydrofluoric acid in industrial and commercial applications to public health and the environment considering a range of events including worst-case accidental releases and shall make recommendations to the Congress for the reduction of such hazards, if appropriate.

#### **(7) RCRA facilities**

In the case of any category or subcategory of sources the air emissions of which are regulated under subtitle C of the Solid Waste Disposal Act [42 U.S.C.A. § 6921 et seq.], the Administrator shall take into account any regulations of such emissions which are promulgated under such subtitle and shall, to the maximum extent practicable and consistent with the provisions of this section, ensure that the requirements of such subtitle and this section are consistent.

**(o) National Academy of Sciences study****(1) Request of the Academy**

Within 3 months of November 15, 1990, the Administrator shall enter into appropriate arrangements with the National Academy of Sciences to conduct a review of--

(A) risk assessment methodology used by the Environmental Protection Agency to determine the carcinogenic risk associated with exposure to hazardous air pollutants from source categories and subcategories subject to the requirements of this section; and

(B) improvements in such methodology.

**(2) Elements to be studied**

In conducting such review, the National Academy of Sciences should consider, but not be limited to, the following--

(A) the techniques used for estimating and describing the carcinogenic potency to humans of hazardous air pollutants; and

(B) the techniques used for estimating exposure to hazardous air pollutants (for hypothetical and actual maximally exposed individuals as well as other exposed individuals).

**(3) Other health effects of concern**

To the extent practicable, the Academy shall evaluate and report on the methodology for assessing the risk of adverse human health effects other than cancer for which safe thresholds of exposure may not exist, including, but not limited to, inheritable genetic mutations, birth defects, and reproductive dysfunctions.

**(4) Report**

A report on the results of such review shall be submitted to the Senate Committee on Environment and Public Works, the House Committee on Energy and Commerce, the Risk Assessment and Management Commission established by section 303 of the Clean Air Act Amendments of 1990 and the Administrator not later than 30 months after November 15, 1990.

**(5) Assistance**

The Administrator shall assist the Academy in gathering any information the Academy deems necessary to carry out this subsection. The Administrator may use any authority under this chapter to obtain information from any person, and to require any person to conduct tests, keep and produce records, and make reports respecting research or other activities conducted by such person as necessary to carry out this subsection.

**(6) Authorization**

Of the funds authorized to be appropriated to the Administrator by this chapter, such amounts as are required shall be available to carry out this subsection.

**(7) Guidelines for carcinogenic risk assessment**

The Administrator shall consider, but need not adopt, the recommendations contained in the report of the National Academy of Sciences prepared pursuant to this subsection and the views of the Science Advisory Board, with respect to such report. Prior to the promulgation of any standard under subsection (f) of this section, and after notice and opportunity for comment, the Administrator shall publish revised Guidelines for Carcinogenic Risk Assessment or a detailed explanation of the reasons that any recommendations contained in the report of the National Academy of Sciences will not be implemented. The publication of such revised Guidelines shall be a final Agency action for purposes of section 7607 of this title.

**(p) Mickey Leland National Urban Air Toxics Research Center**

**(1) Establishment**

The Administrator shall oversee the establishment of a National Urban Air Toxics Research Center, to be located at a university, a hospital, or other facility capable of undertaking and maintaining similar research capabilities in the areas of epidemiology, oncology, toxicology, pulmonary medicine, pathology, and biostatistics. The center shall be known as the Mickey Leland National Urban Air Toxics Research Center. The geographic site of the National Urban Air Toxics Research Center should be further directed to Harris County, Texas, in order to take full advantage of the well developed scientific community presence on-site at the Texas Medical Center as well as the extensive data previously compiled for the comprehensive monitoring system currently in place.

**(2) Board of Directors**

The National Urban Air Toxics Research Center shall be governed by a Board of Directors to be comprised of 9 members, the appointment of which shall be allocated pro rata among the Speaker of the House, the Majority Leader of the Senate and the President. The members of the Board of Directors shall be selected based on their respective academic and professional backgrounds and expertise in matters relating to public health, environmental pollution and industrial hygiene. The duties of the Board of Directors shall be to determine policy and research guidelines, submit views from center sponsors and the public and issue periodic reports of center findings and activities.

**(3) Scientific Advisory Panel**

The Board of Directors shall be advised by a Scientific Advisory Panel, the 13 members of which shall be appointed by the Board, and to include eminent members of the scientific and medical communities. The Panel membership may include scientists with relevant experience from the National Institute of Environmental Health Sciences, the Center for Disease Control, the Environmental Protection Agency, the National Cancer Institute, and others, and the Panel shall conduct peer review and evaluate research results. The Panel shall assist the Board in developing the research agenda, reviewing proposals and applications, and advise on the awarding of research grants.

**(4) Funding**

The center shall be established and funded with both Federal and private source funds.

**(q) Savings provision**

**(1) Standards previously promulgated**

Any standard under this section in effect before the date of enactment of the Clean Air Act Amendments of 1990 [November 15, 1990] shall remain in force and effect after such date unless modified as provided in this section before the date of enactment of such Amendments or under such Amendments. Except as provided in paragraph (4), any standard under this section which has been promulgated, but has not taken effect, before such date shall not be affected by such Amendments unless modified as provided in this section before such date or under such Amendments. Each such standard shall be reviewed and, if appropriate, revised, to comply with the requirements of subsection (d) of this section within 10 years after the date

of enactment of the Clean Air Act Amendments of 1990. If a timely petition for review of any such standard under section 7607 of this title is pending on such date of enactment, the standard shall be upheld if it complies with this section as in effect before that date. If any such standard is remanded to the Administrator, the Administrator may in the Administrator's discretion apply either the requirements of this section, or those of this section as in effect before the date of enactment of the Clean Air Act Amendments of 1990.

## **(2) Special rule**

Notwithstanding paragraph (1), no standard shall be established under this section, as amended by the Clean Air Act Amendments of 1990, for radionuclide emissions from (A) elemental phosphorous plants, (B) grate calcination elemental phosphorous plants, (C) phosphogypsum stacks, or (D) any subcategory of the foregoing. This section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990 [November 15, 1990], shall remain in effect for radionuclide emissions from such plants and stacks.

## **(3) Other categories**

Notwithstanding paragraph (1), this section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990 [November 15, 1990], shall remain in effect for radionuclide emissions from non-Department of Energy Federal facilities that are not licensed by the Nuclear Regulatory Commission, coal-fired utility and industrial boilers, underground uranium mines, surface uranium mines, and disposal of uranium mill tailings piles, unless the Administrator, in the Administrator's discretion, applies the requirements of this section as modified by the Clean Air Act Amendments of 1990 to such sources of radionuclides.

## **(4) Medical facilities**

Notwithstanding paragraph (1), no standard promulgated under this section prior to November 15, 1990, with respect to medical research or treatment facilities shall take effect for two years following November 15, 1990, unless the Administrator makes a determination pursuant to a rulemaking under subsection (d)(9) of this section. If the Administrator determines that the regulatory program established by the Nuclear Regulatory Commission for such facilities does not provide an ample margin of safety to protect public health, the requirements of this section shall fully apply to such facilities. If the Administrator determines that such regulatory program does provide an ample margin of safety to protect the public health, the Administrator is not required to promulgate a standard under this section for such facilities, as provided in subsection (d)(9) of this section.

## **(r) Prevention of accidental releases**

### **(1) Purpose and general duty**

It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty in the same manner and to the same extent as section 654 of Title 29 to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. For purposes of this paragraph, the provisions of section 7604 of this title shall not be available to any person or otherwise be construed to be applicable to this paragraph. Nothing in this section shall be interpreted, construed, implied or applied to create any liability or basis for suit for compensation for bodily injury or any other injury or property damages to any person which may result from accidental releases of such substances.

### **(2) Definitions**

(A) The term “accidental release” means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(B) The term “regulated substance” means a substance listed under paragraph (3).

(C) The term “stationary source” means any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

(D) The term “retail facility” means a stationary source at which more than one-half of the income is obtained from direct sales to end users or at which more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program.

### (3) List of substances

The Administrator shall promulgate not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. For purposes of promulgating such list, the Administrator shall use, but is not limited to, the list of extremely hazardous substances published under the Emergency Planning and Community Right-to-Know Act of 1986 [42 U.S.C.A. § 11001 et seq.], with such modifications as the Administrator deems appropriate. The initial list shall include chlorine, anhydrous ammonia, methyl chloride, ethylene oxide, vinyl chloride, methyl isocyanate, hydrogen cyanide, ammonia, hydrogen sulfide, toluene diisocyanate, phosgene, bromine, anhydrous hydrogen chloride, hydrogen fluoride, anhydrous sulfur dioxide, and sulfur trioxide. The initial list shall include at least 100 substances which pose the greatest risk of causing death, injury, or serious adverse effects to human health or the environment from accidental releases. Regulations establishing the list shall include an explanation of the basis for establishing the list. The list may be revised from time to time by the Administrator on the Administrator's own motion or by petition and shall be reviewed at least every 5 years. No air pollutant for which a national primary ambient air quality standard has been established shall be included on any such list. No substance, practice, process, or activity regulated under subchapter VI of this chapter shall be subject to regulations under this subsection. The Administrator shall establish procedures for the addition and deletion of substances from the list established under this paragraph consistent with those applicable to the list in subsection (b) of this section.

### (4) Factors to be considered

In listing substances under paragraph (3), the Administrator--

(A) shall consider--

(i) the severity of any acute adverse health effects associated with accidental releases of the substance;

(ii) the likelihood of accidental releases of the substance; and

(iii) the potential magnitude of human exposure to accidental releases of the substance; and

(B) shall not list a flammable substance when used as a fuel or held for sale as a fuel at a retail facility under this subsection solely because of the explosive or flammable properties of the substance, unless a fire or explosion caused by the substance will result in acute adverse health effects from human exposure to the substance, including the unburned fuel or its combustion byproducts, other than those caused by the heat of the fire or impact of the explosion.

**(5) Threshold quantity**

At the time any substance is listed pursuant to paragraph (3), the Administrator shall establish by rule, a threshold quantity for the substance, taking into account the toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of the substance and the amount of the substance which, as a result of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health for which the substance was listed. The Administrator is authorized to establish a greater threshold quantity for, or to exempt entirely, any substance that is a nutrient used in agriculture when held by a farmer.

**(6) Chemical Safety Board**

(A) There is hereby established an independent safety board to be known as the Chemical Safety and Hazard Investigation Board.

(B) The Board shall consist of 5 members, including a Chairperson, who shall be appointed by the President, by and with the advice and consent of the Senate. Members of the Board shall be appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in the fields of accident reconstruction, safety engineering, human factors, toxicology, or air pollution regulation. The terms of office of members of the Board shall be 5 years. Any member of the Board, including the Chairperson, may be removed for inefficiency, neglect of duty, or malfeasance in office. The Chairperson shall be the Chief Executive Officer of the Board and shall exercise the executive and administrative functions of the Board.

(C) The Board shall--

(i) investigate (or cause to be investigated), determine and report to the public in writing the facts, conditions, and circumstances and the cause or probable cause of any accidental release resulting in a fatality, serious injury or substantial property damages;

(ii) issue periodic reports to the Congress, Federal, State and local agencies, including the Environmental Protection Agency and the Occupational Safety and Health Administration, concerned with the safety of chemical production, processing, handling and storage, and other interested persons recommending measures to reduce the likelihood or the consequences of accidental releases and proposing corrective steps to make chemical production, processing, handling and storage as safe and free from risk of injury as is possible and may include in such reports proposed rules or orders which should be issued by the Administrator under the authority of this section or the Secretary of Labor under the Occupational Safety and Health Act [29 U.S.C.A. § 651 et seq.] to prevent or minimize the consequences of any release of substances that may cause death, injury or other serious adverse effects on human health or substantial property damage as the result of an accidental release; and

(iii) establish by regulation requirements binding on persons for reporting accidental releases into the ambient air subject to the Board's investigatory jurisdiction. Reporting releases to the National Response Center, in lieu of the Board directly,



shall satisfy such regulations. The National Response Center shall promptly notify the Board of any releases which are within the Board's jurisdiction.

(D) The Board may utilize the expertise and experience of other agencies.

(E) The Board shall coordinate its activities with investigations and studies conducted by other agencies of the United States having a responsibility to protect public health and safety. The Board shall enter into a memorandum of understanding with the National Transportation Safety Board to assure coordination of functions and to limit duplication of activities which shall designate the National Transportation Safety Board as the lead agency for the investigation of releases which are transportation related. The Board shall not be authorized to investigate marine oil spills, which the National Transportation Safety Board is authorized to investigate. The Board shall enter into a memorandum of understanding with the Occupational Safety and Health Administration so as to limit duplication of activities. In no event shall the Board forego an investigation where an accidental release causes a fatality or serious injury among the general public, or had the potential to cause substantial property damage or a number of deaths or injuries among the general public.

(F) The Board is authorized to conduct research and studies with respect to the potential for accidental releases, whether or not an accidental release has occurred, where there is evidence which indicates the presence of a potential hazard or hazards. To the extent practicable, the Board shall conduct such studies in cooperation with other Federal agencies having emergency response authorities, State and local governmental agencies and associations and organizations from the industrial, commercial, and nonprofit sectors.

(G) No part of the conclusions, findings, or recommendations of the Board relating to any accidental release or the investigation thereof shall be admitted as evidence or used in any action or suit for damages arising out of any matter mentioned in such report.

(H) Not later than 18 months after November 15, 1990, the Board shall publish a report accompanied by recommendations to the Administrator on the use of hazard assessments in preventing the occurrence and minimizing the consequences of accidental releases of extremely hazardous substances. The recommendations shall include a list of extremely hazardous substances which are not regulated substances (including threshold quantities for such substances) and categories of stationary sources for which hazard assessments would be an appropriate measure to aid in the prevention of accidental releases and to minimize the consequences of those releases that do occur. The recommendations shall also include a description of the information and analysis which would be appropriate to include in any hazard assessment. The Board shall also make recommendations with respect to the role of risk management plans as required by paragraph (8)(B) <sup>4</sup> in preventing accidental releases. The Board may from time to time review and revise its recommendations under this subparagraph.

(I) Whenever the Board submits a recommendation with respect to accidental releases to the Administrator, the Administrator shall respond to such recommendation formally and in writing not later than 180 days after receipt thereof. The response to the Board's recommendation by the Administrator shall indicate whether the Administrator will--

(i) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation;

(ii) decline to initiate a rulemaking or issue orders as recommended.



Any determination by the Administrator not to implement a recommendation of the Board or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Administrator setting forth the reasons for such determination.

(J) The Board may make recommendations with respect to accidental releases to the Secretary of Labor. Whenever the Board submits such recommendation, the Secretary shall respond to such recommendation formally and in writing not later than 180 days after receipt thereof. The response to the Board's recommendation by the Administrator shall indicate whether the Secretary will--

(i) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation;

(ii) decline to initiate a rulemaking or issue orders as recommended.

Any determination by the Secretary not to implement a recommendation or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Secretary setting forth the reasons for such determination.

(K) Within 2 years after November 15, 1990, the Board shall issue a report to the Administrator of the Environmental Protection Agency and to the Administrator of the Occupational Safety and Health Administration recommending the adoption of regulations for the preparation of risk management plans and general requirements for the prevention of accidental releases of regulated substances into the ambient air (including recommendations for listing substances under paragraph (3)) and for the mitigation of the potential adverse effect on human health or the environment as a result of accidental releases which should be applicable to any stationary source handling any regulated substance in more than threshold amounts. The Board may include proposed rules or orders which should be issued by the Administrator under authority of this subsection or by the Secretary of Labor under the Occupational Safety and Health Act [29 U.S.C.A. § 651 et seq.]. Any such recommendations shall be specific and shall identify the regulated substance or class of regulated substances (or other substances) to which the recommendations apply. The Administrator shall consider such recommendations before promulgating regulations required by paragraph (7)(B).

(L) The Board, or upon authority of the Board, any member thereof, any administrative law judge employed by or assigned to the Board, or any officer or employee duly designated by the Board, may for the purpose of carrying out duties authorized by subparagraph (C)--

(i) hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise attendance and testimony of such witnesses and the production of evidence and may require by order that any person engaged in the production, processing, handling, or storage of extremely hazardous substances submit written reports and responses to requests and questions within such time and in such form as the Board may require; and

(ii) upon presenting appropriate credentials and a written notice of inspection authority, enter any property where an accidental release causing a fatality, serious injury or substantial property damage has occurred and do all things therein necessary for a proper investigation pursuant to subparagraph (C) and inspect at reasonable times records, files, papers, processes, controls, and facilities and take such samples as are relevant to such investigation.

Whenever the Administrator or the Board conducts an inspection of a facility pursuant to this subsection, employees and their representatives shall have the same rights to participate in such inspections as provided in the Occupational Safety and Health Act [29 U.S.C.A. § 651 et seq.].

(M) In addition to that described in subparagraph (L), the Board may use any information gathering authority of the Administrator under this chapter, including the subpoena power provided in section 7607(a)(1) of this title.

(N) The Board is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions and duties. The Board is authorized without regard to section 6101 of Title 41 to enter into contracts, leases, cooperative agreements or other transactions as may be necessary in the conduct of the duties and functions of the Board with any other agency, institution, or person.

(O) After the effective date of any reporting requirement promulgated pursuant to subparagraph (C)(iii) it shall be unlawful for any person to fail to report any release of any extremely hazardous substance as required by such subparagraph. The Administrator is authorized to enforce any regulation or requirements established by the Board pursuant to subparagraph (C)(iii) using the authorities of sections 7413 and 7414 of this title. Any request for information from the owner or operator of a stationary source made by the Board or by the Administrator under this section shall be treated, for purposes of sections 7413, 7414, 7416, 7420, 7603, 7604 and 7607 of this title and any other enforcement provisions of this chapter, as a request made by the Administrator under section 7414 of this title and may be enforced by the Chairperson of the Board or by the Administrator as provided in such section.

(P) The Administrator shall provide to the Board such support and facilities as may be necessary for operation of the Board.

(Q) Consistent with subsection (G)<sup>5</sup> and section 7414(c) of this title any records, reports or information obtained by the Board shall be available to the Administrator, the Secretary of Labor, the Congress and the public, except that upon a showing satisfactory to the Board by any person that records, reports, or information, or particular part thereof (other than release or emissions data) to which the Board has access, if made public, is likely to cause substantial harm to the person's competitive position, the Board shall consider such record, report, or information or particular portion thereof confidential in accordance with section 1905 of Title 18, except that such record, report, or information may be disclosed to other officers, employees, and authorized representatives of the United States concerned with carrying out this chapter or when relevant under any proceeding under this chapter. This subparagraph does not constitute authority to withhold records, reports, or information from the Congress.

(R) Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget request, or other budget information, legislative recommendation, prepared testimony for congressional hearings, recommendation or study to the President, the Secretary of Labor, the Administrator, or the Director of the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No report of the Board shall be subject to review by the Administrator or any Federal agency or to judicial review in any court. No officer or agency of the United States shall have authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony, comments, recommendations or reports to any officer or agency of the United States for approval or review prior to the submission of such recommendations, testimony, comments or reports to the Congress. In the performance of their functions as established by this chapter, the members, officers and employees of the Board shall not be responsible to or subject to supervision or direction, in carrying out any duties under this subsection, of any officer or employee or agent of the Environmental Protection Agency, the Department of Labor or any other agency of the United States except that the President may remove any member,

officer or employee of the Board for inefficiency, neglect of duty or malfeasance in office. Nothing in this section shall affect the application of Title 5 to officers or employees of the Board.

(S) The Board shall submit an annual report to the President and to the Congress which shall include, but not be limited to, information on accidental releases which have been investigated by or reported to the Board during the previous year, recommendations for legislative or administrative action which the Board has made, the actions which have been taken by the Administrator or the Secretary of Labor or the heads of other agencies to implement such recommendations, an identification of priorities for study and investigation in the succeeding year, progress in the development of risk-reduction technologies and the response to and implementation of significant research findings on chemical safety in the public and private sector.

## **(7) Accident prevention**

(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements. Regulations promulgated under this paragraph may make distinctions between various types, classes, and kinds of facilities, devices and systems taking into consideration factors including, but not limited to, the size, location, process, process controls, quantity of substances handled, potency of substances, and response capabilities present at any stationary source. Regulations promulgated pursuant to this subparagraph shall have an effective date, as determined by the Administrator, assuring compliance as expeditiously as practicable.

(B)(i) Within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases. The Administrator shall utilize the expertise of the Secretaries of Transportation and Labor in promulgating such regulations. As appropriate, such regulations shall cover the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control such releases, including training of persons in the use and maintenance of such equipment and in the conduct of periodic inspections. The regulations shall include procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment. The regulations shall cover storage, as well as operations. The regulations shall, as appropriate, recognize differences in size, operations, processes, class and categories of sources and the voluntary actions of such sources to prevent such releases and respond to such releases. The regulations shall be applicable to a stationary source 3 years after the date of promulgation, or 3 years after the date on which a regulated substance present at the source in more than threshold amounts is first listed under paragraph (3), whichever is later.

(ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection and shall also include each of the following:

(I) a hazard assessment to assess the potential effects of an accidental release of any regulated substance. This assessment shall include an estimate of potential release quantities and a determination of downwind effects, including potential exposures to affected populations. Such assessment shall include a previous release history of the past 5 years, including the size, concentration, and duration of releases, and shall include an evaluation of worst case accidental releases;

(II) a program for preventing accidental releases of regulated substances, including safety precautions and maintenance, monitoring and employee training measures to be used at the source; and

(III) a response program providing for specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment, including procedures for informing the public and local agencies responsible for responding to accidental releases, emergency health care, and employee training measures.

At the time regulations are promulgated under this subparagraph, the Administrator shall promulgate guidelines to assist stationary sources in the preparation of risk management plans. The guidelines shall, to the extent practicable, include model risk management plans.

(iii) The owner or operator of each stationary source covered by clause (ii) shall register a risk management plan prepared under this subparagraph with the Administrator before the effective date of regulations under clause (i) in such form and manner as the Administrator shall, by rule, require. Plans prepared pursuant to this subparagraph shall also be submitted to the Chemical Safety and Hazard Investigation Board, to the State in which the stationary source is located, and to any local agency or entity having responsibility for planning for or responding to accidental releases which may occur at such source, and shall be available to the public under section 7414(c) of this title. The Administrator shall establish, by rule, an auditing system to regularly review and, if necessary, require revision in risk management plans to assure that the plans comply with this subparagraph. Each such plan shall be updated periodically as required by the Administrator, by rule.

(C) Any regulations promulgated pursuant to this subsection shall to the maximum extent practicable, consistent with this subsection, be consistent with the recommendations and standards established by the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI) or the American Society of Testing Materials (ASTM). The Administrator shall take into consideration the concerns of small business in promulgating regulations under this subsection.

(D) In carrying out the authority of this paragraph, the Administrator shall consult with the Secretary of Labor and the Secretary of Transportation and shall coordinate any requirements under this paragraph with any requirements established for comparable purposes by the Occupational Safety and Health Administration or the Department of Transportation. Nothing in this subsection shall be interpreted, construed or applied to impose requirements affecting, or to grant the Administrator, the Chemical Safety and Hazard Investigation Board, or any other agency any authority to regulate (including requirements for hazard assessment), the accidental release of radionuclides arising from the construction and operation of facilities licensed by the Nuclear Regulatory Commission.

(E) After the effective date of any regulation or requirement imposed under this subsection, it shall be unlawful for any person to operate any stationary source subject to such regulation or requirement in violation of such regulation or requirement. Each regulation or requirement under this subsection shall for purposes of sections 7413, 7414, 7416, 7420, 7604, and 7607 of this title and other enforcement provisions of this chapter, be treated as a standard in effect under subsection (d) of this section.

(F) Notwithstanding the provisions of subchapter V of this chapter or this section, no stationary source shall be required to apply for, or operate pursuant to, a permit issued under such subchapter solely because such source is subject to regulations or requirements under this subsection.

(G) In exercising any authority under this subsection, the Administrator shall not, for purposes of section 653(b)(1) of Title 29, be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

**(H) Public access to off-site consequence analysis information**

**(i) Definitions**

In this subparagraph:

**(I) Covered person**

The term “covered person” means--

(aa) an officer or employee of the United States;

(bb) an officer or employee of an agent or contractor of the Federal Government;

(cc) an officer or employee of a State or local government;

(dd) an officer or employee of an agent or contractor of a State or local government;

(ee) an individual affiliated with an entity that has been given, by a State or local government, responsibility for preventing, planning for, or responding to accidental releases;

(ff) an officer or employee or an agent or contractor of an entity described in item (ee); and

(gg) a qualified researcher under clause (vii).

**(II) Official use**

The term “official use” means an action of a Federal, State, or local government agency or an entity referred to in subclause (I)(ee) intended to carry out a function relevant to preventing, planning for, or responding to accidental releases.

**(III) Off-site consequence analysis information**

The term “off-site consequence analysis information” means those portions of a risk management plan, excluding the executive summary of the plan, consisting of an evaluation of 1 or more worst-case release scenarios or alternative release scenarios, and any electronic data base created by the Administrator from those portions.

**(IV) Risk management plan**

The term “risk management plan” means a risk management plan submitted to the Administrator by an owner or operator of a stationary source under subparagraph (B)(iii).

**(ii) Regulations**

Not later than 1 year after August 5, 1999, the President shall--

**(I) assess--**

**(aa)** the increased risk of terrorist and other criminal activity associated with the posting of off-site consequence analysis information on the Internet; and

**(bb)** the incentives created by public disclosure of off-site consequence analysis information for reduction in the risk of accidental releases; and

**(II)** based on the assessment under subclause (I), promulgate regulations governing the distribution of off-site consequence analysis information in a manner that, in the opinion of the President, minimizes the likelihood of accidental releases and the risk described in subclause (I)(aa) and the likelihood of harm to public health and welfare, and--

**(aa)** allows access by any member of the public to paper copies of off-site consequence analysis information for a limited number of stationary sources located anywhere in the United States, without any geographical restriction;

**(bb)** allows other public access to off-site consequence analysis information as appropriate;

**(cc)** allows access for official use by a covered person described in any of items (cc) through (ff) of clause (i)(I) (referred to in this subclause as a “State or local covered person”) to off-site consequence analysis information relating to stationary sources located in the person's State;

**(dd)** allows a State or local covered person to provide, for official use, off-site consequence analysis information relating to stationary sources located in the person's State to a State or local covered person in a contiguous State; and

**(ee)** allows a State or local covered person to obtain for official use, by request to the Administrator, off-site consequence analysis information that is not available to the person under item (cc).

**(iii) Availability under freedom of information act****(I) First year**

Off-site consequence analysis information, and any ranking of stationary sources derived from the information, shall not be made available under section 552 of Title 5, during the 1-year period beginning on August 5, 1999.

**(II) After first year**

If the regulations under clause (ii) are promulgated on or before the end of the period described in subclause (I), off-site consequence analysis information covered by the regulations, and any ranking of stationary sources derived from the information, shall not be made available under section 552 of Title 5, after the end of that period.

**(III) Applicability**

Subclauses (I) and (II) apply to off-site consequence analysis information submitted to the Administrator before, on, or after August 5, 1999.

**(iv) Availability of information during transition period**

The Administrator shall make off-site consequence analysis information available to covered persons for official use in a manner that meets the requirements of items (cc)through (ee) of clause (ii)(II), and to the public in a form that does not make available any information concerning the identity or location of stationary sources, during the period--

**(I)** beginning on August 5, 1999; and

**(II)** ending on the earlier of the date of promulgation of the regulations under clause (ii) or the date that is 1 year after August 5, 1999.

**(v) Prohibition on unauthorized disclosure of information by covered persons**

**(I) In general**

Beginning on August 5, 1999, a covered person shall not disclose to the public off-site consequence analysis information in any form, or any statewide or national ranking of identified stationary sources derived from such information, except as authorized by this subparagraph (including the regulations promulgated under clause (ii)). After the end of the 1-year period beginning on August 5, 1999, if regulations have not been promulgated under clause (ii), the preceding sentence shall not apply.

**(II) Criminal penalties**

Notwithstanding section 7413 of this title, a covered person that willfully violates a restriction or prohibition established by this subparagraph (including the regulations promulgated under clause (ii)) shall, upon conviction, be fined for an infraction under section 3571 of Title 18 (but shall not be subject to imprisonment) for each unauthorized disclosure of off-site consequence analysis information, except that subsection (d) of such section 3571 shall not apply to a case in which the offense results in pecuniary loss unless the defendant knew that such loss would occur.



The disclosure of off-site consequence analysis information for each specific stationary source shall be considered a separate offense. The total of all penalties that may be imposed on a single person or organization under this item shall not exceed \$1,000,000 for violations committed during any 1 calendar year.

### **(III) Applicability**

If the owner or operator of a stationary source makes off-site consequence analysis information relating to that stationary source available to the public without restriction--

(aa) subclauses (I) and (II) shall not apply with respect to the information; and

(bb) the owner or operator shall notify the Administrator of the public availability of the information.

### **(IV) List**

The Administrator shall maintain and make publicly available a list of all stationary sources that have provided notification under subclause (III)(bb).

### **(vi) Notice**

The Administrator shall provide notice of the definition of official use as provided in clause (i)(III) and examples of actions that would and would not meet that definition, and notice of the restrictions on further dissemination and the penalties established by this chapter to each covered person who receives off-site consequence analysis information under clause (iv) and each covered person who receives off-site consequence analysis information for an official use under the regulations promulgated under clause (ii).

### **(vii) Qualified researchers**

#### **(I) In general**

Not later than 180 days after August 5, 1999, the Administrator, in consultation with the Attorney General, shall develop and implement a system for providing off-site consequence analysis information, including facility identification, to any qualified researcher, including a qualified researcher from industry or any public interest group.

#### **(II) Limitation on dissemination**

The system shall not allow the researcher to disseminate, or make available on the Internet, the off-site consequence analysis information, or any portion of the off-site consequence analysis information, received under this clause.

### **(viii) Read-only information technology system**

In consultation with the Attorney General and the heads of other appropriate Federal agencies, the Administrator shall establish an information technology system that provides for the availability to the public of off-site consequence analysis



information by means of a central data base under the control of the Federal Government that contains information that users may read, but that provides no means by which an electronic or mechanical copy of the information may be made.

**(ix) Voluntary industry accident prevention standards**

The Environmental Protection Agency, the Department of Justice, and other appropriate agencies may provide technical assistance to owners and operators of stationary sources and participate in the development of voluntary industry standards that will help achieve the objectives set forth in paragraph (1).

**(x) Effect on State or local law**

**(I) In general**

Subject to subclause (II), this subparagraph (including the regulations promulgated under this subparagraph) shall supersede any provision of State or local law that is inconsistent with this subparagraph (including the regulations).

**(II) Availability of information under State law**

Nothing in this subparagraph precludes a State from making available data on the off-site consequences of chemical releases collected in accordance with State law.

**(xi) Report**

**(I) In general**

Not later than 3 years after August 5, 1999, the Attorney General, in consultation with appropriate State, local, and Federal Government agencies, affected industry, and the public, shall submit to Congress a report that describes the extent to which regulations promulgated under this paragraph have resulted in actions, including the design and maintenance of safe facilities, that are effective in detecting, preventing, and minimizing the consequences of releases of regulated substances that may be caused by criminal activity. As part of this report, the Attorney General, using available data to the extent possible, and a sampling of covered stationary sources selected at the discretion of the Attorney General, and in consultation with appropriate State, local, and Federal governmental agencies, affected industry, and the public, shall review the vulnerability of covered stationary sources to criminal and terrorist activity, current industry practices regarding site security, and security of transportation of regulated substances. The Attorney General shall submit this report, containing the results of the review, together with recommendations, if any, for reducing vulnerability of covered stationary sources to criminal and terrorist activity, to the Committee on Commerce of the United States House of Representatives and the Committee on Environment and Public Works of the United States Senate and other relevant committees of Congress.

**(II) Interim report**

Not later than 12 months after August 5, 1999, the Attorney General shall submit to the Committee on Commerce of the United States House of Representatives and the Committee on Environment and Public Works of the United States Senate, and other relevant committees of Congress, an interim report that includes, at a minimum--

(aa) the preliminary findings under subclause (I);

(bb) the methods used to develop the findings; and

(cc) an explanation of the activities expected to occur that could cause the findings of the report under subclause (I) to be different than the preliminary findings.

### **(III) Availability of information**

Information that is developed by the Attorney General or requested by the Attorney General and received from a covered stationary source for the purpose of conducting the review under subclauses (I) and (II) shall be exempt from disclosure under section 552 of Title 5 if such information would pose a threat to national security.

#### **(xii) Scope**

This subparagraph--

(I) applies only to covered persons; and

(II) does not restrict the dissemination of off-site consequence analysis information by any covered person in any manner or form except in the form of a risk management plan or an electronic data base created by the Administrator from off-site consequence analysis information.

#### **(xiii) Authorization of appropriations**

There are authorized to be appropriated to the Administrator and the Attorney General such sums as are necessary to carry out this subparagraph (including the regulations promulgated under clause (ii)), to remain available until expended.

### **(8) Research on hazard assessments**

The Administrator may collect and publish information on accident scenarios and consequences covering a range of possible events for substances listed under paragraph (3). The Administrator shall establish a program of long-term research to develop and disseminate information on methods and techniques for hazard assessment which may be useful in improving and validating the procedures employed in the preparation of hazard assessments under this subsection.

### **(9) Order authority**

(A) In addition to any other action taken, when the Administrator determines that there may be an imminent and substantial endangerment to the human health or welfare or the environment because of an actual or threatened accidental release of a regulated substance, the Administrator may secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The Administrator may also, after notice to the State in which the

stationary source is located, take other action under this paragraph including, but not limited to, issuing such orders as may be necessary to protect human health. The Administrator shall take action under section 7603 of this title rather than this paragraph whenever the authority of such section is adequate to protect human health and the environment.

(B) Orders issued pursuant to this paragraph may be enforced in an action brought in the appropriate United States district court as if the order were issued under section 7603 of this title.

(C) Within 180 days after November 15, 1990, the Administrator shall publish guidance for using the order authorities established by this paragraph. Such guidance shall provide for the coordinated use of the authorities of this paragraph with other emergency powers authorized by section 9606 of this title, sections 311(c), 308, 309 and 504(a) of the Federal Water Pollution Control Act [33 U.S.C.A. §§ 1321(c), 1318, 1319, 1364(a)], sections 3007, 3008, 3013, and 7003 of the Solid Waste Disposal Act [42 U.S.C.A. §§ 6927, 6928, 6934, 6973], sections 1445 and 1431 of the Safe Drinking Water Act [42 U.S.C.A. §§ 300j-4, 300i], sections 5 and 7 of the Toxic Substances Control Act [15 U.S.C.A. §§ 2604, 2606], and sections 7413, 7414, and 7603 of this title.

#### **(10) Presidential review**

The President shall conduct a review of release prevention, mitigation and response authorities of the various Federal agencies and shall clarify and coordinate agency responsibilities to assure the most effective and efficient implementation of such authorities and to identify any deficiencies in authority or resources which may exist. The President may utilize the resources and solicit the recommendations of the Chemical Safety and Hazard Investigation Board in conducting such review. At the conclusion of such review, but not later than 24 months after November 15, 1990, the President shall transmit a message to the Congress on the release prevention, mitigation and response activities of the Federal Government making such recommendations for change in law as the President may deem appropriate. Nothing in this paragraph shall be interpreted, construed or applied to authorize the President to modify or reassign release prevention, mitigation or response authorities otherwise established by law.

#### **(11) State authority**

Nothing in this subsection shall preclude, deny or limit any right of a State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation or standard (including any procedural requirement) that is more stringent than a regulation, requirement, limitation or standard in effect under this subsection or that applies to a substance not subject to this subsection.

#### **(s) Periodic report**

Not later than January 15, 1993 and every 3 years thereafter, the Administrator shall prepare and transmit to the Congress a comprehensive report on the measures taken by the Agency and by the States to implement the provisions of this section. The Administrator shall maintain a database on pollutants and sources subject to the provisions of this section and shall include aggregate information from the database in each annual report. The report shall include, but not be limited to--

(1) a status report on standard-setting under subsections (d) and (f) of this section;

(2) information with respect to compliance with such standards including the costs of compliance experienced by sources in various categories and subcategories;

(3) development and implementation of the national urban air toxics program; and

(4) recommendations of the Chemical Safety and Hazard Investigation Board with respect to the prevention and mitigation of accidental releases.

**CREDIT(S)**

(July 14, 1955, c. 360, Title I, § 112, as added Dec. 31, 1970, Pub.L. 91-604, § 4(a), 84 Stat. 1685; amended Aug. 7, 1977, Pub.L. 95-95, Title I, §§ 109(d)(2), 110, Title IV, § 401(c), 91 Stat. 701, 703, 791; Nov. 9, 1978, Pub.L. 95-623, § 13(b), 92 Stat. 3458; Nov. 15, 1990, Pub.L. 101-549, Title III, § 301, 104 Stat. 2531; Dec. 4, 1991, Pub.L. 102-187, 105 Stat. 1285; Nov. 10, 1998, Pub.L. 105-362, Title IV, § 402(b), 112 Stat. 3283; Aug. 5, 1999, Pub.L. 106-40, §§ 2, 3(a), 113 Stat. 207.)

**MEMORANDA OF PRESIDENT**

**DELEGATION OF AUTHORITY TO REVIEW EMERGENCY RELEASE AUTHORITIES AND  
PREPARE AND TRANSMIT TO THE CONGRESS A MESSAGE CONCERNING SUCH AUTHORITIES**

<Aug. 19, 1993, 58 F.R. 52397>

Memorandum for the Administrator of the Environmental Protection Agency

WHEREAS, the Environmental Protection Agency, the agencies and departments that are members of the National Response Team (authorized under Executive Order No. 12580, 52 Fed.Reg. 2923 (1987)) [set out as a note under section 9615 of this title], and other Federal agencies and departments undertake emergency release prevention, mitigation, and response activities pursuant to various authorities;

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112(r)(10) of the Clean Air Act (the "Act") (section 7412(r)(10) of title 42 of the United States Code) [subsec. (r)(10) of this section] and section 301 of title 3 of the United States Code [section 301 of Title 3, The President], and in order to provide for the delegation of certain functions under the Act [42 U.S.C.A. § 7401 et seq.], I hereby:

(1) Authorize you, in coordination with agencies and departments that are members of the National Response Team and other appropriate agencies and departments, to conduct a review of release prevention, mitigation, and response authorities of Federal agencies in order to assure the most effective and efficient implementation of such authorities and to identify any deficiencies in authority or resources that may exist, to the extent such review is required by section 112(r)(10) of the Act; and

(2) Authorize you, in coordination with agencies and departments that are members of the National Response Team and other appropriate agencies and departments, to prepare and transmit a message to the Congress concerning the release prevention, mitigation, and response activities of the Federal Government with such recommendations for change in law as you deem appropriate, to the extent such message is required by section 112(r)(10) of the Act.

The authority delegated by this memorandum may be further redelegated within the Environmental Protection Agency.

You are hereby authorized and directed to publish this memorandum in the **Federal Register**.

WILLIAM J. CLINTON

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 85. Air Pollution Prevention and Control (Refs & Annos)

Subchapter I. Programs and Activities

Part A. Air Quality and Emissions Limitations (Refs & Annos)

42 U.S.C.A. § 7429

§ 7429. Solid waste combustion

Currentness

(a) New source performance standards

(1) In general

(A) The Administrator shall establish performance standards and other requirements pursuant to section 7411 of this title and this section for each category of solid waste incineration units. Such standards shall include emissions limitations and other requirements applicable to new units and guidelines (under section 7411(d) of this title and this section) and other requirements applicable to existing units.

(B) Standards under section 7411 of this title and this section applicable to solid waste incineration units with capacity greater than 250 tons per day combusting municipal waste shall be promulgated not later than 12 months after November 15, 1990. Nothing in this subparagraph shall alter any schedule for the promulgation of standards applicable to such units under section 7411 of this title pursuant to any settlement and consent decree entered by the Administrator before November 15, 1990: *Provided*, That, such standards are subsequently modified pursuant to the schedule established in this subparagraph to include each of the requirements of this section.

(C) Standards under section 7411 of this title and this section applicable to solid waste incineration units with capacity equal to or less than 250 tons per day combusting municipal waste and units combusting hospital waste, medical waste and infectious waste shall be promulgated not later than 24 months after November 15, 1990.

(D) Standards under section 7411 of this title and this section applicable to solid waste incineration units combusting commercial or industrial waste shall be proposed not later than 36 months after November 15, 1990, and promulgated not later than 48 months after November 15, 1990.

(E) Not later than 18 months after November 15, 1990, the Administrator shall publish a schedule for the promulgation of standards under section 7411 of this title and this section applicable to other categories of solid waste incineration units.

(2) Emissions standard

Standards applicable to solid waste incineration units promulgated under section 7411 of this title and this section shall reflect the maximum degree of reduction in emissions of air pollutants listed under section <sup>1</sup> (a)(4) that the Administrator, taking into

consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing units in each category. The Administrator may distinguish among classes, types (including mass-burn, refuse-derived fuel, modular and other types of units), and sizes of units within a category in establishing such standards. The degree of reduction in emissions that is deemed achievable for new units in a category shall not be less stringent than the emissions control that is achieved in practice by the best controlled similar unit, as determined by the Administrator. Emissions standards for existing units in a category may be less stringent than standards for new units in the same category but shall not be less stringent than the average emissions limitation achieved by the best performing 12 percent of units in the category (excluding units which first met lowest achievable emissions rates 18 months before the date such standards are proposed or 30 months before the date such standards are promulgated, whichever is later).

(3) Control methods and technologies

Standards under section 7411 of this title and this section applicable to solid waste incineration units shall be based on methods and technologies for removal or destruction of pollutants before, during, or after combustion, and shall incorporate for new units siting requirements that minimize, on a site specific basis, to the maximum extent practicable, potential risks to public health or the environment.

(4) Numerical emissions limitations

The performance standards promulgated under section 7411 of this title and this section and applicable to solid waste incineration units shall specify numerical emission limitations for the following substances or mixtures: particulate matter (total and fine), opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. The Administrator may promulgate numerical emissions limitations or provide for the monitoring of postcombustion concentrations of surrogate substances, parameters or periods of residence time in excess of stated temperatures with respect to pollutants other than those listed in this paragraph.

(5) Review and revision

Not later than 5 years following the initial promulgation of any performance standards and other requirements under this section and section 7411 of this title applicable to a category of solid waste incineration units, and at 5 year intervals thereafter, the Administrator shall review, and in accordance with this section and section 7411 of this title, revise such standards and requirements.

(b) Existing units

(1) Guidelines

Performance standards under this section and section 7411 of this title for solid waste incineration units shall include guidelines promulgated pursuant to section 7411(d) of this title and this section applicable to existing units. Such guidelines shall include, as provided in this section, each of the elements required by subsection (a) of this section (emissions limitations, notwithstanding any restriction in section 7411(d) of this title regarding issuance of such limitations), subsection (c) of this section (monitoring), subsection (d) of this section (operator training), subsection (e) of this section (permits), and subsection (h)(4)<sup>2</sup> of this section (residual risk).

(2) State plans

Not later than 1 year after the Administrator promulgates guidelines for a category of solid waste incineration units, each State in which units in the category are operating shall submit to the Administrator a plan to implement and enforce the guidelines with respect to such units. The State plan shall be at least as protective as the guidelines promulgated by the Administrator and shall provide that each unit subject to the guidelines shall be in compliance with all requirements of this section not later than 3 years after the State plan is approved by the Administrator but not later than 5 years after the guidelines were promulgated. The Administrator shall approve or disapprove any State plan within 180 days of the submission, and if a plan is disapproved, the Administrator shall state the reasons for disapproval in writing. Any State may modify and resubmit a plan which has been disapproved by the Administrator.

(3) Federal plan

The Administrator shall develop, implement and enforce a plan for existing solid waste incineration units within any category located in any State which has not submitted an approvable plan under this subsection with respect to units in such category within 2 years after the date on which the Administrator promulgated the relevant guidelines. Such plan shall assure that each unit subject to the plan is in compliance with all provisions of the guidelines not later than 5 years after the date the relevant guidelines are promulgated.

(c) Monitoring

The Administrator shall, as part of each performance standard promulgated pursuant to subsection (a) of this section and section 7411 of this title, promulgate regulations requiring the owner or operator of each solid waste incineration unit--

(1) to monitor emissions from the unit at the point at which such emissions are emitted into the ambient air (or within the stack, combustion chamber or pollution control equipment, as appropriate) and at such other points as necessary to protect public health and the environment;

(2) to monitor such other parameters relating to the operation of the unit and its pollution control technology as the Administrator determines are appropriate; and

(3) to report the results of such monitoring.

Such regulations shall contain provisions regarding the frequency of monitoring, test methods and procedures validated on solid waste incineration units, and the form and frequency of reports containing the results of monitoring and shall require that any monitoring reports or test results indicating an exceedance of any standard under this section shall be reported separately and in a manner that facilitates review for purposes of enforcement actions. Such regulations shall require that copies of the results of such monitoring be maintained on file at the facility concerned and that copies shall be made available for inspection and copying by interested members of the public during business hours.

(d) Operator training

Not later than 24 months after November 15, 1990, the Administrator shall develop and promote a model State program for the training and certification of solid waste incineration unit operators and high-capacity fossil fuel fired plant operators. The Administrator may authorize any State to implement a model program for the training of solid waste incineration unit operators and high-capacity fossil fuel fired plant operators, if the State has adopted a program which is at least as effective as the model



program developed by the Administrator. Beginning on the date 36 months after the date on which performance standards and guidelines are promulgated under subsection (a) of this section and section 7411 of this title for any category of solid waste incineration units it shall be unlawful to operate any unit in the category unless each person with control over processes affecting emissions from such unit has satisfactorily completed a training program meeting the requirements established by the Administrator under this subsection.

(e) Permits

Beginning (1) 36 months after the promulgation of a performance standard under subsection (a) of this section and section 7411 of this title applicable to a category of solid waste incineration units, or (2) the effective date of a permit program under subchapter V of this chapter in the State in which the unit is located, whichever is later, each unit in the category shall operate pursuant to a permit issued under this subsection and subchapter V of this chapter. Permits required by this subsection may be renewed according to the provisions of subchapter V of this chapter. Notwithstanding any other provision of this chapter, each permit for a solid waste incineration unit combusting municipal waste issued under this chapter shall be issued for a period of up to 12 years and shall be reviewed every 5 years after date of issuance or reissuance. Each permit shall continue in effect after the date of issuance until the date of termination, unless the Administrator or State determines that the unit is not in compliance with all standards and conditions contained in the permit. Such determination shall be made at regular intervals during the term of the permit, such intervals not to exceed 5 years, and only after public comment and public hearing. No permit for a solid waste incineration unit may be issued under this chapter by an agency, instrumentality or person that is also responsible, in whole or part, for the design and construction or operation of the unit. Notwithstanding any other provision of this subsection, the Administrator or the State shall require the owner or operator of any unit to comply with emissions limitations or implement any other measures, if the Administrator or the State determines that emissions in the absence of such limitations or measures may reasonably be anticipated to endanger public health or the environment. The Administrator's determination under the preceding sentence is a discretionary decision.

(f) Effective date and enforcement

(1) New units

Performance standards and other requirements promulgated pursuant to this section and section 7411 of this title and applicable to new solid waste incineration units shall be effective as of the date 6 months after the date of promulgation.

(2) Existing units

Performance standards and other requirements promulgated pursuant to this section and section 7411 of this title and applicable to existing solid waste incineration units shall be effective as expeditiously as practicable after approval of a State plan under subsection (b)(2) of this section (or promulgation of a plan by the Administrator under subsection (b)(3) of this section) but in no event later than 3 years after the State plan is approved or 5 years after the date such standards or requirements are promulgated, whichever is earlier.

(3) Prohibition

After the effective date of any performance standard, emission limitation or other requirement promulgated pursuant to this section and section 7411 of this title, it shall be unlawful for any owner or operator of any solid waste incineration unit to which such standard, limitation or requirement applies to operate such unit in violation of such limitation, standard or requirement or for any other person to violate an applicable requirement of this section.



(4) Coordination with other authorities

For purposes of sections 7411(e), 7413, 7414, 7416, 7420, 7603, 7604, 7607 of this title and other provisions for the enforcement of this chapter, each performance standard, emission limitation or other requirement established pursuant to this section by the Administrator or a State or local government, shall be treated in the same manner as a standard of performance under section 7411 of this title which is an emission limitation.

(g) Definitions

For purposes of section 306 of the Clean Air Act Amendments of 1990 and this section only--

(1) Solid waste incineration unit

The term “solid waste incineration unit” means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). Such term does not include incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act [42 U.S.C.A. § 6925]. The term “solid waste incineration unit” does not include (A) materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals, (B) qualifying small power production facilities, as defined in section 796(17)(C) of Title 16, or qualifying cogeneration facilities, as defined in section 796(18)(B) of Title 16, which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes, or (C) air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the Administrator by rule.

(2) New solid waste incineration unit

The term “new solid waste incineration unit” means a solid waste incineration unit the construction of which is commenced after the Administrator proposes requirements under this section establishing emissions standards or other requirements which would be applicable to such unit or a modified solid waste incineration unit.

(3) Modified solid waste incineration unit

The term “modified solid waste incineration unit” means a solid waste incineration unit at which modifications have occurred after the effective date of a standard under subsection (a) of this section if (A) the cumulative cost of the modifications, over the life of the unit, exceed 50 per centum of the original cost of construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs, or (B) the modification is a physical change in or change in the method of operation of the unit which increases the amount of any air pollutant emitted by the unit for which standards have been established under this section or section 7411 of this title.

(4) Existing solid waste incineration unit

The term “existing solid waste incineration unit” means a solid waste unit which is not a new or modified solid waste incineration unit.

(5) Municipal waste

The term “municipal waste” means refuse (and refuse-derived fuel) collected from the general public and from residential, commercial, institutional, and industrial sources consisting of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials and non-combustible materials such as metal, glass and rock, provided that: (A) the term does not include industrial process wastes or medical wastes that are segregated from such other wastes; and (B) an incineration unit shall not be considered to be combusting municipal waste for purposes of section 7411 of this title or this section if it combusts a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal waste.

(6) Other terms

The terms “solid waste” and “medical waste” shall have the meanings established by the Administrator pursuant to the Solid Waste Disposal Act [42 U.S.C.A. § 6901 et seq.].

(h) Other authority

(1) State authority

Nothing in this section shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation or standard relating to solid waste incineration units that is more stringent than a regulation, requirement, limitation or standard in effect under this section or under any other provision of this chapter.

(2) Other authority under this chapter

Nothing in this section shall diminish the authority of the Administrator or a State to establish any other requirements applicable to solid waste incineration units under any other authority of law, including the authority to establish for any air pollutant a national ambient air quality standard, except that no solid waste incineration unit subject to performance standards under this section and section 7411 of this title shall be subject to standards under section 7412(d) of this title.

(3) Residual risk

The Administrator shall promulgate standards under section 7412(f) of this title for a category of solid waste incineration units, if promulgation of such standards is required under section 7412(f) of this title. For purposes of this<sup>3</sup> preceding sentence only--

(A) the performance standards under subsection (a) of this section and section 7411 of this title applicable to a category of solid waste incineration units shall be deemed standards under section 7412(d)(2) of this title, and

(B) the Administrator shall consider and regulate, if required, the pollutants listed under subsection (a)(4) of this section and no others.

(4) Acid rain

A solid waste incineration unit shall not be a utility unit as defined in subchapter IV-A of this chapter: *Provided*, That, more than 80 per centum of its annual average fuel consumption measured on a Btu basis, during a period or periods to be determined by the Administrator, is from a fuel (including any waste burned as a fuel) other than a fossil fuel.

(5) Requirements of parts C and D

No requirement of an applicable implementation plan under section 7475 of this title (relating to construction of facilities in regions identified pursuant to section 7407(d)(1)(A)(ii) or (iii) of this title) or under section 7502(c)(5) of this title (relating to permits for construction and operation in nonattainment areas) may be used to weaken the standards in effect under this section.

**CREDIT(S)**

(July 14, 1955, c. 360, Title I, § 129, as added Nov. 15, 1990, Pub.L. 101-549, Title III, § 305(a), 104 Stat. 2577.)

Notes of Decisions (9)

Footnotes

1 So in original. Probably should be “subsection”.

2 So in original. Probably should be subsection “(h)(3)”.

3 So in original. Probably should be “the”.

42 U.S.C.A. § 7429, 42 USCA § 7429

Current through P.L. 113-92 (excluding P.L. 113-76, 113-79, and 113-89) approved 3-25-14

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End of Document

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## United States Code Annotated

## Title 42. The Public Health and Welfare

## Chapter 85. Air Pollution Prevention and Control (Refs &amp; Annos)

## Subchapter V. Permits (Refs &amp; Annos)

## 42 U.S.C.A. § 7661a

## § 7661a. Permit programs

## Currentness

## (a) Violations

After the effective date of any permit program approved or promulgated under this subchapter, it shall be unlawful for any person to violate any requirement of a permit issued under this subchapter, or to operate an affected source (as provided in subchapter IV-A of this chapter), a major source, any other source (including an area source) subject to standards or regulations under section 7411 or 7412 of this title, any other source required to have a permit under parts <sup>1</sup> C or D of subchapter I of this chapter, or any other stationary source in a category designated (in whole or in part) by regulations promulgated by the Administrator (after notice and public comment) which shall include a finding setting forth the basis for such designation, except in compliance with a permit issued by a permitting authority under this subchapter. (Nothing in this subsection shall be construed to alter the applicable requirements of this chapter that a permit be obtained before construction or modification.) The Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this chapter, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such requirements.

## (b) Regulations

The Administrator shall promulgate within 12 months after November 15, 1990, regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These elements shall include each of the following:

(1) Requirements for permit applications, including a standard application form and criteria for determining in a timely fashion the completeness of applications.

(2) Monitoring and reporting requirements.

(3)(A) A requirement under State or local law or interstate compact that the owner or operator of all sources subject to the requirement to obtain a permit under this subchapter pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this subchapter, including section 7661f of this title, including the reasonable costs of--

(i) reviewing and acting upon any application for such a permit,

(ii) if the owner or operator receives a permit for such source, whether before or after November 15, 1990, implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

(iii) emissions and ambient monitoring,

(iv) preparing generally applicable regulations, or guidance,

(v) modeling, analyses, and demonstrations, and

(vi) preparing inventories and tracking emissions.

(B) The total amount of fees collected by the permitting authority shall conform to the following requirements:

(i) The Administrator shall not approve a program as meeting the requirements of this paragraph unless the State demonstrates that, except as otherwise provided in subparagraphs (ii) through (v) of this subparagraph, the program will result in the collection, in the aggregate, from all sources subject to subparagraph (A), of an amount not less than \$25 per ton of each regulated pollutant, or such other amount as the Administrator may determine adequately reflects the reasonable costs of the permit program.

(ii) As used in this subparagraph, the term “regulated pollutant” shall mean (I) a volatile organic compound; (II) each pollutant regulated under section 7411 or 7412 of this title; and (III) each pollutant for which a national primary ambient air quality standard has been promulgated (except that carbon monoxide shall be excluded from this reference).

(iii) In determining the amount under clause (i), the permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

(iv) The requirements of clause (i) shall not apply if the permitting authority demonstrates that collecting an amount less than the amount specified under clause (i) will meet the requirements of subparagraph (A).

(v) The fee calculated under clause (i) shall be increased (consistent with the need to cover the reasonable costs authorized by subparagraph (A)) in each year beginning after 1990, by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. For purposes of this clause--

(I) the Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year, and

(II) the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

(C)(i) If the Administrator determines, under subsection (d) of this section, that the fee provisions of the operating permit program do not meet the requirements of this paragraph, or if the Administrator makes a determination, under subsection (i) of this section, that the permitting authority is not adequately administering or enforcing an approved fee program, the Administrator may, in addition to taking any other action authorized under this subchapter, collect reasonable fees from the sources identified under subparagraph (A). Such fees shall be designed solely to cover the Administrator's costs of administering the provisions of the permit program promulgated by the Administrator.

(ii) Any source that fails to pay fees lawfully imposed by the Administrator under this subparagraph shall pay a penalty of 50 percent of the fee amount, plus interest on the fee amount computed in accordance with section 6621(a)(2) of Title 26 (relating to computation of interest on underpayment of Federal taxes).

(iii) Any fees, penalties, and interest collected under this subparagraph shall be deposited in a special fund in the United States Treasury for licensing and other services, which thereafter shall be available for appropriation, to remain available until expended, subject to appropriation, to carry out the Agency's activities for which the fees were collected. Any fee required to be collected by a State, local, or interstate agency under this subsection shall be utilized solely to cover all reasonable (direct and indirect) costs required to support the permit program as set forth in subparagraph (A).

(4) Requirements for adequate personnel and funding to administer the program.

(5) A requirement that the permitting authority have adequate authority to:

(A) issue permits and assure compliance by all sources required to have a permit under this subchapter with each applicable standard, regulation or requirement under this chapter;

(B) issue permits for a fixed term, not to exceed 5 years;

(C) assure that upon issuance or renewal permits incorporate emission limitations and other requirements in an applicable implementation plan;

(D) terminate, modify, or revoke and reissue permits for cause;

(E) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties in a maximum amount of not less than \$10,000 per day for each violation, and provide appropriate criminal penalties; and

(F) assure that no permit will be issued if the Administrator objects to its issuance in a timely manner under this subchapter.

(6) Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for expeditious review of permit actions, including applications, renewals, or revisions, and including an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.

(7) To ensure against unreasonable delay by the permitting authority, adequate authority and procedures to provide that a failure of such permitting authority to act on a permit application or permit renewal application (in accordance with the time periods specified in section 7661b of this title or, as appropriate, subchapter IV-A of this chapter) shall be treated as a final permit action solely for purposes of obtaining judicial review in State court of an action brought by any person referred to in paragraph (6) to require that action be taken by the permitting authority on such application without additional delay.

(8) Authority, and reasonable procedures consistent with the need for expeditious action by the permitting authority on permit applications and related matters, to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report under section 7661b(e) of this title, subject to the provisions of section 7414(c) of this title.

(9) A requirement that the permitting authority, in the case of permits with a term of 3 or more years for major sources, shall require revisions to the permit to incorporate applicable standards and regulations promulgated under this chapter after the issuance of such permit. Such revisions shall occur as expeditiously as practicable and consistent with the procedures established under paragraph (6) but not later than 18 months after the promulgation of such standards and regulations. No such revision shall be required if the effective date of the standards or regulations is a date after the expiration of the permit term. Such permit revision shall be treated as a permit renewal if it complies with the requirements of this subchapter regarding renewals.

(10) Provisions to allow changes within a permitted facility (or one operating pursuant to section 7661b(d) of this title) without requiring a permit revision, if the changes are not modifications under any provision of subchapter I of this chapter and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions:<sup>2</sup> *Provided*, That the facility provides the Administrator and the permitting authority with written notification in advance of the proposed changes which shall be a minimum of 7 days, unless the permitting authority provides in its regulations a different timeframe for emergencies.

#### (c) Single permit

A single permit may be issued for a facility with multiple sources.

#### (d) Submission and approval

(1) Not later than 3 years after November 15, 1990, the Governor of each State shall develop and submit to the Administrator a permit program under State or local law or under an interstate compact meeting the requirements of this subchapter. In addition, the Governor shall submit a legal opinion from the attorney general (or the attorney for those State air pollution control agencies that have independent legal counsel), or from the chief legal officer of an interstate agency, that the laws of the State, locality, or the interstate compact provide adequate authority to carry out the program. Not later than 1 year after receiving a program, and after notice and opportunity for public comment, the Administrator shall approve or disapprove such program, in whole

or in part. The Administrator may approve a program to the extent that the program meets the requirements of this chapter, including the regulations issued under subsection (b) of this section. If the program is disapproved, in whole or in part, the Administrator shall notify the Governor of any revisions or modifications necessary to obtain approval. The Governor shall revise and resubmit the program for review under this section within 180 days after receiving notification.

(2)(A) If the Governor does not submit a program as required under paragraph (1) or if the Administrator disapproves a program submitted by the Governor under paragraph (1), in whole or in part, the Administrator may, prior to the expiration of the 18-month period referred to in subparagraph (B), in the Administrator's discretion, apply any of the sanctions specified in section 7509(b) of this title.

(B) If the Governor does not submit a program as required under paragraph (1), or if the Administrator disapproves any such program submitted by the Governor under paragraph (1), in whole or in part, 18 months after the date required for such submittal or the date of such disapproval, as the case may be, the Administrator shall apply sanctions under section 7509(b) of this title in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 7509(a) of this title.

(C) The sanctions under section 7509(b)(2) of this title shall not apply pursuant to this paragraph in any area unless the failure to submit or the disapproval referred to in subparagraph (A) or (B) relates to an air pollutant for which such area has been designated a nonattainment area (as defined in part D of subchapter I of this chapter).

(3) If a program meeting the requirements of this subchapter has not been approved in whole for any State, the Administrator shall, 2 years after the date required for submission of such a program under paragraph (1), promulgate, administer, and enforce a program under this subchapter for that State.

(e) Suspension

The Administrator shall suspend the issuance of permits promptly upon publication of notice of approval of a permit program under this section, but may, in such notice, retain jurisdiction over permits that have been federally issued, but for which the administrative or judicial review process is not complete. The Administrator shall continue to administer and enforce federally issued permits under this subchapter until they are replaced by a permit issued by a permitting program. Nothing in this subsection should be construed to limit the Administrator's ability to enforce permits issued by a State.

(f) Prohibition

No partial permit program shall be approved unless, at a minimum, it applies, and ensures compliance with, this subchapter and each of the following:

(1) All requirements established under subchapter IV-A of this chapter applicable to "affected sources".

(2) All requirements established under section 7412 of this title applicable to "major sources", "area sources," and "new sources".



(3) All requirements of subchapter I of this chapter (other than section 7412 of this title) applicable to sources required to have a permit under this subchapter.

Approval of a partial program shall not relieve the State of its obligation to submit a complete program, nor from the application of any sanctions under this chapter for failure to submit an approvable permit program.

(g) Interim approval

If a program (including a partial permit program) submitted under this subchapter substantially meets the requirements of this subchapter, but is not fully approvable, the Administrator may by rule grant the program interim approval. In the notice of final rulemaking, the Administrator shall specify the changes that must be made before the program can receive full approval. An interim approval under this subsection shall expire on a date set by the Administrator not later than 2 years after such approval, and may not be renewed. For the period of any such interim approval, the provisions of subsection (d)(2) of this section, and the obligation of the Administrator to promulgate a program under this subchapter for the State pursuant to subsection (d)(3) of this section, shall be suspended. Such provisions and such obligation of the Administrator shall apply after the expiration of such interim approval.

(h) Effective date

The effective date of a permit program, or partial or interim program, approved under this subchapter, shall be the effective date of approval by the Administrator. The effective date of a permit program, or partial permit program, promulgated by the Administrator shall be the date of promulgation.

(i) Administration and enforcement

(1) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this subchapter, the Administrator shall provide notice to the State and may, prior to the expiration of the 18-month period referred to in paragraph (2), in the Administrator's discretion, apply any of the sanctions specified in section 7509(b) of this title.

(2) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this subchapter, 18 months after the date of the notice under paragraph (1), the Administrator shall apply the sanctions under section 7509(b) of this title in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 7509(a) of this title.

(3) The sanctions under section 7509(b)(2) of this title shall not apply pursuant to this subsection in any area unless the failure to adequately enforce and administer the program relates to an air pollutant for which such area has been designated a nonattainment area.

(4) Whenever the Administrator has made a finding under paragraph (1) with respect to any State, unless the State has corrected such deficiency within 18 months after the date of such finding, the Administrator shall, 2 years after the date of such finding, promulgate, administer, and enforce a program under this subchapter for that State. Nothing in this paragraph shall be construed

to affect the validity of a program which has been approved under this subchapter or the authority of any permitting authority acting under such program until such time as such program is promulgated by the Administrator under this paragraph.

**CREDIT(S)**

(July 14, 1955, c. 360, Title V, § 502, as added Nov. 15, 1990, Pub.L. 101-549, Title V, § 501, 104 Stat. 2635.)

Notes of Decisions (16)

Footnotes

1 So in original. Probably should be “part”.

2 So in original. A closing parenthesis probably should precede the colon.

42 U.S.C.A. § 7661a, 42 USCA § 7661a

Current through P.L. 113-92 (excluding P.L. 113-76, 113-79, and 113-89) approved 3-25-14

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# REGULATIONS

Code of Federal Regulations

Title 40. Protection of Environment

Chapter I. Environmental Protection Agency (Refs & Annos)

Subchapter C. Air Programs

Part 63. National Emission Standards for Hazardous Air Pollutants for Source Categories (Refs & Annos)

Subpart LLL. National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry (Refs & Annos)

Emission Standards and Operating Limits

40 C.F.R. § 63.1343

§ 63.1343 What standards apply to my kilns, clinker coolers, raw material dryers, and open clinker storage piles?

Effective: February 12, 2013

Currentness

(a) General. The provisions in this section apply to each kiln and any alkali bypass associated with that kiln, clinker cooler, raw material dryer, and open clinker storage pile. All D/F, HCl, and total hydrocarbon (THC) emissions limit are on a dry basis. The D/F, HCl, and THC limits for kilns are corrected to 7 percent oxygen. All THC emissions limits are measured as propane. Standards for mercury and THC are based on a rolling 30-day average. If using a CEMS to determine compliance with the HCl standard, this standard is based on a rolling 30-day average. You must ensure appropriate corrections for moisture are made when measuring flow rates used to calculate mercury emissions. The 30-day period means 30 consecutive kiln operating days excluding periods of startup and shutdown. All emissions limits for kilns, clinker coolers, and raw material dryers currently in effect that are superseded by the limits below continue to apply until the compliance date of the limits below, or until the source certifies compliance with the limits below, whichever is earlier.

(b) Kilns, clinker coolers, raw material dryers, raw mills, and finish mills.

(1) The emissions limits for these sources are shown in Table 1 below. PM limits for existing kilns also apply to kilns that have undergone a modification as defined in subpart A of part 60 of title 40.

Table 1--Emissions Limits for Kilns, Clinker Coolers, Raw Material Dryers, Raw and Finish Mills

If your source is a (an):	And the operating mode is:	And if is located at a:	Your emissions limits are:	And the units of the emissions limit are:	The oxygen correction factor is:
1..... Existing kiln.....	Normal operation.....	Major or area source.....	PM <sup>1</sup> 0.07.....		NA.
			D/F <sup>2</sup> 0.2.....		7 percent.
			Mercury <sup>55</sup> .....		NA.
			THC <sup>3 4</sup> 24 --D.....	lb/ton clinker.....	7 percent.
				ng/dscm (TEQ)	

lb/MM tons clinker

ppmvd

2..... Existing kiln..... Normal operation..... Major source..... HCl 3..... ppmvd..... 7 percent.

3..... Existing kiln..... Startup and shutdown..... Major or area source..... Work practices..... NA ..... NA.

(63.1346(f))

4..... New kiln..... Normal operation..... Major or area source..... PM 0.02..... NA.

D/F<sup>2</sup> 0.2..... 7 percent.

Mercury 21..... NA

THC<sup>3 4</sup> 24 --D..... lb/ton clinker..... 7 percent.

ng/dscm (TEQ)

lb/MM tons clinker

ppmvd

5..... New kiln..... Normal operation..... Major source..... HCl 3..... ppmvd..... 7 percent.

6..... New kiln..... Startup and shutdown..... Major or area source..... Work practices..... NA..... NA.

(63.1346(f))

7..... Existing clinker cooler..... Normal operation..... Major or area source..... PM 0.07..... lb/ton clinker..... NA.

8..... Existing clinker cooler..... Startup and shutdown..... Major or area source..... Work practices..... NA ..... NA.

(63.1348(b)(9))

9..... New clinker cooler..... Normal operation..... Major or area source..... PM 0.02..... lb/ton clinker..... NA.

10..... New clinker cooler..... Startup and shutdown..... Major or area source..... Work practices..... NA ..... NA.

(63.1348(b)(9))

11..... Existing or new raw material dryer..... Normal operation..... Major or area source..... THC<sup>3 4</sup> 24..... ppmvd..... NA.

12..... Existing or new raw material dryer..... Startup and shutdown..... Major or area source..... Work practices..... NA ..... NA.

(63.1348(b)(9))

13..... Existing or new raw or finish mill..... All operating modes..... Major source..... Opacity 10..... percent..... NA.

(2) When there is an alkali bypass and/or an inline coal mill with a separate stack associated with a kiln, the combined PM emissions from the kiln and the alkali bypass stack and/or the inline coal mill stack are subject to the PM emissions limit. Existing kilns that combine the clinker cooler exhaust and/or coal mill exhaust with the kiln exhaust and send the

combined exhaust to the PM control device as a single stream may meet an alternative PM emissions limit. This limit is calculated using Equation 1 of this section:

$$PM_{alt} = (0.0060 \times 1.65) (Q_k + Q_c + Q_{ab} + Q_{cm}) / (7000) \quad (Eq. 1)$$

Where:

$PM_{alt}$  = Alternative PM emission limit for commingled sources.

0.006 = The PM exhaust concentration (gr/dscf) equivalent to 0.070 lb per ton clinker where clinker cooler and kiln exhaust gas are not combined.

1.65 = The conversion factor of ton feed per ton clinker.

$Q_k$  = The exhaust flow of the kiln (dscf/ton feed).

$Q_c$  = The exhaust flow of the clinker cooler (dscf/ton feed).

$Q_{ab}$  = The exhaust flow of the alkali bypass (dscf/ton feed).

$Q_{cm}$  = The exhaust flow of the coal mill (dscf/ton feed).

7000 = The conversion factor for grains (gr) per lb.

For new kilns that combine kiln exhaust and clinker cooler gas the limit is calculated using the Equation 2 of this section:

$$PM_{alt} = (0.0020 \times 1.65) (Q_k + Q_c + Q_{ab} + Q_{cm}) / (7000) \quad (Eq. 2)$$

Where:

$PM_{alt}$  = Alternative PM emission limit for commingled sources.

0.002 = The PM exhaust concentration (gr/dscf) equivalent to 0.020 lb per ton clinker where clinker cooler and kiln exhaust gas are not combined.

1.65 = The conversion factor of ton feed per ton clinker.

$Q_k$  = The exhaust flow of the kiln (dscf/ton feed).

$Q_c$  = The exhaust flow of the clinker cooler (dscf/ton feed).

$Q_{ab}$  = The exhaust flow of the alkali bypass (dscf/ton feed).

$Q_{cm}$  = The exhaust flow of the coal mill (dscf/ton feed).

7000 = The conversion factor for gr per lb.

(c) Open clinker storage pile. The owner or operator of an open clinker storage pile must prepare, and operate in accordance with, the fugitive dust emissions control measures, described in their operation and maintenance plan (see § 63.1347 of this subpart), that is appropriate for the site conditions as specified in paragraphs (c)(1) through (3) of this section. The operation and maintenance plan must also describe the measures that will be used to minimize fugitive dust emissions from piles of clinker, such as accidental spillage, that are not part of open clinker storage piles.

(1) The operation and maintenance plan must identify and describe the location of each current or future open clinker storage pile and the fugitive dust emissions control measures the owner or operator will use to minimize fugitive dust emissions from each open clinker storage pile.

(2) For open clinker storage piles, the operations and maintenance plan must specify that one or more of the following control measures will be used to minimize to the greatest extent practicable fugitive dust from open clinker storage piles: Locating the source inside a partial enclosure, installing and operating a water spray or fogging system, applying appropriate chemical dust suppression agents, use of a wind barrier, compaction, use of tarpaulin or other equally effective cover or use of a vegetative cover. You must select, for inclusion in the operations and maintenance plan, the fugitive dust control measure or measures listed in this paragraph that are most appropriate for site conditions. The plan must also explain how the measure or measures selected are applicable and appropriate for site conditions. In addition, the plan must be revised as needed to reflect any changing conditions at the source.

(3) Temporary piles of clinker that result from accidental spillage or clinker storage cleaning operations must be cleaned up within 3 days.

(d) Emission limits in effect prior to September 9, 2010. Any source defined as an existing source in § 63.1351, and that was subject to a PM, mercury, THC, D/F, or opacity emissions limit prior to September 9, 2010, must continue to meet the limits shown in Table 2 to this section until September 9, 2015.

## Credits

[71 FR 76549, Dec. 20, 2006; 75 FR 55052, Sept. 9, 2010; 76 FR 2835, Jan. 18, 2011; 78 FR 10037, Feb. 12, 2013]

SOURCE: 57 FR 61992, Dec. 29, 1992; 64 FR 31925, June 14, 1999, unless otherwise noted.

AUTHORITY: 42 U.S.C. 7401 et seq.

Current through April 24, 2014; 79 FR 22776

## Footnotes

- 1 The initial and subsequent PM performance tests are performed using Method 5 or 5I and consist of three 1-hr tests.
- 2 If the average temperature at the inlet to the first PM control device (fabric filter or electrostatic precipitator) during the D/F performance test is 400 °F or less this limit is changed to 0.40 ng/dscm (TEQ).
- 3 Measured as propane.
- 4 Any source subject to the 24 ppmvd THC limit may elect to meet an alternative limit of 12 ppmvd for total organic HAP.

Code of Federal Regulations

Title 40. Protection of Environment

Chapter I. Environmental Protection Agency (Refs & Annos)

Subchapter I. Solid Wastes

Part 241. Solid Wastes Used as Fuels or Ingredients in Combustion Units (Refs & Annos)

Subpart A. General

40 C.F.R. § 241.2

§ 241.2 Definitions.

Effective: April 8, 2013

Currentness

For the purposes of this subpart:

Clean cellulosic biomass means those residuals that are akin to traditional cellulosic biomass, including, but not limited to: Agricultural and forest-derived biomass (e.g., green wood, forest thinnings, clean and unadulterated bark, sawdust, trim, tree harvesting residuals from logging and sawmill materials, hogged fuel, wood pellets, untreated wood pallets); urban wood (e.g., tree trimmings, stumps, and related forest-derived biomass from urban settings); corn stover and other biomass crops used specifically for the production of cellulosic biofuels (e.g., energy cane, other fast growing grasses, byproducts of ethanol natural fermentation processes); bagasse and other crop residues (e.g., peanut shells, vines, orchard trees, hulls, seeds, spent grains, cotton byproducts, corn and peanut production residues, rice milling and grain elevator operation residues); wood collected from forest fire clearance activities, trees and clean wood found in disaster debris, clean biomass from land clearing operations, and clean construction and demolition wood. These fuels are not secondary materials or solid wastes unless discarded. Clean biomass is biomass that does not contain contaminants at concentrations not normally associated with virgin biomass materials.

Contaminants means all pollutants listed in Clean Air Act sections 112(b) or 129(a)(4), with the following three modifications:

(1) The definition includes the elements chlorine, fluorine, nitrogen, and sulfur in cases where non-hazardous secondary materials are burned as a fuel and combustion will result in the formation of hydrogen chloride (HCl), hydrogen fluoride (HF), nitrogen oxides (NO<sub>x</sub>), or sulfur dioxide (SO<sub>2</sub>). Chlorine, fluorine, nitrogen, and sulfur are not included in the definition in cases where non-hazardous secondary materials are used as an ingredient and not as a fuel.

(2) The definition does not include the following pollutants that are either unlikely to be found in non-hazardous secondary materials and products made from such materials or are adequately measured by other parts of this definition: hydrogen chloride (HCl), chlorine gas (Cl<sub>2</sub>), hydrogen fluoride (HF), nitrogen oxides (NO<sub>x</sub>), sulfur dioxide (SO<sub>2</sub>), fine mineral fibers, particulate matter, coke oven emissions, opacity, diazomethane, white phosphorus, and titanium tetrachloride.

(3) The definition does not include m-cresol, o-cresol, p-cresol, m-xylene, o-xylene, and p-xylene as individual contaminants distinct from the grouped pollutants total cresols and total xylenes.

Contained means the non-hazardous secondary material is stored in a manner that adequately prevents releases or other hazards to human health and the environment considering the nature and toxicity of the non-hazardous secondary material.

Control means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in this section shall not be deemed to “control” such facilities.



Established tire collection program means a comprehensive collection system or contractual arrangement that ensures scrap tires are not discarded and are handled as valuable commodities through arrival at the combustion facility. This can include tires that were not abandoned and were received from the general public at collection program events.

Generating facility means all contiguous property owned, leased, or otherwise controlled by the non-hazardous secondary material generator.

Ingredient means a non-hazardous secondary material that is a component in a compound, process or product.

Non-hazardous secondary material means a secondary material that, when discarded, would not be identified as a hazardous waste under Part 261 of this chapter.

Person is defined as an individual, trust, firm, joint stock company, Federal agency, corporation (including government corporation), partnership, association, State, municipality, commission, political subdivision of a state, or any interstate body.

Processing means any operations that transform discarded non-hazardous secondary material into a non-waste fuel or non-waste ingredient product. Processing includes, but is not limited to, operations necessary to: Remove or destroy contaminants; significantly improve the fuel characteristics of the material, e.g., sizing or drying the material in combination with other operations; chemically improve the as-fired energy content; or improve the ingredient characteristics. Minimal operations that result only in modifying the size of the material by shredding do not constitute processing for purposes of this definition.

Resinated wood means wood products (containing binders and adhesives) produced by primary and secondary wood products manufacturing. Resinated wood includes residues from the manufacture and use of resinated wood, including materials such as board trim, sander dust, panel trim, and off-specification resinated wood products that do not meet a manufacturing quality or standard.

Secondary material means any material that is not the primary product of a manufacturing or commercial process, and can include post-consumer material, off-specification commercial chemical products or manufacturing chemical intermediates, post-industrial material, and scrap.

Solid waste means the term solid waste as defined in 40 CFR 258.2.

Traditional fuels means materials that are produced as fuels and are unused products that have not been discarded and therefore, are not solid wastes, including: (1) Fuels that have been historically managed as valuable fuel products rather than being managed as waste materials, including fossil fuels (e.g., coal, oil and natural gas), their derivatives (e.g., petroleum coke, bituminous coke, coal tar oil, refinery gas, synthetic fuel, heavy recycle, asphalts, blast furnace gas, recovered gaseous butane, and coke oven gas) and cellulosic biomass (virgin wood); and (2) alternative fuels developed from virgin materials that can now be used as fuel products, including used oil which meets the specifications outlined in 40 CFR 279.11, currently mined coal refuse that previously had not been usable as coal, and clean cellulosic biomass. These fuels are not secondary materials or solid wastes unless discarded.

Within control of the generator means that the non-hazardous secondary material is generated and burned in combustion units at the generating facility; or that such material is generated and burned in combustion units at different facilities, provided the facility combusting the non-hazardous secondary material is controlled by the generator; or both the generating facility and the facility combusting the non-hazardous secondary material are under the control of the same person as defined in this section.

#### Credits

[78 FR 9211, Feb. 7, 2013]

SOURCE: 76 FR 15549, March 21, 2011, unless otherwise noted.

AUTHORITY: 42 U.S.C. 6903, 6912, 7429.

Current through April 24, 2014; 79 FR 22776

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Code of Federal Regulations

Title 40. Protection of Environment

Chapter I. Environmental Protection Agency (Refs & Annos)

Subchapter I. Solid Wastes

Part 241. Solid Wastes Used as Fuels or Ingredients in Combustion Units (Refs & Annos)

Subpart B. Identification of Non-Hazardous Secondary Materials That Are Solid Wastes When Used as Fuels or Ingredients in Combustion Units

40 C.F.R. § 241.3

§ 241.3 Standards and procedures for identification of non-hazardous secondary materials that are solid wastes when used as fuels or ingredients in combustion units.

Effective: April 8, 2013

Currentness

(a) Except as provided in paragraph (b) of this section or in § 241.4(a) of this subpart, non-hazardous secondary materials that are combusted are solid wastes, unless a petition is submitted to, and a determination granted by, the EPA pursuant to paragraph (c) of this section. The criteria to be addressed in the petition, as well as the process for making the non-waste determination, are specified in paragraph (c) of this section.

(b) The following non-hazardous secondary materials are not solid wastes when combusted:

(1) Non-hazardous secondary materials used as a fuel in a combustion unit that remain within the control of the generator and that meet the legitimacy criteria specified in paragraph (d)(1) of this section.

(2) The following non-hazardous secondary materials that have not been discarded and meet the legitimacy criteria specified in paragraph (d)(1) of this section when used in a combustion unit (by the generator or outside the control of the generator):

(i) [Reserved]

(ii) [Reserved]

(3) Non-hazardous secondary materials used as an ingredient in a combustion unit that meet the legitimacy criteria specified in paragraph (d)(2) of this section.

(4) Fuel or ingredient products that are used in a combustion unit, and are produced from the processing of discarded non-hazardous secondary materials and that meet the legitimacy criteria specified in paragraph (d)(1) of this section, with respect to fuels, and paragraph (d)(2) of this section, with respect to ingredients. The legitimacy criteria apply after the non-hazardous secondary material is processed to produce a fuel or ingredient product. Until the discarded non-hazardous secondary material is processed to produce a non-waste fuel or ingredient, the discarded non-hazardous secondary material is considered a solid waste and would be subject to all appropriate federal, state, and local requirements.

(c) The Regional Administrator may grant a non-waste determination that a non-hazardous secondary material that is used as a fuel, which is not managed within the control of the generator, is not discarded and is not a solid waste when combusted. This responsibility may be retained by the Assistant Administrator for the Office of Solid Waste and Emergency Response if combustors are located in multiple EPA Regions and the petitioner requests that the Assistant Administrator process the non-waste determination petition. If multiple combustion units are located in one EPA Region, the application must be submitted to the Regional Administrator for that Region. The criteria and process for making such non-waste determinations includes the following:

(1) Submittal of an application to the Regional Administrator for the EPA Region where the facility or facilities are located or the Assistant Administrator for the Office of Solid Waste and Emergency Response for a determination that the non-hazardous secondary material, even though it has been transferred to a third party, has not been discarded and is indistinguishable in all relevant aspects from a fuel product. The determination will be based on whether the non-hazardous secondary material that has been discarded is a legitimate fuel as specified in paragraph (d)(1) of this section and on the following criteria:

- (i) Whether market participants treat the non-hazardous secondary material as a product rather than as a solid waste;
- (ii) Whether the chemical and physical identity of the non-hazardous secondary material is comparable to commercial fuels;
- (iii) Whether the non-hazardous secondary material will be used in a reasonable time frame given the state of the market;
- (iv) Whether the constituents in the non-hazardous secondary material are released to the air, water or land from the point of generation to the point just prior to combustion of the secondary material at levels comparable to what would otherwise be released from traditional fuels; and
- (v) Other relevant factors.

(2) The Regional Administrator or Assistant Administrator for the Office of Solid Waste and Emergency Response will evaluate the application pursuant to the following procedures:

- (i) The applicant must submit an application for the non-waste determination addressing the legitimacy criteria in paragraph (d)(1) of this section and the relevant criteria in paragraphs (c)(1)(i) through (v) of this section. In addition, the applicant must also show that the non-hazardous secondary material has not been discarded in the first instance.
- (ii) The Regional Administrator or Assistant Administrator for the Office of Solid Waste and Emergency Response will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be published in a newspaper advertisement or radio broadcast in the locality where the facility combusting the non-hazardous secondary material is located, and be made available on the EPA's Web site.

(iii) The Regional Administrator or the Assistant Administrator for the Office of Solid Waste and Emergency Response will accept public comments on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The Regional Administrator or the Assistant Administrator for the Office of Solid Waste and Emergency Response will issue a final decision after receipt of comments and after a hearing (if any). If a determination is made that the non-hazardous secondary material is a non-waste fuel, it will be retroactive and apply on the date the petition was submitted.

(iv) If a change occurs that affects how a non-hazardous secondary material meets the relevant criteria contained in this paragraph after a formal non-waste determination has been granted, the applicant must re-apply to the Regional Administrator or the Assistant Administrator for the Office of Solid Waste and Emergency Response for a formal determination that the non-hazardous secondary material continues to meet the relevant criteria and, thus, is not a solid waste.

(d) Legitimacy criteria for non-hazardous secondary materials.

(1) Legitimacy criteria for non-hazardous secondary materials used as a fuel in combustion units include the following:

(i) The non-hazardous secondary material must be managed as a valuable commodity based on the following factors:

(A) The storage of the non-hazardous secondary material prior to use must not exceed reasonable time frames;

(B) Where there is an analogous fuel, the non-hazardous secondary material must be managed in a manner consistent with the analogous fuel or otherwise be adequately contained to prevent releases to the environment;

(C) If there is no analogous fuel, the non-hazardous secondary material must be adequately contained so as to prevent releases to the environment;

(ii) The non-hazardous secondary material must have a meaningful heating value and be used as a fuel in a combustion unit that recovers energy.

(iii) The non-hazardous secondary material must contain contaminants or groups of contaminants at levels comparable in concentration to or lower than those in traditional fuel(s) which the combustion unit is designed to burn. In determining which traditional fuel(s) a unit is designed to burn, persons may choose a traditional fuel that can be or is burned in the particular type of boiler, whether or not the combustion unit is permitted to burn that traditional fuel. In comparing contaminants between traditional fuel(s) and a non-hazardous secondary material, persons can use data for traditional fuel contaminant levels compiled from national surveys, as well as contaminant level data from the specific traditional fuel being replaced. To account for natural variability in contaminant levels, persons can use the full range of traditional fuel contaminant levels, provided such comparisons also consider variability in non-hazardous secondary material contaminant levels. Such comparisons are to be based on a direct comparison of the contaminant levels in both the non-hazardous secondary material and traditional fuel(s) prior to combustion.

(2) Legitimacy criteria for non-hazardous secondary materials used as an ingredient in combustion units include the following:

(i) The non-hazardous secondary material must be managed as a valuable commodity based on the following factors:

(A) The storage of the non-hazardous secondary material prior to use must not exceed reasonable time frames;

(B) Where there is an analogous ingredient, the non-hazardous secondary material must be managed in a manner consistent with the analogous ingredient or otherwise be adequately contained to prevent releases to the environment;

(C) If there is no analogous ingredient, the non-hazardous secondary material must be adequately contained to prevent releases to the environment;

(ii) The non-hazardous secondary material must provide a useful contribution to the production or manufacturing process. The non-hazardous secondary material provides a useful contribution if it contributes a valuable ingredient to the product or intermediate or is an effective substitute for a commercial product.

(iii) The non-hazardous secondary material must be used to produce a valuable product or intermediate. The product or intermediate is valuable if:

(A) The non-hazardous secondary material is sold to a third party, or

(B) The non-hazardous secondary material is used as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

(iv) The non-hazardous secondary material must result in products that contain contaminants at levels that are comparable in concentration to or lower than those found in traditional products that are manufactured without the non-hazardous secondary material.

#### Credits

[78 FR 9212, Feb. 7, 2013]

SOURCE: 76 FR 15549, March 21, 2011, unless otherwise noted.

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Subchapter I. Solid Wastes

Part 241. Solid Wastes Used as Fuels or Ingredients in Combustion Units (Refs & Annos)

Subpart B. Identification of Non-Hazardous Secondary Materials That Are Solid Wastes When Used as Fuels or Ingredients in Combustion Units

40 C.F.R. § 241.4

§ 241.4 Non-Waste Determinations for Specific Non-Hazardous Secondary Materials When Used as a Fuel.

Effective: April 8, 2013

Currentness

(a) The following non-hazardous secondary materials are not solid wastes when used as a fuel in a combustion unit:

(1) Scrap tires that are not discarded and are managed under the oversight of established tire collection programs, including tires removed from vehicles and off-specification tires.

(2) Resinated wood.

(3) Coal refuse that has been recovered from legacy piles and processed in the same manner as currently-generated coal refuse.

(4) Dewatered pulp and paper sludges that are not discarded and are generated and burned on-site by pulp and paper mills that burn a significant portion of such materials where such dewatered residuals are managed in a manner that preserves the meaningful heating value of the materials.

(b) Any person may submit a rulemaking petition to the Administrator to identify additional non-hazardous secondary materials to be listed in paragraph (a) of this section. Contents and procedures for the submittal of the petitions include the following:

(1) Each petition must be submitted to the Administrator by certified mail and must include:

(i) The petitioner's name and address;

(ii) A statement of the petitioner's interest in the proposed action;

(iii) A description of the proposed action, including (where appropriate) suggested regulatory language; and

(iv) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information. Where the non-hazardous secondary material does not meet the legitimacy criteria, the applicant must explain why such non-hazardous secondary material should be considered a non-waste fuel, balancing the legitimacy criteria with other relevant factors.

(2) The Administrator will make a tentative decision to grant or deny a petition and will publish notice of such tentative decision, either in the form of an advanced notice of proposed rulemaking, a proposed rule, or a tentative determination to deny the petition, in the Federal Register for written public comment.

(3) Upon the written request of any interested person, the Administrator may, at its discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The Administrator may in any case decide on its own motion to hold an informal public hearing.

(4) After evaluating all public comments the Administrator will make a final decision by publishing in the Federal Register a regulatory amendment or a denial of the petition.

(5) The Administrator will grant or deny a petition based on the weight of evidence showing the following:

(i) The non-hazardous secondary material has not been discarded in the first instance and is legitimately used as a fuel in a combustion unit, or if discarded, has been sufficiently processed into a material that is legitimately used as a fuel.

(ii) Where any one of the legitimacy criteria in § 241.3(d)(1) is not met, that the use of the non-hazardous secondary material is integrally tied to the industrial production process, that the non-hazardous secondary material is functionally the same as the comparable traditional fuel, or other relevant factors as appropriate.

#### Credits

[78 FR 9213, Feb. 7, 2013]

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AUTHORITY: 42 U.S.C. 6903, 6912, 7429.

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Title 40. Protection of Environment

Chapter I. Environmental Protection Agency (Refs & Annos)

Subchapter I. Solid Wastes

Part 258. Criteria for Municipal Solid Waste Landfills (Refs & Annos)

Subpart A. General

40 C.F.R. § 258.2

§ 258.2 Definitions.

Currentness

Unless otherwise noted, all terms contained in this part are defined by their plain meaning. This section contains definitions for terms that appear throughout this part; additional definitions appear in the specific sections to which they apply.

Active life means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with § 258.60 of this part.

Active portion means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with § 258.60 of this part.

Aquifer means a geological formation, group of formations, or portion of a formation capable of yielding significant quantities of ground water to wells or springs.

Commercial solid waste means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

Construction and demolition (C & D) landfill means a solid waste disposal facility subject to the requirements in part 257, subparts A or B of this chapter that receives construction and demolition waste and does not receive hazardous waste (defined in § 261.3 of this chapter) or industrial solid waste (defined in § 258.2 of this chapter). Only a C & D landfill that meets the requirements of 40 CFR part 257, subpart B may receive conditionally exempt small quantity generator waste (defined in § 261.5 of this chapter). A C & D landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste.

Director of an Approved State means the chief administrative officer of a state agency responsible for implementing the state permit program that is deemed to be adequate by EPA under regulations published pursuant to sections 2002 and 4005 of RCRA.

Existing MSWLF unit means any municipal solid waste landfill unit that is receiving solid waste as of the appropriate dates specified in § 258.1(e). Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management.

Facility means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

Ground water means water below the land surface in a zone of saturation.

Household waste means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

Indian lands or Indian country means:

- (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation;
- (2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of the State; and
- (3) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

Indian Tribe or Tribe means any Indian tribe, band, nation, or community recognized by the Secretary of the Interior and exercising substantial governmental duties and powers on Indian lands.

Industrial solid waste means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

Lateral expansion means a horizontal expansion of the waste boundaries of an existing MSWLF unit.

Leachate means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under § 257.2 of this chapter. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

New MSWLF unit means any municipal solid waste landfill unit that has not received waste prior to October 9, 1993, or prior to October 9, 1997 if the MSWLF unit meets the conditions of § 258.1(f)(1).

Open burning means the combustion of solid waste without:

- (1) Control of combustion air to maintain adequate temperature for efficient combustion,
- (2) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and

(3) Control of the emission of the combustion products.

Operator means the person(s) responsible for the overall operation of a facility or part of a facility.

Owner means the person(s) who owns a facility or part of a facility.

Residential lead-based paint waste means waste containing lead-based paint, which is generated as a result of activities such as abatement, rehabilitation, renovation and remodeling in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges.

Run-off means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

Run-on means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

Saturated zone means that part of the earth's crust in which all voids are filled with water.

Sludge means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

Solid waste means any garbage, or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State Director means the chief administrative officer of the lead state agency responsible for implementing the state permit program for 40 CFR part 257, subpart B and 40 CFR part 258 regulated facilities.

Uppermost aquifer means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

Waste management unit boundary means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

#### Credits

[57 FR 28627, June 26, 1992; 58 FR 51547, Oct. 1, 1993; 60 FR 52342, Oct. 6, 1995; 63 FR 57044, Oct. 23, 1998; 66 FR 53542, Oct. 23, 2001; 66 FR 67108, Dec. 28, 2001; 68 FR 36495, June 18, 2003]

SOURCE: 56 FR 51016, Oct. 9, 1991; 58 FR 51546, Oct. 1, 1993; 59 FR 58789, Nov. 15, 1994; 63 FR 17729, April 10, 1998; 69 FR 13255, March 22, 2004, unless otherwise noted.

AUTHORITY: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c), 6981(a).

Notes of Decisions (8)

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Title 40. Protection of Environment

Chapter I. Environmental Protection Agency (Refs & Annos)

Subchapter I. Solid Wastes

Part 261. Identification and Listing of Hazardous Waste (Refs & Annos)

Subpart A. General

40 C.F.R. § 261.1

§ 261.1 Purpose and scope.

Effective: June 16, 2010

Currentness

(a) This part identifies those solid wastes which are subject to regulation as hazardous wastes under parts 262 through 265, 268, and parts 270, 271, and 124 of this chapter and which are subject to the notification requirements of section 3010 of RCRA. In this part:

(1) Subpart A defines the terms “solid waste” and “hazardous waste”, identifies those wastes which are excluded from regulation under parts 262 through 266, 268 and 270 and establishes special management requirements for hazardous waste produced by conditionally exempt small quantity generators and hazardous waste which is recycled.

(2) Subpart B sets forth the criteria used by EPA to identify characteristics of hazardous waste and to list particular hazardous wastes.

(3) Subpart C identifies characteristics of hazardous waste.

(4) Subpart D lists particular hazardous wastes.

(b)(1) The definition of solid waste contained in this part applies only to wastes that also are hazardous for purposes of the regulations implementing subtitle C of RCRA. For example, it does not apply to materials (such as non-hazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recycled.

(2) This part identifies only some of the materials which are solid wastes and hazardous wastes under sections 3007, 3013, and 7003 of RCRA. A material which is not defined as a solid waste in this part, or is not a hazardous waste identified or listed in this part, is still a solid waste and a hazardous waste for purposes of these sections if:

(i) In the case of sections 3007 and 3013, EPA has reason to believe that the material may be a solid waste within the meaning of section 1004(27) of RCRA and a hazardous waste within the meaning of section 1004(5) of RCRA; or

(ii) In the case of section 7003, the statutory elements are established.

(c) For the purposes of §§ 261.2 and 261.6:

(1) A “spent material” is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing;

(2) “Sludge” has the same meaning used in § 260.10 of this chapter;

(3) A “by-product” is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(4) A material is “reclaimed” if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. In addition, for purposes of §§ 261.2(a)(2)(ii), 261.4(a)(23), and 261.4(a)(24) smelting, melting and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste found in § 266.100(d)(1)-(3) of this chapter, and if the residuals meet the requirements specified in § 266.112 of this chapter.

(5) A material is “used or reused” if it is either:

(i) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(ii) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(6) “Scrap metal” is bits and pieces of metal parts (e.g.,) bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.

(7) A material is “recycled” if it is used, reused, or reclaimed.

(8) A material is “accumulated speculatively” if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that--during the calendar year (commencing on January 1)--the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same

way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under § 261.4(c) are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

(9) “Excluded scrap metal” is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

(10) “Processed scrap metal” is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (§ 261.4(a)(14)).

(11) “Home scrap metal” is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

(12) “Prompt scrap metal” is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

#### Credits

[45 FR 33119, May 19, 1980, as amended at 48 FR 14293, April 1, 1983; 50 FR 663, Jan. 4, 1985; 51 FR 10174, March 24, 1986; 51 FR 40636, Nov. 1, 1986; 62 FR 26018, May 12, 1997; 73 FR 64760, Oct. 30, 2008; 75 FR 13001, March 18, 2010]

SOURCE: 45 FR 33119, May 19, 1980; 51 FR 28682, Aug. 8, 1986; 51 FR 46668, Dec. 24, 1986; 52 FR 28698, Aug. 3, 1987; 53 FR 27163, 27301, July 19, 1988; 54 FR 4021, Jan. 27, 1989; 62 FR 6651, Feb. 12, 1997, unless otherwise noted.

AUTHORITY: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Notes of Decisions (118)

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Code of Federal Regulations

Title 40. Protection of Environment

Chapter I. Environmental Protection Agency (Refs & Annos)

Subchapter I. Solid Wastes

Part 261. Identification and Listing of Hazardous Waste (Refs & Annos)

Subpart A. General

40 C.F.R. § 261.2

§ 261.2 Definition of solid waste.

Effective: June 16, 2010

Currentness

(a)(1) A solid waste is any discarded material that is not excluded under § 261.4(a) or that is not excluded by a variance granted under §§ 260.30 and 260.31 or that is not excluded by a non-waste determination under §§ 260.30 and 260.34.

(2)(i) A discarded material is any material which is:

(A) Abandoned, as explained in paragraph (b) of this section; or

(B) Recycled, as explained in paragraph (c) of this section; or

(C) Considered inherently waste-like, as explained in paragraph (d) of this section; or

(D) A military munition identified as a solid waste in § 266.202.

(ii) A hazardous secondary material is not discarded if it is generated and reclaimed under the control of the generator as defined in § 260.10, it is not speculatively accumulated as defined in § 261.1(c)(8), it is handled only in non-land-based units and is contained in such units, it is generated and reclaimed within the United States and its territories, it is not otherwise subject to material-specific management conditions under § 261.4(a) when reclaimed, it is not a spent lead acid battery (see § 266.80 and § 273.2), it does not meet the listing description for K171 or K172 in § 261.32, and the reclamation of the material is legitimate, as specified under § 260.43. (See also the notification requirements of § 260.42). (For hazardous secondary materials managed in land-based units, see § 261.4(a)(23)).

(b) Materials are solid waste if they are abandoned by being:

(1) Disposed of; or

(2) Burned or incinerated; or



(3) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(c) Materials are solid wastes if they are recycled--or accumulated, stored, or treated before recycling--as specified in paragraphs (c)(1) through (4) of this section.

(1) Used in a manner constituting disposal.

(i) Materials noted with a "\*" in Column 1 of Table 1 are solid wastes when they are:

(A) Applied to or placed on the land in a manner that constitutes disposal; or

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).

(ii) However, commercial chemical products listed in § 261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(2) Burning for energy recovery.

(i) Materials noted with a "\*" in column 2 of Table 1 are solid wastes when they are:

(A) Burned to recover energy;

(B) Used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste).

(ii) However, commercial chemical products listed in § 261.33 are not solid wastes if they are themselves fuels.

(3) Reclaimed. Materials noted with a "--" in column 3 of Table 1 are not solid wastes when reclaimed. Materials noted with an "\*" in column 3 of Table 1 are solid wastes when reclaimed unless they meet the requirements of §§ 261.2(a)(2) (ii), or 261.4(a)(17), or 261.4(a)(23), or 261.4(a)(24) or 261.4(a)(25).

(4) Accumulated speculatively. Materials noted with a "\*" in column 4 of Table 1 are solid wastes when accumulated speculatively.

Table 1

Use constituting disposal (§ 261.2(c)(1))	Energy recovery/fuel (§ 261.2(c)(2))	Reclamation (261.2(c)(3)), except as provided in §§	Speculative accumulation (§ 261.2(c) (4))
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261.2(a)(2)(ii), 261.4(a)  
(17), 261.4(a)(23), 261.4(a)  
(24), or 261.4(a)(25)

	1	2	3	4
Spent Materials.....	(*)	(*)	(*)	(*)
Sludges (listed in 40 CFR Part 261.31 or 261.32).....	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	--	(*)
By-products (listed in 40 CFR 261.31 or 261.32).....	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	--	(*)
Commercial chemical products listed in 40 CFR 261.33.....	(*)	(*)	--	--
Scrap metal that is not excluded under § 261.4(a)(13).....	(*)	(*)	(*)	(*)

Note: The terms "spent materials," "sludges," "by-products," and "scrap metal" and "processed scrap metal" are defined in § 261.1.

(d) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:

(1) Hazardous Waste Nos. F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028.

(2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in subparts C or D of this part, except for brominated material that meets the following criteria:

(i) The material must contain a bromine concentration of at least 45%; and

(ii) The material must contain less than a total of 1% of toxic organic compounds listed in appendix VIII; and

(iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

(3) The Administrator will use the following criteria to add wastes to that list:

(i)(A) The materials are ordinarily disposed of, burned, or incinerated; or

(B) The materials contain toxic constituents listed in appendix VIII of part 261 and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and

(ii) The material may pose a substantial hazard to human health and the environment when recycled.

(e) Materials that are not solid waste when recycled.

(1) Materials are not solid wastes when they can be shown to be recycled by being:

(i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

(ii) Used or reused as effective substitutes for commercial products; or

(iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at § 261.4(a)(17) apply rather than this paragraph.

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (described in paragraphs (e)(1)(i) through (iii) of this section):

(i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

(iii) Materials accumulated speculatively; or

(iv) Materials listed in paragraphs (d)(1) and (d)(2) of this section.

(f) Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce regulations implementing subtitle C of RCRA who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

### Credits

[50 FR 664, Jan. 4, 1985; 50 FR 33542, Aug. 20, 1985; 56 FR 7206, Feb. 21, 1991; 56 FR 42512, Aug. 27, 1991; 57 FR 38564, Aug. 25, 1992; 59 FR 48041, Sept. 19, 1994; 62 FR 6651, Feb. 12, 1997; 62 FR 26018, May 12, 1997; 63 FR 28636, May 26, 1998; 64 FR 25413, May 11, 1999; 67 FR 11253, March 13, 2002; 71 FR 40258, July 14, 2006; 73 FR 64760, Oct. 30, 2008; 75 FR 13001, March 18, 2010]

SOURCE: 45 FR 33119, May 19, 1980; 51 FR 28682, Aug. 8, 1986; 51 FR 46668, Dec. 24, 1986; 52 FR 28698, Aug. 3, 1987; 53 FR 27163, 27301, July 19, 1988; 54 FR 4021, Jan. 27, 1989; 62 FR 6651, Feb. 12, 1997, unless otherwise noted.

AUTHORITY: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Notes of Decisions (96)

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Code of Federal Regulations

Title 40. Protection of Environment

Chapter I. Environmental Protection Agency (Refs & Annos)

Subchapter I. Solid Wastes

Part 279. Standards for the Management of Used Oil (Refs & Annos)

Subpart A. Definitions

40 C.F.R. § 279.1

§ 279.1 Definitions.

Effective: July 14, 2006

Currentness

Terms that are defined in §§ 260.10, 261.1, and 280.12 of this chapter have the same meanings when used in this part.

Aboveground tank means a tank used to store or process used oil that is not an underground storage tank as defined in § 280.12 of this chapter.

Container means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

Do-it-yourselfer used oil collection center means any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers.

Existing tank means a tank that is used for the storage or processing of used oil and that is in operation, or for which installation has commenced on or prior to the effective date of the authorized used oil program for the State in which the tank is located. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin installation of the tank and if either

- (1) A continuous on-site installation program has begun, or
- (2) The owner or operator has entered into contractual obligations--which cannot be canceled or modified without substantial loss--for installation of the tank to be completed within a reasonable time.

Household "do-it-yourselfer" used oil means oil that is derived from households, such as used oil generated by individuals who generate used oil through the maintenance of their personal vehicles.

Household "do-it-yourselfer" used oil generator means an individual who generates household "do-it-yourselfer" used oil.

New tank means a tank that will be used to store or process used oil and for which installation has commenced after the effective date of the authorized used oil program for the State in which the tank is located.

Petroleum refining facility means an establishment primarily engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, and lubricants, through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes (i.e., facilities classified as SIC 2911).

Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived product. Processing includes, but is not limited to: blending used

oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining.

Re-refining distillation bottoms means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition of still bottoms varies with column operation and feedstock.

Tank means any stationary device, designed to contain an accumulation of used oil which is constructed primarily of non-earthen materials, (e.g., wood, concrete, steel, plastic) which provides structural support.

Used oil means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

Used oil aggregation point means any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons. Used oil aggregation points may also accept used oil from household do-it-yourselfers.

Used oil burner means a facility where used oil not meeting the specification requirements in § 279.11 is burned for energy recovery in devices identified in § 279.61(a).

Used oil collection center means any site or facility that is registered/licensed/permitted/recognized by a state/county/municipal government to manage used oil and accepts/aggregates and stores used oil collected from used oil generators regulated under subpart C of this part who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of § 279.24. Used oil collection centers may also accept used oil from household do-it-yourselfers.

Used oil fuel marketer means any person who conducts either of the following activities:

- (1) Directs a shipment of off-specification used oil from their facility to a used oil burner; or
- (2) First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in § 279.11 of this part.

Used oil generator means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

Used oil processor/re-refiner means a facility that processes used oil.

Used oil transfer facility means any transportation related facility including loading docks, parking areas, storage areas and other areas where shipments of used oil are held for more than 24 hours and not longer than 35 days during the normal course of transportation or prior to an activity performed pursuant to § 279.20(b)(2). Transfer facilities that store used oil for more than 35 days are subject to regulation under subpart F of this part.

Used oil transporter means any person who transports used oil, any person who collects used oil from more than one generator and transports the collected oil, and owners and operators of used oil transfer facilities. Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation but, with the following exception, may not process used oil. Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (e.g., settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products or used oil fuel.

**Credits**

[58 FR 26425, May 3, 1993; 59 FR 10559, March 4, 1994; 71 FR 40280, July 14, 2006]

SOURCE: 57 FR 41612, Sept. 10, 1992, unless otherwise noted.

AUTHORITY: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and Sections 101(37) and 114(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

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