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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 262, 264, 265, 268, 270, 271, and 302

[EPA/OSW-FR-90-010; SWH-FRL-3751-1]

RIN 2050-AC73

Land Disposal Restrictions for Third Third Scheduled Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is promulgating regulations implementing the last of five Congressionally mandated prohibitions on land disposal of hazardous wastes (the third one-third of the schedule of restricted hazardous wastes, hereafter referred to as the Third Third). This action is taken in response to amendments to the Resource Conservation and Recovery Act (RCRA), enacted in the Hazardous and Solid Waste Amendments (HSWA) of 1984. When fully effective in May 1992, this rule, combined with the previous rulemakings, is expected to require treatment of a total of seven million tons of hazardous waste managed in RCRA-regulated facilities.

EFFECTIVE DATE: This final rule is effective on May 8, 1990.

ADDRESSES: The official record for this rulemaking is identified as Docket Number F-90-LD13-FFFFF, and is located in the EPA RCRA Docket, room 2427, 401 M Street SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost \$.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at: (800) 424-9346 (toll-free) or (202) 382-3000 locally.

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and hazardous waste injection wells, contact Bruce Kobelski, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7275. For specific information on capacity determinations or national variances, contact Jo-Ann Bassi, Office of Solid Waste (OS-322), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-6673.

SUPPLEMENTARY INFORMATION:**Expanded Summary**

Today's notice promulgates specific treatment standards and effective dates for the Third Third wastes, "soft hammer" First and Second Third wastes, and five newly listed wastes. Today's notice also promulgates treatment standards and effective dates for multi-source leachate and mixed radioactive/hazardous wastes, which were re-scheduled to the Third Third. The Agency has also re-scheduled wastes from the petroleum refining industry, EPA Hazardous Waste Nos. K048-K052, to the Third Third, is revising the treatment standards for these wastes, and is granting a six-month national capacity variance for K048-K052 nonwastewaters. The Agency is also promulgating alternate treatment standards for lab packs.

The Agency is also promulgating treatment standards and effective dates for hazardous wastes that exhibit one or more of the following characteristics: Ignitibility, corrosivity, reactivity or EP toxicity (40 CFR 261.21-261.24). The Agency has revised the proposed treatment standards for these wastes to reflect data submitted during the comment period showing wide variability in the wastestreams. Today's final rule establishes treatment standards for the characteristic wastes in one of four forms: (1) A concentration level equal to, or greater than the characteristic level; (2) a concentration level less than the characteristic level; (3) a specified treatment technology which in many cases will result in treatment below the characteristic level; or (4) a treatment standard of "deactivation" to remove the characteristic, with guidance on technologies the Agency believes will remove the characteristics (see appendix VI to part 268).

In promulgating treatment standards for characteristic wastes, EPA has evaluated the applicability of certain provisions of the land disposal restrictions' framework with respect to characteristic wastes including wastes regulated under the National Pollutant Discharge Elimination System (NPDES)

program, sections 307(b) and 402 of the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA) programs regulating deep well injection to ensure successful integration of these programs with the regulations being promulgated today. Specifically, the Agency considered the appropriateness of the dilution prohibition for each of the characteristic wastestreams, and the applicability of treatment standards expressed as specified methods.

In general, the Agency believes that the mixing of waste streams to eliminate certain characteristics is appropriate and should be permissible for certain characteristic waste streams (e.g., most wastes that are purely corrosive). Furthermore, EPA believes that the dilution prohibition should not apply to characteristic wastes that are managed in treatment trains regulated under the Pretreatment and National Pollutant Discharge Elimination System (NPDES) programs under sections 307(b) and 402 of the CWA or in Class I underground injection well systems regulated under the Safe Drinking Water Act (SDWA). The Agency believes that the treatment requirements and associated dilution rules under the CWA are generally consistent with the dilution rules under RCRA, and that the Agency should rely on the existing CWA provisions. Similarly, EPA has established a regulatory program under the SDWA to prevent underground injection which endangers drinking water sources. Class I deep wells inject below the lowermost geologic formation containing an underground source of drinking water, and are subject to minimum location, construction, and operation requirements. The Agency believes that application of dilution rules to these wastes would not further minimize threats to human health and the environment, and that disposal of these wastes by underground injection at the characteristic levels is as sound as the treatment option. However, hazardous effluent, sludges, or other residues generated from these treatment trains, or pretreatment from CWA or SDWA systems, that are subsequently land disposed are subject to the land disposal restriction provisions.

The Agency also is limiting the circumstances under which treatment standards expressed as specified methods apply to wastes regulated under the CWA and SDWA programs. In general, the Agency believes that where a treatment standard is expressed as a specified method, and where application of that method is consistent with and promotes the objectives of the program, it should be

impermissible to dilute these wastes and avoid treating them by the designated treatment method. With respect to existing CWA regulations, the Agency believes that this is true for all specified methods in today's rule. Therefore, the Agency is specifying that dilution is impermissible for these wastes, and that the treatment standards expressed as specified methods apply. The Agency, however, is not requiring treatment of underground injected wastes with the specified methods, based on the previously-stated belief that disposal of such characteristic wastes by this method is as sound as the treatment option. (The Agency emphasizes that any mixture of listed and characteristic wastes is subject to the existing dilution prohibition rule, and must comply with the treatment standard for the listed waste, even if it is a specified method.)

The Agency received comments indicating that generators may be likely to change waste codes and ship their wastes as characteristic wastes rather than as listed wastes as a result of this rulemaking. The Agency is concerned with the potential for mislabeling hazardous wastes, but believes that this incentive has always existed since characteristic wastes may be disposed in a subtitle D facility once they no longer exhibit a hazardous characteristic. Furthermore, the Agency is revising the waste identification requirements of 40 CFR parts 261, 262, 264, and 265 to require that all relevant waste codes must be provided; we believe this revision will enhance the ability to enforce the accurate labeling of hazardous wastes. Finally, the Agency emphasizes that the mislabeling of hazardous wastes is a serious violation of the land disposal restrictions, and potentially a criminal act. The Agency will be modifying the existing Waste Analysis Plan Guidance to aid treatment and disposal facilities in determining whether waste has been properly classified.

The Agency is promulgating certain provisions of general applicability in today's rulemaking, including certain revisions to the existing rule that prohibits dilution of prohibited wastes, amendments to 40 CFR 262.11, which outlines the procedures for identification of hazardous wastes, and modifications to the tracking and recordkeeping requirements of 40 CFR 268.7. In addition, EPA is modifying existing testing requirements for treatment and disposal facilities, and amending subparagraph (c) of 40 CFR 261.33 (commercial chemicals that are hazardous wastes when discarded) due to the possible lack of clarity that

became apparent in the course of establishing treatment standards for these wastes. The Agency also is clarifying certain questions of applicability, such as whether wastes formerly excluded by the Bevill Amendment are to be considered newly identified for purposes of the land disposal restrictions, and applicability of California list prohibitions to newly identified and newly lifted hazardous wastes.

Unless a longer national capacity variance is specified, the effective date for compliance with treatment standards for all waste codes in the final rule has been extended to August 8, 1990 by granting a three-month national capacity variance. The effective date is being delayed because the Agency realizes that even where data indicate that sufficient treatment capacity exists, it is not immediately available. Nonetheless, all Third Third wastes become restricted on May 8, 1990 and therefore subject to a number of LDR provisions. For example, if hazardous wastes not treated in compliance with applicable treatment standards are disposed of in surface impoundments or landfills, such units must meet minimum technological requirements. Furthermore, wastes subject to this extension of the effective date must be in compliance with all applicable recordkeeping requirements, and California list prohibitions, if applicable.

Finally, wastes for which treatment standards are being promulgated may be land disposed after their effective dates only if the applicable treatment standards are met, or if disposal occurs in units that satisfy the "no migration" standard.

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I. Background

A. Summary of the Hazardous and Solid Waste Amendments of 1984 and the Land Disposal Restrictions Framework

1. Statutory Requirements

The Hazardous and Solid Waste Amendments (HSWA), enacted on November 8, 1984, prohibit the land disposal of hazardous wastes. Specifically, the amendments specify dates when particular groups of hazardous wastes are prohibited from land disposal unless " * * * it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous" (RCRA sections 3004(d)(1), (e)(1), (g)(5); 42 U.S.C. 6924(d)(1), (e)(1), (g)(5)).

The amendments also require the Agency to set " * * * levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1), 42 U.S.C. 6924(m)(1)). Wastes that meet treatment standards established by EPA are not prohibited and may be land disposed. In addition, a hazardous waste that does not meet the treatment standard may be land disposed provided the "no migration" demonstration specified in RCRA

sections 3004(d)(1), (e)(1) and (g)(5) is accepted by EPA.

For the purposes of the restrictions, HSWA defines land disposal " * * * to include, but not be limited to, any placement of such hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave" (RCRA section 3004(k), 42 U.S.C. 6924(k)).

The land disposal restrictions are effective when promulgated unless the Administrator grants a national capacity variance from the otherwise-applicable date and establishes a different date (not to exceed two years beyond the statutory deadline) based on " * * * the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available" (RCRA section 3004(h)(2), 42 U.S.C. 6924(h)(2)). The Administrator may also grant a case-by-case extension of the effective date for up to one year, renewable once for up to one additional year, when an applicant successfully makes certain demonstrations (RCRA section 3004(h)(3), 42 U.S.C. 6924(h)(3)). A case-by-case extension can be granted whether or not a national capacity variance has been granted.

The statute also allows treatment of hazardous wastes in surface impoundments that meet certain minimum technological requirements (or certain exceptions thereto). Treatment in surface impoundments is permissible provided the treatment residues that do not meet the treatment standard(s) (or applicable statutory prohibition levels) are " * * * removed for subsequent management within one year of the entry of the waste into the surface impoundment" (RCRA section 3005(j)(11)(B), 42 U.S.C. 6925(j)(11)(B)).

In addition to prohibiting the land disposal of hazardous wastes, Congress prohibited storage of any waste which is prohibited from land disposal unless " * * * such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal" (RCRA section 3004(j), 42 U.S.C. 6924(j)).

2. Applicability to Injected Wastes

As noted above, disposal of hazardous wastes in injection wells is subject to the provisions of HSWA. The injection of hazardous wastes is controlled by two statutes, RCRA and the Safe Drinking Water Act (SDWA). The regulations governing injection of these wastes have been codified along

with other regulations of the Underground Injection Control (UIC) program under the SDWA in parts 124, 144, 145, 146, 147, and 148 of the Code of Federal Regulations.

3. Solvents and Dioxins

Effective November 8, 1986, HSWA prohibited land disposal (except by deep well injection) of solvent-containing hazardous wastes numbered F001-F005 listed in 40 CFR 261.31 and dioxin-containing hazardous wastes numbered F020-F023 and F026-F028 (RCRA sections 3004 (e)(1), (e)(2), 42 U.S.C. 6924 (e)(1), (e)(2)). In response to this mandate, EPA promulgated a final rule (51 FR 40572) on November 7, 1986, implementing RCRA section 3004(e). This rule established the general framework for the land disposal restrictions program, and established treatment standards for the F001-F005 solvent wastes and F020-F023 and F026-F028 dioxin-containing wastes.

4. California List Wastes

Effective July 8, 1987, the statute prohibited further land disposal (except by deep well injection) of the following listed or identified wastes (RCRA section 3001) set out in RCRA sections 3004 (d)(1) and (d)(2) (42 U.S.C. 6924 (d)(1), (d)(2)):

(A) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/l.

(B) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below:

(i) Arsenic and/or compounds (as As) 500 mg/l;

(ii) Cadmium and/or compounds (as Cd) 100 mg/l

(iii) Chromium (VI and/or compounds (as Cr VI)) 500 mg/l;

(iv) Lead and/or compounds (as Pb) 500 mg/l;

(v) Mercury and/or compounds (as Hg) 20 mg/l;

(vi) Nickel and/or compounds (as Ni) 134 mg/l;

(vii) Selenium and/or compounds (as Se) 100 mg/l; and

(viii) Thallium and/or compounds (as Tl) 130 mg/l.

(C) Liquid hazardous waste having a pH less than or equal to two (2.0).

(D) Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 50 ppm.

(E) Hazardous wastes containing halogenated organic compounds (HOCs) in total concentration greater than or equal to 1,000 mg/kg.

On July 8, 1987, EPA promulgated a final rule (52 FR 25760) implementing RCRA section 3004(d). This rule established treatment standards for California list wastes containing PCBs and certain HOCs, and codified the statutory prohibition on liquid corrosive wastes. The statutory prohibition also is in effect for the California list wastes containing free cyanides, metals, and the California list dilute HOC wastewaters.

5. Disposal of Solvents, Dioxins and California List Wastes in Injection Wells

Section 3004(f) of RCRA required that the Administrator prohibit the disposal of solvents, dioxins and California list wastes in deep wells, effective August 8, 1988, unless such disposal had been determined to be protective of human health and the environment for as long as the wastes remained hazardous, or unless a variance had been granted under RCRA section 3004(h). On July 26, 1988, the Agency established effective dates for the prohibition on injection of solvents and dioxin wastes (53 FR 28118). In another regulation, effective August 6, 1988 and published August 16, 1988 in the *Federal Register*, the Agency established effective dates for the prohibition on injection of California list wastes (53 FR 30908).

6. Scheduled Wastes

HSWA required the Agency to prepare a schedule by November 8, 1986, for restricting the land disposal of all hazardous wastes, including underground injected wastes, listed or identified as of November 8, 1984, in 40 CFR part 261, excluding solvent- and dioxin-containing wastes and California list wastes covered under the schedule set by Congress. The schedule, based on a ranking of the listed wastes that considers their intrinsic hazard and their volume, ensures that prohibitions and treatment standards are promulgated first for high volume hazardous wastes with high intrinsic hazard before standards are set for low volume wastes with low intrinsic hazard. The statute further requires that these determinations be made by the following deadlines:

(A) At least one-third of all listed hazardous wastes by August 8, 1988;

(B) At least two-thirds of all listed hazardous wastes by June 8, 1989; and

(C) All remaining listed hazardous wastes and all hazardous wastes identified as of November 8, 1984, by one or more of the characteristics

defined in 40 CFR part 261 by May 8, 1990.

Furthermore, if EPA failed to set a treatment standard by the statutory deadline for any hazardous waste in the first or second third of the schedule, should such waste be disposed in a landfill or surface impoundment, that unit must meet the minimum technological requirements specified in RCRA section 3004(o) for new facilities (RCRA section 3004(g)(6)). (Note: In the August 17, 1988 First Third final rule, EPA interpreted the term "such facility" in section 3004(g)(6) to refer to the individual surface impoundment or landfill unit.) In addition, prior to disposal in such unit, the generator was required to certify to the Administrator that he had investigated the availability of treatment capacity and had determined that disposal in such landfill or surface impoundment was the only practical alternative to treatment currently available to the generator. This restriction on the use of landfills and surface impoundments that met the minimum technological requirements applied until EPA set a treatment standard for the waste, or until May 8, 1990, whichever was sooner. These requirements were collectively referred to as the soft hammer provisions. Other forms of land disposal, including underground injection, were not similarly restricted, and could continue to be used for disposal of untreated wastes until EPA promulgated a treatment standard, or until May 8, 1990, whichever was sooner.

If the Agency fails to set a treatment standard for any scheduled hazardous waste by May 8, 1990, the soft hammer provisions are superseded by the hard hammer. (Note: It is EPA's interpretation that the hard hammer applies to characteristic wastes. See 54 FR 48489.) These wastes are automatically prohibited from all forms of disposal on May 8, 1990, unless the wastes are the subject of a successful "no migration" demonstration (RCRA section 3004(g)(5), 42 U.S.C. 6924(g)(5)). (Note: RCRA section 3004(h)(2) permits extensions of the effective date such as national capacity extensions or case-by-case extensions beyond the hard hammer date.)

On May 28, 1986, EPA promulgated the schedule for setting treatment standards for the listed and identified hazardous wastes (51 FR 19300). All wastes that are identified as hazardous by characteristic are scheduled in the Third Third. This schedule is incorporated in 40 CFR 268.10, 268.11 and 268.12.

For the scheduled wastes, the statute does not provide different deadlines for restriction of wastes that are injected underground versus disposed of in surface land units. The Agency did, however, propose and promulgate First Third regulations for surface disposed and injected wastes on separate dates. The First Third final rule, promulgated on August 8, 1988, and published in the **Federal Register** on August 17, 1988 (53 FR 31138), set out the conditions under which wastes included in the first one-third of the schedule of restricted hazardous wastes may continue to be land disposed (other than by injection). Final regulations prohibiting deep well injection of certain First Third wastes were published on August 16, 1988 (53 FR 30908) and on June 14, 1989 (54 FR 25416).

The Second Third final rule, promulgated on June 8, 1989, and published in the **Federal Register** on June 23, 1989, (54 FR 26594) established treatment standards and prohibition effective dates for land disposal and underground injection for certain wastes. In addition, EPA promulgated treatment standards and effective dates for certain First Third soft hammer wastes, Third Third wastes and newly listed wastes.

Today's notice promulgates the conditions under which Third Third wastes may continue to be land disposed. It also promulgates treatment standards for some First and Second Third restricted hazardous wastes, five newly listed wastes (*i.e.*, listed after November 8, 1984), promulgates alternate treatment standards for lab packs, and revises the treatment standards for petroleum refining wastes (EPA Hazardous Waste No. K048-K052). This rule applies to all forms of land disposal, including deep well injection, and finalizes the November 22, 1989 proposed rulemaking (54 FR 48372).

7. Newly Identified and Listed Wastes

RCRA requires the Agency to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR part 261 after November 8, 1984, within six months of the date of identification or listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). However, the statute does not provide for an automatic prohibition of the land disposal of such wastes if EPA fails to meet this deadline. Today's notice promulgates treatment standards for five newly listed wastes (see section III.A).

B. Regulatory Framework

The November 7, 1986, final rule (51 FR 40572) established the regulatory

framework for implementing the land disposal restrictions program. Some changes to the framework were made in the July 8, 1987, final rule (52 FR 25760) that prohibited the land disposal of California list wastes, and in the August 17, 1988, First Third final rule. Some additional changes are also being promulgated in today's final rule, particularly with respect to characteristic wastes. Regulations specifying how the framework applies to injected wastes were promulgated July 26, 1988 (53 FR 28118). The following discussion summarizes the major provisions of the land disposal restrictions framework.

1. Applicability

The land disposal restrictions apply prospectively to the affected wastes. In other words, hazardous wastes land disposed after the applicable effective dates are subject to the restrictions, but wastes land disposed prior to the effective dates are not required to be removed or exhumed for treatment (51 FR 40577). However, if these wastes or contaminated media are excavated and removed, these wastes are subject to the land disposal restrictions. Similarly, only surface impoundments receiving restricted wastes after the applicable deadline are subject to the restrictions on treatment in surface impoundments contained in 40 CFR 268.4 and RCRA section 3005(j)(11). Also, the storage prohibition applies to wastes placed in storage after the effective dates.

The provisions of the land disposal restrictions apply to wastes produced by generators of greater than 1,000 kilograms of hazardous waste per calendar month, as well as small quantity generators of 100 to 1,000 kilograms of hazardous waste (or greater than 1 kilogram of acute hazardous waste) in a calendar month. However, wastes produced by small quantity generators of less than 100 kilograms of hazardous waste (or less than 1 kilogram of acute hazardous waste) per calendar month are conditionally exempt from RCRA, including the land disposal restrictions (see 40 CFR 268.1).

The land disposal restrictions apply to all facilities subject to RCRA, including both interim status and permitted facilities. The requirements of the land disposal restrictions program supersede 40 CFR 270.4(a), which currently provides that compliance with a RCRA permit constitutes compliance with subtitle C of RCRA. Therefore, even though the requirements may not be specified in the permit conditions, all permitted facilities are subject to the restrictions. Moreover, the land disposal

restrictions are material conditions or requirements of the interim status standards that may be enforced in either a criminal or civil action. Although EPA attempted to clarify this point in the June 4, 1987 correction notice (54 FR 21010, item #1, and 21016, item #27), the Agency's correction has been viewed as imprecise in that it characterized part 265 as requirements of persons managing wastes pursuant to part 268. Although the Agency believes that this point is already established, EPA is clarifying today that the part 268 provisions should be characterized as material conditions or requirements of part 265. Therefore, 265.1(e) is modified accordingly.

2. Treatment Standards

By each statutory deadline, the Agency must establish the applicable treatment standards under 40 CFR part 268 subpart D for each restricted hazardous waste (RCRA section 3004(m)(1)). After the applicable effective dates, restricted wastes may be land disposed only if they meet the treatment standards, or it has been demonstrated to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. If EPA does not promulgate treatment standards by the statutory deadlines, such wastes are prohibited from land disposal (with the exception of First and Second Third scheduled hazardous wastes, which were subject to the soft hammer provisions of RCRA section 3004(g)(6) until May 8, 1990).

At present, a treatment standard is based on the performance of the best demonstrated available technology (BDAT) to treat the waste (51 FR 40578). EPA may establish treatment standards either as specific technologies or as performance standards based on the performance of BDAT. Compliance with performance standards may be monitored by measuring the concentration level of the hazardous constituents (or in some circumstances, indicator pollutants) in the waste, treatment residual, or in the extract of the waste or treatment residual. When treatment standards are set as performance levels, the regulated community may use any technology not otherwise prohibited (such as impermissible dilution) to treat the waste to meet the treatment standard. Thus, treatment is not limited to only those technologies considered in determining the treatment standard. However, when treatment standards are

expressed as specific technologies, such technologies must be employed.

3. National Capacity Variances From the Effective Dates

The Agency has the authority to grant national capacity variances from the statutory effective dates, not to exceed two years, if there is insufficient alternative protective treatment, recovery or disposal capacity for the wastes (RCRA section 3004(h)(2)). To make capacity determinations, EPA compares the nationally available alternative treatment, recovery, or protective disposal capacity at permitted and interim status facilities which will be in operation by the effective date with the quantity of restricted waste generated. If there is a significant shortage of such capacity nationwide, EPA will establish an alternative effective date based on the earliest date such capacity will be available. During the period such a capacity variance is in place, if the waste is disposed in a landfill or surface impoundment, such disposal may only be in a unit meeting the minimum technological requirements of RCRA section 3004(o) (53 FR 31186 and 40 CFR 268.5(h)(2)). It should be noted, however, that if a waste subject to a national capacity variance is treated to meet the applicable treatment standards, the land disposal restrictions allow such waste to be disposed in a subtitle C landfill or surface impoundment regardless of whether the unit meets minimum technological requirements. Note, however, that independent RCRA provisions may require such wastes to be disposed in units meeting minimum technological requirement.

4. Case-By-Case Extensions of the Effective Date

The Agency will consider granting up to a one-year extension (renewable only once) of a prohibition effective date on a case-by-case basis. The requirements outlined in 40 CFR 268.5 must be satisfied, including a demonstration that adequate alternative treatment, recovery, or disposal capacity for the petitioner's waste cannot reasonably be made available by the effective date due to circumstances beyond the applicant's control, and that the petitioner has entered into a binding contractual commitment to construct or otherwise provide such capacity. If a waste is placed in a surface impoundment or landfill during the period that such a case-by-case extension is in place, such unit must meet the minimum technological requirements of RCRA section 3004(o).

5. "No Migration" Exemptions From the Restrictions

EPA has the authority to allow the land disposal of a restricted hazardous waste which does not meet the treatment standard provided that the petitioner demonstrates that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the waste remains hazardous (40 CFR 268.6). If a petition is granted under 40 CFR part 268, it can remain in effect no longer than ten years for disposal in interim status land disposal units, and for no longer than the term of the RCRA permit for disposal in permitted units (40 CFR 268.6(h)).

However, for injected wastes, 40 CFR 148.20 (promulgated on July 26, 1988, see 53 FR 28118) outlines in detail the Agency's requirements for "no migration" petitions for hazardous waste injection facilities. Briefly, a petitioner is required, through modeling, to demonstrate that there is no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This demonstration can be made in one of two ways: the use of flow and transport models to show that injected fluids will not migrate vertically out of the injection zone for a period of 10,000 years; or, use of geochemical modeling to show that the waste is transformed so it will become nonhazardous at the edge of the injection zone. Also, a showing must be made that the well was in compliance with the substantive area of review, corrective action, and mechanical integrity requirements of part 146.

6. Variances From the Treatment Standards

EPA established the variance from the treatment standard to account for those wastes that cannot be treated to meet the applicable treatment standards, even if well-designed and well-operated BDAT treatment systems are used, or if treatment technologies are inappropriate for the waste (40 CFR 268.44). This variance is somewhat analogous to the fundamentally different factors variance in the Agency's Clean Water Act effluent limitations guidelines regulations. Among other things, petitioners must demonstrate that the waste is significantly different from the wastes evaluated by EPA in establishing the treatment standard, and the waste cannot be treated to the level or by the method specified by the treatment standard, or that such standard or method is inappropriate for the waste (51 FR 40605). This variance procedure

can result in the establishment of a new treatability group and corresponding treatment standard that applies to all wastes meeting the criteria of the new waste treatability group. A site-specific variance from the treatment standard may also be granted administratively (without rulemaking), but the variance has no generic applicability to other wastes at other sites (53 FR 31199).

7. Exemption for Treatment in Surface Impoundments

Wastes that would otherwise be prohibited from one or more methods of land disposal may be treated in a surface impoundment that meets certain technological requirements (40 CFR 268.4(a)(3)) as long as treatment residuals that do not meet the applicable treatment standard (or statutory prohibition levels where no treatment standards are established) are removed for subsequent management within one year of entry into the impoundment and the wastes are not placed into any other surface impoundment. The owner or operator of such an impoundment must certify to the Regional Administrator that the technical requirements have been met and must also submit a copy of the waste analysis plan to the Regional Administrator that shows the waste analysis plan has been modified to provide for testing of treatment residuals in accordance with § 268.4 requirements.

8. Storage of Prohibited Wastes

Storage of prohibited wastes in tanks and containers is prohibited except where storage is solely for the purpose of accumulating sufficient quantities of wastes to facilitate proper treatment, recovery, or disposal (40 CFR 268.50). A facility that stores a prohibited waste for more than one year bears the burden of proof that such storage is solely for this purpose. *Id.* EPA bears the burden of proof if the Agency believes that storage of a restricted waste by a facility for up to one year is not for the purpose of accumulating sufficient quantities to facilitate proper treatment, recovery, or disposal. *Id.*

9. The "Soft Hammer" Provisions

First and Second Third wastes for which EPA did not promulgate treatment standards by their respective effective dates could continue to be disposed of in landfill and surface impoundment units until May 8, 1990. Such land disposal could occur only if certain demonstrations were made, and provided technology requirements of RCRA section 3004(o) (see 53 FR 31181, August 17, 1988). Other types of land

disposal were not similarly restricted (e.g., underground injection). On May 8, 1990, wastes for which EPA has not established treatment standards are prohibited from land disposal (including underground injection). This prohibition is referred to as the hard hammer. Effective May 8, 1990, therefore, the soft hammer provisions are no longer in effect.

C. Pollution Prevention (Waste Minimization) Benefits

EPA's progress over the years in improving environmental quality through its media-specific pollution control programs has been substantial. Over the past two decades, standard industrial practice for pollution control concentrated to a large extent on "end of pipe" treatment or land disposal of hazardous and non-hazardous wastes. However, EPA realizes that there are limits to how much environmental improvement can be achieved under these programs which emphasize management after pollutants have been generated. EPA believes that reducing or eliminating discharges and/or emissions to the environment through the implementation of cost-effective source reduction and environmentally sound recycling practices can provide additional environmental improvements. Many corporations are seeking to incorporate waste minimization planning programs into their strategic planning to lower emission volumes and toxicities as a function of actual plant processes through either recycling or source reduction.

Under sections 3002(b) and 3005(h), hazardous waste generators are required to certify that they have a program in place to reduce the volume or quantity and toxicity of hazardous waste to the degree determined by the generator to be economically practicable. EPA encourages hazardous waste generators to pursue source reduction and environmentally sound recycling wherever possible to reduce the need for and costs of subsequent treatment, storage and disposal. In many cases, there may be economic as well as environmental benefits for companies that pursue pollution prevention options. Waste minimization planning programs have been suggested by EPA and mandated by some state governments. Several EPA documents on waste minimization are available to the public (Draft Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program; Notice and Request for Comment, *Federal Register* Vol. 54, No. 111, June 12, 1989; The EPA Manual for Waste Minimization Opportunity Assessments, EPA 600/2-

88/025, April 1988). Several state governments have already enacted waste minimization legislation (Massachusetts Toxics Use Reduction Act of 1989; Oregon Toxics Use Reduction and Hazardous Waste Reduction Act, House Bill 3515, July 2, 1989). About six other states have legislation pending that will mandate some type of waste minimization program and/or facility planning. About 25 other states offer some type of technical assistance to companies that seek alternatives to treatment, storage and disposal of waste.

Many companies have already implemented waste minimization programs. Most of these waste minimization programs have elements in common. The most successful programs have incorporated waste minimization into company policy. It is advantageous for top corporate management and/or individual plant management to provide support for assessing and understanding the economic and regulatory benefits of pursuing waste minimization versus treatment, storage and disposal options. Typically, management supports assessment of the true costs associated with waste production, including the costs of compliance, loss of production potential, and potential liability.

Program success generally requires that each individual, regardless of status or rank, be encouraged to make a contribution to minimize waste. Collective and individual pay incentives can be provided for productivity improvements. Waste minimization circles can be established using self-managing teams chosen from a broad spectrum of production and management personnel. These management teams can be provided with all information necessary to adequately assess waste minimization opportunities. Additionally, it is very beneficial for production personnel to be trained and retrained in optimum use of plant equipment and raw materials.

Some companies set explicitly defined objectives for the reduction of waste volume and toxicity that are achievable within a reasonable time frame. Typically, the objectives should not exceed the ability of the operations personnel to support and maintain them.

In all cases, it is necessary to determine the causes of waste generation. This can be done for individual processes or for several combined processes if the plant process waste streams are particularly complex. Many corporations have implemented this type of "waste minimization assessment" as part of an overall waste minimization program.

For a waste minimization assessment, it is generally necessary to accurately characterize the type of waste generated by volume, toxicity and source(s). Most companies track their waste generation by a variety of means and then normalize the results to account for variations in production rate(s). One State (Massachusetts Toxics Use Reduction Act) requires each generator of a toxic or hazardous substance to track the rate of waste generation and release/transfer per unit of product. The EPA Manual for Waste Minimization Opportunity Assessments aids in tracking waste streams which can be quite difficult to analyze in complex plant operations, where many processes discharge into one waste stream.

Next, individual processes can be examined to search for opportunities for waste reduction such as recycling, substituting less hazardous raw materials, modifying existing equipment, novel technologies, capital improvements, and increasing process efficiency. EPA and State funded technical assistance programs (e.g., Minnesota Technical Assistance Program—MnTAP, California Waste Minimization Clearinghouse, U.S. EPA Pollution Prevention Information Clearinghouse) are becoming increasingly available to identify some of these opportunities. Information is also available through industry trade associations, professional consultants specializing in waste minimization, technical literature, and chemical and equipment vendors.

It is important to realize that waste minimization, especially when incorporated into company policy, is a continual process. Ideally, a waste minimization program becomes an integral part of the company strategic plan to increase manufacturing productivity.

D. Summary of the Proposed Rule

On November 22, 1989, the Agency proposed treatment standards and prohibition effective dates for approximately 350 hazardous wastes, including hazardous wastes listed in 40 CFR 268.12 (Third Third wastes), certain wastes listed in 40 CFR 268.10 and 268.11 (First and Second Third wastes), five newly listed wastes, and wastes exhibiting a characteristic (i.e., ignitability, corrosivity, reactivity, and EP toxicity) as described in 40 CFR 261.21–261.24. In addition, the Agency proposed one modification to the land disposal restrictions regulatory framework and several interpretations of general applicability. Furthermore, the Agency proposed to revise the

treatment standards for wastes from the petroleum refining industry, EPA Hazardous Waste Nos. K048-K052. Today's rulemaking finalizes the November 22, 1989 proposal.

1. Characteristic Wastes

In the November 22, 1989 notice, EPA proposed two alternatives: (1) Set the treatment standards at the characteristic level for all of the characteristic wastes; or (2) set treatment standards at the lowest level which data indicated could be consistently achieved, some of which were below the characteristic levels, and require these standards to be met before the waste could be land disposed (even though the waste was no longer defined as hazardous). This second alternative was based on a reading of the statute that the land disposal prohibitions can attach at the point a waste becomes hazardous, and that the section 3004(m) requirements to treat to a level (or by a method) that minimizes threats to human health and the environment can attach at that point. Waste that is hazardous at the point of generation and destined for land disposal remains subject to the requirements of section 3004(m) regardless of its concentration at any subsequent time. See 54 FR 48490.

In addition, if a waste is identified as carrying more than one characteristic, it would need to meet each treatment standard or utilize each method for those characteristics. If a listed waste could also be identified for one or more characteristic waste codes, EPA proposed that the waste would have to be treated to meet the treatment standards for each of the waste codes. See 54 FR 48491.

2. Determining When Dilution is Permissible

The Agency also clarified the dilution rules as they apply to centralized treatment in the proposed rule. In particular, the Agency indicated that aggregation of wastes for the purpose of treatment in a centralized treatment system must, at a minimum, result in "actual reduction in the toxicity or mobility of at least one BDAT constituent in each prohibited waste that is centrally treated to the extent that these constituents are present in initial concentrations that exceed the treatment standard for that prohibited waste." See 54 FR 48494.

3. Other Impermissible Dilution Issues

The Agency proposed that: (1) Impermissible dilution (as previously defined for listed wastes) of a waste that exhibits a characteristic be prohibited; and (2) impermissible

dilution of a listed waste to achieve a delisting level be prohibited. See 54 FR 48495.

4. Treatment Standards for Multi-Source Leachate

On February 27, 1989, the Agency amended the schedule for prohibiting hazardous wastes from land disposal by placing multi-source leachate derived from listed spent solvents and scheduled hazardous wastes (i.e., First, Second, and Third Third) in the Third Third (see 54 FR 8264). In the Third Third proposed rule, the Agency proposed two options for the development of treatment standards for multi-source leachate: (1) Continued application of the treatment standards developed for the underlying wastes from which the leachate is derived; or (2) establishment of one set of wastewater standards and one set of nonwastewater standards which would apply to all multi-source leachate. See 54 FR 48461.

5. Alternative Treatment Standards for Lab Packs

The Agency proposed an approach for lab packs that establishes alternate treatment standards expressed as technologies for those lab packs meeting certain criteria. In particular, EPA proposed incineration as the alternative treatment standard for lab packs containing certain characteristic waste and listed organic hazardous waste codes only, and stabilization for lab packs containing certain EP toxic metals only. The proposed approach was intended to provide administrative relief and simplify the management system for lab pack wastes, because the treatment residue for these wastes would not need to be analyzed for compliance with individual treatment standards. See 54 FR 48470.

6. Applicability to Mineral Processing Wastes

On September 1, 1989 (54 FR 36592), EPA narrowed the scope of the RCRA exclusion for solid wastes from the extraction, beneficiation, and processing of ores and minerals, limiting this exclusion to 25 high volume/low toxicity wastes. On January 23, 1990 (55 FR 23227), the Agency removed five additional wastes from the exclusion based upon additional volume and/or hazard data. In the Third Third proposal, EPA proposed to consider the wastes that were removed from the exclusion to be "newly identified" for the purposes of these provisions, and further proposed not to apply the treatment standards for characteristic wastes to such wastes. Therefore, these wastes would not be subject to the

BDAT treatment standards for characteristic wastes. See 54 FR 48492.

7. Clarification of "P" and "U" Solid Wastes

The Agency proposed to modify the existing language of 40 CFR 261.33 to include residues of 40 CFR 261.33(f) materials remaining in containers and in inner liners, in addition to 40 CFR 261.33(e) residues already included in the scope of the commercial chemical product listings.

EPA also proposed that soils and spill residues contaminated with 40 CFR 261.33(d) wastes be considered to be solid wastes unless they are recycled within 90 days of the spill, regardless of intent to recycle in the future. See 54 FR 48493.

8. Treatment/Disposal Facility Testing Requirements

EPA proposed revisions to the facility testing requirements contained in 40 CFR 264.13(a), 265.13(a), 268.7(b), and 268.7(c). Specifically, the Agency proposed two approaches to specify under what circumstances EPA may require the owner/operator of a treatment or disposal facility to analyze a representative sample of a waste: (1) State that the generator may supply waste analysis information only if an EPA approved waste analysis plan allows the generator to do so; or (2) state that the owner/operator is required to test the waste a minimum of once a year, and that the Regional Administrator may require more frequent testing through the waste analysis plan on a site-specific basis. See 54 FR 48497.

9. Testing of Wastes Treated in 90-Day Tanks or Containers

Under 40 CFR 268.7(b), treatment facilities treating prohibited hazardous wastes must test the treatment residues that they generate at a frequency determined by their waste analysis plan in order to ascertain compliance with the applicable treatment standards. There is a regulatory gap, however, with respect to treatment of prohibited wastes that is conducted in 90-day tanks or containers regulated under § 262.34. This is because such tanks or containers are not subject to a waste analysis plan requirement. To close this regulatory gap, EPA proposed that persons treating prohibited wastes in such tanks and containers must prepare a plan justifying the frequency of testing based on a detailed analysis of a representative sample of the prohibited waste. The plan must contain all information necessary to treat the waste

in accordance with part 268, and must be retained as a facility record. See 54 FR 48497.

10. Generator Notification Requirements

EPA proposed to clarify 40 CFR 268.7 by allowing generators to reference the treatment standards in 40 CFR 268.41, 268.42, or 268.43. Such a reference must include the EPA Hazardous Waste No., the treatability group(s) of the waste(s), and the CFR section where the treatment standards appear. The Agency also proposed to amend 40 CFR 268.7 to allow a one-time notification and certification requirement for small quantity generator (SQG) shipments subject to tolling agreements. See 54 FR 48498.

11. Storage Prohibition

Section 3004(j) of RCRA provides that storage of prohibited hazardous waste is itself prohibited " * * * unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal" (40 CFR 268.50(a)(2) and 51 FR 1709). The Agency proposed an interpretation of this section such that the storage prohibition does not apply where storage precedes legitimate, protective treatment, or recovery. See 54 FR 48496.

12. Applicability of California List Prohibitions After May 8, 1990

The Agency outlined three situations where the California List is still applicable: (1) Liquid hazardous wastes that contain over 50 ppm PCBs, where PCBs are not a regulated constituent in the treatment standards; (2) HOC-containing wastes identified as hazardous by a characteristic property that does not contain HOCs; and (3) liquid hazardous wastes that exhibit a characteristic and also contain over 134 mg/1 of nickel and/or 130 mg/1 of thallium.

The California list regulatory and statutory prohibitions are superseded by more specific prohibitions and treatment standards. However, EPA solicited comment on a national capacity variance (to May 8, 1992) for injected corrosive wastes, but did not propose a capacity variance for corrosive wastes disposed of in surface impoundments. The legal basis for this approach was that without it, in the case of a waste which received a national capacity variance under the California list rule, EPA would effectively grant a national capacity variance for a California list waste for longer than two years. EPA also proposed to modify the language of 40 CFR 268.32(h) to ensure that there are

no periods of time in which neither the California list or superseding HOC standards would operate. See 54 FR 48498.

II. Summary of Today's Final Rule

Today's final rule is the fifth rulemaking required under the land disposal restrictions program as outlined in the 1984 Hazardous and Solid Waste Amendments to RCRA. The Agency is required to promulgate regulations establishing conditions under which the Third Third wastes included in 40 CFR 268.12 may be land disposed by the statutory deadline of May 8, 1990.

A. Applicability of Today's Final Rule

The Agency today is promulgating treatment standards and effective dates for all Third Third wastes, including wastes exhibiting a characteristic as described in 40 CFR 261.21-261.24 (see sections III.A.3 and III.A.4). The Agency also is promulgating treatment standards and effective dates for all First and Second Third soft hammer wastes (previously subject to the requirements of 40 CFR 268.8).

In previous rulemakings, the Agency amended the schedule so that certain First and Second Third wastewater residues, derived-from wastes (*i.e.*, multi-source leachate), and mixtures of scheduled hazardous/radioactive wastes were moved to the Third Third of the schedule (see 53 FR 31214, § 268.12 (b), (c), and (d); 54 FR 8264; and 54 FR 26648, § 268.12 (b) and (c)). The Agency today is promulgating treatment standards for these wastes. In addition, the Agency is promulgating treatment standards for five newly listed wastes (*i.e.*, wastes listed after enactment of the Hazardous and Solid Waste Amendments of 1984); four wastes that fall into the F002 and F005 (spent solvent) waste codes, and F025.

In the Second Third rulemaking, the Agency solicited comments, data, and specific suggestions regarding the regulation of lab packs. In today's rule, the Agency is promulgating alternate treatment standards expressed as specified technologies for lab packs meeting certain criteria.

1. Three-Month National Capacity Variance for Third Third Wastes

The Agency is granting a three-month national capacity variance for all wastes affected by this rule, based on the time required for the regulated community to make adjustments necessary to comply with the new regulations. The prohibitions on land disposal in this final rule, therefore, will be effective on August 8, 1990. During the period between May 8, 1990, and August 8,

1990, wastes (that do not meet the treatment standards) disposed in landfills or surface impoundments, must be disposed in units that meet the minimum technological requirements set out in 40 CFR 268.5(h)(2), and must comply with the California list prohibitions, where applicable. See 52 FR 25760, July 8, 1987. In addition, the recordkeeping requirements of 40 CFR 268.7 (a)(3) and (b)(6) apply to all Third Third wastes during the three-month national capacity variance. See section III.C of today's preamble for a discussion of this capacity variance.

2. Hazardous Waste Injection Wells Regulated Under 40 CFR Part 148

The Agency has, on occasion, proposed and promulgated regulations and effective dates for underground injected hazardous wastes covered under RCRA sections 3004 (f) and (g) separately from regulations addressing wastes disposed in surface facilities. EPA is addressing all methods of land disposal of wastes in today's rulemaking, including hazardous waste injection wells regulated jointly under the Safe Drinking Water Act (SDWA) and RCRA.

3. Remaining Scheduled Listed Hazardous Wastes

Today's final rule establishes treatment standards and effective dates for those listed hazardous wastes included in 40 CFR 268.10-268.12 for which treatment standards have not been promulgated to date. In section III.A, the Agency identifies the waste treatability groups by waste code and identifies the best demonstrated available technology (BDAT) for each. Treatment standards applicable to each treatability group are based on the performance levels achievable by the BDAT identified for each group. The Agency reiterates that any technology not otherwise prohibited (*e.g.*, impermissible dilution) may be used to meet the concentration-based treatment standards.

In addition, EPA is re-scheduling wastes from the petroleum refining industry, K048-K052, to the Third Third, and promulgating revisions to existing treatment standards for these wastes. The Agency is also rescinding all existing treatment standards expressed as "no land disposal" for nonwastewaters. A detailed discussion of the revised treatment standards for these wastes may be found in section III.A.

4. Characteristic Hazardous Wastes

In today's final rule, EPA is promulgating treatment standards and effective dates for hazardous wastes that exhibit one or more of the following characteristics: Ignitibility, corrosivity, reactivity or EP toxicity (40 CFR 261.21-261.24). In the November 22, 1989 notice, the Agency proposed treatment standards based on the performance of best demonstrated available technology without regard to the characteristic level. The standards, however, were transferred from treatment of listed wastes, which after evaluating data submitted by commenters, proved unachievable for characteristic wastes. The Agency today is promulgating treatment standards for these wastes that have been revised to reflect data from treating characteristic wastes submitted during the comment period. These newly-submitted data show wide variability in the wastestreams. Today's final rule establishes treatment standards for the characteristic wastes in one of four forms: (1) A concentration level equal to or greater than the characteristic level for the EP toxic metals; (2) a specified treatment technology; (3) a treatment standard of "deactivation" to remove the characteristic, with guidance on technologies the Agency believes will remove the characteristics (see appendix VI to part 268); or (4) treatment to concentration levels below the characteristic level (typically where the standard can be based on a treatment technology that is not matrix-dependent, or the Agency has sufficient data to find achievability). In addition, the Agency believes that by specifying technologies for certain of the characteristic wastes (i.e., incineration of high-TOC ignitable nonwastewaters and EP toxic pesticide wastewaters), it is requiring treatment below the characteristic levels for wastes where such treatment is technically achievable. A detailed discussion of the treatment standards promulgated for the characteristic wastes is provided in sections III.A.2, III.A.3 and III.D of today's preamble.

5. Characteristic Wastes Regulated Under the Safe Drinking Water Act (SDWA) and the Clean Water Act (CWA) and RCRA

Today's final rule limits the applicability of certain provisions of the land disposal restrictions' framework to characteristic wastes subject to regulation under the Clean Water Act (i.e., discharges permitted under the NPDES or POTW pretreatment regulations), and to characteristic

wastes managed in systems which discharge to Class I underground injection wells subject to regulation under the Safe Drinking Water Act. First, the LDR dilution prohibition does not apply to characteristic wastes managed in NPDES or pretreatment systems and subsequently discharged under CWA regulations, *unless* a method of treatment is specified. Second, the LDR dilution prohibition does not apply to wastes disposed of in Class I underground injection wells. Third, where a specified technology is the treatment standard for a characteristic waste, the method need not be utilized if the waste is disposed of in a Class I injection well. Characteristic wastes that are exempt from the dilution prohibition and which are managed and disposed of on-site, are not subject to the full § 268.7 requirements for waste analysis and recordkeeping. The Agency believes that this action is necessary to successfully integrate RCRA and SDWA programs; the underlying rationale for these decisions is provided in section III.D of today's preamble.

6. Mineral Processing Wastes

On September 1, 1989 and January 23, 1990, EPA published final rules in the *Federal Register* (54 FR 36592 and 55 FR 2322, respectively) that removed a number of mineral processing wastes from the so-called "Bevill Exclusion." RCRA section 3001(b)(3)(A)(ii) excludes from the hazardous waste regulations, pending completion of studies by the Agency, solid wastes from the extraction, beneficiation, and processing of ores and metals.

All of these previously excluded mineral processing wastes that exhibit one or more of the characteristics of hazardous waste will be subject to the hazardous waste regulations when the final rules become effective March 1, 1990, and July 23, 1990.

EPA believes that these wastes are "newly identified" for the purposes of determining applicability of the land disposal prohibitions. Although technically the wastes are not being identified by a new characteristic, they are being brought into the subtitle C system after the date of enactment of HSWA on November 8, 1984. The Agency, therefore, is clarifying in today's final rule that these newly identified mineral processing wastes are *not* subject to the BDAT treatment standards promulgated today for characteristic hazardous wastes. A detailed discussion is provided in section III.H.

B. Implementation of Requirements for Characteristic Wastes

In today's final rule, the Agency is promulgating several new provisions, and revising existing regulations to implement the treatment standards for characteristic wastes.

1. Overlap of Standards for Listed Wastes That Also Exhibit a Characteristic

The Agency today is promulgating its proposed approach with respect to determining applicable treatment standards for wastes that carry more than one waste code. Specifically, wastes that carry more than one characteristic waste code must be treated to meet the treatment standard for each characteristic; listed wastes that also exhibit one or more hazardous characteristics must be treated to meet the treatment standard for each of the waste codes, unless the characteristic constituent or property is specifically addressed in the treatment standard for the listed waste. Finally, EPA is specifying that disposal of a waste that exhibits a characteristic at the point of disposal is prohibited unless the treatment standard for that characteristic component is above the characteristic level. See section III.E.1 for a more detailed discussion.

2. Revisions to Waste Identification Requirements

Section 262.11 of 40 CFR currently sets out an either/or scheme where, if the generator determines that a waste is listed, the generator does not need to determine whether the waste exhibits a characteristic. The Agency is amending § 262.11 to indicate that generators must determine whether listed wastes also exhibit characteristics of hazardous waste for purposes of compliance with 40 CFR part 268. In addition, the Agency is amending §§ 261.21 through 261.24 to indicate that wastes that carry characteristic waste codes may also be listed wastes. See section III.E.2 of today's preamble.

3. Wastes Subject to a Capacity Variance

EPA is clarifying the requirements that are applicable to characteristic wastes during the period of a capacity variance. Under the present rule, it is possible for prohibited characteristic wastes which are subject to a national capacity variance to become nonhazardous. If, during the period of the variance the waste is treated to be nonhazardous, arguably the landfill or impoundment unit would have to meet minimum technological requirements.

EPA does not read the statute or the rules this way, and is making this clarification in section III.E.3 of today's preamble.

4. Use of TCLP v. EP Analytical Methods for Compliance

EPA is establishing treatment standards for several characteristic wastes at the characteristic level, and has determined that this level should be measured by the TCLP. This is the protocol which large quantity generators will use to assess the toxicity of their wastes starting on September 25, 1990 (small quantity generators are subject to the revised testing protocol on March 29, 1990), and it is the protocol used to measure the efficacy of stabilization or other immobilization treatment in most of the BDAT standards. A detailed discussion is provided in section III.E.4.

5. Newly Identified Toxicity Characteristic (TC) Wastes

EPA is clarifying that wastes that exhibit the TC but not the EP are not presently prohibited, even if the constituent causing the waste to exhibit the TCLP is also a constituent controlled by the EP. This point is also discussed in section III.E.5 of today's preamble.

In addition, EPA is clarifying that for hazardous wastes that are subject to more than one treatment standard, during the period of a national capacity variance for one of the wastes, the treatment standards for any other waste codes that have not received such an extension must be met. As indicated in previous rulemakings, hazardous wastes that are subject to a capacity extension and contain California list constituents must comply with the California list prohibitions. See 53 FR 31188. A detailed discussion is provided in section III.E.3 of today's preamble.

6. Further Principles Governing Applicability

The Agency notes that the issues in this rulemaking concerning when hazardous wastes become prohibited from land disposal do not change the status of other regulatory or statutory inclusions or exclusions to the definition of solid or hazardous waste found at 40 CFR 261.2-261.6. These provisions can override the LDR point of generation evaluation to keep wastes from being prohibited and subject to a dilution prohibition or treatment standard. Further, those who manage hazardous waste will need to assess what LDR prohibitions apply at different points in the waste management process. The question of whether a given waste is going to prohibited land disposal is complicated by the fact that wastes may

change form or treatability groups after undergoing treatment. The Agency explains these decision rules and provides clarifying examples in section III.E.6 of today's final rule.

C. Amended Tracking System for Characteristic Prohibited Wastes

EPA's decisions concerning characteristic wastes necessitate certain modifications of the tracking provisions contained in 40 CFR 268.7. These changes are summarized below, and a detailed discussion of each of these provisions is provided in section III.F of today's preamble.

1. Clarification of and Changes to Generally Applicable Recordkeeping Requirements

Most of the existing provisions of § 268.7 contemplate that restricted wastes are being shipped off-site for treatment or disposal (see §§ 268.7 (a)(2) and (a)(3), and §§ 268.7 (b)(4) and (b)(5)). The Agency is clarifying in today's rulemaking that for wastes managed on-site, generators must determine if the waste is restricted, and keep some documentation of that determination, plus some documentation of where the restricted waste was treated, stored, or disposed—whether treatment, storage, or disposal occurs on-site or off-site. This requirement applies to characteristic wastes, even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste under 40 CFR 261.2-261.6. The Agency also notes that those wastes exempted from all of part 268 under 40 CFR 268.1 (b) and (e) are not subject to any recordkeeping requirements.

2. Tracking (*i.e.*, Notification/Certification) Provisions Applicable to Generators

EPA believes that the existing tracking system requires some modification for characteristic waste that the generator has treated to meet the treatment standard before it is sent off-site (and therefore, in most cases may be land disposed in a subtitle D facility). The Agency believes that under the present rule, sending the tracking forms to subtitle D facilities could have counterproductive effects, and has determined that the tracking forms should not accompany shipments from generators to subtitle D facilities. By deciding that tracking documents for prohibited characteristic wastes that no longer exhibit a characteristic should not go to these facilities, however, the Agency is *not* deciding that notifications and certifications should not be

prepared for such wastes. EPA believes that the notifications and certifications should be sent to the appropriate EPA Regional Administrator or his delegated representative, or to a state authorized to implement the land disposal restrictions. EPA is making some slight modifications in the notification form that would be sent to EPA (or to an authorized State), because the existing notification refers to the waste's ID number and manifest number when shipped, neither of which are available for wastes no longer exhibiting a characteristic. While the revised notification form would not contain hazardous waste codes, it must contain a complete and accurate description of the waste, including its former hazardous waste classification, and must identify the facility receiving the waste. EPA is not amending the tracking requirements for those characteristic wastes that still exhibit a characteristic when they are sent off-site.

3. Tracking Provisions Applicable to Treaters

EPA is adopting the same approach for treaters of characteristic wastes as it is for generators. Thus, tracking forms for shipments of characteristic wastes that meet a treatment standard, and no longer exhibit a characteristic of hazardous waste, would be sent to EPA or to an authorized state.

4. Land Disposal Facilities

Under existing rules, subtitle C disposal facilities receiving prohibited wastes must keep copies of the notification and certification prepared by the generator and/or the treater, must test wastes (or waste extracts) at a frequency specified in their waste analysis plan (as modified in today's rule), and must dispose of certain types of wastes in minimum technology units. 40 CFR 268.7(c) (1), (2), and (3). These requirements do not fit well for the characteristic wastes prohibited in today's rule. The Agency is thus indicating that the requirements of § 268.7(c) do not apply to subtitle D disposal facilities receiving wastes that no longer exhibit a characteristic.

5. Changes in Certification to Reflect Dilution Prohibition

EPA is amending the certifications of compliance required of treaters and generators in § 268.7 to state that the treatment standard was not achieved by a form of impermissible dilution.

D. The Dilution Prohibition as it Applies to Centralized Treatment

The existing rules on dilution and EPA's interpretive statements regarding those rules indicate that the dilution prohibition has a two-fold objective: (1) To ensure that prohibited wastes are actually treated; and (2) to ensure that prohibited wastes are treated by methods that are appropriate for that type of waste. EPA has acknowledged that prohibited wastes which are aggregated are not diluted impermissibly if they are treated legitimately in centralized treatment systems, irrespective of the dilution inherent in such a system. Thus, if "dilution" is a legitimate type of treatment, or a necessary pretreatment step in a legitimate treatment system, such dilution is permissible. Conversely, prohibited wastes that are "treated" by inappropriate methods, or sent to treatment systems that do not treat the wastes, are diluted impermissibly.

In applying these principles to characteristic wastes, EPA encountered two major difficulties: First, the interface with regulatory systems established pursuant to the Clean Water Act and Safe Drinking Water Act, and second, difficulties in being able to quantify the proposal in a meaningful way. Given these problems and complications, EPA has decided that the most constructive course is to provide additional interpretive guidance on the existing dilution prohibition contained in § 268.3, and to explain more fully how those rules would apply in specific situations.

In all cases, the Agency has determined that for non-toxic hazardous characteristic wastes, it should not matter how the characteristic property is removed so long as it is removed. Thus, dilution is an acceptable treatment method for such wastes. In most cases, EPA has determined also not to apply a dilution prohibition to characteristic wastes that are managed in treatment systems regulated under the Clean Water Act or the Safe Drinking Water Act. However for aggregation of listed wastestreams or toxic characteristic wastestreams not included above, the Agency is able to provide limited additional guidance today on the issue of when centralized treatment methods involving dilution are permissible. As a general rule, if the wastes are all legitimately amenable to the same type of treatment, and this method of treatment is utilized for the aggregated wastes, the aggregation step does not constitute impermissible dilution.

E. Treatment Standards for Multi-Source Leachate

On February 27, 1989, the Agency amended the schedule for prohibiting hazardous wastes from land disposal by placing multi-source leachate derived from hazardous wastes in the Third Third (see 54 FR 8264). The Agency took this step to study more fully the most appropriate treatment standards for such leachate. The Agency's original approach to multi-source leachate was that the leachate carries the waste codes of all of the listed hazardous wastes from which it is derived and, therefore, is subject to each of the prohibitions and treatment standards for those wastes. In the event a particular constituent in the leachate is present in more than one prohibited waste, the stricter treatment standard would apply (53 FR 31138, August 17, 1988).

The Agency today is promulgating a fixed set of wastewater treatment standards and a set of nonwastewater treatment standards for all multi-source leachate and residues derived from the treatment of multi-source leachate. The Agency is promulgating treatment standards for these wastes under EPA Hazardous Waste Code No. F039. The Agency has identified treatment levels for the entire BDAT list of hazardous constituents in the wastewater and nonwastewater treatability groups.

The Agency is also specifying that leachate derived solely from F020-F023 and F026-F028 (dioxin) wastes, and no other listed wastes, is considered to be single-source leachate and must comply with the treatment standards for those wastes and continue to be classified under those waste codes.

The Agency is not promulgating separate standards for multi-source leachate that exhibits a characteristic of hazardous waste because, by promulgating standards for all of the BDAT list constituents, the treatment standards will address all of the constituents and properties that the treatment standards for characteristic wastes address. Should multi-source leachate or residues derived from the treatment of multi-source leachate exhibit a characteristic at the point of disposal, however, it would have to be treated to meet the treatment standards for that characteristic. A detailed discussion of the treatment standards for multi-source leachate is contained in section III.A.6 of today's final rule.

F. Alternate Treatment Standards for Lab Packs

The Agency is today promulgating alternate treatment standards for lab packs that contain certain prohibited

organometallic and organic wastes specified in appendix IV and appendix V to 40 CFR part 268, respectively. The alternate treatment standards are expressed as a specified technology for each of the waste categories: (1) Incineration followed by treatment to meet the treatment standards for certain EP toxic metals for the organometallic wastes identified in appendix IV; and (2) incineration as a specified method for the organic hazardous wastes identified in appendix V. In addition, the Agency is allowing certain unregulated wastes to be included in lab packs utilizing the alternate treatment standards. The Agency is not promulgating the proposed alternate treatment standard for inorganic wastes due to concerns about unverified stabilization of variable waste streams.

The Agency believes that the alternate treatment standards provide some administrative relief, while minimizing the threats posed by land disposal of these small volumes of hazardous waste. Section III.A.9 of today's preamble contains a detailed discussion of the alternate treatment standards for these wastes.

G. Mixed (Hazardous/Radioactive) Wastes

EPA is granting a two-year national capacity variance under section 3004(h)(2) for mixed scheduled hazardous/radioactive wastes subject to today's rulemaking. The Agency bases the national variance for these wastes upon a determination that there is inadequate treatment capacity available for these wastes. The Agency is continuing to evaluate the volumes, characteristics, and treatment options for such wastes. A detailed discussion of EPA's approach for mixed wastes subject to today's rulemaking is provided in section III.A.8 of today's preamble.

The Agency is also establishing four separate treatability groups for specific types of mixed waste that could not be treated with the technologies determined to be BDAT for the corresponding nonradioactive wastes. The BDAT treatment standard for high-level radioactive wastes generated during the reprocessing of fuel rods is vitrification. For radioactive lead solids, the BDAT treatment standard is macroencapsulation. The BDAT treatment standard for radioactive elemental mercury is amalgamation. For radioactive hydraulic oil contaminated with mercury, BDAT is incineration.

H. Nationwide Variances From the Effective Date

Due to lack of sufficient treatment or recovery capacity, EPA is promulgating a two-year national capacity variance for the surface-disposed and deep well-injected hazardous wastes listed in Tables 1 and 2. In addition to the wastes listed in Tables 1 and 2, EPA is also granting a two-year national capacity extension to: mixed hazardous/radioactive wastes; naturally occurring radioactive materials that are mixed with RCRA hazardous wastes; soil and debris contaminated with Third Third wastes for which the treatment standard is based on incineration, mercury retorting, vitrification, or wet-air oxidation; and inorganic debris as defined in § 268.2(a)(7) (which also applies to chromium refractory bricks carrying the EPA Hazardous Waste Nos. K048-K052). The Agency is also granting a six-month capacity variance to nonwastewaters from the petroleum refining industry, EPA Hazardous Waste Nos. K048-K052. See section III.B of today's preamble for a detailed discussion of this six-month capacity variance.

Determinations of available capacity are based on a comparison of the volumes of wastes requiring treatment to the amount of capacity available for such treatment. Although EPA does not require that BDAT technologies be used to meet the applicable treatment standards, unless otherwise specified, EPA assesses available capacity by evaluating the availability of technologies identified as BDAT.

TABLE 1. SUMMARY OF TWO-YEAR NATIONAL CAPACITY VARIANCES FOR SURFACE-DISPOSED WASTES ¹

Required alternative treatment technology	Waste code/ physical form
Acid Leaching and Chemical Precipitation.	D009 Low Mercury Nonwastewater.
	K106 Low Mercury Nonwastewater.
	P065 Low Mercury Nonwastewater.
	P092 Low Mercury Nonwastewater.
	U151 Low Mercury Nonwastewater.
	F039 ² Nonwastewater.
Combustion of Sludge/Solids.	K048 ³ Nonwastewater.
	K049 Nonwastewater.
	K050 Nonwastewater.
	K051 Nonwastewater.
	K052 Nonwastewater.
Mercury Retorting....	D009 High Mercury Nonwastewater.
	K106 High Mercury Nonwastewater.

TABLE 1. SUMMARY OF TWO-YEAR NATIONAL CAPACITY VARIANCES FOR SURFACE-DISPOSED WASTES ¹—Continued

Required alternative treatment technology	Waste code/ physical form
	P065 High Mercury Nonwastewater.
	P092 High Mercury Nonwastewater.
	U151 High Mercury Nonwastewater.
Secondary Smelting.	D008 Lead Materials Stored before Secondary Smelting.
Thermal Recovery....	P087 Nonwastewater/wastewater.
Vitrification.....	D004 Nonwastewater.
	K031 Nonwastewater.
	K084 Nonwastewater.
	K101 Nonwastewater.
	K102 Nonwastewater.
	P010 Nonwastewater.
	P011 Nonwastewater.
	P012 Nonwastewater.
	P036 Nonwastewater.
	P038 Nonwastewater.
U136 Nonwastewater.	

¹ EPA is granting these wastes a two-year national capacity variance, except for K048-K052 nonwastewaters. This table does not include mixed radioactive wastes, certain contaminated soil and debris, or inorganic debris as defined in 268.2(a)(7) which are receiving two-year national capacity variances.

² Multi-source Leachate.
³ For K048-K052 petroleum-refining nonwastewaters, EPA is granting a six-month variance.

TABLE 2. SUMMARY OF TWO-YEAR NATIONAL CAPACITY VARIANCES FOR UNDERGROUND INJECTED WASTES

Required alternative treatment technology	Waste code/ physical form
Acid Leaching and Chemical Precipitation.	D009 Low Mercury Nonwastewater.
Alkaline Chlorination.	D003 ¹ Wastewater/ Nonwastewater.
Chemical Oxidation followed by Chemical Precipitation.	D003 ² Wastewater/ Nonwastewater.
Chemical Oxidation followed by Chromium Reduction and Chemical Precipitation.	D003 ³ Wastewater/ Nonwastewater.
Chromium Reduction followed by Chemical Precipitation.	D007 Wastewater/ Nonwastewater.
Mercury Retorting....	D009 Nonwastewater.
Neutralization.....	D002 ⁴ Wastewater/ Nonwastewater.
Wet-Air Oxidation....	K011 Wastewater.
	K013 Wastewater.
	K014 Wastewater/ Nonwastewater.

TABLE 2. SUMMARY OF TWO-YEAR NATIONAL CAPACITY VARIANCES FOR UNDERGROUND INJECTED WASTES—Continued

Required alternative treatment technology	Waste code/ physical form
Wet-Air Oxidation Followed by Carbon Adsorption Followed by Chemical Precipitation; Biological Treatment Followed by Chemical Precipitation.	F039 ⁵ Wastewater.

¹ D003 (Cyanides).
² D003 (Sulfides).
³ D003 (Explosives, water reactives, and other reactives).
⁴ Deepwell injected D002 liquids with a pH less than 2.0 must meet the California list prohibitions on August 8, 1990.
⁵ Multi-Source Leachate.

I. Generator Notification Requirements

The generator notification requirements set forth in 40 CFR 268.7 specify that when the generator has determined that the waste is restricted and does not meet the applicable treatment standards, the generator must, with each shipment of waste, notify the treatment facility in writing of the appropriate treatment standards. This notice must include, among other items, the applicable treatment standard and all applicable prohibitions set forth in § 268.32 or RCRA section 3004(d). If the waste being shipped is restricted, but can be land disposed without further treatment, the generator must submit to the land disposal facility the same information, as well as a certification stating that the waste meets the applicable treatment standards (40 CFR 268.7(a)(2)).

In today's final rule, the Agency is amending § 268.7 to allow referencing of the treatment standards. The following information must be included in the reference: EPA Hazardous Waste Number, the subcategory of the waste code (e.g., D003, reactive cyanide subcategory), the treatability group(s) of the waste(s) (e.g., wastewater or nonwastewater), and the section where the treatment standards appear. This change does not apply to spent solvents (F001-F005), multi-source leachate (F039), or California list wastes because these waste categories each contain a number of individual constituents or waste groups.

In addition, the Agency is amending § 268.7 to allow a one-time notification

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and certification for SQG shipments subject to tolling agreements. A detailed discussion of these changes is provided in section III.I of today's preamble.

J. Waste Analysis Plans and Treatment/Disposal Facility Testing Requirements

The Agency today is promulgating modifications to the waste analysis plan requirements which incorporate elements of both approaches proposed on November 22, 1989. Under the final approach, treatment and disposal facilities must conduct periodic detailed physical and chemical analyses of their wastestreams to assure that the appropriate 40 CFR part 268 treatment standards are being met. Today's final rule amends the comment in 40 CFR 264.13(a)(2) and 265.13(a)(2) to clarify that the generator or treater may supply part of the waste analysis information, and that waste analysis requirements are not superseded if the treatment or disposal facility is supplied information by the generator or treater. See section III.J for a detailed discussion.

K. Testing of Wastes Treated in 90-Day Tanks or Containers

The Agency is promulgating testing requirements for wastes treated to comply with the BDAT treatment standard in so-called 90-day tanks (or containers) as proposed. A regulatory gap existed with respect to treatment of prohibited wastes in such tanks or containers regulated under § 262.34 because they were not subject to the waste analysis plan requirements. Thus, there was no regulatory vehicle for determining testing frequency in such circumstances.

In order to close this regulatory gap, EPA is requiring that persons treating prohibited wastes in such tanks and containers must prepare a plan justifying the frequency of testing that they choose to adopt. The Agency is also clarifying that these wastes are subject to the 40 CFR 268.7 recordkeeping requirements. A detailed discussion of these requirements is provided in section III.K of today's preamble.

L. Clarification of "P" and "U" Solid Wastes

The Agency is amending 40 CFR 261.33(c) to clarify the regulations pertaining to "P" and "U" hazardous wastes. The amendment will add residues of § 261.33(f) materials remaining in containers and in inner liners to the residues already included in the scope of the commercial chemical product listings. The existing regulatory language is partially in error, and the

Agency is correcting it with today's revisions.

In the November 22, 1989 proposal, the Agency also proposed amendments to § 261.33 regarding soil, water and spill debris contaminated with § 261.33 (e) and (f) (P and U wastes) materials. Specifically, the Agency proposed that residues of spills of commercial chemical products will be considered solid waste if they are not recycled within 90 days of the spill. The Agency has decided not to promulgate this revision as the desired effect can be achieved through interpretation of existing regulations.

Finally, during the comment period, several commenters requested clarification of the exception to the mixture rule for *de minimis* losses of "P" and "U" wastes (§ 261.33(a)(iv)(D)) to underground injection units. Today's notice provides this clarification. A detailed discussion of these issues is provided in section III.L of today's final rule.

M. Storage Prohibition

Section 3004(j) provides that storage of prohibited hazardous waste is prohibited " * * * unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal." See § 268.50(a)(2), and 51 FR 1709, January 14, 1986. This language applies only to storage of prohibited wastes in non-land based storage units (e.g., tanks and containers), as land-based storage is a form of disposal. In the November 22, 1989, notice, the Agency proposed an interpretation that the storage prohibition does not apply where storage precedes legitimate, protective treatment, recovery, or disposal. The Agency is not pursuing a definitive reinterpretation in today's final rule as proposed. The Agency continues to believe, however, that the statutory prohibition was designed to prevent the use of storage as a means of avoiding a treatment standard, and will continue to enforce the storage prohibition with that intention in mind. EPA is aware of the difficulties posed by the applicability of the section 3004(j) storage prohibition to mixed (radioactive/hazardous) wastes, as there is little disposal or treatment capacity available. EPA is further evaluating the legal, policy and factual issues relevant to these wastes, and expects to issue policy on these issues within the next 90 days. A detailed discussion is provided in section III.M of today's preamble.

N. Case-by-Case Extension Petitions

In granting a case-by-case extension, there is a statutory requirement that a binding contractual commitment to construct or otherwise provide alternative treatment, recovery, or disposal capacity that meets the treatment standards be in place. RCRA section 3004(h)(3). EPA today is clarifying that this requirement may be satisfied by EPA proposing to grant a no-migration petition or a treatability variance. See preamble section III.N for a more detailed discussion.

O. Applicability of California List Prohibitions After May 8, 1990

With the promulgation of the Third Third final rule, almost all of the California list prohibitions will be superseded by more specific prohibitions and treatment standards when they become effective.¹ The only continued applicability of the California list appears to be (1) for liquid hazardous wastes that contain over 50 ppm PCBs; (2) for HOC-containing wastes identified as hazardous by a characteristic property that does not involve HOCs, as, for example, an ignitable waste that also contains greater than 1000 ppm HOCs (but not an EP toxic waste that exhibits the characteristic because it contains one of the six chlorinated organic pesticides covered by the EP toxicity characteristic); and (3) for liquid hazardous wastes that exhibit a characteristic and also contain over 134 mg/l of nickel and/or 130 mg/l of thallium.

Today's final rule also addresses several issues that were raised in the November 22, 1990, proposal. First, EPA is restating that the California list prohibitions apply to wastes that receive national capacity variances in later rulemakings. The Agency believes these more general prohibitions serve as a minimum requirement. EPA notes, however, that the California list prohibitions do not apply to newly listed or identified wastes (*i.e.*, wastes identified or listed after November 8, 1984) as the statute does not compel a contrary interpretation. A more detailed discussion of these issues appears in section III.O of today's preamble.

P. Analysis of Treated Wastes

The Agency today is using the same approach to waste analysis promulgated in the First and Second Third final rules

¹ See 52 FR 29993 (August 12, 1987) and 52 FR 25773 (July 8, 1987); see also 40 CFR 268.32(h) (HOC prohibition superseded by treatment standard and effective date for a particular HOC).

(53 FR 31146 and 54 FR 26594). (The following discussion and later preamble discussion are included for purposes of information and do not reopen the issue for judicial review.) Where BDAT is a destruction or removal technology, a total waste analysis is required because it is most appropriate for measuring such destruction or removal. The legislative history indicates a strong preference for treatment that destroys hazardous constituents (see, e.g., 130 Cong. Rec., S9179, daily ed. July 25, 1984, statement of Senator Chafee), and the only reliable way to verify that destruction has occurred is to measure the total waste. Similarly, where BDAT is identified as an immobilization technology such as stabilization, analysis of a TCLP waste extract is required because it is the most appropriate measure of immobilization. In cases where both technologies are identified as BDAT, both types of waste analysis are required.

In order to determine whether the waste meets the applicable treatment standards as generated, the original generator should perform an analysis of the waste. The waste extract is analyzed if the applicable treatment standards appear in 40 CFR 268.41, and a total waste analysis is performed if the applicable treatment standards appear in § 268.43. The generator may also make this determination based on knowledge of the waste, provided there is a reasonable basis for doing so (for example, the generator uses so little of a key constituent that it could not be found in the waste at levels exceeding a treatment standard). All supporting data used to make the determination must be retained on-site in the generator's files. See 40 CFR 268.7(a)(5). The Agency has discussed this principle in past rulemakings, and is repeating it here for the reader's convenience.

Q. Practical Quantitation Limits (PQLs)

As noted above, where BDAT is based on a destruction/removal technology, total waste analysis is performed to measure compliance with the BDAT levels. Several commenters have raised concerns that, in certain cases, analytical problems may prevent demonstrating compliance with the treatment standards. They contend that the BDAT concentration levels are, in some cases, below the practical quantitation limit (PQL)—the lowest level of quantitation that the Agency believes a competent laboratory can reliably achieve.

The Agency is currently developing guidance material on waste analysis which the Agency believes will resolve many of these problems. In the interim,

the Agency believes that where a waste has been treated with a combustion BDAT process (i.e., incineration or fuel substitution unit), and if the person has made a good faith effort to achieve the maximum analytical sensitivity, in certain cases the Agency will consider the person to have demonstrated compliance with the treatment standard for the respective organic constituents in the waste. For a more complete discussion of these issues, see section III.A.1 of today's final rule.

R. Best Demonstrated Available Technologies (BDAT)

Today's rule defines waste treatability groups by waste code, and identifies the Best Demonstrated Available Technology (BDAT) for each waste code within the treatability group (see section III.A.1). Treatment standards are based on the performance levels achievable by the BDAT identified for each waste code. Any technology not otherwise prohibited (e.g., impermissible dilution) may be used to meet the concentration-based treatment standards. Where treatment standards are expressed as a technology, the waste must be treated using the specified technology prior to land disposal.

S. Reformatting of Treatment Standard Tables and Addition of Appendix VII to Part 268, Effective Dates for Prohibited Wastes

The Agency is reformatting all of the tables of treatment standards in 40 CFR part 268 subtitle D and is providing the subpart D treatment standard tables in their entirety, including both previously promulgated standards and the treatment standards being promulgated today. The reformatted tables (i.e., 40 CFR 268.41, 268.42, and 268.43) are arranged according to waste code in alphanumeric order and include the CAS number identifying each regulated constituent, whether the standard is based on analyses of grab or composite samples, cross-references, and several other clarifying features that will make determining applicable treatment standards easier for the reader. The treatment standards finalized for the first time today are included in the tables. No substantive changes are being made to the treatment standards that were previously promulgated in the November 7, 1986, the July 8, 1987, the August 17, 1988, and the June 23, 1989, final rules except as discussed in other preamble sections of today's rule. (As an example, regulated constituents are being added to the wastes K048-K052, as well as F002 and F005, wastes for which certain treatment standards were previously promulgated. See preamble

section III.A.4.a. for a discussion of F002 and F005 and section III.A.4.o. for a discussion of K048-K052.)

In addition, the Agency is providing a complete list of waste codes regulated to date under the land disposal restrictions (including the waste codes included in today's rulemaking), as appendix VII to part 268. The appendix is provided for the reader's convenience; no substantive changes have been made to the dates, except as discussed in the preamble of today's rule.

T. Relationship of Hazardous Waste Treatment Council v. EPA to Treatment Standards Promulgated in Today's Final Rule

A number of commenters raised the issue of whether the treatment standards being adopted are below levels at which threats to human health and the environment are minimized, citing portions of the recent opinion *Hazardous Waste Treatment Council v. EPA*, 886 F.2d 355 (D.C. Cir. 1989) (HWTC III). In that case, the Court upheld EPA's existing technology-based approach to establishing treatment standards as a reasonable construction of the statute, but remanded the case to the Agency in order for the Agency to explain properly why it had chosen this approach. EPA's explanation was published in the *Federal Register* on February 26, 1990, and was accepted by the Court, which dismissed all petitions for review on March 15, 1990. The standards EPA is adopting in this rule are also technology-based, which the Agency believes is warranted at this time due to the uncertainties associated with hazardous waste land disposal and the Agency's present inability to quantify precisely *de minimis* levels of hazardous constituents that would determine when threats to human health and the environment from disposal of prohibited wastes are minimized. 55 FR 6642. Further discussion of this point may be found in section III.A.1.i of today's preamble. As discussed in section III.D, EPA believes that HWTC III is not dispositive on the issue of appropriate treatment standards for characteristic wastes.

III.A. Detailed Discussion of Today's Final Rule

1. Development and Identification of Treatment Standards

Today's rule promulgates treatment standards for the remaining Third Third scheduled wastes, and for the First Third and Second Third wastes which heretofore were subject to the "soft hammer" provisions of 40 CFR 268.8.

Development and identification of the treatment standards are presented on a waste code basis in sections III.A.2. through III.A.5. of today's notice. Section III.A.6. presents the development of treatment standards for wastes identified as F039, multi-source leachate. Section III.A.7. discusses the applicability of today's treatment standards to contaminated soil and debris. Section III.A.8. presents the Agency's approach to regulating radioactive waste that is mixed with hazardous wastes.

The following discussion has appeared in previous preambles and is being repeated here as an aid to the reader's understanding of the land disposal restrictions program. Comments were not solicited in the proposed rule on the following discussion; however, comments were received pertaining to various issues discussed below. These comments, and the Agency's responses, are found in the response to BDAT-Related Comments document, Volume 1, in the RCRA docket.

The BDAT Methodology

The first step in the development of treatment standards is to divide the wastes to be regulated into groups based on similar physical and chemical properties. These waste treatability groups take into account differences in the applicability and effectiveness of treatment for those particular wastes. The Agency initially decides how wastes should be grouped by examining whether the wastes are generated by similar industries or from similar processes. This is a valid starting point because the waste characteristics that affect treatment performance are expected to be similar for these wastes even though the wastes themselves are somewhat different.

The next step in the development of treatment standards is to identify the best Demonstrated Available Technology (BDAT) for each treatability group. A treatment technology is considered to be "demonstrated" primarily based on data from full-scale treatment operations that are currently being used to treat the waste (or a similar waste). Once the "demonstrated" technologies have been identified, the Agency determines whether these technologies may be considered "available". To be "available", the technology itself or the services of the technology must be able to be purchased, and the technology must substantially diminish the toxicity of the waste or reduce the likelihood of migration of the waste's hazardous constituents. EPA prefers to base BDAT

on technologies that further the statutory goals of waste minimization and recycling. EPA may select this type of technology as BDAT over more conventional treatment if the disparity in performance of the technologies is not too pronounced, and the technology selected minimizes threats to human health and the environment by substantially diminishing waste toxicity and reducing mobility of toxic constituents.

Treatment data from "demonstrated" "available" technologies are then screened with regard to the design and operation of the equipment, the quality assurance/quality control (QA/QC) analyses of the performance and operating data, and the accuracy and precision of the analytical tests used to assess treatment performance. After this screening, the treatment data are adjusted for each constituent based on the analytical recovery of that constituent from the treatment residuals. The Agency has chosen to perform this adjustment in order to account (in part) for analytical interferences associated with the chemical makeup of the treatment residual. Where data for more than one treatment technology exist, the individual performance data for each of the various treatment technologies are then statistically evaluated. The mean concentrations of the constituents in the treatment residuals from each technology are then compared using an analysis of variance (ANOVA) test in order to determine if one technology performed significantly better than the other. (A detailed discussion of the methodology for identification of BDAT and the ANOVA test is provided in the November 7, 1986 final rule (51 FR 40572).) Where data exist for only one technology, the Agency uses best engineering judgment to assess whether that technology represents the best applicable technology for that particular waste and whether the data indicate that the treatment system was well-designed and well-operated.

After BDAT is identified, EPA develops the treatment standard for certain constituents in the waste. Treatment standards are expressed as maximum constituent-specific concentrations allowed in the waste (or in an extract of the treated waste), as a specific technology (or group of technologies), or as a combination of these. Although the statute provides discretion to establish treatment standards as either levels or methods of treatment, EPA normally attempts to set concentration-based treatment standards whenever possible, because they provide the regulated community

with flexibility in choosing treatment technologies and also allow the investigation and development of new and alternative technologies. In addition, establishing concentration-based standards provides a means of ensuring that treatment technologies are operated at conditions that will result in the best demonstrated performance.

b. Use of Technologies Identified As BDAT

Compliance with a concentration-based treatment standard requires only that the treatment level be achieved; once achieved, the waste may be land disposed. The waste need not be treated by the BDAT technology; in fact, a concentration-based treatment standard provides maximum flexibility in one's choice of treatment technology because any treatment, including recycling or any combination of treatment technologies, unless prohibited (e.g., impermissible dilution) or unless defined as land disposal (e.g., land treatment), can be used to achieve these standards.

Some treatment standards in today's rule, however, are expressed as a treatment method rather than as a concentration-based standard. EPA typically establishes a treatment method as the standard when it has no means of calculating valid concentration-based standards. In such cases, the specified technology must be used to treat that particular waste (including any mixture that contains the waste). After the waste is treated using the specified method, it may be land disposed, unless EPA has specified otherwise in the rule, or if the residue exhibits a hazardous waste characteristic and does not meet the treatment standard for that characteristic. In situations where wastes subject to concentration-based standards are mixed with wastes subject to treatment standards expressed as a method, the mixture must be treated by the specified method and must also meet the concentration-based treatment standards for any other prohibited waste contained in the matrix (see generally 53 FR 31146-7, August 17, 1988).

When EPA requires the use of a technology (or technologies), a generator or treater may demonstrate that an alternative treatment method can achieve the equivalent level of performance as that of the specified treatment method (40 CFR 268.42(b)). This demonstration is typically both waste-specific and site-specific and may be based on: (1) The development of a concentration-based standard that utilizes a surrogate or indicator compound that guarantees effective

treatment of the hazardous constituents; (2) the development of a new analytical method for quantifying the hazardous constituents; and (3) other demonstrations of equivalence for an alternative method of treatment based on a statistical comparison of technologies, including a comparison of specific design and operating parameters.

c. Applicability of Treatment Standards to Treatment Residues Identified as Derived-From Wastes and to Waste Mixtures

(1) *Derived-From Wastes.* All residues from treating the original listed F, K, U or P wastes are likewise usually considered to be the listed waste by virtue of the derived-from rule found in 40 CFR 261.3(c)(2). Consequently, all wastes generated in the course of treatment are prohibited from land disposal unless they comply with the treatment standard or are otherwise exempted from the prohibition, such as through a no-migration determination or by a capacity variance. Residues from the treatment of characteristic wastes, however, are not automatically considered the characteristic waste; these residues are considered characteristic if they still display the original characteristic, or if they display another characteristic.

Treatment operations, including those identified as BDAT, typically generate wastewater and nonwastewater residuals that may require further treatment. EPA has not tested every possible waste that may result from every subsequent part of the treatment train. However, since the treatment standards promulgated today are generally based on treatment of a relatively concentrated form of the waste (i.e., the "original" waste), the Agency believes that residues from subsequent treatment will be less difficult to treat.

The Agency is investigating de minimis levels for certain hazardous constituents in listed wastes below which the waste will no longer be a hazardous waste for purposes of subtitle C regulation. The Agency has yet to propose these de minimis levels. The Agency has indicated, however, that these de minimis levels will cap treatment standards if they are higher than the treatment standards (55 FR 6640; Feb. 26, 1990).

(2) *Mixtures of Different Hazardous Waste Streams.* Today's treatment standards apply to mixtures of different waste streams. Where a waste mixture consists of listed wastes and has more than one applicable concentration-based treatment standard for a

particular constituent, the most stringent standard must be met prior to land disposal (see 40 CFR 268.41(b)). In the event that such a waste mixture cannot be treated to meet the most stringent standard, one may petition the Agency for a variance from the treatment standard pursuant to 40 CFR 268.44.

d. Wastewater Versus Nonwastewater Standards

In today's rule, the treatment standards (both concentration-based and specified methods) are generally presented as applicable to wastewaters or to nonwastewaters (see 40 CFR 268.2). Wastewaters are defined as those wastes (listed wastes, including wastes generated as a result of the mixture and derived-from rules) that contain less than 1% total organic carbon (TOC) and less than 1% total suspended solids (TSS), except for those wastes identified as F001, F002, F003, F004, and F005 solvent-water mixtures. (See 53 FR 31145 (August 17, 1988) which adopts this definition for most First Third wastes, and 51 FR 40579 (November 7, 1986) for the definition of F001, F002, F003, F004, and F005 solvent-water mixtures.) Those wastes (listed wastes, including wastes that are hazardous as a result of the mixture and derived-from rules) that do not meet these criteria are defined as nonwastewaters and thus contain greater than or equal to 1% TOC, or greater than or equal to 1% TSS. (Note, however, the discussion in III.B. of further subcategorization of nonwastewaters for purposes of national capacity variances based on a lack of solids incineration capacity.)

(1) *Impermissible Switching of Wastewater and Nonwastewater Standards for Listed Wastes.* (See also discussion at III.D. below for issues associated with characteristic wastes.) It is not permissible to dilute or partially treat a prohibited listed waste in order to switch the applicability of a nonwastewater standard to a wastewater standard, or vice versa (see 52 FR 21012 (June 4, 1987); but see 52 FR 25767 (July 8, 1987) noting special circumstances when California list wastes are involved). The Agency has established this principle because technologies applicable to nonwastewaters are not generally applicable to wastewaters, or require special designs (in the case of incineration) in order to simultaneously handle wastewaters. Furthermore, treatment residues meeting the definition of nonwastewaters must comply with all applicable nonwastewater treatment standards; likewise, residual wastewaters must

comply with all applicable wastewater treatment standards.

The Agency recognizes, however, that certain technologies are specifically designed to separate wastewaters from nonwastewaters. Such technologies may or may not be considered partial treatment under this principle, as discussed in the following paragraphs.

Dewatering technologies such as filtration and centrifugation are typically designed to remove suspended solids (TSS) from aqueous wastes. When these technologies are applied to a nonwastewater that contains greater than 1% TSS but less than 1% TOC, the resultant liquid residue will probably meet the definition of a wastewater (i.e., it will probably contain less than 1% TSS and less than 1% TOC). The Agency does not consider this impermissible switching of applicable treatment standards. (Note: For the purposes of applying BDAT treatment standards, the Agency does not consider carbon adsorption a dewatering technology even though it may act as a filter for suspended material.)

When the suspended material is organic and the overall untreated waste contains greater than 1% TOC, these dewatering technologies are also not precluded from use. The resultant residuals (i.e., the removed solids and the liquids) must comply with the applicable wastewater or nonwastewater treatment standards depending on their TOC and TSS content. If the liquid residues from these dewatering technologies meet the definition of wastewaters, the Agency does not consider this to be impermissible switching of applicable standards.

The importance of the TOC level in determining permissible switching of applicable wastewater or nonwastewater treatment standard is apparent in the scenario of treatment of a waste containing less than 1% TSS and slightly more than 1% TOC (such as 2 or 3% TOC), and thereby being a nonwastewater by definition. If EPA has established concentration-based treatment standards for the corresponding wastewater form of this waste, it would be permissible to use carbon adsorption to treat this nonwastewater, so long as these concentration-based treatment standards for the wastewaters are ultimately achieved (i.e., if the residual wastewater contains hazardous constituents at levels above the concentration-based wastewater treatment standards, additional treatment with other technologies is necessary prior to land disposal.) However, if EPA has established a

wastewater treatment standard expressed as Carbon Adsorption as a Method of Treatment for this waste code, the nonwastewater described above must comply with the standard for the nonwastewater form, despite the fact that the TOC content is only slightly greater than 1%. This is not just a mechanical application of the requirement that treatment must be conducted by the specified method, with the treatability group determined at the point of generation. EPA established Carbon Adsorption as a Method of Treatment standard for certain wastewaters based on the assumption that wastewaters typically contain TOC levels much less than 1%, so that removal of the organic constituents from these wastewaters was anticipated to be effective. If the nonwastewater previously described is subjected to carbon adsorption as a method of treatment, there would be no means of assuring optimum removal of the hazardous constituents. Thus, in such a situation, the use of carbon adsorption for this nonwastewater, is not permitted as a means of complying with BDAT. The Agency considers this an impermissible switching of applicable treatability groups and treatment standards.

When EPA specifies a treatment method as the treatment standard, residues resulting from the required treatment method are no longer prohibited from land disposal unless EPA should otherwise specify. In the Second Third final rule (see generally 54 FR 26625, 26630, June 23, 1989), the Agency presented specific guidelines on this. (This summary is repeated here for the reader's convenience.) Where EPA has established Incineration as the treatment standard for nonwastewaters and/or wastewaters, or where EPA has established Carbon Adsorption the treatment standard for wastewaters, the following statements concerning residuals from treatment trains incorporating these technologies are true: (1) Scrubber waters from incinerators in compliance with the substantive provisions of 40 CFR part 264 subpart O or part 265 subpart O are considered to meet the treatment standard and can be land disposed; (2) the scrubber waters from incinerators in compliance with the substantive provisions of 40 CFR part 264 subpart O or part 265 subpart O are not required to undergo Carbon Adsorption as a Method of Treatment when this specified wastewater treatment method also has been established; (3) incinerator ashes and residues from the subsequent treatment of scrubber

waters from incinerators in compliance with the substantive provisions of 40 CFR part 264 subpart O or part 265 subpart O are considered to meet the treatment standard, and can be land disposed; (4) Incinerator equipment (such as fire brick) derived from sections of the incinerator that have been directly subjected to the high temperatures of the incinerator that was operated in compliance with the substantive provisions of 40 CFR part 264 subpart O or part 265 subpart O, or are downstream from the high temperature zones, are considered to meet the treatment standards for the wastes that were incinerated and can be land disposed (this does not include incinerator equipment such as refractory bricks that, as manufactured, contain metals that may be characteristic wastes by virtue of the EP toxicity test when discarded); (5) wastewater effluent and any subsequent nonwastewater treatment residues from carbon adsorption units treating wastewater forms of these wastes (i.e., wastes from downstream from the carbon column) are considered to meet the specified treatment standard and can be land disposed; and, (6) where EPA specifies carbon adsorption as the treatment method for wastewaters, spent carbon, as well as any other nonwastewater residues from the wastewater treatment preceding carbon adsorption, are *not* considered to meet the treatment standard; such spent carbon and nonwastewater residues must be treated by the specified nonwastewater method prior to land disposal.

e. Transfer of Treatment Standards

Rather than testing the performance of BDAT on every waste, in certain cases, the Agency transfers treatment standards from a tested waste to a similar untested waste. EPA believes that transferring treatment performance data for untested wastes is technically valid, particularly when the untested wastes are generated from similar industries or similar processing steps. EPA also believes that transferring treatment performance data for tested constituents in one waste to untested constituents in another similar waste is technically valid, particularly when the constituents and wastes have similar chemical and physical properties.

To determine whether wastes generated by different processes can be treated to the same performance levels, EPA reviews data on waste characteristics to identify parameters that are expected to affect treatment selection. When this analysis suggests that an untested waste can be treated

with the same technology as a tested waste, the Agency examines a more comprehensive list of constituents that represent the most important waste characteristics that will affect treatment performance.

The complete methodology for transferring treatment standards, however, depends upon the waste itself and often differs from treatability group to treatability group. For a detailed discussion of the transfer methodology for the wastes presented in today's rule, refer to the background documents for each waste or treatability group and the background documents for the wastes from which the treatment standards were transferred.

EPA notes further that in the case of transferring standards based on performance of incineration, EPA is most often transferring standards that were based on the ability of the incinerator to achieve destruction of organics to detection limits as measured in the ash and scrubber water. This is supported by data from approximately fourteen different test burns for a variety of different RCRA hazardous wastes. These wastes contained varying concentrations of many BDAT list organics. In developing concentration-based treatment standards for the U and P wastes, the Agency considered all of the detection limits and determined which were the most representative of U and P wastes. In order to account for the anticipated variability in waste characteristics of untreated U and P wastes, the Agency typically selected the highest detection limits for the constituent that corresponded to the chemical represented by the U or P code. Thus, the Agency believes the resultant treatment standards should be achievable on a routine basis for the majority of U and P wastes.

When developing concentration-based treatment standards for certain F and K wastes containing organics, the Agency considered all of the data and determined which particular waste was the most representative of that particular F or K waste based on the availability of waste characterization data. As a result, the Agency often transferred treatment standards that were significantly lower than those developed for the U and P wastes. The Agency believes that these lower treatment standards are achievable for these F and K wastes based on the ability to achieve detection limits for organics in the waste matrix from which the standard was transferred.

f. Treatment Standards Based on Single Facility Data, Grab Samples Versus Composite Samples, and Waste Analysis Plans

(1) *Single Facility Data.* As discussed in the August 17, 1988 final rule for First Third wastes, the Agency believes that the use of a small number of data sets from a single treatment facility can be representative of the treatment achieved by the particular treatment system. This is particularly true when no other treatment data are available, or when data exist but there is no verification that the treatment process from which the data were obtained was well-designed or well-operated. It is not possible for the Agency to sample every facility generating the waste or every treatment system treating the waste. For the purposes of determining treatment standards, the Agency has established a methodology for selecting particular facilities and treatment systems that it considers to be well-designed and well-operated. The Agency also selects wastes that are representative of those most difficult to treat.

The Agency recognizes that there is variability inherent in every treatment system, as well as variability in the characteristics of the wastes. The Agency accounts for these by multiplying the mean of the constituent concentrations by a variability factor. This factor is derived through a quantitative procedure that determines the statistical 99th percentile for the treatment standard. This establishes a treatment standard that should be achievable 99 percent of the time by a well-designed, well-operated system. The Agency further adjusts the treatment standard to account for variabilities due to analytical recovery. In addition, all analyses of hazardous constituents are performed in accordance with an established QA/QC plan as outlined in the BDAT Generic Quality Assurance Project Plan.

Standards based on incineration are always established above the limit of detection for that particular waste rather than at the detection limit. This is because the Agency prefers to account for the variability inherent in the treatment system and in the analysis of the recovery data. Therefore, following EPA's methodology for establishing treatment standards, the data are adjusted through use of the variability factor (typically 2.8) and an adjustment for recovery of a spiked analyte (or surrogate). The resulting treatment standards for the organic constituents are above the detection limits. The standards are thus greater than the achievable levels (which are at or below

the detection limits) and should be easily met by a well-designed, well-operated incineration system.

(2) *Grab versus Composite Samples.* Where performance data exist based on both the analysis of composite samples and the analysis of grab samples, the Agency establishes the treatment standards based on the analysis of grab samples. Grab samples normally reflect maximum process variability, and thus would reasonably characterize the range of treatment system performance.

In cases where only composite data exist, the Agency considers the QA/QC of the data, the inherent efficiency of the process design, and the level of performance achieved. The Agency may then choose to use this composite data to develop the treatment standard. Where these data are used to establish the treatment standard, the treatment standard is identified as based on analysis of a composite sample. Enforcement of that standard thus would also be based on composite samples.

(3) *Waste Analysis Plans.* The waste analysis plan provides the basis for monitoring a disposal facility's compliance with the promulgated treatment standards. This plan must be adequate to assure compliance with part 268. The disposal facility is, however, ultimately responsible if it disposes of a waste that does not meet a treatment standard. Therefore, a disposal facility might violate the land disposal restrictions while at the same time comply with the provisions of its waste analysis plan. Put another way, a waste analysis plan may be written to authorize types of sampling and monitoring different from those used to develop the treatment standard(s). In such an instance, the disposal facility must demonstrate that the waste analysis plan (and the specific deviating feature) is adequate to assure compliance with part 268 (see 40 CFR 264.13). This might require, for example, a demonstration of statistical equivalence between a composite sampling protocol and one based on grab sampling, or a demonstration of why monitoring for a subset of pollutants would assure compliance of those not monitored. In any case, enforcement of the land disposal restrictions is based on grab samples (except as described in the previous section) and analysis of all constituents regulated by the applicable treatment standards, not on the facility's waste analysis plan. (See preamble section III.G. for further discussion of WAPs.)

g. Analytical Requirements, the BDAT List, and Relationship of PQLs to BDAT

(1) *Waste Analysis Requirements.* In today's rule, BDAT has been identified as a destruction technology for organic constituents and cyanides in many wastes. The best measure of treatment performance for these wastes is one that reflects the extent to which these organics and cyanides have been destroyed. This approach is consistent with the Congressional preference to destroy hazardous wastes where possible. See, e.g., 130 Cong. Rec. S 9178-9179 (July 25, 1984) (statement of Sen. Chaffee) (wastes with high organic content should be incinerated). This approach is also consistent with the strong Congressional goal of eliminating uncertainty from the land disposal of hazardous waste. See, e.g., RCRA section 3004(d)(1), because it ensures removal of hazardous constituents from the land disposal environment. The corresponding treatment standards for these constituents are based, therefore, on an analysis of total constituent concentrations in a representative sample of the treated waste.

(Note: The land disposal restrictions for solvent waste codes F001-F005 (51 FR 40572) require analysis of waste extracts obtained from the Toxicity Characteristic Leaching Procedure (TCLP) as a measure of performance. At the time that the treatment standards for F001-F005 were promulgated, useful data were not available on total constituent concentrations in treated residuals and, as a result, the TCLP was considered to be the best available measure to evaluate performance of the treatment technology.)

In cases where treatment standards for metals in nonwastewaters are based on stabilization, the use of the TCLP is typically required as the measure of the performance of the treatment technology. Where treatment standards for nonwastewaters are based on multiple treatment processes due to mixtures of organics and metals, or where recovery of metals is the basis of the treatment standards, analysis of total constituent concentrations and analysis of the TCLP extract (or EP extract depending upon the standard) must be performed prior to land disposal.

(2) *The BDAT List.* The Agency has established a list of chemicals made up primarily from the constituents in 40 CFR part 261 appendix VII and appendix VIII, that are evaluated for regulation as BDAT constituents (i.e., for purposes of concentration-based treatment standards) when they are

present in a listed waste. The rationale for selection of the particular constituents to be regulated can be found in the background document for each waste or waste treatability group. The Agency believes that it is not limited to regulating only those constituents for which a waste is listed (40 CFR part 261 appendix VII). Appendix VII sets forth only the constituents that were the basis for the listing and is not an exhaustive list of hazardous constituents in each waste. Additional support for taking this approach is found in RCRA section 3001(f), which specifies that EPA must consider additional hazardous constituents other than those for which the waste was listed when evaluating delisting petitions. Section 3001(f) thus acknowledges that appendix VII is only a partial list of the hazardous constituents that can be present in a listed waste.

(3) *Relationship of Treatment Standards to PQLs.* In proposed revisions to the September 1986 edition of *Test Methods for Evaluating Solid Wastes* (also known as and herein referred to as SW-846), the Agency defines practical quantitation limits (PQLs) as " * * * the lowest level of quantitation that the Agency believes a competent laboratory can be expected to reliably achieve." PQLs are directly related to the amount of interferences that are present in different waste matrices, and the PQLs listed in SW-846 are not always achievable for constituents as measured in untreated wastes. Most treatment processes, however, particularly destructive technologies such as incineration, destroy not only the hazardous constituents of the waste but also other organics that typically interfere with the analysis for constituents in untreated wastes. Thus, PQLs typically are significantly lower for treatment residuals such as incinerator ash than for untreated wastes. Such differences in PQLs for untreated versus treated wastes are demonstrated by the data for almost every incineration test burn performed by the Agency in developing the treatment standards.

Potential users of PQLs should keep in mind that the PQLs in SW-846 were established to provide guidance for the analysis of waste samples by acting as minimum performance criteria for analytical laboratories. The PQLs do not necessarily represent the lowest limits of analytical performance achievable for any given waste.

The PQLs in SW-846 were intended to be broadly applied to groups of wastes. As a result, matrix dependent correction

factors were not developed for any particular waste code, and do not specifically apply to any particular treatment residuals (i.e., only correction factors for matrices identified as ground water, low-level soil, high-level soil, and non-water miscible waste were specified in Method 8250 of SW-846). Furthermore, the Agency is currently modifying and expanding the matrix correction factors, as well as modifying the detection limits from which the PQLs are derived.

The PQLs listed in SW-846 for some constituents are less stringent than some of the treatment standards. This apparent anomaly results primarily from the fact that the PQLs in SW-846 were not based on the same waste matrices (i.e., treatment residues) that were tested in developing the treatment standards. The treatment standards for a given waste code are based on analysis of the treatment residuals of the waste (or in some cases, a similar waste from which the treatment standards are transferred). Consequently, the resulting treatment standards appropriately reflect the level of analytical performance achievable for that waste. Thus, the PQLs in SW-846 are generally not used directly in developing the Part 268 treatment standards.

Today's promulgated concentration-based nonwastewater standards based on combustion derive from detection limits from EPA's 14 test burns (which generated the data supporting virtually all of the proposed rule's concentration-based standards) plus a data set submitted by a commenter representing the hazardous waste treatment industry. This comment is discussed at length in subsequent paragraphs.

This commenter submitted a study that was undertaken to verify whether industry labs can reliably quantify regulated constituents at the level of both the existing and the proposed concentration-based standards. The study's secondary purpose was to identify any regulated constituents for which the concentration-based treatment standards may be inappropriate. The study consisted of analyzing regulated constituents in incinerator ash at levels near the concentration-based standards.

In the commenter's opinion, the data and observations indicate that many treatment standards are inappropriate, and also made three major assertions with respect to PQLs. First, the commenter asserted that based on the PQLs calculated using his data, certain previously promulgated concentration-based standards are not achievable.

EPA rejects this assertion because no specific treatment data were received in either this study or during the comment period for the appropriate rulemaking that indicated on a waste-specific basis that these treatment standards could not be achieved. (Note: The Agency is not precluded, however, from promulgating revisions to these standards in a later rulemaking after giving sufficient public notice.)

Second, the commenter asserted that certain of the proposed Third Third concentration-based standards are not achievable because they are based on detection levels below the PQLs calculated from his study. EPA evaluated the commenter's detection limit data rather than his PQLs and has determined that the majority of the commenter's detection limits demonstrate compliance with the concentration-based standards that were proposed, and all but a very few, comply with the standards being promulgated in today's rule. Because of this, and for reasons discussed below, the Agency has generally rejected the use of the PQLs calculated by the commenter in promulgating treatment standards.

However, several nonwastewater standards promulgated in today's rule reflect revisions based on the commenter's detection limit and recovery data. EPA has indicated where these data were used to revise specific standards in later sections of today's preamble. Although EPA revised these standards based on some data from this study, EPA generally found flaws with the commenter's study (such as: Incomplete untreated waste characterization; probable analytical interferences; and incomplete incinerator process documentation) that precluded incorporation of much of the data into the treatment standards for nonwastewaters. For example, BDAT analytes were detected at levels above the detection level (i.e., at measurable quantities) in several of the commenter's ash samples. Also, different ash samples appeared to have different compositions of these BDAT analytes, apparently indicating that these ashes differ significantly from one another. (See detail responses of these data in the Response to BDAT-Related Comments Background Document for Third Land Disposal Restrictions in the administrative record for today's rule.)

Third, the commenter stated that EPA had inappropriately calculated nonwastewater treatment standards in terms of both numerical detection levels and the best procedure for calculating standards, specifically, considering the

use of PQLs. The commenter chose to use a methodology adapted from the Clean Water Act regulations to calculate alternative concentration-based standards for ash which they asked EPA to consider. Regardless of the validity of the commenter's data, EPA is not deviating from the calculation methodology of the Generic Quality Assurance Project Plan for Land Disposal Restrictions Program ("BDAT") promulgated in conjunction with the November 11, 1986 regulatory framework. The Agency therefore is retaining its established methodology.

h. Relationship of Detection Limits to Concentration-Based Standards

Several commenters raised the issue that, in certain cases, analytical problems (i.e., difficulties in reliable quantitation at detection limits near the concentration-based treatment standards) may prevent demonstrating compliance with the proposed treatment standards for Third Third wastes. They also pointed out that this same problem already may exist for some First and Second Third wastes.

EPA has examined the data submitted to the Agency in support of these comments. (See discussion of these data as they relate to PQLs in the preceding section of the preamble.) While the Agency does not believe that the currently available data is conclusive, EPA acknowledges that there can be situations where lack of available analytical methods may prevent demonstration of compliance with the treatment standards.

EPA is dealing with this potential problem in a number of ways. First, EPA has examined detection limit data submitted by the commenters and compared them to the data used to develop the proposed standards. After a thorough technical evaluation, the Agency incorporated a portion of these data into the promulgated standards in today's rule. In addition, the Agency has reevaluated the existing BDAT data generated by the Agency, the transfer procedures used for some of the wastes, and recently available information and data on recovery of the BDAT organic constituents. Thus, EPA concurred with the commenters and concluded that many of the other proposed concentration-based treatment standards may not be achievable. As a result, EPA is promulgating revised treatment standards for some organics in nonwastewaters that are higher than the proposed standards. In doing so, the majority of the commenters' concerns over ability to measure at concentrations near the standards are no longer applicable. (Note: The Agency

is continuing to study this issue and, if warranted, may adjust other standards, including some for First and Second Third wastes, after sufficient public notice.)

Second, in certain situations where compliance with a standard cannot be demonstrated for a particular waste due to problems with analytical detection limits and where the treatment technology employed was considered by the Agency to be BDAT (see specific instances below), the Agency has decided that reliance upon the treatability variance petition process would place an unnecessary burden on both the regulated and regulatory communities. The Agency believes that where a waste has been treated with a combustion BDAT process (i.e., incineration or fuel substitution unit), and if the person has made a good faith effort to achieve maximum analytical sensitivity, the Agency will consider the person to have demonstrated compliance with the treatment standard for the respective organic constituents in the waste.

In order to demonstrate compliance in such cases, the person will have had to make a good faith effort to demonstrate that the analyte of concern is not present in the waste at, or above, the treatment standard. To provide a more concrete basis for making such demonstrations, EPA intends to develop and issue guidance on what constitutes a good faith effort to achieve such analytical sensitivity within the near future. This guidance is anticipated to be available at or near the effective date for the Third Third treatment standards (August 8, 1990).

In developing the treatment standards in today's rule, the Agency selected the treatment data (i.e., detection limit data) that best represented what the majority of wastes could meet. (Note: Most of these data were from incinerator units that were considered well-designed and well-operated.) However, the Agency rejected detection limit data for some wastes, because the Agency determined that these wastes were not necessarily representative of the treatability of other wastes. After reexamination of all of the available detection limit data, the Agency has found that the majority of the detection limit data for these wastes will generally not exceed the promulgated treatment standards by more than one order of magnitude. The Agency also points out that there is an inherent three-fold difference in detection limits that may arise due to difference in sample size taken for analysis.

Thus, until this formal guidance is available, the Agency will consider that, if an analytical sensitivity (i.e., detection limit) within an order of magnitude of the organic constituent treatment standard has been achieved, compliance with such treatment standard will be considered to have been demonstrated provided the data represents the use of a combustion process (i.e., restricted to incineration or fuel substitution in a unit in compliance with all applicable technical operating requirements under 40 CFR part 264 subpart O and part 265 subpart O. Thus, it is likely that the combustion unit is being operated properly). The Agency believes that this is consistent with RCRA section 3004(m), in that, as an alternative to specifying a concentration-based standard for these wastes, the Agency could have promulgated a method of treatment specifying the use of incineration or fuel substitution.

One commenter requested that persons with untreated wastes also be allowed to certify compliance if analytical problems prevent their demonstrating compliance with the treatment standards. The Agency emphatically disagrees. This situation has a substantial potential to mask the presence of hazardous constituents. Untreated wastes, and wastes treated by other than the aforementioned combustion processes (e.g., biotreatment), typically contain many materials that interfere with achieving low detection limits. Such wastes can, thus, contain significant levels of hazardous constituents even when the treatment process is operating properly. Allowing land disposal of such wastes would be contrary to the objectives of the land disposal restrictions statutory provisions. In addition, the rules already allow generators to certify compliance based on their knowledge of the waste, rather than by testing (section 268.7(a)(2)). If a generator believes, for example, that as a result of mass balance information a waste meets the treatment standard, it can certify compliance even if it is not possible to analytically demonstrate compliance with the standard.

EPA is thus amending §§ 268.7 and 268.43 to state that where a treatment standard for organics in nonwastewaters is based on the aforementioned combustion technologies (i.e., incineration or fuel substitution in units operated in accordance with the technical operating requirements of 40 CFR part 264 subpart O and part 265 subpart O) and a waste has been treated using that treatment method, the treatment facility may

certify compliance with the organic constituent standard if a good faith effort has been made to analytically demonstrate compliance with this standard and a detection limit within an order of magnitude of the organic constituent standard has been achieved. This includes all waste codes in the First, Second, and Third Thirds where standards for organics are based on such combustion processes or were transferred from wastes based on such combustion processes. These standards are specifically indicated in Table CCW of § 268.43.

The Agency points out that in cases where a facility believes that waste-specific treatment standards cannot be met because their laboratory is still unable to achieve detection limits below the treatment standards on specific treatment residuals, and: (1) The facility complies with all the other conditions mentioned above; or (2) a facility utilizes a combustion technology other than incineration or fuel substitution; or (3) a facility utilizes a technology other than combustion that can be demonstrated to be equivalent, the facility may submit a petition for a variance from the treatment standards for that particular waste code (EPA construes 40 CFR 268.44 as encompassing such petitions). The facility must demonstrate that the analyses are in compliance with all other BDAT QA/QC provisions (as outlined in the BDAT Generic Quality Assurance Project Plan (EPA/530-SW-011, March 1987). Moreover, the petitioner must also demonstrate that the treatment process is a well-designed and well-operated BDAT process.

Relation of Hazardous Waste Treatment Council v. EPA

A number of commenters raised the issue of whether the treatment standards being adopted are below levels at which threats to human health and the environment are minimized, citing portions of the recent opinion in *Hazardous Waste Treatment Council v. EPA*, 886 F. 2d 355 (D.C.Cir. 1989) (HWTC III). In that case, the Court upheld EPA's existing technology-based approach to establishing treatment standards as a reasonable construction of the statute, but remanded the case to the Agency in order for the Agency to properly explain why it had chosen this approach. EPA's explanation was published in the *Federal Register* on February 26, 1990 and was accepted by the Court, which dismissed all petitions for review on March 15, 1990.

The standards EPA is adopting in this rule are also technology based. However, as discussed in detail in

section III.D. below, the Agency believes that with respect to disposal of prohibited characteristic wastes that are no longer "hazardous" under the regulations, the Agency must harmonize the competing considerations of section 3004(g) and 1006 (b) (relating to a regulatory framework for subtitle D systems) with those of section 3004(m) (relating to treatment to fully minimize threats) before determining the extent of the prohibition.

EPA notes further that it believes that treatment standards established below characteristic levels can result in nonredundant minimization of threats to human health and the environment and thus be permissible under RCRA section 3004(m) and the Court's opinion. Indeed, the Court itself noted that characteristic levels do not serve as a bar to further treatment (886 F. 2d at 363). The treatment standards for characteristic wastes in today's rule thus are not premised on any finding that the characteristic level, in and of itself, creates a bar to further treatment.

2. Treatment Standards for Certain Characteristic Wastes

This section of today's preamble presents a discussion of D001 Ignitable, D002 Corrosive, and D003 Reactive characteristic wastes, as well as the six EP Toxic pesticides (D012 through D017). Treatment standards for the eight EP Toxic metals are found in section III.A.3. of this preamble.

a. General Issues on Developing Treatment Standards for Characteristic Wastes

There were a number of options proposed for developing treatment standards for the characteristic wastes. One option considered by the Agency was to promulgate concentration-based standards (for those characteristic wastes that were defined by a level) based on available data. A second option was to promulgate a treatment standard expressed as a required method. A third option was to simply establish the characteristic level as the treatment standard, and a fourth option was to establish a method of treatment along with a required performance level.

The Agency received extensive comments discussing these options, particularly the option of setting treatment standards expressed as the characteristic levels. A few commenters strongly supported establishing treatment standards for characteristic wastes at levels below the characteristic levels, stating that available performance data supported such an approach. The majority of commenters, however, supported limiting the

treatment standards at the characteristic levels.

The Agency found some of the technical issues raised by these commenters persuasive. (Discussion of the policy issues associated with setting treatment standards for characteristic wastes is found in preamble section III.D.) The Agency agrees with commenters that argued that characteristic wastes may be generated in many matrices, and thus, can take any number of different forms; transferring data from specific listed wastes to these variable characteristic wastes, the commenters indicated, may not account for such differences.

In addition, for certain D001, D002, and D003 treatability groups, there are currently no available analytical methods to quantify residual ignitability, corrosiveness, and reactivity. Until EPA can develop analytical methods capable of accurately determining quantitative characteristic hazards, industry must judiciously make qualitative technical decisions dependent on the waste definition. Treaters must complete treatment until qualitative technical judgement indicates that the waste or waste residual no longer exhibits the characteristic hazard specified by the definition.

Many commenters supported the Agency's approach for setting treatment standards for Ignitable, Corrosive, and Reactive (with the exception of Reactive Cyanides) wastes expressed as a required method of treatment: Deactivation. The Agency, therefore, is promulgating the Deactivation treatment standard and is providing suggested deactivation methods to remove the characteristic for the various Ignitable, Corrosive, and Reactive treatability groups in appendix VI to 40 CFR part 268.

No comments were received on the proposed approach for regulating the EP Toxic pesticides (D011-D017). The Agency is promulgating concentration-based treatment standards for the nonwastewater forms of these wastes and methods of treatment for the wastewaters. The Agency is taking this action based on data indicating that incineration can remove organic constituents to non-detectable levels in nonwastewaters as evidenced by incineration data available for certain halogenated pesticides. Further discussion of issues associated with promulgating treatment standards for these characteristic wastes is found in the following sections of today's preamble.

b. Ignitable Characteristic Wastes

Under 40 CFR 261.21, there are four criteria for identifying a waste as D001 Ignitable. Paraphrasing these criteria, a waste is a D001 Ignitable if: (1) It is a liquid with a flash point less than 140 °F; (2) it is an ignitable compressed gas; (3) it is not a liquid and is capable of causing fire through friction, absorption of moisture, or spontaneous chemical changes and when ignited burns vigorously and persistently; or (4) it is an oxidizer. EPA has determined that these four criteria translate directly into four major D001 subcategories (although EPA has further subcategorized the ignitable liquid subcategory into three treatability groups). If a waste is classified as D001 because it fits under more than one D001 subcategory, the waste must be treated by a treatment method or treatment methods that will remove all characteristics of ignitability for each applicable subcategory.

(1) *Ignitable Liquids Subcategory.* The first D001 subcategory, the Ignitable Liquids Subcategory, refers to those D001 wastes that exhibit the properties listed in § 261.21(a)(1). Commenters specifically questioned whether the determination of liquid under § 261.21(a)(1) was based on the paint filter test ("free liquid" Method 9095), the EP test (Method 1310), or the releasable liquids test in Method 9096. While the Agency has defined liquids both as materials expressed from wastes in Step 2 of Method 1310 (EP), and in Methods 9095 and 9096, there is not a specific definition of liquid with respect to this characteristic in the regulations. Therefore, the generator of a potentially ignitable waste may use any method for determining whether the waste is classified as a liquid for which he can provide an appropriate scientific or technical justification.

One commenter requested clarification regarding the D001 liquid exclusion for aqueous alcohol wastes which is found in 40 CFR 261.21(a). This provision states that a solid waste exhibits the characteristic of ignitability if "it is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 60 °C (140 °F) * * *". The Agency notes that, in this definition, the term alcohol refers to any alcohol or combination of alcohols. (Note: If the alcohol has been used for solvent properties and is one of the alcohols specified in EPA Hazardous Waste No. F003 or F005, the waste must be coded with these Hazardous Waste Numbers (which cover the hazard of ignitability).)

Data indicate that the majority of all D001 wastes generated fall into the D001

Ignitable Liquids Subcategory and are typically described as solvents, paint thinners, contaminated oils, and various organic hydrocarbons. Some of these wastes may contain organic constituents that are potential carcinogens or otherwise toxic. Typically, the major organic constituents in these wastes are volatile, flammable hydrocarbons or oxygenated hydrocarbons that provide the characteristic of ignitability to the waste (i.e., a flash point of less than 140 °F). (Note: Currently, the length of time over which combustion is sustained at a temperature of less than 140 °F is not specified although such a regulatory change may be appropriate in the future. This issue assumes relevance when considering the large volume of solvent-containing wastewaters that flashes but does not sustain combustion.)

For purposes of BDAT determination, most of the ignitable liquid wastes are typically classified as nonwastewaters because of their high organic content (usually greater than 1 percent TOC). Technologies applicable for treatment of these organic nonwastewaters include incineration, fuel substitution, and recovery processes such as distillation or liquid-liquid extraction. Thermal destruction technologies such as incineration and reuse as a fuel completely remove the characteristic of low flash point by completely destroying the volatile organic compounds (VOCs), thereby rendering the waste nonignitable. Recovery processes also remove the characteristic but recover the ignitable material for reuse instead of destroying the material. Furthermore, the Agency believes such technologies are both demonstrated and available because EPA has data showing that the majority (i.e., 75%) of D001 Ignitable Liquids are already treated by incineration, reused as a fuel substitute because of their high BTU content, or recovered for reuse through processes such as distillation. Based on the fact that these demonstrated, available technologies remove the characteristic of ignitability permanently and completely, as well as destroying a number of hazardous constituents, EPA proposed a treatment standard of "Incineration, Fuel Substitution, or Recovery as Methods of Treatment" for D001 nonwastewaters in the Ignitable Liquids Subcategory (54 FR 48420).

At the time of proposal, the Agency was unable to determine whether any D001 wastes in the Ignitable Liquids Subcategory, as initially generated, conformed to EPA's regulatory definition of wastewaters (i.e., wastes containing less than 1 percent TOC and 1 percent TSS). Accordingly, EPA did

not believe that wastewater treatment technologies such as biodegradation were applicable for treatment of any waste forms in the D001 Ignitable Liquids Subcategory because of the high organic contents and large BTU values thought to be inherent in these wastes, as well as the concern for air emissions caused by the release of untreated VOCs during dilution and aeration steps associated with most wastewater treatment technologies. Consequently, EPA proposed that the standard for nonwastewaters apply to any wastewaters as well, since the end result would be the removal of the ignitability characteristic and destruction of the hazardous constituents. See 54 FR 48420-22.

Concerning the issue of wastewater generation, the Agency received many comments indicating that there are wastes in the D001 Ignitable Liquids Subcategory that consist primarily of water. The commenters also emphasized that most of these low-organic, aqueous D001 wastes are best treated using wastewater treatment technologies even though such aqueous streams may contain greater than 1 percent TOC and may thus be classified as nonwastewaters. With respect to wastewater treatment technologies being appropriate methods of treating aqueous ignitable wastes, some commenters said that biological treatment is applicable for some of the D001 aqueous wastes that contain water-soluble organics. Other commenters indicated that wet air oxidation and carbon adsorption are also applicable forms of treatment for D001 aqueous wastes. Nonetheless, the Agency is still concerned about possible air emissions associated with the aeration and dilution steps that are often part of wastewater treatment processes such as biodegradation. However, EPA believes that such emissions can be controlled by altering operating parameters (e.g., aeration rates, temperatures) and by performing process steps such as aeration and dilution steps in controlled environments such as tanks equipped with air pollution control devices. The Agency believes some facilities are already practicing these precautions. For example, one commenter mentioned a biodegradation system used to treat D001 that was anaerobic and kept any air emissions contained inside the system.

After evaluation of all the appropriate waste characterization data and treatment performance data presented in the comments, the Agency decided that wastewater treatment technologies

that are capable of providing legitimate treatment for such aqueous wastes do exist. Next, EPA investigated information about technology treatment capabilities corresponding to the organic and water contents of wastes. For example, the Agency has information indicating that incineration is generally applied to those wastes having greater than 10 percent organic content and that technologies such as air stripping, wet air oxidation, and solvent extraction can be applied to streams containing up to 10 percent organic content. Using this information, along with the Agency's regulatory definitions of wastewaters and nonwastewaters, EPA determined that the D001 Ignitable Liquids Subcategory should be further subcategorized by division into three treatability groups as follows: (1) D001 Ignitable Liquids High TOC Nonwastewaters, (2) D001 Ignitable Liquids Low TOC Nonwastewaters, and (3) D001 Ignitable Liquids Wastewaters.

The Ignitable Liquids High TOC Nonwastewater Subcategory is defined as ignitable liquid wastes that contain greater than or equal to 10 percent TOC as generated. These wastes have large organic concentrations, high BTU content, and low water content. It is common practice to recover reusable organic materials from these wastes using processes such as distillation, steam stripping, and liquid-liquid extraction. Also, many of these wastes are excellent candidates for fuel substitution because of high BTU values. (Additional discussion on fuel substitution as a treatment method for these wastes is contained in the discussion of national capacity variances in section III.B.) The Agency is promulgating "Incineration (INCIN), Fuel Substitution (FSUBS), or Recovery (RORGS) a Method of Treatment" for this treatability group. See § 268.42 Table 1 in today's rule for a detailed description of the technology standard referred to by the five letter technology code in parentheses.

The Agency believes it appropriate to require that these wastes be treated by some type of destruction and recovery technology given that they often contain high concentrations of toxic organic constituents that provide the ignitability characteristic to the waste. The toxics in these wastes might not be destroyed if the waste could be land disposed so long as it is not ignitable at the point of disposal. Additionally, the Agency notes that this is an instance illustrating how a point-of-generation approach (i.e., the treatment method applies if the waste is in the treatability group when generated) ensures that the objectives of

section 3004(m) are satisfied. EPA also notes that if an Ignitable Liquids High TOC Nonwastewater is commingled with other waste streams, the entire mixture must be treated by one of the methods prescribed for Ignitable Liquids High TOC Nonwastewater Subcategory 268.41(b). This is an instance of how the rules seek to ensure that wastes are not commingled if the treatment method is not appropriate for each commingled waste. Put another way, commingling of Ignitable Liquids High TOC Nonwastewaters with non-incinerable wastes is normally a type of impermissible dilution. See 52 FR 25766 (July 8, 1987).

The Ignitable Liquids Low TOC Nonwastewater Subcategory is defined as wastes that contain greater than 1% but less than 10% TOC as generated. The Ignitable Liquids Wastewater Subcategory is defined as wastes that contain less than 1 percent TOC and less than 1 percent TSS as generated. The Agency believes that some of these wastes can be effectively treated (i.e., remove the characteristic of ignitability by either destroying or recovering the organic constituents that gave the waste its ignitable character) using technologies applicable for treatment of aqueous wastes. In some cases, these wastewaters and low TOC nonwastewaters may need to be mixed with other wastewaters to achieve an organic concentration desirable for proper operation of a treatment system for aqueous wastes. For instance, wastewaters destined for biological treatment are often commingled to achieve an organic concentration that is optimal for the microorganisms. Fuel substitution is not considered practical since wastes in both these categories generally do not have high BTU contents because they contain mostly water. Most of these wastes can be treated with wastewater technologies; however, incineration may also be applicable, especially for the Low TOC Nonwastewaters. EPA is promulgating "Deactivation (DEACT) to Remove the Characteristic of Ignitability" for both the Ignitable Liquids Low TOC Nonwastewater Subcategory and the Ignitable Liquids Wastewater Subcategory. See section 268 appendix VI of today's rule for a list of applicable technologies that used alone or in combination can achieve this standard. (See also § 268.42 Table 1 for a technical description of these technologies. A five letter code (acronym) for each technology has been established in order to simplify the tables.)

One commenter requested clarification on whether phase

separation followed by recovery or use as a fuel of the organic phase could be considered a permissible type of deactivation treatment for ignitable wastes. EPA considers processes that separate an organic phase to be recovery (or in some cases pretreatment) and, hence, acceptable treatment provided the separated organic phase is reused or further treated by a technology that will remove the characteristic of ignitability. The aqueous phase would not require further treatment unless it still exhibited the ignitability characteristic (assuming the aqueous phase is not hazardous for any other reason). See also discussion of permissible switching of applicable wastewater and nonwastewater standards 54 FR 48383 (November 22, 1989). (Additionally, this is in keeping with the general principle established in these rules that determination of whether a characteristic waste achieves BDAT must be reevaluated whenever a treatment residual is generated. Put another way, each new treatability group is a new point of generation for a characteristic waste. See section III.D. below.)

EPA is aware that some D001 Ignitable Liquids have been shown to contain organic constituents that are also constituents in F001-F005 solvents. The Agency studied the option of transferring the standards for these constituents from the corresponding F001-F005 standards promulgated in the November 7, 1986, final rule (51 FR 40642). The Agency received comments for and against this option. However, the Agency believes that this option would create an unnecessary burden on the regulated community since the majority of D001 wastes in the Ignitable Liquids Subcategory should not contain these constituents and that most wastes containing F001-F005 constituents are probably cases of misclassification. Misclassifying F001-F005 waste as D001 is currently one of the largest enforcement issues in the RCRA program. Such misclassification is, of course, illegal and a serious infraction. It avoids the Congressionally mandated treatment standards for the prohibited solvent wastes. Indeed, solvents were the wastes Congress prioritized for prohibition and treatment. EPA believes, however, that the problem is best handled through enforcement rather than establishing treatment standards for the misclassified wastes because it seems an unreasonable burden to require generators of authentic D001 wastes to conduct the significant amount of testing and certification required under the land disposal

restrictions when it is likely that the constituents will not be present in most true D001 wastes. Therefore, the Agency is not promulgating concentration-based D001 treatment standards based on a transfer of F001-F005 data at this time, although it may reevaluate this decision in the future.

(2) *Ignitable Compressed Gases Subcategory.* The second subcategory, the Ignitable Compressed Gases Subcategory, refers to those D001 wastes that exhibit the properties listed in § 261.21(a)(3). The Agency has limited information on the generation and characterization of D001 wastes in this subcategory, but suspects that although these wastes are generated, it is unlikely that they require placement in any type of land disposal unit. The Agency believes that there are no gas cylinders containing compressed ignitable gases placed in surface impoundments and that it is physically impossible to dispose of them by means of deep well injection. Some cylinders containing D001 ignitable gases may be placed in waste piles; however, such placement of a container in a storage unit is not land disposal under section 3004(k). See 54 FR 48439. In addition, these types of cylinders are usually returned to distribution facilities to be refilled. The Agency does not intend to prevent short-term storage of cylinders prior to refilling.

The Agency proposed several options as treatment standards for compressed ignitable gases. The first option was that of recovery by direct reuse since, typically, the cylinders are directly refilled. The second option was incineration by venting the gas into an incinerator. The Agency proposed a treatment standard of "Recovery or incineration of Vented Ignitable Gases" for these wastes.

EPA continues to believe that both incineration and recovery are applicable technologies for treatment of most compressed gases. However, several commenters presented information about the limitations of the proposed technologies and provided information about additional technologies that the Agency also believes to be applicable treatment methods for removing the characteristic of ignitability for this subcategory.

In regard to the feasibility of the recovery option, one commenter stated that it is viable within the compressed gas industry, except for cases such as cylinders that have defective valves, that have lost the identity of the manufacturer, that are lecture bottle size, or that are damaged. In any of these four cases, the contents in the cylinders must instead be treated. The

commenter also stated that the most prevalent treatment method is to feed the ignitable gas into a furnace as a fuel source. The Agency did not propose fuel substitution as a method because EPA's knowledge about the use and suitability of these wastes as fuels was limited. However, the characterization data submitted during the comment period indicate that most of the waste gases currently treated by fuel substitution are gases that can be used efficiently and safely as fuels.

With respect to "incineration of vented gases" as a treatment method, EPA believes that there may be cases when it is preferable to vent the gas into an appropriate adsorbent material (e.g., water, solvents, activated carbon) and then to incinerate the adsorbed gas/adsorbent material combination to permanently remove the characteristic. Additionally, a commenter said that for small volume containers of ignitable compressed gases (e.g., aerosol cans of 18 oz. or less), the containers can be fed directly into the kiln and vented within the kiln itself by the melting of the small cans. The vented gases are then incinerated in the kiln or afterburner.

One commenter described a method of treatment for pyrophoric gases. Typical gases in this class include tributyl aluminum, dimethylzinc, triethylborane, and tetramethyltin. The commenter claimed that these gases, because of their air reactive characteristics, cannot be vented into an incinerator without considerable risk. The commenter's method of treatment for such gases has been by remote control penetration and detonation under a column of appropriate scrubbing solution.

Another method of treatment described by the commenters to deactivate the ignitable characteristic in some compressed gases is to chemically oxidize them in an aqueous medium. The commenters claimed that carbonyl sulfide and methyl mercaptans are efficiently treated by oxidation. Chemical oxidation and chemical reduction technologies include reactions with reagents in aqueous mediums that will oxidize or reduce the hazardous constituents.

The Agency believes that all these technologies can remove the characteristic of ignitability and is promulgating a treatment standard of "Deactivation (DEACT) to Remove the Characteristic of Ignitability" for the Ignitable Compressed Gas Subcategory. The Agency has established this standard to allow the regulated community the flexibility to use the "best" technology for the specific gaseous waste. See section 268

Appendix VI of today's rule for a list of applicable technologies that used alone or in combination can achieve this standard. (See also § 268.42 Table I for a technical description of these technologies. A five letter code (acronym) for each technology has been established in order to simplify the tables.) This treatment standard will apply to all forms of wastes in the Ignitable Compressed Gases Subcategory since the definitions of wastewater and nonwastewater do not apply to this group of wastes.

(3) *Ignitable Reactives Subcategory.* The third subcategory, the Ignitable Reactives Subcategory, refers to those D001 wastes that exhibit the properties listed in § 261.21(a)(2). These wastes are typically generated on a sporadic basis in low volumes and are characterized as primarily inorganic solids or wastes containing reactive materials. Ignitable reactive materials include reactive alkali metals or metalloids (such as sodium and potassium) and calcium carbide slags. Most of these are very reactive with water and will generate gases that can ignite as the result of heat generated from the reaction with water. Other reactive ignitable solids in this subcategory include metals such as magnesium and aluminum that, when finely divided, can vigorously react with the oxygen in the air when ignited.

There appears to be an overlap between wastes in this D001 subcategory and certain D003 (characteristic of reactivity) wastes. A close examination of the definitions in § 261.21(a)(2) for ignitable wastes and §§ 261.23(a) (2), (3), and (6) for reactive wastes reveals the distinction between these two groups. The key difference is in the definition of ignitable wastes, which states: " * * * when ignited, burns vigorously and persistently." This phrase implies that the hazard is due primarily to the ignition potential rather than to the extreme reactivity.

The Agency proposed a treatment standard of "Deactivation as a Method of Treatment" for wastes in the D001 Ignitable Reactive Subcategory. The Agency took this approach for these wastes since the hazardous characteristic is based on imminent hazard (i.e., ignition and violent reaction) rather than on other criteria such as levels of hazardous constituents and since technologies exist that can completely remove this characteristic.

Current management practices for some of these wastes, such as calcium carbide slag, involve controlled deactivation with water. Other D001 Ignitable Reactives, such as those containing reactive alkali metals

(sodium or potassium) are sometimes chemically deactivated using chemical oxidation or chemical reduction technologies. Several commenters stated that incineration is also an appropriate treatment method for these wastes. Additionally, other commenters have indicated that recovery technologies are applicable for some wastes in this subcategory. EPA also believes that stabilization is an established deactivation technique for safe and equivalent management of reactive ignitable materials since it accomplishes results equivalent to those of other technologies by isolating and encapsulating the pyrophoric metal fines and precluding conditions that could cause ignition or reaction of the material.

The Agency believes that chemical oxidation, chemical reduction, incineration, and recovery are all applicable technologies for waste forms in the D001 Ignitable Reactives Subcategory because these technologies will remove the characteristic of ignitability. However, the Agency believes that because of the diversity in physical and chemical forms of the wastes in the Ignitable Reactives Subcategory it is not possible to determine a "best" technology for all wastes. EPA is promulgating a treatment standard of "Deactivation (DEACT) to Remove the Characteristic of Ignitability" for the Ignitable Reactives Subcategory. See section 268 Appendix VI of today's rule for a list of applicable technologies that used alone or in combination can achieve this standard. (See also § 268.42 Table 1 for a technical description of these technologies. A five letter code (acronym) for each technology has been established in order to simplify the tables.) This treatment standard is established only for nonwastewaters since ignitable reactive wastes are described as being very reactive with water and hence cannot exist as wastewaters.

(4) *Oxidizers Subcategory.* The fourth subcategory, the D001 Oxidizers Subcategory, refers to those D001 wastes that exhibit the properties listed in § 261.21(a)(4) and meet the definitions in 49 CFR 173.151. Several commenters have asked for an elaboration of the oxidizer definition because the DOT definition is not definitive but rather lists examples of oxidizing compounds. EPA believes that D001 wastes in the Oxidizers Subcategory are primarily inorganic and include such things as waste peroxides, perchlorates, and permanganates. The Agency has very limited information on the generation and characterization of D001 wastes in

this subcategory. Currently, generators must assess wastes for oxidizing hazards by considering known oxidizing constituents contained within the wastes, and by the definition as outlined in 49 CFR 173.151 which states:

"An oxidizer for the purpose of this subchapter is a substance such as a chlorate, permanganate, inorganic peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of the organic matter."

In other words, the presence of any amount of the above substances does not indicate that a material is an oxidizer, rather one or more of these substances must be present in a quantity sufficient to yield oxygen and stimulate combustion.

The Agency believes recovery for reuse to be an applicable treatment for wastes in this subcategory since it is possible that certain aqueous solutions of waste oxidizers could be useful in the treatment of other hazardous wastes. These wastes must, however, be used as treatment reagents in tanks and not in surface impoundments because of the potential release of heat and volatile organics during the oxidation/reduction reactions (see 40 CFR 264.229 and 265.229).

Several commenters wrote about different technologies that are applicable to wastes in the oxidizer subcategory. One commenter generates calcium hypochlorite and trichlorocyanuric acid wastes that fit into the oxidizer subcategory. They are both off-spec or contaminated swimming pool chlorination chemicals. The wastes are normally generated as solids and routinely disposed of through deactivation by adding the material to large quantities of water (similar to its use in swimming pools). Following the deactivation, the waste is further treated in a wastewater treatment facility. During deactivation and treatment, there is no release of chlorine gas. EPA considers mixing with water followed by chemical treatment to be applicable for oxidizer wastes.

Additionally, the commenter pointed out that both hydrogen peroxide and nitric acid are oxidizers and that the standard treatment for these chemicals is dissolution in water followed by neutralization. In the case of nitric acid, the diluting in water is needed to prevent an adverse reaction. Other commenters use recovery and incineration as treatment methods. The Agency believes that all these technologies are applicable for treatment of oxidizer wastes since they will remove the characteristic of ignitability.

The Agency proposed a treatment standard of "Deactivation" for wastes in the D001 Oxidizers Subcategory. The Agency took this approach for these wastes since the hazardous characteristic of these wastes is based on imminent hazard. (i.e., oxidizers can react violently with organics or other materials and result in the rapid generation of fires) rather than on other criteria such as levels of hazardous constituents and since technologies exist that can completely remove this characteristic. EPA continues to believe that this standard is appropriate for wastes in the D001 Oxidizer Subcategory and is promulgating a treatment standard of "Deactivation (DEACT) to Remove the Characteristic of Ignitability" for the D001 Oxidizers Subcategory. See section 268 appendix VI of today's rule for a list of applicable technologies that used alone or in combination can achieve this standard. (See also § 268.42 Table 1 for a technical description of these technologies. A five letter code (acronym) for each technology has been established in order to simplify the tables.) This standard will allow the regulated community the flexibility to determine the "best" treatment based on the physical and chemical characteristics of the oxidizer wastes.

BDAT TREATMENT STANDARDS FOR D001 IGNITABLE LIQUIDS 261.21(a)(1)

[Nonwastewaters]—[High TOC Ignitable Liquids Subcategory—Greater than or equal to 10% total organic carbon]

Incineration (INCIN), fuel substitution (FSUBS), or recovery (RORGS) as a method of treatment*

BDAT TREATMENT STANDARDS FOR D001 IGNITABLE LIQUIDS 261.21(a)(1)

[Nonwastewaters]—[Low TOC Ignitable Liquids Subcategory—Less than 10% total organic carbon]

Deactivation (DEACT) to remove the characteristic of ignitability*

BDAT TREATMENT STANDARDS FOR D001 IGNITABLE LIQUIDS 261.21(a)(1)

[Wastewaters]

Deactivation (DEACT) to remove the characteristic of ignitability*

**BDAT TREATMENT STANDARDS FOR D001
IGNITABLE COMPRESSED GASES
261.21(a)(3)**

Deactivation (DEACT) to remove the characteristic of ignitability*

**BDAT TREATMENT STANDARDS FOR D001
IGNITABLE REACTIVES 261.21(a)(2)**

[Nonwastewaters]

Deactivation (DEACT) to remove the characteristic of ignitability*

**BDAT TREATMENT STANDARDS FOR D001
OXIDIZERS 261.21(a)(4)**

[Wastewaters and Nonwastewaters]

Deactivation (DEACT) to remove the characteristic of ignitability*

* See § 268.42 Table 1 in today's rule for a detailed description of all technologies referred to by a five letter technology code. See also part 268 appendix VI for a list of applicable technologies that used alone or in combination can achieve deactivation of ignitability.

c. Corrosive Characteristic Wastes

Paraphrasing the criteria for defining a D002 Corrosive waste (40 CFR 261.22), a waste can be a D002 waste if it is aqueous and has a pH less than or equal to 2; or it is aqueous and has a pH greater than or equal to 12.5; or it is a liquid and corrodes steel at a specified rate and temperature. EPA tentatively determined at proposal that these criteria translated into three subcategories, the Acid Subcategory, the Alkaline Subcategory, and the Other Corrosives Subcategory (54 FR 48422). In general, commenters supported this subcategorization of D002 wastes.

Therefore, EPA is adopting this classification scheme in the final rule.

(1) *D002 Acid and Alkaline Subcategories.* The Acid Subcategory and the Alkaline Subcategory, refer to those D002 wastes that exhibit the properties listed in 40 CFR 261.22(a)(1) and are distinguishable by the appropriate pH specifications. The Acid Subcategory is defined as those wastes with a pH of less than or equal to 2.0, and the Alkaline Subcategory is defined as those wastes with a pH of greater than or equal to 12.5. Also by definition in § 261.22, D002 wastes in these two subcategories only include wastes which are considered to be "aqueous", due to the fact that standard pH measurements can only be performed in

the presence of significant amounts of water (i.e., pH is the measure of the concentration of hydronium ions in water).

D002 wastes in the Acid Subcategory typically include concentrated spent acids, acidic wastewaters, and spent acid strippers and cleaners. Wastes in the Alkaline Subcategory typically include concentrated spent bases, alkaline wastewaters, and spent alkaline strippers and cleaners. These wastes represent a significant portion of all hazardous wastes generated by almost every industry.

EPA proposed a treatment standard of "Base Neutralization to a pH 6 to 9 and Insoluble Salts" for the D002 Acidic Subcategory (54 FR 48422). Likewise, EPA proposed a treatment standard of Acid Neutralization to a pH 6 to 9 and Insoluble Salts" for the D002 Alkaline Subcategory (54 FR 48422).

(i.) *Comments Concerning the Proposed pH Requirements.* Treatment of acids and bases is generally referred to as "neutralization". In the proposed rule, the Agency interpreted this to mean a pH range of 6 to 9. This range was selected based on a rounding off of the pH range found in fresh water aquatic ecosystems through natural carbonate/bicarbonate buffering (i.e., pH 5.5 to 8.5). While a "true" neutral pH is equal to 7, by proposing the pH 6 to 9 range, the Agency was recognizing that even in natural systems, pH can fluctuate significantly. Thus, the Agency's underlying premise was that treatment of corrosive wastes should result in a pH range (i.e., pH 6 to 9) that was referred to as "neutral".

In addition, the Agency expressed concern on whether a waste with a pH 2 to 6 could have a negative impact on the effectiveness of a clay liner in mitigating the mobility of hazardous constituents from surface impoundments. In fact, this was one of the major concerns of Congress with respect to the statutory land disposal restrictions imposed by HSWA on all hazardous wastes with pH less than 2. (See generally 52 FR 25760 through 25792 (July 8, 1987) where EPA codified these restrictions for all corrosive wastes (without specifically referring solely to D002 wastes.))

EPA received many comments pertaining to the impact that the pH range of 6 to 9 would have on generators and treaters of D002 wastes. Commenters documented that enormous disruptions of existing wastewater treatment systems would occur if the standard were promulgated with the proposed pH restrictions. For example, every surface impoundment or injection well receiving commingled wastes

(some of which were D002 corrosive wastes at the point of generation, but once commingled were above pH 2 (or below pH 12.5) and therefore no longer considered hazardous by section 261.22) that were outside of the pH 6 to 9 range would be in violation of the standard. This would effect thousands of such units (most of which are RCRA subtitle D units and hence not presently affected by RCRA subtitle C).

With regard to the proposed pH 6 to 9 requirement for underground injection units, several commenters stated that the proposed pH range would cause problems in many of the injection units and wells, because some metals tend to precipitate out of solution at these pH ranges resulting in plugging in either the injection unit itself or further inside the well. Commenters also stated that specific pH ranges are typically required in permits for many underground injection wells and are typically at levels less than pH 6 to ensure that the injected fluid flows properly through the injection zone without plugging.

Another commenter remarked that they treat an acidic D002 waste only to a pH of 4.5 prior to commingling with other wastes that require biodegradation. This is done in order to counter the production of alkaline ammonia during the biodegradation process, and thereby aids in maintaining a "neutral" pH in the biodegradation process.

Other commenters pointed out that a pH of 10 is often considered the optimum pH for removal of most metals from wastewaters and that requiring a pH of 6 to 9 would cause severe disruptions in most metals removal treatment systems. These treatment systems generally consist of chemical precipitation in tanks to remove metals followed by neutralization of the effluent in surface impoundments prior to discharge.

As a result of all of the comments on pH ranges mentioned above and for the reasons mentioned below, the Agency is not promulgating the proposed pH range of 6 to 9. While the Agency maintains that in some cases a pH of 6 to 9 may be considered desirable, the Agency believes the Clean Water Act, end-of-pipe, NPDES limitations will address these specific situations, where water quality issues are of concern (specifically where discharges of such neutralized wastewaters are into fresh water ecosystems). (Note: The Agency points out that pH is commonly already regulated for such discharges.)

The Agency also notes that liquids are not allowed in subtitle C landfills under section 3004(c). As mentioned by the

commenters (and discussed above), requiring a pH range of 6 to 9 before discharge to most surface impoundments will cause severe disruptions in existing treatment operations. Additionally, the Agency believes that its concern regarding the impact of corrosive wastes on the integrity of clay liners is addressed mostly by the statutory restrictions on a pH of less than 2. The Agency currently has little data on the impact that wastes containing pH of 2 to 6 may have on clay liners. Finally, regarding the proposed pH range, the Agency did not intend to interfere with optimum pH levels desired for treatment of metals in tanks, nor did it intend for these standards to interfere with other legitimate wastewater treatment operations (such as the biotreatment processes mentioned by the commenter).

(ii.) Comments Concerning the Proposed Acid and Base Requirements. EPA additionally proposed that "neutralization" of wastes in the D002 Acidic and Alkaline subcategories be accomplished specifically through the use of the corresponding neutralization chemicals (i.e., acids to neutralize the Alkaline Subcategory and bases to neutralize the Acidic Subcategory). As commenters quickly pointed out, almost all chemicals (including water which dissociates into hydronium and hydroxide ions) have some acid character and some basic character depending upon the reference chemical. That is what is historically been taught in academia as the "Lewis Acid Theory". The Agency never intended to dispute basic chemical theory, but was merely stating its preference to neutralize the corrosive characteristic of these wastes with chemicals that would result in an overall reduction in total dissolved solids in effluent (i.e., the use of these chemicals is coupled with the concept of the proposed requirement to create insoluble salts rather than the concept of neutralization to a specific pH). (See also the discussion on insoluble salts in the preamble discussion following this one.)

With respect to the use of these chemicals (i.e., acids and bases) to achieve the treatment standard, several commenters stated that it is not always necessary to use chemicals that are specifically identified as commercial acids or bases to achieve treatment of D002 wastes. In fact many facilities generate both acidic and alkaline wastes (often from different processes) and commonly use them to neutralize each other. This situation also occurs at commercial hazardous waste treatment facilities, in that the facilities will take

acid wastes from various generators and will neutralize them with alkaline wastes from other generators. In general, commercial acids and bases are used to complete the neutralization processes and often are used only for pH adjustment of the final wastewater discharges. Many commenters also pointed out that the mixing of D002 corrosive wastes with other wastewaters (even other acidic, noncorrosive wastes) will contribute to an overall neutralization due to the resultant change in pH. This is because pH is merely a measure of the concentration of hydronium ions (H^+) in water and is dependent upon the equilibrium constant for the dissociation of water into hydronium and hydroxide ions. As more water is present, the equilibrium will be shifted and thereby increase the pH; resulting in "neutralization." Because of this, EPA is specifically allowing mixing of D002 wastes with each other and with other wastewaters to remove the characteristic of corrosivity (i.e., resulting in a pH between 2 and 12.5). However, EPA's allowance of mixing wastes to remove corrosivity does not override other prohibitions on dilution of wastes for other purposes (i.e., this does not override other dilution prohibitions that may be applicable for other wastes).

Many commenters declared that incineration should also be allowed as treatment for D002 wastes, especially for organic acids, mixed D001/D002 waste streams, and other D002 wastes with organics. Pollution control devices on incinerators will remove corrosive gases from the burning of these D002 wastes. Alkaline scrubber waters are often employed in these air pollution control devices in order to neutralize acidic emissions. These scrubber waters are then further neutralized if necessary. The Agency agrees with the commenters that incineration is an applicable treatment method for some D002 wastes and is thus not precluding incineration as treatment of D002 wastes.

(iii.) Comments Concerning the Insoluble Salt Requirement. The Agency proposed that neutralization of wastes in the D002 Acid and Alkaline Subcategories should be required to result in insoluble salts. The reason was that the Agency felt that the overall dissolved solids loading on fresh water aquatic systems could be reduced by establishing such a standard, even though it would result in an insoluble sludge that would require landfilling. The Agency believed that such a standard would discourage the generation of D002 acids and alkaline

wastes and thereby promote minimization/source reduction as well as recycling of acids (either directly or after some form of pretreatment). While the Agency maintains that the goal behind the proposed standard is consistent with national policy on waste minimization and the Agency's overall concerns on cross-media impacts of both hazardous and nonhazardous constituents on the entire environment, many commenters presented technical complications with the proposed requirement on insoluble salts that the Agency has found persuasive.

The Agency received numerous comments concerning this proposed requirement indicating that neutralization and formation of insoluble salts is either impractical or technically impossible for some of the most commonly used acids and bases that become D002 wastes (such as nitric acid, hydrochloric acid, sodium hydroxide, potassium hydroxide, other acid halides). Because the salts generated from the neutralization of these particular acids and bases are very soluble in water, the proposed requirement to generate insoluble salts would result in treatment with exotic chemicals in order to comply (if there are any methods at all to create insoluble salts). The Agency concurs with the commenters. This is further supported by the fact that almost all nitrate and chloride salts of the major metals are very soluble in water.

Other commenters stated that requiring the formation of insoluble salts often will negate the use of alkaline and acidic process wastes that are generated on-site for neutralization. This would in effect, result in double the volume of insoluble salts that would have to be disposed and use up valuable virgin commercial acids and bases that otherwise would not be needed. As stated in the preceding sections of this discussion on corrosive wastes, the Agency never intended to preclude such on-site neutralization with wastes, and agrees that this would probably result in an unnecessary use of virgin materials for waste treatment.

Additionally, one commenter points out that in many cases neutralization of D002 wastes that contain organics, is often a necessary pretreatment step for other treatment processes (such as steam stripping, biological treatment and/or carbon adsorption) that remove or destroy the organics in the waste. If a sludge must be formed during the neutralization process, organic constituents that could have been destroyed or removed while in the wastewaters are instead being

transferred to the solid phase where they will be either disposed of untreated or where they may require treatment with incineration. The Agency shares the commenters concerns on treatment of organics in D002 wastes.

As a result, the Agency is withdrawing the requirement for neutralization to insoluble salts for wastes in the D002 Acid and Alkaline subcategories. In doing so, the Agency's concerns of using acids and bases to provide neutralization is a moot point.

(iv.) Promulgated Treatment Standards. For the reasons outlined in the previous discussions, the Agency is withdrawing the proposed treatment standards for D002 Acid and Alkaline Subcategories. The Agency considered promulgating a treatment standard as a specified technology, namely "Neutralization". However, the Agency found that in certain cases, "incineration" and "recovery" processes were also quite applicable to wastes in these subcategories.

In addition, many D002 wastes also are hazardous for other reasons, and may require that additional treatment processes be employed besides neutralization, incineration, or recovery. For example, a facility may have interpreted that biodegradation would have been precluded from use, for a D002 waste that also contained organics. Since biodegradation may have actually been a technically viable alternative for this waste, the facility would have had to submit a petition for a treatability variance. While the Agency probably would have granted it, the variance process would have created an unnecessary burden on both the regulatory and regulated community, and probably without incurring any additional protection of human health and the environment.

As a result, EPA is promulgating a general treatment standard for wastes in the D002 Acid and Alkaline Subcategories that allows the use of any appropriate treatment technology, namely: "Deactivation (DEACT) to Remove the Characteristic of Corrosivity". This means that the facility may use any treatment (including neutralization achieved through mixing with other wastewaters) that results in a pH above 2 but less than 12.5, and thereby removes the characteristic of corrosivity. See section 268 Appendix VI of today's rule for a list of applicable technologies that used alone or in combination can achieve this standard. (See also § 268.42 Table 1 for a technical description of these technologies. A five letter code (acronym) for each technology has been established in order to simplify the tables.)

EPA has adopted this standard, in part, to avoid the massive disruptions to wastewater treatment systems that would have resulted from the proposed standard (which impacts far exceeded any others that would have resulted under the proposed rule), and because the final standard does require the removal of the property of corrosivity. Corrosivity is not defined in the same way EP Toxic wastes are defined. Corrosivity is not based on a toxic constituent, where the environmental concern is mass-loading in the environment. With respect to the issue of toxics present in these corrosive wastes, EPA notes that if a corrosive waste also exhibits the toxicity characteristic, it must be treated to meet the treatment standard for the toxic constituent as well (see generally section III.A.1. of this preamble).

The Agency received many comments regarding non-liquid wastes that are corrosive and the applicability of treatment technologies for aqueous and liquid corrosive wastes to treat non-liquid corrosive wastes. The proposal did not specifically address corrosive solids because there is not a definition of corrosive solids in § 261.22 at this time. Until the Agency amends § 261.22 to include a definition for corrosive solids and promulgates a treatment technology, generators must prudently handle wastes with regard to known hazards. Although not required under current regulations, many generators of corrosive solids prefer to classify these wastes as D002 corrosives and choose waste management and disposal protocols accordingly in an added effort to protect the environment.

(2) *Other D002 Corrosives*. The third major subcategory is classified as the Other Corrosives Subcategory and is defined as those D002 wastes that exhibit corrosivity to steel as defined in § 261.22(a)(2). They often are nonaqueous corrosive wastes such as certain organic liquids, but can represent inorganic chemicals as well.

Wastes in the Other D002 Corrosives Subcategory are generated on a sporadic basis and generally in low volumes. The Agency suspects that these wastes are often identified as corrosive without performing the specified testing with steel (i.e., the corrosivity of the waste may be assumed due to the presence of known corrosive constituents). This may also be due, in part, to the high cost of testing and to the difficulties in identifying laboratories that are experienced in steel corrosion testing.

The physical and chemical characteristics of this group of wastes vary greatly. The wastes may be

aqueous or they may be primarily organic. In addition, a large variety of corrosive chemicals may appear as constituents in this type of corrosive waste. Depending on the concentration of these corrosive chemicals, they may corrode SAE 1020 steel. Examples of chemicals that may contribute to corrosivity include ferric chloride, benzene sulfonfyl chloride, benzotrichloride, acetyl chloride, formic acid, hydrofluoric acid, some catalysts, various resins, metal cleaners, and etchants. Highly concentrated acids that have no water may also be included in this subcategory, since pH measurements are not possible on these wastes.

Wastes in the Other Corrosives Subcategory are often treated by deactivating the corrosive constituents of the waste with an appropriate chemical reagent. Wastes that contain high concentrations of corrosive organics are often incinerated; however, due to the great variety of potential corrosive organics, the Agency does not believe that it should establish concentration-based standards based on incineration for these D002 wastes. Removal and recovery of either organic or inorganic corrosive constituents may also be applicable technologies, since recovery could extract the corrosive constituents until the waste itself is no longer corrosive to steel.

EPA proposed a treatment standard of "Deactivation" for D002 wastes in the Other Corrosives Subcategory. The Agency took this approach for these wastes since the hazardous characteristic is based on imminent hazard (i.e., the corrosivity to steel may cause rupture of a tank or container, thus releasing the contents either suddenly or through leaks) rather than on other criteria such as levels of hazardous constituents, and that technologies exist that can completely remove this characteristic.

EPA continues to believe that the proposed standard is appropriate for wastes in the D002 Other Corrosives Subcategory and is promulgating a treatment standard of "Deactivation (DEACT) to Remove the Characteristic of Corrosivity". See section 268 Appendix VI of today's rule for a list of applicable technologies that used along or in combination can achieve this standard. (See also § 268.42 Table 1 for a technical description of these technologies. A five letter code (acronym) for each technology has been established in order to simplify the tables.) This standard will allow the use of the "best" treatment based on the

chemical and physical characteristics of the waste.

BDAT TREATMENT STANDARDS FOR D002 ACID SUBCATEGORY 261.22(a)(1)

Deactivation (DEACT) to remove the characteristic of corrosivity*

BDAT TREATMENT STANDARDS FOR D002 ALKALINE SUBCATEGORY 261.22(a)(1)

Deactivation (DEACT) to remove the characteristic of corrosivity*

BDAT TREATMENT STANDARDS FOR D002 OTHER CORROSIVES 261.22(a)(2)

Deactivation (DEACT) to remove the characteristic of corrosivity*

*See section 268 appendix VI of today's rule for a list of applicable technologies that used alone or in combination can achieve this standard. See also 268.42 Table 1 for a description of the technologies indicated by a five letter code.

1. Reactive Characteristic Wastes

According to 40 CFR 261.23, there are eight criteria for defining a waste as a D003 Reactive waste. Paraphrasing these criteria, a waste can be a D003 waste if: (1) It is unstable and readily undergoes violent changes without detonating; or (2) it reacts violently with water; or (3) it forms potentially explosive mixtures with water; or (4) when mixed with water, it generates toxic gases; or (5) it is a cyanide or sulfide bearing waste which under certain conditions can generate toxic gases; or (6) it is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement; or (7) it is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure; or (8) it is a forbidden explosive, a Class A explosive, or a Class B explosive.

EPA tentatively determined at proposal that these eight criteria translated into five subcategories for D003 wastes (54 FR 48424). Commenters concurred with these classifications. The first subcategory is classified as the Reactive Cyanides subcategory and refers to those D003 wastes that exhibit the properties listed in § 261.23(a)(5) for cyanide. The second subcategory is classified as the Explosives subcategory and refers to those D003 wastes that exhibit the properties listed in

§§ 261.23(a)(6) through 261.23(a)(8). The third subcategory is classified as the Water Reactive subcategory and refers to those D003 wastes that exhibit the properties listed in §§ 261.23(a)(2) through 261.23(a)(4). The fourth subcategory is classified as the Reactive Sulfides subcategory and refers to those D003 wastes that exhibit the properties listed in § 261.23(a)(5) for sulfide. The fifth subcategory is classified as the Other Reactives subcategory and refers to those D003 wastes that exhibit the properties listed in § 261.23(a)(1).

For all subcategories of D003 wastes except the Reactive Cyanides, the Agency believes that development of concentration-based treatment standards would be difficult because there are no known analytical tests that are specifically designed to measure the particular reactivity associated with each D003 treatability subcategory, nor is there a test that distinguishes the reactive chemical from the deactivated chemical.

The Agency solicited comments and data on the physical and chemical characterization of all five subcategories of D003 wastes. The Agency also requested comment on the applicability of chemical deactivation, incineration, and any other type of chemical or physical deactivation technology to these wastes.

(1) *Reactive Cyanides*. D003 wastes in the Reactive Cyanides Subcategory are by definition those cyanide-bearing wastes that generate toxic gases (assumed to be hydrogen cyanide) when exposed to pH conditions between 2 and 12.5, in a sufficient quantity to present a danger to human health and the environment (40 CFR 261.23(a)(5)). Commenters requested clarification of which analytical methods should be used to determine reactive cyanide and associated toxic gas liberation. EPA's approved analytical procedures can be found in SW-846 Vol. 1C, Chapter 7 which defines the characteristic and regulation of reactive wastes. Specifically, Section 7.3.3.2 describes the "Test Method to Determine Hydrogen Cyanide Released from Wastes" which outlines the correct procedure of hydrogen cyanide gas liberation from reactive wastes. Method 9010 is the analytical method for quantitatively determining reactive cyanide concentrations.

The reactive cyanide wastes typically are generated by the electroplating and metal finishing industries, and include mixed cyanide salts, cyanide solutions, and cyanide-bearing sludges. Most of the volume of all D003 wastes that are generated can be identified as wastes

belonging to the Reactive Cyanides Subcategory. Reactive cyanide wastes are not typically placed directly in most types of land disposal units without treatment; however, it is possible that some untreated wastes are placed in surface impoundments.

Reactive cyanide wastes (like other reactive wastes) are already subject to special requirements prior to disposal in landfills, surface impoundments, and waste piles under existing regulations. Also, as a July 8, 1987 (the statutory deadline for the California list prohibitions), liquid hazardous wastes having a free cyanide concentration in excess of 1,000 mg/kg (ppm) were prohibited from land disposal. No one has suggested, however, that these existing regulations and prohibitions are sufficient to apply to the Reactive Cyanides Subcategory. The statute did not specifically identify the California list cyanides as D003 wastes, and furthermore, it did not specify a required method of treatment, nor did it establish the 1,000 mg/kg prohibition level as a "treatment standard".

The Agency believes that simple cyanides (e.g. NaCN, KCN) are more likely to react to liberate hydrogen cyanide gas since they are soluble and have weaker bond energies than complex cyanides (e.g., $\text{Fe}_3[\text{Fe}(\text{CN})_6]_2$, $\text{Ni}[\text{Fe}(\text{CN})_6]_2$, $\text{Zn}_2\text{Fe}(\text{CN})_6$). Consequently, EPA believes that simple cyanide rather than complex cyanide is the cyanide form most likely to give a waste containing cyanide the characteristic of reactivity. Accordingly, the Agency believed at the time of proposal that most D003 nonwastewaters resembled wastes containing simple cyanides (i.e., F011, F012 and P030) rather than wastes containing complex cyanides (i.e., F006, F007, F008, F009). Treatment technologies applicable for treatment of D003 reactive cyanide wastes include electrolytic oxidation, alkaline chlorination and wet air oxidation.

The Agency proposed to transfer the treatment performance of simple cyanide nonwastewaters (i.e., mixture of F011 and F012) using electrolytic oxidation followed by alkaline chlorination developed in the Second Third final rule (54 FR 26594, June 23, 1989), the nonwastewaters in the Reactive Cyanides Subcategory (54 FR 48425). In other words, the Agency believed all D003 reactive cyanide nonwastewaters could be treated to a total cyanide level of 110 mg/kg and an amenable cyanide level of 9.1 mg/kg representing treatment of wastes containing simple cyanides (i.e., F011 and F012) instead of a total cyanide level of 590 mg/kg and an amenable

cyanide level of 30 mg/kg representing treatment performance of wastes containing complexed cyanides (i.e., F006-F009). For wastewaters in the Reactive Cyanides Subcategory, EPA proposed to transfer treatment performance from treatment of F006-F009 wastewaters using alkaline chlorination, since this is the best treatment data available to the Agency for wastewaters containing high concentrations of cyanides.

With respect to the transfer being valid, several commenters submitted data indicating that D003 wastes in the Reactive Cyanides Subcategory more closely resemble the wastes containing complexed cyanides rather than the wastes containing simple cyanides and that the proposed treatment levels were unachievable for some D003 wastes because of the presence of iron cyanide and other cyanide complexes. One commenter claimed that, in many cases, iron contamination in some D003 cyanide wastes is unavoidable due to normal process operation and that a threshold level of only 50 to 100 mg/kg of iron is required to result in formation of iron cyanide complex.

Based on the high iron contents shown to be present in some D003 cyanide wastes, the Agency believes that some D003 cyanide wastes may contain complexed cyanides and thus may not be treatable to the 110 mg/kg level. One commenter suggested that the Agency develop two treatability groups for nonwastewater forms in the D003 Reactive Cyanides Subcategory based on the concentration of complex cyanide present in the waste: one group for wastes containing mostly simple cyanides (i.e., less than 110 mg/kg complex cyanide) and the other group for wastes containing high concentrations of complexed cyanides (i.e., greater than 110 mg/kg complex cyanide). EPA believes that this concept, while desirable, may not be viable because of the analytical interferences caused by the complicated matrices of untreated wastes. Furthermore, the vast majority of characterization data submitted during the comment period seem to indicate that D003 nonwastewaters more closely resemble the F006-F009 nonwastewaters instead of the F011 and F012 nonwastewaters. Therefore, the Agency is promulgating a treatment standard of 590 mg/kg total cyanide and 30 mg/kg amenable cyanide based on the treatment of wastes containing complex cyanides (i.e., F006-F009 nonwastewaters) for nonwastewaters in the D003 Reactive Cyanide Subcategory.

For the wastewaters in the D003 Reactive Cyanide Subcategory, EPA proposed a treatment standard of 1.9 mg/l total cyanide and 0.1 mg/l amenable cyanide based on alkaline chlorination. Comments and data were received from Sterling Chemicals demonstrating that alkaline chlorination did not achieve those limits for D003. Further examination of categorical wastewater discharge standards, pursuant to the Clean Water Act, supported the inability of alkaline chlorination to achieve the proposed amenable cyanide level. EPA is promulgating an amenable cyanide standard of 0.86 mg/l based on the Metal Finishing categorical wastewater discharge standards. Data submitted by Sterling Chemicals demonstrated compliance with this limit. With regard to total cyanide, the Agency is reserving the standard for further analyses to resolve the substantial variation in total cyanide levels submitted by commenters and standards established for categorical wastewater discharges. In the interim, the amenable cyanide limit will insure that alkaline chlorination of equivalent BDAT technology is utilized to comply with the land disposal restriction for reactive cyanide D003 wastes.

The Agency has chosen a concentration based treatment level for wastes in the D003 Reactive Cyanide Subcategory rather than establish "Deactivation (DEACT) to Remove the Characteristic of Reactivity" for the following reasons: First, unlike the other characteristic wastes, the Agency can identify an indicator compound (i.e., cyanide) that is known to be present in all D003 reactive cyanide wastes and can analyze the indicator compound in wastewater and nonwastewater matrices with EPA-approved SW 846 analytical test methods. (See also section III.A.6.(a) of today's preamble for a further discussion of cyanide treatment standards for other wastes and a clarification of the analytical methodology for compliance with the promulgated standards.) Second, EPA believes most D003 cyanide wastes are generated from the same types of processes that generate the F006-F012 and P030 wastes and thus, are frequently of the same type, and present similar risks when land disposed as the listed wastes. EPA does not believe that Congress precluded the Agency from establishing the same treatment standards for the D003 wastes that have been established for the listed wastes (assuming, of course, that such standards are consistent with the command of section 3004(m) to reduce

toxicity or mobility so that risks to health and the environment are minimized). Finally, the Agency suspects that some generators are currently misclassifying F006-F012 and P030 wastes as D003 reactive cyanide wastes. While this is primarily an issue for enforcement, the Agency is concerned that a less stringent standard would discourage proper identification of the F and P cyanide wastes.

The Agency realizes that reactive cyanide wastes treated to meet the promulgated standard may no longer exhibit the characteristic of reactivity (although the determination of reactivity can sometimes be difficult due to the non-quantified standard in § 261.23(a)(5)). The Agency believes this appropriate. As discussed in section III.D., the Agency sees no legal bar in establishing treatment standards that are below the characteristic level. Doing so is appropriate for these wastes because the reactivity characteristic does not evaluate the toxic nature of the wastes, because Congress specifically intended that cyanides be destroyed where possible (see statement of Senator Chafee, 130 Cong. Rec. S 9178-9 (July 25, 1984)), and because the Agency believes the similarity of most D003 wastes and the F006-F009 wastes warrants the same treatment standards for each in order to satisfy the section 3004(m) standard.

(2) *Reactive Sulfides Subcategory.* D003 wastes in the Reactive Sulfides Subcategory are by definition those sulfide-bearing wastes that generate toxic gases (assumed to be H₂S) when exposed to a pH between 2 and 12.5, in a sufficient quantity to present a danger to human health and the environment. Currently the accepted method for quantitatively determining reactive sulfides is outlined in SW-846, Vol. 1C, § 7.3.3.2 and in Method 9030.

The Agency is in the process of developing a quantitative threshold for toxic gas generated from reactive sulfide wastes. The interim value the Agency is considering is 500 mg of H₂S generated per kilogram of waste. Although this number is only an interim guideline for the purpose of BDAT determinations, the Agency proposed to use this number to identify the wastes in this subcategory (given the need for an objective means of determining the subcategory's applicability). The Agency received several comments stating that a test method should be finalized and a rationale published prior to setting this threshold as a numerical standard. EPA agrees with the commenters that for wastes in this subcategory the test method used in determining how much

gas can be released from a waste needs to be standardized before establishing a concentration based treatment standard with the test methods. Accordingly, the Agency's action today should not be viewed as redefining the characteristic for sulfide-bearing wastes.

Reactive sulfides may be treated and chemically converted to relatively inert sulfur, to insoluble metallic sulfide salts, or to soluble sulfates that can be removed or recovered. Some data indicate that these wastes can be treated by alkaline chlorination, specialty incineration, or other chemical deactivation techniques. The Agency believes that some of these wastes may also be contaminated with organic sulfides known as mercaptans. These malodorous chemicals are believed to complicate the treatment of these reactive sulfide wastes. It is believed that these wastes have posed particular treatment problems for the petroleum refining industry and the paper and pulp industry.

The Agency solicited waste characterization and treatment data that could potentially be used to develop treatment standards for these wastes. One commenter sent data demonstrating that treatment with chlorine dioxide is a very effective technology for destroying organic sulfides and mercaptans in petroleum wastes. Another commenter submitted stabilization data indicating that this treatment process can treat D003 reactive sulfide wastes by removing the characteristic. One commenter uses mercaptan-free and organic-free sulfide wastes to precipitate metals from wastewater. Another commenter uses a thermal process that converts sulfides to sulfates instead of sulfur oxides.

The Agency proposed a treatment standard of "Alkaline Chlorination, Chemical Oxidation, or Incineration Followed By Precipitation to Insoluble Sulfates" for the Reactive Sulfide subcategory. (Note: While alkaline chlorination is a form of chemical oxidation, the Agency did not want to specifically preclude the use of any particular oxidant.)

Because of the variety of treatment processes currently used to treat reactive sulfide wastes, the Agency is promulgating a treatment standard of "Deactivation (DEACT) to Remove the Characteristic of Reactivity" for nonwastewaters and wastewaters in the D003 Reactive Sulfides Subcategory to allow the treatment facility the flexibility to use the "best" technology for the particular waste stream. See section 268 Appendix VI of today's rule for a list of applicable technologies that used alone or in combination can

achieve this standard. (See also § 268.42 Table 1 for a technical description of these technologies. A five letter code (acronym) for each technology has been established in order to simplify the tables.) The treatment standard is expressed as required methods of treatment rather than as a concentration-based standard because the Agency has not approved a standard analytical method for testing either sulfides or "reactive" sulfides in hazardous wastes or in treatment residues (however, as noted above, the Agency is working to develop a quantitative threshold for reactive sulfides). In the future the Agency may establish numerical standards for wastes in this subcategory.

(3) *Explosives Subcategory.* D003 wastes in the Explosives Subcategory are by definition those wastes that are capable of detonation or explosive reaction under various conditions, or are forbidden, Class A, or Class B explosives (according to 49 CFR 173.52, 173.53, and 173.88 respectively). Commenters expressed concern that many types of waste may fall into a potentially explosive classification, and requested a standardized procedure for making a reactivity determination to assist in the classification of explosive hazardous wastes. The Agency chose to rely on the current descriptive definition primarily because the available tests for measuring the various classes embraced by the reactivity definition suffer from some deficiencies.

In 1984, under an interagency agreement with the Bureau of Mines (BOM), OSW sponsored research on two test methods designed to determine whether a substance had explosive properties. However, in June 1985, the Agency issued Memorandum #7 (OSWER Dir. 9445.04(85)) that explained that the BOM test results were inconclusive, and in the interim, OSW supported the use of a battery of tests submitted by the U.S. Army to the Agency. Information on these Army tests can be obtained from the Office of Solid Waste's Methods Section (202-382-4770).

Wastes classified as D003 and belonging to the explosives subcategory, have typically been identified as being generated by the explosives industry and by the U.S. Department of Defense. While these wastes are not generated as frequently as the reactive cyanides, they are generated more often than all other reactive subcategories. Explosives are already subject to special requirements prior to disposal in landfills, surface impoundments, and waste piles under existing regulations. These explosive wastes are not typically placed in most

types of land disposal units; rather, commenters have indicated that they can be treated by technologies such as chemical oxidation or incineration. Such treatments permanently remove the explosive characteristic of this D003 waste by thermal or chemical destruction of explosive constituents.

Incineration is an applicable technology for some D003 explosive wastes. Such units are not typically found at commercial incineration facilities. The Agency is aware that incineration units specially designed and fitted with explosion-proof equipment are currently used by the Department of Defense to treat explosive wastes. One commenter suggested that the Agency divide the explosive wastes into incinerable and nonincinerable wastes. EPA, however, could not make a determination of explosive wastes that could always be incinerated 100% of the time as generated.

The Agency proposed a general standard of "Deactivation" for the D003 Explosives Subcategory. By establishing this standard, the Agency is allowing the regulated community to use that treatment technology (e.g., incineration, chemical deactivation) that best fits the type of explosive waste. The Agency took this approach for these wastes since the hazardous characteristic is based on imminent hazard (i.e., explosivity) rather than on other criteria such as levels of hazardous constituents, and because technologies exist that can completely remove this characteristic.

Due to the large number of explosive formulations and the difference in applicable treatments (see Department of the Army Technical Manual TM9-1300-214, Military Explosives), the Agency continues to believe that the proposed standard is applicable for wastes in the D003 Explosive Subcategory and is promulgating a treatment standard of "Deactivation (DEACT) to Remove the Characteristic of Reactivity" for nonwastewaters and wastewaters in the D003 Explosive Subcategory. See section 268 Appendix VI of today's rule for a list of applicable technologies that used alone or in combination can achieve this standard. (See also § 268.42 Table 1 for a technical description of these technologies. A five letter code (acronym) for each technology has been established in order to simplify the tables.) This standard should provide treaters of explosive wastes the ability to use the "best" treatment technology based on the chemical and physical parameters of the explosive waste, and any safety considerations.

Several commenters have indicated that mixing with water or organic liquids (i.e., kerosene) may be necessary in some cases to reduce potential for explosion and thus, ensure safe handling and/or transportation for subsequent incineration or chemical treatment of explosive wastes. EPA is not restricting the use of this practice for any waste in the D003 Explosives Subcategory.

(4) **Water Reactive and Other Reactives Subcategories.** D003 wastes in the Water Reactive or Other Reactives Subcategories can be either organic or inorganic. Water Reactive D003 wastes as defined in 40 CFR 261.23(a)(2), (3), and (4) are either very reactive with water, or can generate toxic or explosive gases with water. These reactions are usually very vigorous and therefore difficult to control. Wastes considered to belong in D003 Other Reactives Subcategory exhibit the property listed in § 261.23(a)(1). Wastes in both of these subcategories are generated on a sporadic basis and generally in low volumes. These wastes are not typically placed in land disposal units nor are they placed in surface impoundments due to their violent reactivity.

The Agency has information suggesting that some water reactives are treated by incineration. During this thermal oxidation process, the reactive organic constituents are destroyed and the reactive inorganic constituents form less hazardous oxides. Other applicable treatment technologies include controlled reactions with water, chemical oxidation and chemical reduction. All the above-mentioned technologies can remove the characteristic of reactivity.

The Agency proposed a general standard of "Deactivation" for the D003 Water Reactives and Other Reactives Subcategories. The Agency chose this approach for these wastes since the hazardous characteristic is based on imminent hazard (i.e., potential violent reactions with water) rather than on other criteria such as levels of hazardous constituents, and that technologies exist that can completely remove these reactive characteristics.

Because of the diversity in physical and chemical forms of the waste in both subcategories, it is not possible to determine a "best" technology for all wastes. The Agency is promulgating a treatment standard of "Deactivation (DEACT) to Remove the Characteristic of Reactivity" for wastes in the D003 Water Reactives Subcategory and D003 Other Reactives Subcategory to allow flexibility in the selection of the "best" technology. See section 268 appendix VI of today's rule for a list of applicable

technologies that used alone or in combination can achieve this standard. (See also § 268.42 Table 1 for a technical description of these technologies. A five letter code (acronym) for each technology has been established in order to simplify the tables.) For wastes in the D003 Water Reactives Subcategory, the standard is established only for nonwastewaters since these wastes are very reactive with water and thus cannot exist as wastewaters.

Several commenters have indicated that mixing with certain organic liquids (such as kerosene) may be necessary in some cases to reduce potential for violent reaction with water and thus, ensure safe handling and/or transportation for subsequent incineration or chemical treatment. EPA is not restricting the use of this practice for any waste in these D003 Subcategories.

BDAT TREATMENT STANDARDS FOR D003 REACTIVE CYANIDES—261.23(a)(5)

[Nonwastewaters]	
Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Cyanides (total).....	590
Cyanides (amenable).....	30

BDAT TREATMENT STANDARDS FOR D003 REACTIVE CYANIDES—261.23(a)(5)

[Wastewaters]	
Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Cyanides (total).....	Reserved
Cyanides (amenable).....	0.86

BDAT TREATMENT STANDARDS FOR D003 REACTIVE SULFIDES—261.23(a)(5)

Deactivation (DEACT) to Remove the Characteristic of Reactivity*

BDAT TREATMENT STANDARDS FOR D003 Explosives—261.23(a)(6), (7), AND (8)

Deactivation (DEACT) to Remove the Characteristic of Reactivity*

BDAT TREATMENT STANDARDS FOR D003 Water Reactives—261.23(a)(2), (3), AND (4)

Deactivation (DEACT) to Remove the Characteristic of Reactivity*

BDAT TREATMENT STANDARDS FOR D003 OTHER REACTIVES—261.23(a)(1)

Deactivation (DEACT) to Remove the Characteristic of Reactivity*

*See 40 CFR part 268 appendix VI for a list of applicable technologies that used alone or in combination can achieve this standard. See also § 268.42 Table 1 for a description of the technologies as referred to by a five letter code.

e. Effect of Treatment Standards on Disposal Provisions in 40 CFR parts 264 and 265 for Ignitable and Reactive Wastes

Management practices have been established for ignitable and reactive wastes in surface impoundments, waste piles, land treatment units, and landfills (see 40 CFR 264.229, 264.256, 264.281, and 264.312, as well as 265.229, 265.256, 265.281, and 265.312). The treatment standards finalized today for ignitable (D001) and reactive (D003) wastes will supercede the above-mentioned provisions and exclusions for permissible land disposal of these waste outlined in parts 264 and 265; therefore, the Agency is amending these sections to reflect the new regulations in part 268. Facilities handling ignitable and reactive wastes will have to comply with the promulgated treatment standards for these wastes in order to land dispose them.

f. EP Toxic Halogenated Pesticide Wastes

D012—EP Toxic for Endrin.
D013—EP Toxic for Lindane.
D014—EP Toxic for Methoxychlor.
D015—EP Toxic for Toxaphene.
D016—EP Toxic for 2,4-D
D017—EP Toxic for 2,4,5-TP (Silvex)

In the November 22, 1989 proposed rule, the Agency proposed two basic options for the treatment standards for EP Toxic halogenated pesticide wastes (D012, D013, D014, D015, D016 and D017) and solicited comments on these. In one option, the Agency proposed concentration-based standards that were based on the total composition of

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these pesticides in treatment residuals. As a second option, the Agency proposed concentration-based treatment standards that correspond to their respective characteristic concentrations. As an alternative, the Agency stated that technology-based treatment standards could be established that would achieve treatment to below these characteristic levels.

(1) *Nonwastewaters.* EPA proposed concentration-based standards for the nonwastewater forms of D012, D013, D014, D015, D016 and D017 that were based on the analysis of total composition based on data that clearly indicated that the pesticide constituents of concern (or pesticides with similar physical and chemical characteristics) could be incinerated to detection limits as measured in ash samples. As noted in the proposed rule, the Agency believes that these total constituent concentration-based treatment standards based on incineration, are preferable to those in the second option, i.e., standards that correspond to their respective characteristic concentrations). The Agency contends that the total constituent concentration standards assure the public that these chemicals are being destroyed to the best levels that are achievable. This is in accord with the statutory policy of reducing the uncertainties inherent in hazardous waste land disposal as well as specific Congressional directives to destroy hazardous organic constituents, e.g., 130 Cong. Rec. S 9179 (July 25, 1984) (statement of Sen. Chaffee), and results in minimization of threats to human health and the environment. The Agency has determined that it is prudent to require that these EP Toxic halogenated pesticide wastes be treated with the best demonstrated technology in view of their toxicity: they are probable carcinogens. Since data clearly indicate that incineration represents BDAT, the Agency gave serious consideration to establishing a technology-based treatment standard of incineration as a Method of Treatment" for the nonwastewater forms of these wastes. However, the Agency believes that at other technologies besides incineration may be able to achieve an equivalent performance. As such, the Agency is promulgating concentration-based treatment standards for all EP Toxic halogenated pesticide nonwastewaters based on total composition rather than establishing incineration as a Method of Treatment".

Commenters offered very little opposition to the proposed nonwastewater standards based on

analysis of total constituent concentrations, other than questioning the achievability of the standard due to differences in detection limits. Commenters submitted a limited amount of additional detection limit data for these pesticides in incinerator ash. The Agency has evaluated these additional detection limit data, along with the data used to propose the standards, in promulgating the standards for D012-D017 nonwastewaters in today's rule. The Agency believes that these data indicate that the promulgated standards are achievable, and detectable.

These nonwastewater standards are based on the analysis of total constituent concentrations. Some of the standards on their face appear higher than the characteristic levels. This is not the case, however, since the characteristic levels are based on levels in a leachate rather than total constituent analysis. Given the 20 to 1 dilution factor inherent to the TCLP (and the EP) protocol, it is apparent that none of the final treatment standards in fact exceed characteristic levels because none of them are 20 times higher than the characteristic level.

(2) *Wastewaters.* The Agency proposed one set of concentration-based standards for D012-D017 wastewaters based on detection limits of the pesticides as measured in scrubber waters. Just prior to proposal, the Agency completed its analysis of treatment performance data for wastewaters from various data sources. (See, generally, the discussion of the development of treatment standards for U and P wastewaters using these data in section III.A.5.(a)(1) to today's preamble.) As a result, the Agency proposed alternative concentration-based treatment standards for various wastewaters based on these wastewater treatment data. While the Agency did not specifically propose these as alternatives standards for wastewater forms of D012-D017, the Agency believes that these standards could have been promulgated, if it were not for circumstances discussed below.

Based on the aforementioned wastewater treatment data, the Agency has identified specific treatment technologies that are considered to be demonstrated on D012-D017 pesticide constituents (or pesticides with similar physical and chemical characteristics) and can achieve destruction of the pesticide constituents to below their respective characteristic levels. By adopting treatment methods for these wastewaters rather than concentration-based standards, the dilution prohibition attaches at the point of generation when

these wastes are managed in Clean Water Act systems, and destruction of these constituents is assured. (See section III.D. of today's preamble.) As a result, concentrations below the characteristic levels will be achieved through the use of these treatment technologies rather than through the potential use of simple dilution. The Agency is therefore promulgating technology-based treatment standards for the D012-D017 wastewaters.

The Agency has identified incineration, wet air oxidation, chemical oxidation, carbon adsorption, and/or biodegradation as BDAT treatment technologies as BDAT for D012-D017 wastes, as discussed in EPA's Final Best Demonstrated Available Technology (BDAT) Background Document for U and P Wastes and Multi-Source Leachates (F039), Volume A: Wastewater Forms of Organic U and P Wastes and Multi-Source Leachates (F039) For which There Are Concentration-Based Treatment Standards. The technology-based standards are as follows: (1) Incineration and biodegradation have been specified as BDAT for D012 and D015 wastewaters; (2) incineration and carbon adsorption for D013 wastewaters; (3) incineration and wet air oxidation for D014 wastewaters; (4) incineration, chemical oxidation, and biological treatment for D016 wastewaters; and (5) incineration or chemical oxidation for D017 wastewaters.

BDAT TREATMENT STANDARDS FOR D012, D013, D014, D015, D016, AND D017

[Nonwastewaters]		
Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
D012.....	Endrin.....	0.13
D013.....	Lindane.....	0.066
D014.....	Methoxychlor.....	0.18
D015.....	Toxaphene.....	1.3
D016.....	2, 4-D.....	10
D017.....	2, 4, 5-TP.....	7.9

BDAT TREATMENT STANDARDS FOR D012 AND D015 (Wastewaters).

Incineration (INCIN) or Biodegradation (BIODG) as a method of treatment

BDAT TREATMENT STANDARDS FOR D013

(Wastewaters)

Incineration (INCIN) or Carbon Adsorption (CARBN) as a method of treatment

BDAT TREATMENT STANDARDS FOR D014

(Wastewaters)

Incineration (INCIN) or wet air oxidation (WETOX) as methods of treatment

BDAT TREATMENT STANDARDS FOR D016

(Wastewaters)

Incineration (INCIN) or chemical oxidation (CHOXD) or biodegradation (BIODG) as a method of treatment

BDAT TREATMENT STANDARDS FOR D017

(Wastewaters)

Incineration (INCIN) or chemical oxidation (CHOXD) as a method of treatment

3. Treatment Standards for Metal Wastes

a. Introduction

Metal wastes are hazardous wastes containing metals or metallic compounds such as inorganic metallic salts or organometallics. Certain F, K, U, and P wastes were listed specifically for the presence of metallic compounds. Additionally, a waste can be identified as a characteristic waste based on the concentration of one of eight different metals as specified in 40 CFR 261.24: arsenic, barium, cadmium, chromium, lead, mercury, selenium, or silver (i.e., D004 through D011 respectively) at a concentration equal to or greater than the levels presented in 40 CFR 261.24 Table I—Maximum Concentration of Contaminants for Characteristic of EP Toxicity.

Treatment standards for most U and P metallic compounds are based on a quantitative analysis for the metal constituent only, and not for the specific U or P metallic salt (i.e., compound). The Agency received comments supporting this proposed approach and it agrees that regulation of only the metal constituents for these wastes will address the primary toxic hazard associated with these metallic compounds. (Except those few U and P wastes where the anionic species also poses a toxic hazard, such as for metal-cyanide salts.)

(1) *Development of Treatment Standards for Metals.* In today's rule, the Agency is promulgating treatment standards for several of the U and P wastes expressed as concentrations of specific metals. In general, performance data that are available from the treatment of various F and K wastes containing these metals have been transferred to these U and P wastes. Commenters also provided information and data to support the characterization and treatment of certain metal wastes. These data have been used in some cases to establish metal U and P treatment standards. (These comments and data are discussed in the preamble section pertaining to the specific metal waste, and are discussed in detail in the Response to BDAT-Related Comments Background Document.)

The Agency proposed a similar approach for characteristic metal wastes—i.e., transferring treatment data from F and K listed wastes to these D-coded wastes. Significant comments were received, however, describing potential problems associated with this approach that EPA finds persuasive. Commenters pointed to the fact that characteristic wastes may be generated in many different matrices and thus take any number of forms. A transfer of data from treatment of any one particular matrix would thus be unlikely to be routinely achievable unless the treatment data being transferred represented a waste more difficult to treat than any characteristic waste. The Agency has further determined that the data generally do not support the proposed transfer of concentration-based treatment standards from the specified listed wastes to these relatively non-specific characteristic wastes. The Agency found that the data and information submitted by the commenters further supported that certain matrices from particular industries (or particular waste types) appear to be so unlike the matrix of the listed waste (from which the Agency originally proposed to transfer treatment standards) that the treatment standard could not be achieved. All waste-specific comments are further addressed below in the sections pertaining to each metal, or in the Response to BDAT-Related Comments Background Document.

While there are certain treatability groups that are exceptions, the general approach for regulating metal wastes is as follows. The Agency is establishing treatment standards for arsenic, barium, cadmium, chromium, lead, and silver at a level corresponding to their respective characteristic levels. For most metals

the data received by the Agency indicate that concentrations below these characteristic levels can be achieved through the use of either stabilization processes or vitrification; however, the exact concentration achievable by stabilization processes is apparently dependent upon the industry and processes from which the waste was generated. This is most likely due to the wide variability of other constituents (both organic and inorganic) present in the waste which interfere with the performance of stabilization.

The treatment standard for D010 selenium wastes is established at a level slightly greater than the characteristic level, because the Agency had only a limited amount of data on these wastes. In fact, the majority of information suggests that while there are relatively few generators of D010 wastes, most of them are recovering the selenium from them. Treatment standards for D009 mercury wastes with high concentrations of mercury are set as required methods of treatment. See also the discussion in section III.D. of this preamble.

(2) *Treatment of Organic Debris and Inorganic Solids Debris.* Comments were received indicating that many of the D004 through D011 characteristic metal wastes may be generated in organic matrices. Rather than set up specific organic treatability groups under each characteristic metal waste code, the Agency is stating as a matter of treatment policy that prohibited metal wastes that are generated as an organo-metallic or in an organic matrix can be incinerated (in accordance with the technical operating requirements of 40 CFR 264 or 265 Subpart O) to destroy the organo-metallic bond or the organic matrix containing the metal, prior to subsequent treatment of the ash (if necessary), in order to comply with a concentration-based standard or prior to application of the technology-based metal treatment standard. This includes characteristic metal wastes that are identified specifically as "debris". D004 through D011 wastes identified as debris that are comprised primarily of organic materials are referred to as "organic debris" (e.g., rags, paper, cardboard, clothes, gloves, paints, paint chips, wood, grubbing materials, blankets, hoses, bags, resins, plastic liners and PVC piping). (This does not preclude the washing or extraction of metals from "organic debris" that is only a characteristic wastes due to surface contamination (i.e., provided the residual "organic debris" is no longer a characteristic waste for metals). In fact, much of the D004–D011 "organic debris"

may be treatable by washing or extraction rather than incineration. However, incineration may be a preferred pretreatment when the "organic debris" are expected to contain organo-metallics or are otherwise impregnated with inorganic metal dyes or pigments (e.g., paints, paint chips, and/or resins).

The Agency also received comments requesting that the Agency clarify the appropriate treatment for characteristic metal wastes that are identified as slags, glass, concrete, bricks, and other inorganic solid debris. They stated that these materials would probably have to be crushed or otherwise reduced in size prior to stabilization in order to comply with the D004 through D011 treatment standards. The Agency agrees that these, as well as other similar wastes form a different treatability group, and is identifying this group of D004 through D011 wastes as the "inorganic solids debris" treatability group. Wastes in this treatability group are defined in 268.2(a)(7) of today's rule as follows: nonfriable inorganic solids that are capable of passing through a 9.5 mm standard sieve that require cutting, or crushing and grinding in mechanical crushing equipment prior to stabilization, limited to the following inorganic or metal materials: (1) Metal slags (either glass or scoria); (2) glassified slag; (3) glass; (4) concrete (excluding pozzolanic or pozzolanic stabilized hazardous wastes); (5) masonry and refractory bricks; (6) metal cans, containers, drums, or tanks; (7) metal nuts, bolts, pipes, pumps, valves, appliances, or industrial equipment; and (8) scrap metal as defined in 40 CFR 11.1(c)(6). (Note: The 9.5 mm requirement on sieve is based on a similar requirement for pretreatment of samples that are to be analyzed using the TCLP. This size also approximates the size of small pebbles that are often incorporated into some forms of concrete.)

While the Agency is establishing a separate treatability group for these "inorganic solids debris", it is promulgating the same concentration-based treatment standards for these wastes as for other characteristic metal wastes. Thus, there are no separate treatment standards for inorganic solid debris D004 through D011 wastes appearing in today's rule. The Agency has determined, however, that there is a national capacity shortage for treatment of this treatability group. Therefore, the standards for D004 through D011 wastes do not apply to "inorganic solids debris" until May 8, 1992.

Several commenters suggested that treatment standards should not apply at all to these wastes; that no treatment technology is technically applicable to these wastes; and that these wastes should be allowed to land disposed as is. Other commenters pointed out that crushing processes create dust emissions or discharges to surface waters that may result in a significant increase in releases of toxic constituents to the environment. They pointed out that stabilization should not be necessary because of the relatively impermeable nature of these inorganic solids and that stabilization results in a significant increase in volume of waste to be land disposed.

While the Agency finds these comments persuasive, it is somewhat limited by RCRA section 3004(m) into developing treatment standards for these wastes, since absent a treatment standard, the statutory land disposal prohibition applies. However, from a purely common sense standpoint, it may make little sense to pulverize these relatively cement-like materials only to re-cement them again before land disposal. The Agency believes today's actions provide the opportunity to revisit these standards during the two-year national capacity variance and to address these commenters concerns in greater detail. In addition, the Agency points out that many of these same issues will be addressed in a forthcoming proposed rule for soil and debris.

(3) *Reexamination of Proposed of Co-disposal Prohibitions.* EPA requested comments at proposal on whether it should establish requirements under 40 CFR parts 264 and 265 for certain chemical species of arsenic, selenium, and mercury. The proposed requirements called for segregating certain wastes containing these metals in monofills or in separate cells within landfills, and for prohibiting the addition of alkaline materials to these wastes. These proposed requirements were the result of available data showing that the solubility of certain metal species is likely to increase under alkaline leaching conditions as compared to their relative insolubility under acid conditions (see 54 FR 48430, 48441). Several comments were received addressing this issue, most of which stated that specific co-disposal requirements are not needed at this time because operators of landfills must monitor leachate collection systems for the migration of metals. Other commenters pointed out that some operators of landfills already segregate these particular metal-bearing wastes as

part of their waste analysis plan, and such requirements should be made on a site- and waste-specific basis. In addition, vendors of specialized stabilization materials submitted data that show some promise in treating low concentration of these alkaline-soluble metal species.

EPA finds these comments persuasive and is therefore not promulgating its proposed co-disposal prohibitions for wastes containing arsenic, selenium and mercury. Additional information is necessary to develop a comprehensive national prohibition standard for these wastes. EPA also concurs with commenters that permit writers can effectively address these co-disposal prohibition requirements on a case-by-case basis under the omnibus authority in RCRA section 3005(c)(3).

b. Arsenic

- D004—EP toxic for arsenic
- K031—By-product salts generated in the production of MSMA and cacodylic acid.
- K084—Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.
- K101—Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.
- K102—Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.
- P010—Arsenic acid
- P011—Arsenic (V) oxide
- P012—Arsenic (III) oxide
- P036—Dichlorophenylarsine
- P038—Diethylarsine
- U136—Cacodylic acid

These wastes are grouped together because they all contain arsenic as the primary hazardous constituent. Like other metals arsenic exhibits a positive valence state; however, it shows little tendency to exist as solitary cationic species in aqueous matrices. Arsenic typically exists in aqueous conditions as oxo-anions (e.g., arsenic appears primarily as anionic arsenite (AsO_2^-) or arsenate (AsO_4^{3-})). This behavior is important, because selection and performance evaluation of treatment technologies for other metals are based primarily on the cationic behavior of the metals in aqueous conditions (i.e., wastewaters and leachates). Thus, treatment technologies for wastewaters and nonwastewaters containing arsenic are often different from technologies for wastes containing only other metal constituents.

(1) *Nonwastewaters.* To identify the technologies that are applicable for

treating metals in nonwastewaters, the Agency evaluates treatment technologies that either reduce the leaching of the metals or recover the metals for reuse. The Agency identified stabilization technologies (e.g., cement, asphalt, vitrification), and recovery as potentially applicable technologies for treatment of arsenic present in nonwastewater matrices.

(a) Inconclusive Stabilization Performance Data. EPA has relatively inconclusive performance data for stabilization of arsenic in three different wastes using nine different binders. Analysis of these data indicates that the effectiveness of any particular stabilization binder appears to be highly dependent upon the waste types. This result is what might be expected giving the chemical nature of arsenic (see preceding discussion of arsenic chemistry) and the relative sensitivity of the effectiveness of stabilization processes with respect to the presence of organics and organo-metallics.

Data on a K031 waste with an untreated leachability of 533 mg/l (based on analysis of an EP extract) indicate that the leachability of arsenic decreases somewhat for all binders. The best results were obtained from asphalt stabilization, which provided reductions to 25.3 mg/l (EP). Data on a D004 waste identified as an arsenic sulfide waste show an increase in leachability when cement, silicate polymer, clay, and polyethylene binders are used. However, data on this waste using an asphalt binder indicated a reduction in leachability of arsenic from 41 mg/l to 1.7 mg/l (EP). Data and information on a smelter dust that leaches arsenic indicate that cement binders can increase the leachability of the arsenic, while silicate polymers and asphalt binders decrease the leachability. However, these data do not contain operating information (e.g., binder to waste ratios) or QA/QC information.

The Agency has also tested cement, lime/fly ash, and kiln dust stabilization on K031 nonwastewaters that when untreated contain more than 130,000 ppm total arsenic and leach 5,930 mg/l (based on analysis of a TCLP extract). Some of the TCLP data on the K031 wastes that were "stabilized" with cement, appear to indicate an increase in arsenic leachability of 10 percent. The best results were achieved when the lime/fly ash binder was used, however, these data show minor reductions of arsenic from 5,930 mg/l to 4,687 mg/l in the TCLP extract.

Chemfix submitted performance data for a proprietary "alkaline stabilization system". These limited data show an acid production byproduct liquid waste

(believed to be a D004) with 73,000 ppm total arsenic leaching 2.7 mg/l arsenic in the treatment residue TCLP leachate. No binder-to-waste ratios, binder additives or untreated TCLP concentrations were presented, making it difficult to assess the viability of this treatment process for all D004 nonwastewaters, in particular those arsenic wastes known to contain organics.

Data were submitted by the Hazardous Waste Treatment Council (HWTC) showing stabilization using proprietary reagents of a boiler stack residue designated D004, generated from the demolition of stacks and site closure of an electric utility. The reagents are added to induce cementitious, siliceous, and pozzolanic stabilization reactions. The solid waste was first slurried with tap water to facilitate reaction with the reagents. The data show reductions of arsenic in the TCLP leachate from 409 mg/l to 2.27 mg/l. The volume ratio of waste to binder was 1 to 1; consequently, the volume for disposal increased by 100 percent. The Agency is uncertain that this technology would be applicable for wastes containing organics or organic arsenicals.

Another commenter, SolidiWaste, submitted stabilization data for D004 arsenic sulfide wastes using a proprietary silicate-rich matrix under neutral or slightly alkaline conditions. Under these conditions, the arsenic sulfide may have been converted to an insoluble complex silicoarsenate compound. The data show an untreated waste containing 35,000 ppm total arsenic, which after treatment contains 0.08 mg/l arsenic in the TCLP leachate. The commenter did not submit TCLP data for the untreated waste, information concerning waste to binder ratios, or analytical QA/QC data. The Agency is also uncertain that this technology would be applicable for wastes containing organics or organic arsenicals.

(b) Performance Data Indicating Broader Applicability. The Agency received data from American NuKEM demonstrating that incineration and/or chemical oxidation followed by coprecipitation and subsequent stabilization is effective treatment for a variety of arsenic wastes. The Agency believes that the arsenic compounds treated by this procedure are first oxidized to the arsenate form by either thermal and/or chemical treatment. The arsenate, which ends up in the scrubber water (in the case of incineration) or in the wastewater (in the case of the chemical oxidation), is then coprecipitated with iron salts. (Note: The coprecipitation process is very pH dependent and even under optimum

conditions the amount of ferric hydroxide generated is two to eight times the concentration of ferric arsenate precipitated.) The iron precipitate containing the arsenate is then stabilized with dolomitic lime.

Performance data submitted by American NuKem for their chemical oxidation wastewater treatment train described above indicate that a D004 arsenic sulfide waste containing 750,000 ppm total arsenic can be treated to 0.75 mg/l (TCLP). However, these data do not indicate whether the arsenic sulfide waste was significantly diluted prior to treatment. In addition, it is important to note that the stabilization step with dolomitic lime required careful control to avoid making the stabilized mass significantly alkaline, implying that the arsenic may have been quite leachable under alkaline conditions and thus, may not be truly "stabilized".

Performance data were also submitted by American NuKEM using incineration followed by treatment of scrubber water indicate that organo-arsenic wastes designated as a combined P011/D004 waste with concentrations up to 1,200 total arsenic can be effectively treated. The treatment facility states that essentially all of the arsenic compounds in the feed volatilize during incineration and are completely oxidized to arsenic oxides and ultimately to arsenate ions, which are removed by flue gas scrubbing using alkaline solution scrubbers with large liquid-to-gas ratios. As mentioned above, the scrubber water treatment (discussed in a subsequent discussion on treatment of arsenic wastewaters) consists of coprecipitation with iron salts and stabilization of the precipitate. No data on the characterization or treatment of the incinerator ash residual were submitted. Also, the commenter failed to provide untreated TCLP results or waste-to-binder ratios.

(c) Vitrification Performance Data. As an alternative to conventional stabilization processes such as cementitious stabilization for arsenic wastes, the Agency identified vitrification as technology that is applicable to nonwastewaters containing arsenic (54 FR 48431-33). Vitrification is a technology that uses heat generated by electrodes or direct flame to melt a mixture of glass formers and waste materials into a molten slag, which then cools and incorporates the metals and other materials into this glass/slag matrix. This technology can be applied to wastes containing organic as well as inorganic forms of arsenic since it operates at high temperatures

(1200 °C to 1500 °C) that will destroy the organics present in the wastes.

The Agency solicited and received comments on this stabilization technique for arsenic wastes. Several commenters said that vitrification is neither "demonstrated" nor "available" to treat arsenic-containing wastes. The Agency also received comments supporting the argument that vitrification can treat arsenic wastes effectively and that the units are available for sale. One commenter even conducted a study that determined that vitrification would provide a significantly better method of disposal than other stabilization processes for D004 arsenic sulfide wastes generated from phosphoric acid purification containing 2 to 3% total arsenic. This determination was made because the waste volume for disposal is reduced by more than 75%, even though fixation and fluxing agents were added, and the resultant product leaches arsenic levels less than 0.5 mg/l (TCLP). However, the commenter did not submit TCLP results on the untreated waste or analytical QA/QC data.

Other data available to the Agency indicate that vitrification can incorporate arsenic in concentrations up to 23.5% into a glass/slag matrix with a maximum leachability of arsenic at 1.8 mg/l (EP). In all, these data consist of 14 separate data points, with arsenic concentration in the untreated wastes ranging from 0.3% to 23.5%. Data on treated (i.e., glassified) wastes ranged from 0.007 mg/l to 1.8 mg/l (EP). All of these data clearly indicate that vitrification can consistently achieve stabilization of arsenic to leachate levels below the characteristic level, 5.0 mg/l (based on EP). However, these data did not have any analytical QA/QC or any information about volume increases/reductions on the treatment residues.

Several commenters expressed concern about air emissions associated with the vitrification units. The Agency believes that these concerns are addressed because these devices will typically have to be permitted under 40 CFR part 264 subpart X and will therefore have to meet designated air permit requirements. In addition, one commenter said that to avoid arsenic loss due to vaporization, a special furnace configuration with a recycling vapor scrubbing system is being investigated for use with the facility's vitrification unit. Thus, the Agency anticipates that this technology currently under development will result in an additional safety precaution (with

regards to potential air emissions) for this technology in the near future.

(d) Determination of BDAT for Nonwastewaters. For the proposed rule, the Agency determined that vitrification was the "best" technology for treatment of nonwastewaters containing arsenic. EPA made this determination based on the performance data available at the time of proposal. Most data that was then available appeared to indicate that conventional stabilization (e.g., cement) was not an effective technology for arsenic wastes since the stabilized wastes showed little reduction in arsenic leaching or leached more arsenic than the unstabilized wastes. In the proposed rule, the Agency requested that facilities submit data demonstrating treatment of arsenic nonwastewaters.

Several commenters submitted new data that appear to indicate that wastes containing high concentrations of specific inorganic forms of arsenic can be treated by stabilization using cement, silicates, and/or proprietary binder mixtures. Generally, these stabilization data are relatively inconclusive, due to the lack of necessary treatment performance data and to the relatively limited applicability of these stabilization processes to wastes containing organics or organo arsenicals. In addition, while the data do indicate low levels of leachable arsenic are obtained, in some cases the reductions may be attributed to dilution with the binders caused by undesirable high binder-to-waste ratios (resulting in considerable increases in the amount of waste to be land disposed). While the Agency believes that these stabilization technologies have considerable drawbacks, the data do appear to indicate that they may provide adequate treatment for some specific forms of D004 inorganic arsenic wastes. However, the Agency has not based BDAT treatment standards for all D004 wastes on these stabilization technologies. The Agency is not precluding their use, but cautions that their use should be determined on a case-by-case basis. At this time, the Agency cannot determine a separate treatability subcategory for D004 wastes for which these technologies could be used to establish treatment standards.

The technology that appears to have a broader applicability to wastes containing organics or organo arsenicals is the American NuKem process (i.e., the process where the arsenic is first thermally or chemically oxidized, coprecipitated with iron or aluminum salts, and then stabilized in an insoluble form such as ferric arsenate). Unfortunately, this treatment may also

increase the amount of waste for land disposal because of the large amounts of ferric hydroxide that may be precipitated with the ferric arsenate. However, because of the broader applicability of this technology, the Agency considered this process to be an alternative technology to vitrification for K031, K084, K101, K102, P036, P038, U136 and D004 wastes containing organics and organo arsenicals.

The Agency still believes that vitrification represents the "best" technology because the data support treatment of arsenic present at percentage concentrations along with volume reductions for land disposal. The Agency also believes that incineration or complex chemical treatment followed by stabilization may work for some forms of arsenic in some wastes, but the increases in volume for disposal make this technology less desirable than vitrification.

(e) Treatment Standards for Nonwastewaters. The Agency used the vitrification data from the study that used EP toxicity testing to evaluate treatment performance. These EP leachate data were used to calculate the treatment standard because one of the fourteen data points represents a waste containing 23.5 percent arsenic whereas the vitrification data that were based on TCLP analyses represent a waste containing only 3 percent arsenic. EPA hence believes that the EP vitrification data demonstrate treatment of a waste matrix that is more difficult to treat.

EPA calculated the treatment standard for arsenic nonwastewaters based on the highest leachate data point of 1.8 mg/l for the matrix containing 23.5 percent arsenic. Analytical recovery data were transferred from the Agency's analysis of K102 incinerator ash (which had the appearance of a slag) were used to adjust the value for analytical accuracy. The adjusted value was multiplied by a variability factor of 2.8, and a concentration-based treatment standard for arsenic of 5.6 mg/l in the leachate (measured by the EP toxicity test) was calculated.

The Agency is transferring the concentration-based treatment standard of 5.6 mg/l in the EP toxicity leachate arsenic to K031, K084, P010, P011, P012, P036, P038, and U136 nonwastewaters, primarily due to similarities in total arsenic concentrations anticipated in these wastes when compared to the 23.5% total arsenic that was vitrified (i.e., the basis of the 5.6 mg/l standard). For example, waste characterization data indicate total arsenic concentrations of 0.1 to 18% for K031 and 10 to 25% for K084, with theoretical

arsenic content in the U and P wastes ranging from approximately 25% total arsenic in P036 to a maximum of 75% in P011. While some of these U and P wastes may contain percentage levels of arsenic greater than the amount in the untreated waste used to develop the treatment standard (i.e., 23.5 percent), the Agency believes that the arsenic content in these wastes are similar enough to transfer this standard. In addition, for such wastes, the Agency believes that more glass-forming reagents can be added to the molten slag/waste mixture during the vitrification process in order to achieve the promulgated treatment standard. Based on EPA's analysis of additional vitrification data, the Agency believes that the performance of the vitrification technology and analytic variability of treatment residues will not change significantly for different arsenic-containing wastes; thus, this transfer is legitimate.

For D004 nonwastewaters, EPA is promulgating the characteristic level of 5.0 mg/l arsenic as the treatment standard. The Agency has taken this approach because available data indicate that treatment below the characteristic level is achievable (albeit the extent is not readily ascertainable for the entire group of D004 wastes) and because of the concern for the potential regulatory disruptions and confusion that could be created by establishing a standard slightly higher than the characteristic level. In addition, given the statutory hard hammer, EPA would not establish a treatment standard at a higher level unless there clearly was a problem treating to the hard hammer level. Although the data are equivocal, the Agency does not believe that treatment to the characteristic level is unachievable. Furthermore, the Agency believes that persons will normally try to ensure that their waste no longer exhibits a characteristic in order to have less expensive subtitle D disposal, and also because these technologies cannot easily be "turned off" at precisely the characteristic level, so that the characteristic level will more readily be achieved.

Since the vitrification performance data that EPA used to develop the nonwastewater treatment standards for arsenic were EP toxicity leachate data, the Agency has based the nonwastewater standards on the arsenic concentration in the EP leachate. However, since the Agency has some information that appears to indicate that the TCLP test is more aggressive than the EP test for determining arsenic leachability, the Agency is establishing

that if a waste does not achieve the arsenic nonwastewater standard based on analysis of a TCLP extract but achieves the standard based on analysis of an EP extract the waste is considered to be in compliance with the arsenic nonwastewater standard. Thus, a facility can use the TCLP test to demonstrate compliance for D004, and also K031, K084, K101, K102, P010, P011, P012, P036, P038, and U136 nonwastewaters.

(f) **Comments Concerning Recovery.** The Agency believes that for some wastes, recovery of arsenic may be feasible with high-temperature metal recovery technologies used by mining operations. Information available to the Agency indicates that arsenic trioxide recovered as a by-product of copper and gold mining operations has been used by the wood preserving industry as a raw material in the formulation of wood preservatives. Currently smelters located in the United States are not accepting hazardous wastes to recover arsenic trioxide; however, the idea is being investigated by a smelter located in Canada who is planning to market copper arsenate as a wood preservative in the Northwest. The plan, still under consideration, is to have the smelter accept back arsenic-bearing residues from the copper arsenate customers. The Agency requested comments and data on the applicability of recovery technologies for wastes containing arsenic. One commenter claimed that while recovery options may be technically viable, the current market does not make recovery of arsenic economical.

(2) **Wastewaters.** The Agency identified chemical precipitation technologies as applicable treatment technologies for arsenic-containing wastewaters. When evaluating precipitation technologies to determine BDAT for arsenic wastewaters, the Agency considered not only the efficiency of removal of these metals from the wastewater, but also the physical and chemical state of the arsenic that ends up in the wastewater treatment residues.

(a) **Identification of BDAT.** Wastewater treatment for most metals is typically based on precipitation with anionic species such as hydroxide or sulfide. Soluble arsenic species have been removed from wastewaters by using lime (calcium hydroxide) as a precipitant, resulting in arsenic precipitation as a calcium salt (calcium arsenate) rather than as a hydroxide as is typical for most other metals. Sulfide precipitation using sodium sulfide or hydrogen sulfide as reagents has also

been reported as being partially effective for wastewaters containing arsenic in the form of arsenates, but relatively ineffective for arsenites. While arsenic sulfide is relatively insoluble in water under acid conditions, information indicates that the leachability (i.e., solubility) of the arsenic sulfide increases under alkaline conditions. Additionally, coprecipitation with iron salts generates a relatively insoluble ferric arsenate precipitate, but the nature of the reaction also generates ferric hydroxide, which causes an increase in sludge volume for disposal.

The Agency solicited comment on whether it should specify the precipitating reagent for all wastewaters containing arsenic as part of the treatment standard. Commenters said that the Agency should not specify which reagents should be used to precipitate arsenic from wastewaters because the chemical matrix of each wastewater is unique and therefore each wastewater should be evaluated individually to determine the appropriate reagent for removing arsenic. Based on the diversity of waste characterization data for the arsenic wastes, the Agency agrees with the commenters and is not specifying precipitating reagents.

(b) **Standards for Arsenic-Containing Wastewaters.** In the proposed rule, the Agency based a treatment standard of 0.79 mg/l arsenic for all D004 wastewaters on performance data demonstrating the precipitation of arsenic from wastewaters identified as D004 from the veterinary pharmaceutical industry. The treatment system consisted of precipitation using lime followed by manganese sulfate and ferric sulfate in a three-stage alkaline process. The untreated wastewater data were for a waste consisting of a mixture of organo-arsenicals and inorganic arsenic compounds in concentrations up to 1,600 ppm. At the time of the proposed rule, the Agency believed that these data represented a D004 wastewater matrix that would be the most difficult to treat.

Some commenters have indicated that they cannot treat to the proposed levels because some D004 wastewaters require more extensive treatment trains in order to treat other metals, and also contain organics, which interfere with the treatment of the arsenic. One commenter described a treatment process that required a reduction step for hexavalent chromium and an oxidation step with peroxides or permanganates to treat the organo-arsenicals. Reduction of the chromium is required to precipitate chromium

hydroxide at high pH. The addition of oxidizing agents to destroy the organo-arsenical compounds will reoxidize the trivalent chromium to hexavalent chromium, and consequently the chromium will be leachable from the waste. This commenter requested that the Agency reconsider treatment to the characteristic level because experience indicates that a level of 5.0 mg/l can be achieved but not a level of 0.79 mg/l. However, the commenter submitted no data to substantiate this claim. Other commenters also indicated difficulty meeting the proposed level of 0.79 mg/l arsenic when treating scrubber waters containing arsenic and wastewaters containing hexafluoroarsenate compounds.

Based on the information in the comments, the Agency believes that it may not be possible for all generators of D004 wastewaters to meet a level of 0.79 mg/l arsenic. In addition, and more important, EPA has determined not to impose treatment standards below characteristic levels for characteristic wastewaters (i.e., is choosing to apply the prohibition at the point of disposal) in order to properly integrate Clean Water Act (CWA) programs with the RCRA land ban, and due to general protectiveness of class I nonhazardous UIC well disposal for dilute metals. Hence, EPA is promulgating a treatment standard of 5.0 mg/l arsenic for D004 wastewaters. It should be mentioned that EPA still believes precipitation to be BDAT for arsenic wastewaters because even a difficult to treat waste (i.e., the hexafluoroarsenate waste) shows a reduction in total arsenic concentration.

The constituents for which P010, P011, and P012 wastes are listed are all inorganic forms of arsenic. The constituents for which P036, P038, and U136 wastes are listed are all organic forms of arsenic. K031 and K084 are typically generated as process wastes that contain mixtures of both organic and inorganic forms of arsenic. Although all of these wastes are typically generated as nonwastewaters, the Agency expects that wastewater forms of these wastes may be generated from incidental spills or from the treatment process itself and thus require treatment standards. The Agency is transferring the D004 performance data and concentration-based treatment standard of 0.79 mg/l to K031, K084, P010, P011, P012, P036, P038, and U136 wastewaters. The Agency has chosen to transfer treatment performance from the treatment of the D004 veterinary pharmaceutical wastewaters because these wastewaters should contain

similar organo-arsenical and inorganic arsenic compounds that can be removed by lime followed by manganese sulfate and ferric precipitation.

(3) *Revisions to K101 and K102 Treatment Standards.* In the First Third Final Rule (53 FR 31170, August 17, 1989), the Agency established two subcategories of K101 and K102 nonwastewaters based on the concentration of arsenic in the waste. A low arsenic subcategory was established for waste containing less than 1 percent arsenic and a high arsenic subcategory for waste containing 1 percent or greater. In today's rule, the Agency is changing the nonwastewater standards for K101 and K102 promulgated in the First Third Final Rule as proposed by eliminating the low and high level arsenic subcategories and by replacing the existing metal standards with a concentration-based treatment standard for arsenic of 5.6 mg/l (measured in the EP extract) based on the performance of vitrification. The organic standards will remain the same as those established in the First Third Final Rule.

The Agency is also promulgating new wastewater treatment standards for K101 and K102 in today's rule. Standards for K101 and K102 wastewaters were promulgated in the First Third rule (53 FR 31170, August 17, 1988) and were applicable to all forms of K101 and K102 wastewaters (i.e., they did not distinguish between high arsenic or low arsenic subcategories). These promulgated standards were based on the same D004 wastewater treatment data used in today's proposal to establish arsenic standards for other K, U, and P wastes. In the process of reevaluating the D004 wastewater treatment data for today's rule, however, EPA discovered an error in the calculation of the promulgated K101 and K102 wastewater standards for the metal constituents. The Agency is correcting this error by amending the wastewater standards for the metal constituents (arsenic, cadmium, lead, and mercury) in K101 and K102 as proposed. Therefore, a new treatment standard of 0.79 mg/l for arsenic, 0.24 mg/l for cadmium, 0.17 mg/l for lead, and 0.82 mg/l for mercury is being promulgated. Since there was no error in the calculation of the promulgated standards for the organic constituents, they are not being changed. The promulgated standards for the organics are being presented for convenience of the reader.

BDAT TREATMENT STANDARDS FOR D004

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, EP leachate ¹ (mg/l)
Arsenic.....	5.0

BDAT TREATMENT STANDARDS FOR D004

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Arsenic.....	5.0

BDAT TREATMENT STANDARDS FOR K031, K084, P010, P011, P012, P036, P038, AND U136

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, EP leachate ¹ (mg/l)
Arsenic.....	5.6

BDAT TREATMENT STANDARDS FOR K031, K084, P010, P011, P012, P036, P038, AND U136

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Arsenic.....	0.79

BDAT TREATMENT STANDARDS FOR K101

[Nonwastewaters²]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)	Maximum for any single grab sample, EP leachate ¹ (mg/l)
Nitroaniline.....	14	NA
Arsenic.....	NA	5.6

BDAT TREATMENT STANDARDS FOR K101

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Ortho-nitroaniline.....	0.27
Arsenic.....	0.79
Cadmium.....	0.24
Lead.....	0.17
Mercury.....	0.082

BDAT TREATMENT STANDARDS FOR K102

[Nonwastewaters ²]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)	Maximum for any single grab sample, EP leachate ¹ (mg/l)
Ortho-nitrophenol.....	13	NA
Arsenic.....	NA	5.6

BDAT TREATMENT STANDARDS FOR K102

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Ortho-nitrophenol.....	0.028
Arsenic.....	0.79
Cadmium.....	0.24
Lead.....	0.17
Mercury.....	0.082

¹ The TCLP test can also be used to demonstrate compliance for these wastes.

² This removes subcategories based on high and low arsenic content.

c. Barium

**D005 Characteristic Barium Wastes
P013 Barium Cyanide**

The Agency proposed treatment standards for all D005 wastes (wastes containing 100 mg/l barium as measured in the EP leachate) as well as for all barium cyanide wastes listed as P013 (54 FR 48434). The proposed wastewater treatment standard for D005 and P013 was 1.15 mg/l, based on a limited amount of data from the EPA Office of Water's Effluent Guidelines program. The proposed nonwastewater treatment standard for D005 and P013 was expressed as a method of treatment, "Acid or Water Leaching Followed by Chemical Precipitation as Sulfate or Carbonate; or Stabilization". An

alternative for all characteristic wastes was also presented, that of establishing the characteristic level as the treatment standard.

Because the proposed treatment standards were based on very limited data, the Agency solicited comments and data on waste characterization and treatment. Several data sets were received pertaining to D005 nonwastewaters. These data have been used in today's rule to support that D005 nonwastewaters can be treated to levels below the characteristic level of 100 mg/l. In most cases, however, the data were not adequate to support a specific treatment standard for D005 and P013 because they lacked QA/QC information, influent/effluent levels, or did not provide enough data points to be representative of these wastes. One data set was used, however, to establish today's final treatment standard for P013 nonwastewaters, as is further discussed in section (2) below.

Several comments were received on the proposed approach for regulating D005. No comments were received pertaining specifically to P013. Additional comments other than those addressed in this preamble were received on the proposed approach for regulating barium wastes. All comments and the Agency's responses are found in the Response to BDAT-Related Comments Document, in the RCRA Docket.

(1) *D005—Characteristic Barium Wastes.* Today's rule promulgates concentration-based treatment standards for all D005 wastes expressed as the characteristic level for barium, 100 mg/l. The Agency is adopting this approach because of the data deficiencies discussed above, and issues that were raised in the public comments that are discussed in the following paragraphs.

Several commenters requested that the treatment standard be set at the characteristic level. As mentioned above, the Agency received data for D005, all of which demonstrates treatment to below the characteristic level of 100 mg/l. Because D005 wastes are so diverse (in fact, an organobarium waste stream was identified by two commenters when the Agency primarily characterized this waste as an inorganic waste stream) and the data received during the comment period so inconclusive as to establishing a concentration-based treatment standard for all D005 wastes, the Agency is promulgating the characteristic level as the treatment standard. The Agency is confident, however, based on the data received, that treatment to achieve the

100 mg/l level is possible for both wastewater and nonwastewater forms of D005.

Many commenters requested that a concentration-based standard be established for D005 nonwastewaters rather than the proposed method of treatment. As explained above, this is the approach that is being promulgated in today's rule. The Agency prefers to set a concentration-based treatment standard rather than specifying a method of treatment because it allows the treater of any of the various forms of D005 maximum flexibility in the choice of treatment technology most appropriate for the waste. Additionally, some commenters disagreed with the proposed specification of precipitating reagents (i.e., precipitation as sulfate or carbonate). The Agency agrees that specifying precipitating reagents may cause unnecessary problems for the treatment industry in that treatment of barium often takes place in a waste stream containing other metals for which the specified reagent is inappropriate.

Commenters opposed the proposed D005 wastewater treatment standard as being unattainable, stating further that the 1.15 mg/l standard is overly restrictive because it is very close to the Agency's drinking water standard. Only one data point was received during the comment period for treatment of D005 wastewaters, not enough data to support a concentration-based standard for the diverse forms of D005 wastewaters. Additionally, some commenters disagreed with EPA's discussion of typical precipitation reagents suitable for D005 (and P013). The Agency has data indicating that barium is usually precipitated as a sulfate salt. Commenters expressed concern that the Agency should neither set precipitation as a required method of treatment for these wastewaters nor specify required precipitation reagents. The Agency is not promulgating a treatment standard expressed as a required method, and agrees that specifying precipitating reagents may cause unnecessary problems for the treatment industry.

(2) *P013—Barium Cyanide.* Today's rule promulgates barium treatment standards for P013, barium cyanide wastes. Treatment standards for cyanide in P013 were promulgated in the June 23, 1989 final rule for Second Third wastes (54 FR 26614).

Data was provided during the comment period on stabilization of D005 nonwastewaters that is being used as the basis of a treatment standard for barium in P013 nonwastewaters. Based on these data, a treatment standard of

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52 mg/l has been calculated. Use of this data for P013 is justified even though it was not used for D005 nonwastewaters. As one of the "P" listings, P013 is a specific waste, while D005, a characteristic waste, may take diverse forms. Generally, the more specific P013 is expected to be characterized consistently. The data is appropriate for establishing a waste-specific treatment standard for P013 because the waste's properties are not likely to change. Therefore, the standard should be achievable for all P013 nonwastewaters.

No data were received during the comment period to set a treatment standard for P013 wastewaters. Commenters objected to the proposed 15 mg/l D005 wastewater standard as being unattainable, and the Agency is considering these comments applicable to P013 as well. Commenters also objected to the specification of precipitation reagents for D005 wastewaters. The Agency is therefore disinclined to establish a method of treatment (i.e., chemical precipitation with specified reagents) for P013 wastewaters. In the absence of any data on treatment of P013 wastewaters, therefore, the Agency is not promulgating a barium wastewater treatment standard. The cyanide in P013 wastewaters is regulated under the land disposal restrictions (54 FR 26614); therefore, P013 wastewaters will not be subject to the "hard hammer" (i.e., banned from land disposal on May 8, 1990).

BDAT TREATMENT STANDARDS FOR P013

(Nonwastewaters)

Regulated constituent	Maximum for any single grab sample TCLP leachate (mg/l)
Barium.....	52

d. Cadmium

D006—Characteristics cadmium wastes.

Today's rule promulgates wastewater and nonwastewater treatment standards for D006 wastes. Comments and data were received asserting that it was not possible to meet the proposed treatment standards for D006 cadmium, which data EPA finds persuasive. Data are also insufficient to reliably establish a standard below the characteristic level that is generally achievable. Data were submitted during the comment period, however, indicating that the wastes can be treated to meet the characteristic level. Therefore, the Agency is promulgating the characteristic level of 1.0 mg/l cadmium (as measured by the TCLP) as the treatment standard for D006 nonwastewaters and wastewaters. EPA is also establishing an additional treatability group for cadmium batteries that are characteristic hazardous wastes. The standard for cadmium batteries is thermal recovery.

In the proposed rule, EPA proposed regulation of cadmium in D006 wastes at treatment levels below the characteristic level. Two commenters submitted performance data showing various wastes treated by different stabilization technologies (e.g., different chemical reagents) and data supporting that the proposed standards were unachievable. The data, however, showed that D006 wastes can be treated to meet treatment levels at or about the characteristic level of 1.0 mg/l for cadmium (as measured by TCLP for nonwastewaters) once the proper chemical reagents and waste to binder ratios are used. Based on these data, EPA is not finalizing the proposed treatment standards for D006 and instead, is promulgating treatment standards at 1.0 mg/l cadmium for both wastewater and nonwastewater (as measured by TCLP) forms of D006.

Some facilities submitted comments asserting that their wastes were unique or simply unable to meet concentration based treatment standards developed by the Agency and requested that EPA promulgate a method of treatment for their D006 wastes. These facilities failed

to identify a method of treatment that may meet BDAT criteria or to provide adequate data that may enable EPA to assess the validity of their claims. As a result, these facilities' claims of not even being able to treat to the characteristic levels must be addressed (if at all) by requesting a treatability variance, as provided in 40 CFR 268.4.

EPA proposed that cadmium-containing batteries be a separate subcategory of D006 wastes. See 54 FR 48436, listing several examples of industries, manufacturing processes, or commercial users that generate cadmium batteries. The proposed rule called for batteries containing leachable cadmium above 1.0 mg/l (as measured by EP Toxicity) to be treated for cadmium recovery in thermal recovery units as a prerequisite for land disposal.

Commenters fully supported the Agency's determination that thermal recovery of cadmium represents BDAT for D006 wastes in the cadmium-containing battery subcategory. Their comments pointed out that these wastes are routinely treated in industrial furnaces such as smelters for the recovery of cadmium and other valuable metals.

Commenters asked the Agency to clarify in its final rule the status of residues from cadmium battery recycling operations. Cadmium is typically recovered in pyrometallic operations or by smelting (typically as a byproduct in zinc smelting operations). Batteries can also be broken to extract recoverable cadmium, which cadmium is then sent to thermal recovery. Residues from these various operations, including air pollution control sludges, thermal recovery furnace residues, and residues from battery breaking, are no longer in the cadmium-containing battery subcategory. If they continue to exhibit the characteristic for cadmium, however, they would still be prohibited wastes in the D006 treatability group and would have to be treated to meet the standard for that treatability group (i.e., treated so that they no longer exhibit the characteristic). Residues most likely to exhibit the characteristic for cadmium are the residues from battery breaking, and air pollution control residues from thermal recovery.

Commenters also questioned whether small consumer-type nickel cadmium rechargeable dry cell batteries were covered by the prohibition. EPA is making no determination in this rule whether such batteries are hazardous wastes. This is a question of fact based upon whether such batteries exhibit the EP characteristic when a representative sample of the battery is tested. In

BDAT TREATMENT STANDARDS FOR D005

(Nonwastewaters)

Regulated constituent	Maximum for any single grab sample TCLP leachate (mg/l)
Barium.....	100

BDAT TREATMENT STANDARDS FOR D005

(Wastewaters)

Regulated constituent	Maximum for any single grab sample (mg/l)
Barium.....	100

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addition, many of these batteries, even if hazardous, would be household hazardous wastes and thus are excluded from all subtitle C regulation (40 CFR 261.4(b)(1) and 268.1(b)).

BDAT TREATMENT STANDARDS FOR D006

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample TCLP leachate (mg/l)
Cadmium.....	1.0

BDAT TREATMENT STANDARDS FOR D006

[Wastewaters]

Regulated constituent	Maximum for any single grab sample (mg/l)
Cadmium.....	1.0

BDAT TREATMENT STANDARDS FOR D006

[Cadmium-Containing Batteries]

Thermal Recovery of Metals or Inorganics (RTHM) as a Method of Treatment

e. Chromium

D007—EP Tox for Chromium

U032—Chromic acid (H₂CrO₄, calcium salt)

EPA is promulgating a treatment standard of 0.094 mg/l chromium (total), as measured in the leachate generated by use of the TCLP for nonwastewater forms of U032. The wastewater treatment standard for U032 is 0.32 mg/l chromium (total). For nonwastewater and wastewater forms of D007, EPA is promulgating a treatment standards of 5.0 mg/l chromium (total) (as measured by TCLP for nonwastewaters). A technical description of U032 and D007 can be found in the listing documents for each waste.

Several commenters objected to the proposal to regulate total chromium rather than hexavalent chromium in D007 and U032. They believe that EPA should only regulate hexavalent chromium since "EPA has recognized that only the hexavalent chromium presents a threat to humans and the environment * * *". The Agency is not persuaded by these arguments, maintaining that treatment of total chromium will provide the most effective regulation of hexavalent forms. These comments moreover improperly

characterize the Agency's position, which is long-established, and is not being reopened for consideration in this rule. Under Subtitle C, EPA regulates on a total chromium basis unless it is demonstrated that chromium is exclusively (or nearly exclusively) trivalent, the chromium is generated from a process that uses only trivalent chromium, and that the waste is managed in non-oxidizing environments. See § 261.4(b)(6)(i) (1980). To date, EPA is unaware of any generator submitting a demonstration to EPA for processing. EPA repeats that it is not reopening this long-settled issue in this proceeding.

Detailed discussions of the development of treatment standards for D007 and U032 can be found in the final BDAT Background Document for these wastes in the RCRA docket.

(1) *D007*. EPA proposed concentration-based treatment standards for D007 wastewaters and nonwastewaters based on a transfer of treatment standards for K062. (K062 wastes are spent pickle liquors generated by the iron and steel industry.) This was because the chromium standards that were promulgated for K062 wastes were based on treatment of a mixture of K062 and other EP Toxicity wastewaters (including D007 wastes). The treatment process included hexavalent chromium reduction (to the trivalent state) followed by chemical precipitation, settling, filtering, and dewatering of solids. As an alternative, the Agency also proposed treatment standards for D007 wastes based on a transfer of chromium standards promulgated for F006 wastes (wastewater treatment sludges from the treatment of wastewaters from the electroplating industry). Treatment data for F006 wastes were based on the performance of conventional cementitious or pozzolanic stabilization.

(i) *Wastewaters*. Commenters indicated that the proposed levels for D007 wastewaters based on the transfer from K062 wastes (i.e., 0.32 mg/l) could not be achieved for the majority of their D007 wastes. In support of their position, they submitted ten specific sets of data on the treatment of various D007 wastes. However, these data primarily included treatment information with an emphasis on the nonwastewater residues and did not include very much data on the wastewater residuals. Data from one commenter supported their claim, but indicated that the characteristic level for chromium (i.e., 5.0 mg/l could generally be achieved. While these wastewater data were mostly above the proposed 0.32 mg/l standard for chromium, none of these data submitted could be used to

support an alternative wastewater treatment standard that is below the characteristic level. Based on these data and for reasons outlined in section III.D. of today's preamble, the Agency is not promulgating the proposed treatment standard of 0.32 mg/l and, instead, is establishing the characteristic level (i.e., 5.0 mg/l) as the treatment standard for D007 wastewaters.

(ii) *Nonwastewaters*. Except for D007 refractory bricks (see discussion below), the majority of the commenters believed that the 0.094 mg/l TCLP standard based on a transfer from K062 wastes could not be achieved. However, the alternative standards proposed for D007 nonwastewaters (i.e., 5.2 mg/l TCLP based on the transfer from F006 and capping the standard at the 5.0 mg/l characteristic level) could be achieved on a routine basis. In support of their position, they submitted ten specific sets of data on the treatment of various D007 wastes. The Agency examined the quality and completeness of these data for the nonwastewater residues.

The Agency determined that eight of the ten data sets could not support the development treatment standards due to a significant lack of information on: influent concentrations, waste source descriptions, binder/waste ratios, treatment operating/design information, the existence of a pretreatment step (hexavalent chromium reduction), and/or quality assurance and quality control information. The Agency also determined that the other two data sets also have some deficiencies in the above criteria, but do represent similar treatment trains used to establish the chromium standards for K062 and F006. The Agency emphasizes that none of these ten data sets are as complete as the data for either F006 or K062.

In considering the usefulness of the two data sets that are more complete than the others, the Agency examined what treatment standards would have been if they were derived from these data. One data set (from Cyanokem) would have resulted in a standard of 0.86 mg/l and another data set (using only 10 of the more complete data points from the HWTC) would have resulted in a standard of 0.74 mg/l. (Note: Both are based on TCLP analysis.)

However, the HWTC data contained an additional 32 incomplete treatment data points (no untreated TCLP analyses), many of which could not meet the 0.86 mg/l or the 0.74 mg/l treatment standards. Assuming that these previously rejected 32 data points represent valid treatment, the Agency decided that both the 0.86 mg/l and the 0.74 mg/l standards calculated on just 20

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data points were not achievable on a routine basis. The Agency found that it was difficult to ascertain (per treatment facility) the mixing ratios of waste volumes that were received from each of the different industries. While the data indicated that some wastes contained very high concentrations of chromium, the lack of information on mixing ratios and feed rates made it difficult to assess the true effectiveness of treatment (i.e., the Agency could not determine the chromium concentration of the mixed D007 wastes just prior to treatment.)

The Agency points out that the data from Cyanokem represented primarily treatment of liquid wastes (some with very high concentrations of chromium). Some of the sludges generated from this process did not require further treatment (i.e., stabilization). This same situation occurred with the process used to establish the promulgated treatment standards for K062 wastes, in that the wastewater treatment process employed for treating the combined K062/D007 wastes was effective enough that the treatment sludges were not characteristic for chromium and did not require any further stabilization. (Thus, the derivation of the 0.094 mg/l proposed standard for D007 wastes.) While Cyanokem's data clearly indicated that the proposed 0.094 mg/l could not be achieved and thus implying that their combined D007 wastes were more difficult to treat, their data did not represent wastes similar to those represented by the HWTC data which was comprised primarily of sludge stabilization data.

The Agency then decided to examine what the treatment standard would be based on all of the data from Cyanokem and the HWTC (i.e., using all 52 data points, except for one from the HWTC data that the Agency believes to be an outlier). In doing so, it significantly increased the number of data points and also represented a greater variety of wastes from a greater cross-section of industries. Despite all of this, the Agency took a conservative approach and assumed that proper and effective treatment had occurred for all of the data.

The resultant standard using these combined data was 4.3 mg/l based on TCLP. While the combined data are technically "weak" due to various deficiencies in BDAT information, the combined two data sets do reflect the treatment of a greater variety of wastes. The Agency contemplated promulgating the 4.3 mg/l standard as an alternative to the 5.2 mg/l from F006; however, this level is so close to the 5.0 mg/l characteristic level that the Agency does

not believe the significant regulatory disruptions and uncertainties inherent in applying direct part 268 regulation to subtitle D facilities is warranted.

The Agency notes that the 5.2 mg/l F006 standard was also generated by the commercial treatment industry and that further combination of the F006 data with the commenters' data would probably result in a standard even closer to the characteristic level of 5.0 mg/l. As it is, a measurement of 4.3 mg/l by the TCLP test is approximately 86% of the 5.0 mg/l characteristic level and within the analytical error that may be expected for such an analysis.

As a result of these comments and data, EPA is withdrawing both of the proposed treatment standards for D007 wastes (i.e., the transfer from F006 and from K062). While the Agency contemplated promulgating the 5.2 mg/l F006 standard, it is even closer to the characteristic level than the 4.3 mg/l calculated using the commenters' data. The treatment standard promulgated today, therefore, is set at 5.0 mg/l chromium (total) (as measured by TCLP). While the majority of commenters supported this approach from a policy standpoint, the Agency is convinced that the available data submitted by them clearly indicate the validity of the achievability of this standard.

(iii) D007 Refractory Bricks. Some D007 nonwastewaters are generated in the form of refractory bricks containing percent levels of hexavalent chromium. The Agency has identified one facility that is recovering chromium using a high temperature thermal recovery process. The bricks are crushed and recycled as feedstock along with other raw materials in the manufacture of refractory bricks or metal alloys. This recovery technology is currently used for bricks that contain up to 20% chromium but the facility believes the technology can treat bricks containing up to 40% chromium. However, the facility also indicated that there are upper limits on the amount of phosphorus present in the bricks that would lower the quality of the product.

EPA has determined that this thermal recovery process is an alternative treatment for some forms of these D007 refractory bricks. However, the Agency is currently uncertain to what extent this thermal recovery technology is demonstrated for all of the various types of refractory bricks currently being land disposed. Thus, the Agency is not establishing high temperature thermal recovery as a treatment standard for these D007 wastes, but is not precluded from doing so in the future. At the same

time, facilities are not precluded from using this technology for these types of wastes.

Some commenters submitted data on the stabilization of these spent refractory bricks. These data are one of the seven data sets rejected by the Agency for reasons outlined in section III.A.2.(e)(1) above. These data consist of analysis on two TCLP extracts of crushed refractory brick that were subjected to two different stabilization technologies. One technology utilized cement as a stabilization reagent and achieved a treated TCLP level for chromium of 70 mg/l. The other technology was a glassification process that achieved a treated TCLP level for chromium of 110 mg/l. While these performance data are incomplete, they appear to indicate that chromium bricks could be more difficult to treat than the other chromium containing wastes tested by EPA (K062 or F006) or, more likely, that stabilization of chromium bricks may need to be preceded by a hexavalent chromium reduction step. Congress in fact contemplated that hexavalent chromium would be reduced to the maximum extent possible before prohibited wastes are land disposed. Statement of Senator Chaffee, 130 Cong. Rec. S 9178 (July 25, 1984). EPA thus does not view these data as representing BDAT, nor as minimizing threats to human health and the environment.

See also preceding section III.A.3.(a)(2) discussing treatment standards for inorganic solids debris (including refractory bricks) and the two year national capacity variance granted for these wastes.

(2) U032. The treatment standards promulgated today for U032 are transferred from the treatment of K062 wastewaters and nonwastewaters. EPA believes that K062 wastes are more difficult to treat than U032 wastes, in that U032 wastes should contain lower concentrations of potentially interfering metals than K062 wastes and should primarily contain only one specific chromium compound (i.e., the calcium salt of chromic acid). Because of this, EPA sees no technical bar to transferring data to establish treatment standards for U032 wastewaters and nonwastewaters.

BDAT TREATMENT STANDARDS FOR D007

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Chromium (Total).....	5.0

BDAT TREATMENT STANDARDS FOR D007

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Chromium (Total).....	5.0

BDAT TREATMENT STANDARDS FOR U032

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Chromium (Total).....	0.094

BDAT TREATMENT STANDARDS FOR U032

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Chromium (Total).....	0.32

f. Lead

- D008—EP toxic for lead.
- P110—Tetraethyl lead.
- U144—Lead acetate.
- U145—Lead phosphate.
- U146—Lead subacetate.
- K069—Emission control dust/sludge from secondary lead smelting.
- K100—Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.

(1) *D008 Wastes.* The Agency, as one alternative, proposed treatment standards below the characteristic levels for nonwastewaters and wastewaters as 0.51 mg/l TCLP and 0.04 mg/l, respectively. The Agency also proposed an option of capping the treatment standards for D008 at the characteristic level. Additional data and comments were received that indicated that the proposed levels of 0.51 mg/l TCLP and 0.04 mg/l were unachievable

for many D008 wastes on a routine basis. After detailed analysis of the available data, EPA concludes that treatment to 5.0 mg/l EP best represents the achievable treatment standard for the entire spectrum of D008 nonwastewaters. In addition, EPA is establishing the treatment standard for wastewaters at the characteristic level for the reasons stated in section III.D of the preamble.

(a) *Nonwastewaters.* The Agency proposed a cut-off concentration of 2.5% total lead as a means of distinguishing between those essentially inorganic nonwastewaters containing recyclable levels of lead and those which can be effectively stabilized. Consequently, the Agency proposed two treatability groups for lead based on the 2.5% cutoff as the Low and High Lead Subcategory. The Agency solicited comments on the use of the cutoff level and whether the 2.5% total lead gives an accurate description of lead that can be recycled from D008 nonwastewaters. Many commenters requested that the Agency not promulgate the cutoff level. In fact, many commenters suggested that it is not economically feasible to recycle lead from wastes with less than 25% lead. Many commenters (including those from secondary lead industry itself) also stated that lead concentrations are not the sole measure of recyclability. The commenters presented data that indicates that D008 nonwastewaters with greater than 2.5% total lead can often be stabilized. Therefore, the Agency has decided not to promulgate the cutoff levels and has decided not to adopt proposed high and low lead treatability groups for D008 nonwastewaters and instead to promulgate generically applicable treatment standards.

In addition, the Agency proposed and solicited comments on three options for the development of treatment standards for D008 nonwastewaters. The first option was to develop a numerical treatment standard for those D008 nonwastewaters that can be stabilized. Consequently, the Agency proposed a numerical treatment standard of 0.51 mg/l for leachable lead based on a transfer of the performance of stabilization for F006 wastes. The second option was to specify Thermal Recovery as a method of treatment as the treatment standard for D008 nonwastewaters where the lead could be recovered. The third option was to limit the treatment standard for D008 nonwastewaters to the characteristic level.

During the comment period, the Agency received D008 nonwastewater

data from various sources. Most of the data came from stabilizing specific D008 nonwastewaters. Some of the data were from the foundry industry, secondary lead smelters, the glass industry, and commercial treaters of D008 nonwastewaters. The majority of the data received by the Agency did not have the proper QA/QC, corresponding influent and effluent data, and design and operating parameters, so the Agency is hesitant to use the data in developing treatment standards. The Agency, nevertheless, evaluated all of the data to assess the range of waste variability and what standard could typically be achieved.

Stabilization data was submitted by the foundry industries by Wheland Foundry and the American Foundrymen. The untreated lead concentration ranged up to 88 mg/l leachable using the EP toxicity test. An analysis of the data indicates that the performance of the treatment system could achieve leachable levels of lead lower than the characteristic level. In fact, the highest leachable concentration of lead is 1.4 mg/l. Although these data showed that the leachable concentration of lead was below the characteristic level, the leachable level for cadmium was higher than the characteristic level. These data clearly show that the other metals in the wastes could affect the performance of stabilization for this waste. Put another way, this means (assuming proper treatment performance) that the performance of the treatment system could achieve concentration levels below the characteristic level for lead but levels higher than the characteristic level for cadmium.

Data was submitted by two glass manufactures, Vision Ease and Ciby-Geigy Corporation. Vision Ease submitted treatment data for stabilization of ground glass particles, wastewater treatment sludges, and polishing and grinding dust. The type of binder used was hydrated lime and sodium monophosphate. The commenter indicated that these untreated wastes contained total lead concentrations greater than 2.5% and leached higher than the characteristic level; however, no actual influent concentrations were submitted. The commenter also did not submit QA/QC data. If the Agency calculated a treatment standard using the stabilized data, the standard would be the characteristic level of 5.0 mg/l measured by the EP test.

Ciby-Geigy submitted treatment data for waste produced in the manufacture of glass enamels. These wastes were produced from equipment and container washing during the manufacturing

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process. These washing were treated by a wastewater treatment system that generated a sludge that exhibited the characteristic of toxicity for lead. The commenter submitted two sets of data. The first set of data was treatment of a 25.6% lead oxide sludge by stabilizing with clays, flints, and calcium chloride and then heating the waste to a maximum temperature of 1850 degrees Fahrenheit to produce a ceramic material. This ceramic material leached lead concentration ranging from 0.2 to 0.4 ppm as measured by the EP test. If the Agency calculated a treatment standard for this waste, the treatment standard would be 0.89 mg/l measured by the EP test. For this data set, there was no untreated leachable concentrations of lead, therefore the Agency cannot determine whether the waste was hazardous before treatment. The second data set contained lead oxide concentration ranging from 13% to 5%. The waste was mixed with borax and then heated to a maximum temperature of 1950 degrees Fahrenheit. This ceramic material leached lead at levels ranging from 0.2-40 ppm measured by the EP test. Of the 11 data points that were collected by the commenter, 4 of the 11 would fail the EP test. The Agency did not use these data to calculate a treatment standard, however, because each used different binder ratios. These two data sets from glass manufacturers clearly show the diversity of the waste and a difference in treatable levels. In some cases stabilization can reduce leachability of lead at, or somewhat below, the characteristic level.

The Agency received data from the Secondary Lead Smelters Association (SLSA) on the treatment of slag by stabilization. The wastes contained total concentrations of up to 10 percent lead. The types of binders that were used were portland cement, polymers, and silicates. The commenter submitted approximately 110 data points from two different plants. The binder to waste ratios ranged from 1 to 2, to 1 to 15. In the data submission, there was no QA/QC data and no corresponding influent leachable lead concentration. One data set was based on use of portland cement as a stabilizing agent with a binder to waste ratio ranging from 1 to 5, to 1 to 10. The Agency calculated a treatment standard of 2.47 mg/l was measured by the TCLP from these data. The other data set was based on the use of polymers and silicates as stabilizing agents with binder to waste ratio ranging from 1 to 5, to 4 to 10. There were approximately 94 data points, and of these data points, one was above the

characteristic level for lead. The Agency used these data to calculate a treatment standard of 4.82 mg/l as measured by the TCLP.

The Hazardous Waste Treatment Council (HWTC) submitted eight data sets for the treatment of D008 nonwastewaters. There was no QA/QC and influent leachable concentration of lead. The data set with the highest concentration of total lead was a zinc ammonium chloride solid from the manufacture of containers. This waste had a total lead concentration of 49,000 ppm. This waste was stabilized to a leachable level of lead ranging from 6.47 to 8.7 ppm as measured by the TCLP. This stabilized waste represented a volume increase ratio ranging from 1.8 to 2.5.

The data set with the next highest total lead concentration was generated from an incinerator fly ash from the aerospace industry that contained 810 ppm of total lead. Based on the data provided in the comments, this waste would not be considered characteristically hazardous due to the fact that the untreated leachable level for lead is 0.0749 ppm. This waste was treated by stabilizing with a binder to waste ratio ranging from 0.89 to 2.8. The treated leachable levels ranged from 0.1 to .27 ppm as measured by the TCLP.

The third highest data set represented data from three soils contaminated with lead and petroleum, with concentrations ranging from 29 to 561 ppm total lead. This waste contained total lead concentration of 29 ppm, and had a corresponding untreated leachable level of 6.01 ppm as measured by the TCLP, which is above the characteristic level. These soils resulted in the best treatment, with levels ranging from .066 to 0.257 ppm as measured by the TCLP. This represented a volume increase ranging from 1.6 to 3.4.

The HWTC provided three other data sets representing waste generated as water filtrate and sludge from the manufacture of conduit, as ammonium hydroxide sludge from electroplating, and as sump sludge from the reconditioning of metal drums. These wastes had total lead concentrations ranging from 234 to 460 ppm. There was no untreated TCLP data corresponding to the total lead levels. The stabilized wastes ranged in concentration from .06 to .10 ppm as measured by the TCLP. The binder to waste ratio ranged from 1.6 to 3.5.

Of these data, the waste with the highest total lead concentration shows treatment levels barely above the characteristic level of 5 ppm. These data show that a high concentration of lead

(approximately 5%) could barely be stabilized to the characteristic level (although the data are so sparse that no hard conclusions are possible). These data also show that most of the untreated wastes discussed in the HWTC comments did not exhibit a characteristic before stabilization. Also, these data highlight the diversity of D008 nonwastewaters that can be treated.

The HWTC commented on data submitted to EPA from the Secondary Lead Smelters Association (SLSA). The HWTC concluded that the treatment data support concentrations of lead below the characteristic level. The HWTC also stated that these data support the proposed BDAT treatment standard of 0.51 mg/l, or at least achieving levels below the characteristic level. The HWTC points out that agents such as fly ash, lime, and sulfide would provide for a higher degree of stabilization than just adding portland cement.

The Agency does not agree with the HWTC that these data support treatment levels significantly below the characteristic level. The data provided by SLSA clearly show that two treated data points of 87 were above the characteristic level. The Agency used the data to calculate a treatment standard of 4.82 mg/l, very close to the 5.0 mg/l characteristic level. In addition, the Agency does not agree with HWTC that other stabilizing agents may provide a higher degree of stabilization. At the least, the proposition is not self-evident. The data provided by SLSA show treatment by three types of binders and a significant range of binder to waste ratios. Using the highest binder to waste ratio for these wastes, the treated level is higher than the characteristic level. (In addition, there are issues of whether stabilization of slag is appropriate treatment. See discussion of inorganic debris in preamble section III.A.1.a.(2).)

The Agency does not believe that the data it received in response to the proposed rule represent the entire spectrum of characteristic lead nonwastewaters. Also, these data do not support the assumption that characteristic lead nonwastewaters can typically be treated to levels significantly less than the EP characteristic level. The limited amount of data does not reflect the full measure of waste variability inherent in a characteristic waste, particularly variability of matrices and lead concentrations. In addition, the commenters do not address how treatability of other metals could be affected by optimized lead treatment,

nor has EPA had the time to address this issue. With the treatment of the Vision Ease waste to 5.0 mg/l as measured by the EP and the SLSA data demonstrating treatment to 4.82 mg/l as measured by the TCLP, and data points above the characteristic level submitted by the waste treatment industry, the Agency is adopting for nonwastewater forms of D008 wastes, the treatment standard equal to 5.0 mg/l as measured by the EP procedure. The Agency is adopting this approach to address the range of variability inherent in the D008 wastes.

Because a facility may generate a waste containing lead and other metals, the TCLP (which is required for most other metals) may be used to measure compliance with this standard. EPA is not basing the standard for D008 on the TCLP; however, because that protocol is more aggressive for lead than the EP. The Agency is not sure that levels of 5.0 mg/l as measured by the TCLP are typically achievable. The TCLP can be used to demonstrate compliance. However, if the analysis shows that the waste leaches below 5.0 mg/l for lead as measured by the TCLP, then the facility has complied with the standard. If the waste leaches above 5.0 mg/l for lead, then the facility may analyze the sample using the EP procedure. (It should be noted, however, that if a waste exhibits the amended toxicity characteristic, it must still be managed in a Subtitle C facility even if it is not prohibited from land disposal).

(b) Wastewaters. In the November 22, 1989, proposed rule, the Agency proposed a treatment standard for D008 wastewaters of 0.04 mg/l based on a transfer of the performance of precipitation with lime and sulfide, filtration, and settling for K062 wastewaters. In addition, the Agency solicited comments on the approach of specifying a precipitant as a method of treatment for D008 wastewaters. Comments were solicited on whether the Agency should develop treatment standards based on data provided from the primary and secondary lead smelters industries as part of the Agency's effluent limitation guidelines program.

Many commenters questioned the Agency's technical capabilities of the transfer of the performance of the treatment system for K062 wastes as compared to D008 wastewaters. In particular, the commenters pointed out that the untreated K062 wastewaters had low concentration of lead compared to the D008 wastes as actually generated. However, commenters submitted additional data indicating that although the 0.04 mg/l for lead was

unachievable, precipitation and filtration treatment could achieve concentrations of lead in the effluent lower than the characteristic level.

In particular, the Agency received treatment data for D008 wastewaters from three sources. One set of data submitted to the Agency was from the Battery Council, Inc (BCI). These data represented a small portion of the data that was collected in the effluent limitations guidelines program for the battery and nonferrous metals point source category. BCI's contention was that if the Agency decides to develop treatment standards lower than the characteristic level for D008 wastewaters, then the Agency should base the levels on the effluent guidelines for the battery and nonferrous metals categories. The Battery Council submitted treatment data using the following treatment technologies: lime settling, lime settling and filtration, and carbonate precipitation, settling, and filtration. This data showed influent concentration levels ranging up to 300 ppm. The data showed a substantial reduction of lead and other metals from the treatment system. BCI submitted corresponding quality assurance/quality control (QA/QC) information for the data. If the Agency uses the data from the treatment system, the calculated treatment standard would be roughly 0.6 mg/l, an order of magnitude lower than the characteristic level.

In addition, the Agency received D008 wastewater data from Tricil Environmental Services, a treater of D008 and other characteristically hazardous wastewaters. However, this waste was commingled with other waste before treatment, thereby blending down such that the concentration of lead would be lower than what was actually reported. Data was submitted on the treatment of lead by precipitation with phosphate, followed by settling, and filtration. The concentration of lead in the influent before blending down ranged up to 50,000 ppm. If the Agency used all of the treatment data in order to calculate a treatment standard, the performance of the treatment system indicates that a calculated treatment standard is 0.2 mg/l, which is more than an order of magnitude lower than the characteristic level. The Agency would hesitate to use the data in developing treatment standards for D008 wastewaters due to the lack of QA/QC data and corresponding influent and effluent data. Because of the initial concentration of lead and concentrations of other dissolved metal, the Agency believes that these wastes

represent the variability associated with the characteristic wastes.

Also, the Agency received treatment data from a foundry facility treating D008 wastewater. This data represents treated wastewaters by precipitation with high magnesium lime and filtration. The lead concentration in the untreated wastewater ranged up to 276 mg/l. If the Agency used all of the treatment data, the calculated treatment standard is 0.4 mg/l, which is an order of magnitude lower than the characteristic level. For this data, the Agency evaluated the QA/QC data, the design and operating parameters, and corresponding influent concentrations.

Based on the evaluation of all of the wastewaters data received from comments, as well as the various Clean Water Act, effluent limitation guidelines and pretreatment standards regulating lead (for example, the Combined Metals Data Base and regulations for primary lead, secondary lead and battery manufacturing), the Agency concludes that well designed and well operated treatment systems can achieve total concentrations of lead lower than the characteristic level. As explained in Section III.D, however, EPA has determined not to require hazardous wastewaters to be treated to levels less than the characteristic level in order to avoid significant and potentially environmentally counterproductive disruptions to the NPDES/pretreatment and UIC programs.

In addition, many commenters suggested that the Agency not specify a precipitant as a method of treatment for D008 wastewaters. Many commenters suggest that particular precipitants may perform better depending on the characteristics of the waste. For example, Tricil Environmental points out that phosphate is a superior precipitant than carbonate or sulfate because of the low solubility of lead phosphate. The Agency agrees with the commenters and is not promulgating a precipitant as a method of treatment. In fact, the Agency is promulgating the treatment standard at the characteristic level, thereby treating and generators of D008 wastewaters may select any precipitant in order to meet the characteristic level.

(c) Lead Acid Batteries. For lead acid batteries, the Agency is promulgating a standard of "Thermal recovery of lead in secondary lead smelters (RELEAD)". (See § 268.42 Table 1 in today's rule for a detailed description of the technology standard referred to by the five letter technology code in the parentheses.) The Agency believes that virtually all of

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the treaters of lead acid batteries are using a recovery process.

Incidentally, the Agency notes that lead acid batteries themselves, when stored, are not considered to be land disposed because the battery is considered to be a container (see 40 CFR 264.314(d)(3)). Battery storage, however, typically is subject to the subpart J storage standards (relating to secure storage, secondary containment in some instances, and other requirements). See subpart G of part 266.

Other commenters questioned whether the slag or matte from recovery processes would need further treatment and whether these wastes should be placed in monofills. The residuals from the recovery process are a new treatability group (i.e. the residues are not lead acid batteries) and therefore their status as prohibited or nonprohibited is determined at the point the residues are generated. Such residues would thus only be prohibited and therefore require further treatment if they exhibit a characteristic. See discussion of inorganic debris in section I.A.3.a of today's rule.

(2) *P110, U144, U145, and U146 Wastes.* The Agency proposed wastewater treatment standards for lead for P110, U144, U145, U146 based on transfer of the performance of precipitation with lime and sulfide, filtration, and settling for K062 wastewaters. While these U and P codes represent primarily organo-lead compounds and one may consider that the transfer from an inorganic lead to an organic lead is not feasible, no comments were received indicating the lack of achievability. The Agency's judgment is that the standard is technically feasible. Therefore, the Agency is promulgating a standards for lead in P110, U144, U145, U146 wastewaters of 0.04 mg/l as proposed.

The Agency has determined that some nonwastewater forms of lead wastes including P110, U144, U146, and some D008 wastes, would need to be incinerated prior to stabilization due to the presence of high concentrations of organics in order to achieve a treatment standard based on stabilization. This is primarily because the organics typically interfere with conventional stabilization processes (particularly at concentrations exceeding 1% TOC). The Agency has data on the incineration on organic wastes containing up to 1,000 mg/kg lead (such as K087 wastes) followed by stabilization of the ash. These data indicate that the proposed standard (i.e. 0.05 mg/l leachable lead) can be

achieved for wastes that also contain significant concentrations of organics, provided the organics are destroyed by pretreatment. Lead acetate (U144) and lead subacetate (U146) are anticipated to be less difficult (or at least of similar difficulty) to treat than tetraethyl lead. The Agency is therefore promulgating the 0.04 mg/l standard for organo-lead compounds, P110, U144, and U146.

Additionally, the Agency received no comments on the feasibility of the transfer of lead in K062 wastewaters to lead phosphate U145. Therefore, the Agency will promulgate as proposed.

(3) *K069.* In today's rule, the Agency is promulgating treatment standards for K069 nonwastewaters in the Calcium Sulfate Subcategory, and for wastewater forms of K069. In addition, the Agency is revoking the no land disposal based on recycling as a treatment standard for the Non Calcium Sulfate Subcategory for K069 nonwastewaters and is promulgating "Thermal Recovery of Lead in Secondary Lead Smelters (RLEAD)". See § 268.42 Table 1 in today's rule for a detailed description of the technology standard referred to by the five letter technology code in the parentheses.

For K069 wastewaters, the Agency is promulgating treatment standards for cadmium and lead. For cadmium, the treatment standard is based on the performance of chemical precipitation with lime and sulfide and sludge dewatering for K062 wastes. For lead, the treatment standard is based on the performance of chemical precipitation with magnesium hydroxide followed by clarification and sludge dewatering for D008 wastewaters. This treatment data was submitted as part of the public comment period. The Agency believes that these wastewaters better represent a K069 wastewater due to the concentration of lead (i.e. up to 300 ppm). The Agency believes that the performance of both technologies can achieve the regulated concentration due to the fact that both precipitating agents are hydroxides.

BDAT for K069 nonwastewaters in the Calcium Sulfate Subcategory is stabilization. The Agency believes that there is only one generator of this waste and that this waste cannot be directly recycled to recover lead. The waste characterization data from the one generator indicated that this waste contains metal constituents such as cadmium and lead. The metal concentrations range up to 3300 ppm.

For the K069 nonwastewaters in the Calcium Sulfate Subcategory, the

Agency is transferring the performance of stabilization of K061 to K069 nonwastewaters. This is a technically feasible transfer because the K061 waste is a more difficult waste to treat. In fact, the lead concentrations in K061 waste ranges up to 20,300 ppm thus, the performance of the treatment system can be legitimately transferred.

(4) *K100.* In today's rule, the Agency is promulgating treatment standards for wastewaters and nonwastewater forms of K100 wastes as proposed. For cadmium and total chromium in K100 wastewaters, treatment standards are based on a transfer of the performance of chromium reduction followed by lime and sulfide precipitation, and dewatering for K062 wastes. For lead in K100 wastewaters, treatment standard is based on the performance of chemical precipitation with magnesium hydroxide followed by clarification and sludge dewatering for D008 wastewaters. The Agency believes that both technologies can achieve the concentration of the regulated constituents due to the fact that both precipitating agents are hydroxides. For K100 nonwastewaters treatment standards are based on the transfer of the performance of stabilization for F006 wastes.

Treatment standards for K100 wastes were originally scheduled to be promulgated as part of the Third Third rulemaking. However, a treatment standard of "No Land Disposal Based on No Generation" for K100 nonwastewaters was promulgated on August 8, 1988 and subsequently revised on May 2, 1989 (54 FR 18836) to be applicable only to "Nonwastewater forms of these wastes generated by the process described in the listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes (Based on No Generation)." The Agency received no comments on the treatment standards for K100 wastes; therefore, the Agency is promulgating as proposed.

BDAT TREATMENT STANDARDS FOR D008
[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, EP (mg/l)
Lead.....	5.0

BDAT TREATMENT STANDARDS FOR D008

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Lead	5.0

BDAT TREATMENT STANDARDS FOR D008

[Lead Acid Batteries]

Thermal recovery (RLEAD) of lead in secondary lead smelters

BDAT TREATMENT STANDARDS FOR P110, U144, U145, AND U146

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Lead	0.040

BDAT TREATMENT STANDARDS FOR P110, U144, U145, AND U146

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Lead	0.51

BDAT TREATMENT STANDARDS FOR K069

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Cadmium.....	1.6
Lead	0.51

BDAT TREATMENT STANDARDS FOR K069 CALCIUM SULFATE SUBCATEGORY

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Cadmium.....	0.14
Lead	0.24

BDAT TREATMENT STANDARDS FOR K069 NON-CALCIUM SULFATE SUBCATEGORY

[Nonwastewaters; Revised From No Land Disposal]

Thermal recovery of lead in secondary lead smelters (RLEAD)

BDAT TREATMENT STANDARDS FOR K100

[Wastewaters; Revised From No Land Disposal]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Cadmium.....	1.6
Chromium (Total).....	0.32
Lead	0.51

BDAT TREATMENT STANDARDS FOR K100

[Nonwastewaters; Revised From No Land Disposal]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Cadmium.....	0.066
Chromium (Total).....	5.2
Lead	0.51

* See § 268.42 Table 1 in today's rule for a detailed description of the technology standard referred to by the five letter technology code in parentheses.

g. Mercury

D009—EP toxic for mercury.

K071—Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.

K106—Wastewater treatment sludges from the mercury cell process in chlorine production.

P065—Mercury fulminate.

P092—Phenylmercury acetate.

U151—Mercury.

EPA is today promulgating treatment standards for D009, K106, P065, P092, and U151. EPA has revised the proposed regulatory approach for some of these wastes in response to comment. EPA is also withdrawing the proposed revisions for K071 nonwastewaters. These wastes are described fully in the respective Listing Background Documents.

(1) *Review of BDAT for Nonwastewaters.* EPA identified thermal recovery processes, acid leaching, stabilization, and incineration as BDAT for mercury wastes. Commenters questioned whether thermal processing of mercury should be the basis (or the exclusive basis) for the treatment standard. Use of thermal processing raises issues of cross-media

transfer of mercury, as well as the environmental benefit of thermal processing over stabilization or land disposal. Other comments questioned the amenability of mercury sulfide wastes to stabilization as well as EPA's proposed restrictions on co-disposal of mercury wastes with alkaline wastes. The stabilization comments and the co-disposal issues are addressed in section III.A.3.a.

Multimedia issues raised by thermal processing of mercury materials involve the potential transfer of mercury and sulfur dioxide from the retorting/roasting chambers to downstream air pollution control devices (APCD) and potentially to environmental media (e.g., air to water). Specifically, commenters felt that EPA had not properly addressed the issue of mercury air emissions from retorting and urged EPA to quantify mercury emissions prior to determining whether roasting or retorting represents BDAT for mercury and sulfide wastes (i.e., K106).

The Agency acknowledges the legitimacy of the commenters' concerns, which the Agency shares. The Agency discussed the issue of air controls for mercury retorting at 54 FR 48501. In addition, the Agency provided calculations in the administrative record for the proposed rule of the potential amounts of sulfur dioxide emissions to the air that could result from the retorting or roasting of mercury sulfide wastes such as K106, based on available performance data from a facility thermally processing cinnabar ores. EPA also included the document entitled, "Review of National Emission Standards (NESHAPs) for Mercury" (EPA 450/3-84-014, 1984) in the proposed administrative record. In this 1984 document, EPA provided quantitative analysis for the potential of mercury air emissions from several industrial operations that include the thermal processing of cinnabar ores as well as the retorting of mercury containing wastes.

The available air emission information shows that both mercury and sulfur dioxide emissions can be effectively controlled by well designed and well operated air pollution control devices that allow for the recovery of valuable mercury. Based on available air emission information, performance data from the thermal processing of cinnabar ores, and performance data from the retorting/roasting of mercury wastes, EPA determined that retorting/roasting represent BDAT for mercury wastes. EPA reaffirms this determination in today's rule. In order to assure that air emissions from mercury

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are controlled adequately, the Agency is specifying as part of BDAT that the retorting unit either (a) be subject to the mercury NESHAP; (b) be subject to a BACT or LAER standard for mercury imposed pursuant to a PSD permit; or (c) that it be subject to a state permit that establishes emission limitations (within the meaning of section 302 of the Clean Air Act) for mercury. The Agency believes that with such air emission controls retorting is a treatment technology that minimizes threats to human health and the environment and so satisfies the requirements of section 3004(m). (Pending amendments to the Clean Air Act may also result in imposition of standards for these units.) (The Agency's authority to impose these conditions on performance of a mercury retorting device comes directly from its authority under section 3004(m) to establish methods of treatment. EPA is indicating here that part of the designated method includes operating pursuant to standards that prevent cross-media contamination. Such standards are enforceable under RCRA pursuant to the authority in section 3008(a).) In addition, as discussed more fully below, the Agency believes that this technology is preferable to stabilization.

Several commenters believe that the treatment standards of roasting and retorting are not needed for K106 wastes that are generated as mercury sulfides. According to the commenters, these K106 wastes contain mercury in one of its less soluble forms. As a result, the commenters argued that sulfide stabilization—including the sulfide precipitation treatment that generates the K106—should be considered a mode of treatment under RCRA section 3004(m). The commenters also believe the migratory potential of mercury from sulfide sludges to the air or water is less than what could result from retorting/roasting.

EPA has evaluated these comments carefully but determined that treatment standards for those mercury wastes amenable to recovery should be based on recovery technologies. There is a strong preference in the land disposal restrictions legislation for treatment standards to be based on recovery where possible (e.g., S. Rep. No. 284 at 17). This preference is reinforced by the overall goals of RCRA to encourage waste minimization and resource recovery (e.g., RCRA section 1003(a)(6)). The Agency further concludes that compliance with the mercury NESHAP, PSD BACT/LAER controls, or state permitting requirements will ensure that air emissions of mercury are controlled

so as to be protective of human health and the environment. Commenters also raised the potential for fugitive air emissions from mercury waste handling operations preceding retorting. Since retorters would normally require RCRA storage permits, however, permit writers are able to craft controls to adequately control fugitive emissions using the omnibus authority in RCRA section 3005(c)(3). (The Agency intends to issue guidance to permit writers on this matter.)

EPA has also considered the argument that wastes from retorting will contain a more leachable form of mercury than at least the mercury sulfide wastes (such as K106) being smelted in the unit. Although this will be true in some cases, as demonstrated in the record leachable mercury in retorting wastes will still be at low levels, and well below the characteristic level. More important, there will be less mercury to leach because most mercury will be recovered as product. The Agency estimates, based on data from the thermal processing of cinnabar ores and the retorting/roasting of a mixture of K071 and K106 wastes, that mercury retorting can recover 98–99% of mercury contained in the feed material. The overall potential of disposed mercury to be released to the environment will thus be significantly reduced. Retorting/roasting also achieves volumetric waste minimization compared to stabilization, because it reduces the overall volume of waste to be disposed, unlike stabilization which increases overall volume. The Agency thus concludes that retorting/roasting is the appropriate method of treatment for recoverable mercury wastes. As explained below, however, the Agency has modified its proposed approach with respect to which mercury wastes are recoverable.

(2) *Revisions to the Cut-Off Level for Mercury Subcategories.* EPA proposed a cut-off level of 16 mg/kg of total mercury in a hazardous waste to delineate two subcategories of mercury wastes (54 FR 46441–42), high and low, with high mercury wastes being required to meet a standard based on recovery. The 16 mg/kg cut-off level was calculated from two sets of retorting/roasting data collected by EPA. One data set represents the retorting/roasting of mercury chloride/mercury sulfide wastes (mixture of K071 and K106). The other data set represents the thermal processing of cinnabar ores which the Agency believes can simulate the retorting/roasting of mercury sulfide sludges (i.e., K106 wastes) because wastewater treatment sludges (including sulfide sludges) are routinely burned in multiple hearth furnaces, the same (or

similar) type of furnace that processes cinnabar ores. EPA relied on the K071/K106 treatment residual data, on the analytical data of cinnabar ore thermal recovery, and on the performance data from the thermal processing of cinnabar ores for the purpose of calculating the 16 mg/kg cut-off level. The level reflected the Agency's view of mercury levels remaining after properly conducted recovery, and assumed that any higher level is recoverable. The majority of the commenters have submitted comments and data urging EPA to reconsider the proposed cut off level of 16 mg/kg in the retorting residual use at proposal to define the two subcategories of mercury wastes.

The Chlorine Institute (CI) and OxyChem have submitted performance data based on the retorting/roasting of mercury wastes. The Chlorine Institute's performance data consists of bench- and pilot-scale test studies for the roasting of K106 having mercury sulfide species. OxyChem performance data consist of full-scale retorting tests of K106 and D009 wastes. None of OxyChem's K106 and D009 wastes had mercury sulfide species.

The Chlorine Institute's data show that mercury sulfide sludges (K106 wastes) differ from cinnabar ores with regard to the concentration of chloride salts. The Chlorine Institute believes that the high concentrations of chloride salts in K106 are likely to interfere with the overall performance of retorting/roasting operations. As explained in detail in the BDAT and Response to Comments Background Documents, however, EPA believes these chloride salts can be effectively controlled by a pretreatment step prior to retorting/roasting along with the optimized operation of the retorting/roasting process.

The Chlorine Institute also believes that their roasting data show that higher concentrations of residual mercury, in the order of 160 mg/kg mercury, may be left behind in the residues from retorting/roasting operations. OxyChem likewise believes that their performance data show that lower concentrations of residual mercury cannot routinely be achieved and thus should not be required for mercury wastes below 260 mg/kg.

Another commenter pointed out more fundamentally that EPA should base the cut-off level for "Mercury Subcategories" not on treated residuals from the retorting/roasting operations but rather on mercury concentrations in the waste before retorting. In other words, the determination of what is recoverable should not be determined

solely by levels reflecting mercury treatment. The commenter also believes that basing the cut-off level of "High Mercury Subcategory" on untreated mercury concentrations will better reflect similar BDAT determinations EPA had made for other recoverable wastes such as K061. EPA's data for untreated mercury wastes being retorted/roasted domestically show minimum concentrations of mercury up to 255 mg/kg (for a mixture of K106 and K071 wastes).

Based on these comments, EPA is revising the proposed cut-off level from the proposed 16 mg/kg to 260 mg/kg (rounded to two significant figures). Although the new cut-off level is based on the available data for low mercury concentrations of untreated mercury wastes being retorted/roasted, EPA points out that this new cut-off level of 260 mg/kg should not be deemed as a relaxation of the standard or treatability group. Instead, the new cut-off level takes into account consistency in identifying treatability groups and the variability inherent to mercury sulfide wastes, as documented by EPA's thermal processing data of cinnabar ores and the fact that available data on these low levels of recoverable mercury fully support that well-designed and -operated thermal recovery processes allow routine recovery of valuable mercury.

For the purpose of this rule, mercury nonwastewaters with mercury concentrations equal to or above 260 mg/kg mercury belong to the High Mercury Subcategory. Mercury nonwastewater with mercury concentrations below the 260 mg/kg mercury belong to the Low Mercury Subcategory.

(3) *Standards for All Wastewaters.* EPA is promulgating a treatment standard of 0.030 mg/l mercury for K106, P065, and P092. This treatment standard is based on the precipitation of mercury from wastewaters identified as K071 from the chlor-alkali industry using sulfide as the precipitant.

EPA acknowledges that there may be certain wastewaters that may require combinations of other wastewater treatment technologies which may include either additional treatment (for the destruction or removal of organics) or additional treatment by sulfide precipitation and filtration for the purpose of meeting today's treatment standards. The use of other wastewater treatment technologies are not precluded by this rule. This determination seems to be supported by the concurrence of other commenters either with the proposed standards or with EPA's determination of BDAT for mercury wastewaters.

Some commenters objected to EPA's rationale to transfer the K071 performance data to K106, P065, P092, U151, and D009 wastewaters. Among these commenters, one believes the proposed treatment standards are based on performance data that may not take into account other forms of mercury constituents which can be less amenable to sulfide treatment. However, this commenter submitted no specific data and thus failed to demonstrate that combinations of other wastewater technologies are unable to meet the standards.

Other commenters concurring with EPA's identification of BDAT believe EPA should base the treatment standards on the Office of Water (OW) performance data supporting the treatment standards for multi-source leachate. These commenters believe the OW-performance data represent the treatment of a more diverse universe of K071 wastewater than the one tested by EPA. These alternative performance data result in a treatment standard of 0.11 mg/l mercury.

The multi-source leachate treatment performance data represent the treatment provided by sulfide chemical precipitation to different characteristic wastewaters that may include K071 wastewaters. EPA believes that the data developed from treating the specific mercury wastes is preferable to a transfer of performance data. Moreover, the commenters advocating the transfer submitted no data and so failed to demonstrate unachievability of the standards or whether their wastes are significantly different from the treated wastewaters supporting the proposed standards. The Agency is not convinced by these comments and thus, is promulgating treatment standards for K106, P065, P092, and U151 as proposed.

For D009 wastewaters, EPA proposed two regulatory options. One option was to transfer K071's performance treatment data and require a level of treatment below the D009 characteristic level. The other option was to set a treatment level at the characteristic level. For reasons discussed in preamble section III.D., EPA is promulgating treatment standards at the characteristic level of 0.20 mg/l mercury for D009 wastewaters as measured by TCLP.

(4) *Standards for K106 and U151 Nonwastewaters.* EPA is promulgating treatment standards for these two wastes as proposed (54 FR 48441). The threshold for the High and Low Mercury Subcategories is revised, however, as explained in section (2) above.

High Mercury Subcategory K106 and U151 wastes are required to be treated by retorting/roasting as a prerequisite

for land disposal. Residues from retorting/roasting operations are not prohibited from land disposal unless they leach mercury above 0.2 mg/l, as measured by the TCLP (see § 268.9 of the final rule indicating that normally any disposal of a waste exhibiting a characteristic is prohibited). Data indicate, however, that residues from retorting these wastes do not leach mercury at this level. Residues unacceptable for land disposal (i.e., above 0.2 mg/l) are required to comply with the appropriate standards for K106 or U151 wastes (i.e., High or Low Mercury Subcategory) presented below. It is impermissible to dilute a High Mercury Subcategory waste to reduce the mercury concentration to less than 260 mg/kg.

For K106 and U151 nonwastewaters in the "Low Mercury Subcategory" (i.e., less than 260 mg/kg) the Agency is promulgating a treatment standard of 0.025 mg/l mercury as measured by the TCLP leachate. This level is transferred from acid leaching data for K071 nonwastewaters. Residues from this acid leaching process must be evaluated for mercury content to determine whether they should undergo roasting/retorting. K106 and U151 nonwastewaters that contain less than 260 mg/kg and that also leach less than 0.025 mg/l mercury (as measured in the TCLP extract) are considered to have met the BDAT and can be land disposed.

(5) *Withdrawal of Proposed Revisions to K071 Nonwastewaters.* EPA proposed that certain K071 nonwastewaters be retorted or roasted (54 FR 48442). The Chlorine Institute and generators of K071 submitted comments to EPA emphasizing that existing treatment standards should not be revised. These commenters pointed out that their K071 wastes currently being land disposed already have low concentrations of mercury (10 to 120 mg/kg mercury, average) which EPA had deemed to meet the requirement of 3004(m) of HSWA. They believe these low mercury concentrations are unattractive for retorting/roasting operations. In addition, they believe that retorting/roasting may have not been demonstrated for these K071 wastes since the available data to EPA for the retorting/roasting of K071 wastes describe the treatment of untreated K071 wastes having low mercury concentrations of up to 255 mg/kg.

Although EPA believes these treated forms of K071 can be treated by retorting/roasting, EPA is not adopting the proposed revisions to K071 wastes because their recyclability is

questionable. The existing standard for these wastes thus will stay in place (53 FR 31166, August 17, 1988 and § 268.41 (treatment standard for K071 nonwastewaters)). However, today's decision does not preclude the Agency from revising the K071 treatment standards if new data become available.

(6) *Standards for P065 and P092 Nonwastewaters.* EPA is promulgating incineration as the treatment standard for P065 and P092 nonwastewaters followed by recovery or treatment of mercury from the incineration treatment residues if those residues are in the high mercury subcategory. (As noted at proposal, these organo-mercury wastes are not directly amenable for recovery, but must be pretreated to destroy carbon-metal bonds (54 FR 48442).) Incineration nonwastewater residues from these wastes that are above or equal to 260 mg/kg are considered to belong to the High Mercury Subcategory and thus must be recovered by retorting or roasting. Incineration wastewater residues must meet the treatment level of 0.030 mg/l mercury as a prerequisite for land disposal. Nonwastewater residues from retorting/roasting operations are not prohibited from land disposal unless they leach mercury above 0.2 mg/l, as measured by the TCLP. Retorting/roasting residues unacceptable for disposal (i.e., above 0.2 mg/l) are required to comply with the appropriate standards for the High or Low Mercury Subcategory, depending on whether their total mercury concentration exceeds 260 mg/kg. Incineration residues below 260 mg/kg are considered to belong to the Low Mercury Subcategory which are not prohibited from land disposal unless they leach mercury above 0.025 mg/l (as measured in the TCLP extract). See section (4) above for a discussion of this mercury leach level.

(7) *Standards for D009 Nonwastewaters.* The treatment standards for D009 nonwastewaters in the High Mercury Subcategory are promulgated as "Roasting or Retorting as a Method of Treatment, or Incineration followed by Roasting or Retorting of Incinerator nonwastewater residues (e.g., calcinates, soot, ash, or wastewater treatment sludges from the treatment of incineration scrubber waters) provided such residues exceed 260 mg/kg total mercury. Residues from retorting/roasting operations are not prohibited from land disposal unless they leach mercury above 0.20 mg/l, as measured by the TCLP. Retorting/roasting residues unacceptable for disposal (i.e., above 0.20 mg/l) are required to comply with the appropriate

standards for the High or Low Mercury Subcategory. The applicable standards for wastes in the Low Mercury Subcategory are discussed at the end of this section. As a result, if the initial organic content is too high for the retorting or roasting, incineration can be used as a pretreatment step to the retorting/roasting.

At least one facility submitted data showing that wastes with concentrations of semivolatile organics up to 30 percent are currently being retorted outside the United States. The facility described its waste as a mercury spent catalyst contaminated with an intermediate chemical used in the manufacture of polymers. The facility sends this D009 waste overseas for the purpose of direct retorting of mercury. Based on this information, EPA believes the proposed standards can be promulgated as proposed.

Several commenters have identified a list of D009 wastes which they believe meet EPA's criteria of contaminated soils and debris. The commenters believe this list of D009 debris are not amenable to retorting/roasting. However, they have proposed alternative treatment standards based on the use of a chemical decontamination technology. The chemical decontamination standards require the use of three steps: (1) Decontamination of debris wastes based on polysulfide or hydrochloride solutions; (2) triple water rinses of the chemically decontaminated wastes; and (3) (sulfide) chemical precipitation of mercury from contaminated solutions and water washes. The chemically decontaminated and triple water rinsed debris would not be prohibited from land disposal.

EPA has been unable to determine whether the alternative chemical decontamination technology specifically represents BDAT for these wastes. EPA currently lacks performance data from the use of this technology on D009 debris wastes. If performance data become available, the Agency may be publishing revisions to today's standards as it continues the general effort to develop separate standards for soil and debris wastes. See also section III.A.3.(a)(2) for a further discussion of treatment for inorganic solids debris.

Another reason that the Agency is not adopting these procedures as the treatment standard for mercury debris is the possibility that mercury could ultimately be recovered. One commenter provided information indicating that their facility routinely recovers chromium from debris such as waste refractory bricks containing chromium.

The bricks are crushed and recycled as feedstock along with other raw materials in the manufacture of refractory brick. EPA believes that this recycling technology (following pretreatment) may be generally applicable and can be used to treat at least some D009 debris.

For D009 wastes in the Low Mercury Subcategory, EPA is promulgating a treatment standard of 0.20 mg/l, as measured by the TCLP. Achievability of these standards are supported by K071 treatment data and other stabilization data submitted to the Agency. The Final BDAT Background Document for Mercury contains a detailed technical discussion for the development of all the treatment standards promulgated today.

BDAT TREATMENT STANDARDS FOR K106 AND U151

[All nonwastewaters in the High Mercury Subcategory (i.e., greater than or equal to 260 mg/kg total mercury)]

Roasting or Retorting (RMERC)

BDAT TREATMENT STANDARDS FOR K106 AND U151

[Nonwastewaters that are residues from RMERC and are in the Low Mercury Subcategory (i.e., less than 260 mg/kg total mercury)]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Mercury.....	0.20

BDAT TREATMENT STANDARDS FOR K106 AND U151

[Nonwastewaters that are not residues from RMERC and are in the Low Mercury Subcategory (i.e., less than 260 mg/kg total mercury)]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Mercury.....	0.025

BDAT TREATMENT STANDARDS FOR K106 AND U151

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Mercury.....	0.030

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BDAT TREATMENT STANDARDS FOR D009

[All nonwastewaters that contain mercury and organics (and are not incinerator residues) and are also in the High Mercury Subcategory (i.e., greater than or equal to 260 mg/kg total mercury)]

Incineration of wastes with organics and mercury (IMERC) or roasting/retorting (RMERC)

BDAT TREATMENT STANDARDS FOR D009

[Nonwastewaters that are inorganics (including incinerator residues and residues from RMERC) and are in the High Mercury Subcategory (i.e., greater than or equal to 260 mg/kg total mercury)]

Roasting or retorting (RMERC)

BDAT TREATMENT STANDARDS FOR D009

[All nonwastewaters in the Low Mercury Subcategory (i.e., less than 260 mg/kg total mercury)]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Mercury.....	0.20

BDAT TREATMENT STANDARDS FOR D009

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Mercury.....	0.20

BDAT TREATMENT STANDARDS FOR P065

[All nonwastewaters that are not incinerator residues and are not residues from RMERC; regardless of Mercury Content]

Incineration of wastes with organics and mercury (IMERC)

BDAT TREATMENT STANDARDS FOR P092

[All nonwastewaters that are not incinerator residues and are not residues from RMERC; regardless of Mercury Content]

Incineration of wastes with organics and mercury (IMERC) or roasting/retorting (RMERC)

BDAT TREATMENT STANDARDS FOR P065 AND P092

[Nonwastewaters that are either incinerator residues or residues from RMERC, and are in the High Mercury Subcategory (i.e., greater than or equal to 260 mg/kg total mercury)]

Roasting or retorting (RMERC)

BDAT TREATMENT STANDARDS FOR P065 AND P092

[Nonwastewaters that are incinerator residues (and are not residues from RMERC) that are also in the Low Mercury Subcategory (i.e., less than 260 mg/kg total mercury)]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Mercury.....	0.025

BDAT TREATMENT STANDARDS FOR P065 AND P092

[Nonwastewaters that are residues from RMERC and are in the Low Mercury Subcategory (i.e., less than 260 mg/kg total mercury)]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Mercury.....	0.20

BDAT TREATMENT STANDARDS FOR P065 AND P092

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Mercury.....	0.030

h. Selenium

- D010—EP toxic for selenium
- P103—Selenourea
- P114—Thallium selenite
- U204—Selenious acid
- U205—Selenium disulfide

For the proposed rule the Agency had no specific treatment data on RCRA hazardous wastewaters or nonwastewaters containing significant quantities of selenium (54 FR 48433). However, based on the similarities in chemical behavior of arsenic and selenium, the Agency extrapolated the treatment performance data for arsenic-containing wastewaters and nonwastewaters to the selenium-containing wastewaters and nonwastewaters, respectively.

(1) *Standards for Selenium-Containing Nonwastewaters.* The Agency believes that for most wastes containing high concentrations of selenium, recovery of selenium is feasible using recovery technologies used by copper smelters and copper refining operations. The Agency does not have any performance data for selenium recovery, but

information available to the Agency indicates that recovery of elemental selenium out of certain types of scrap material and other types of waste is currently practiced in the United States. The Agency requested comments and data on the applicability of these, and any other, recovery technologies for wastes containing selenium; however, the Agency received no responses to these issues.

The Hazardous Waste Treatment Council (HWTC) submitted treatment performance data for stabilization of selenium wastes using proprietary reagents to induce cementitious, siliceous, and pozzolanic stabilization reactions. One data set shows a D010 waste containing selenium concentrations of 5 ppm total selenium and 2.97 mg/l in the TCLP extract reduced to concentrations of 0.282 mg/l in the TCLP extract. The binder-to-waste ratio was 1 to 1. Another data set shows results for treatment of a mineral processing waste believed to be a D010 waste because of the high selenium concentrations in the TCLP leachate. The waste contains up to 700 ppm total selenium and 3.74 mg/l selenium in the TCLP leachate. The treated residuals leach between 1.80 and 0.154 mg/l selenium based on TCLP methodology. This waste also contains high concentrations of arsenic, cadmium, and lead. The binder to waste ratios varied from 1.3 to 2.8.

Data were also submitted by the HWTC for the stabilization of wastes containing selenium dioxide (U204) an selenium sulfide (U205). Data for stabilization of the discarded pure product show values of 30 and 6.05 mg/l in the TCLP leachate for U204 and U205, respectively. The binder-to-waste ratios were 1.8 for each study. Data for stabilization of spiked soil samples containing 1000 ppm of the U204 compounds show values of 45.8 mg/l in the unstabilized TCLP leachate and 2.88 mg/l in the stabilized TCLP leachate. Data for stabilization of spiked soil samples containing 1000 ppm of the U205 compounds show values of 0.207 mg/l in the unstabilized TCLP leachate and 0.154 mg/l in the TCLP leachate.

For the proposed rule, the Agency had no stabilization data for selenium and could not investigate the potential problems in stabilization for high concentrations of selenium. The Agency believed, based on selenium's chemical similarities to arsenic, that the same complications would occur (e.g., increased leaching when using alkaline binders). Therefore, the Agency determined that vitrification was the "best" technology for selenium wastes

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and extrapolated the performance data for vitrification of arsenic to D010 nonwastewaters and proposed the same concentration-based standard, 5.8 mg/l selenium as measured in the leachate generated by the EP toxicity test (54 FR 48432). In a similar manner, the Agency proposed to transfer this concentration-based treatment standard of 5.6 mg/l selenium to P103, P114, U204, and U205 nonwastewaters. The Agency has received a comment indicating that selenium parallels the melting behavior of arsenic and that the transfer of performance data was valid; however, no performance data for the vitrification of selenium were submitted during the comment period.

EPA still believes that vitrification is an applicable technology for treatment of selenium wastes based on the history of the commercial glass industry using selenium metal as an additive and the melting behavior of selenium, which is similar to that of arsenic. However, unlike arsenic, no known generators of selenium wastes are investigating vitrification as a treatment technology. The Agency continues to believe that most wastes containing high levels of selenium are being recovered because of the high market value of selenium (approximately \$10.00/pound).

The Agency has developed performance standards based on stabilization as BDAT since the only treatment data submitted by commenters, and available to the Agency, were for the stabilization of selenium. Because EPA has information indicating that wastes containing high concentrations of selenium are rarely generated and land disposed, the Agency does not believe that the pure product and simulated wastes are representative of wastes that would require stabilization treatment but are more representative of wastes that could be recovered for the selenium content. Consequently, the Agency is not using any performance data for treatment of these wastes, but is using the performance data for the D010 waste containing up to 700 ppm selenium since this waste contains more selenium than the other wastes and is believed to be the most difficult to treat waste. Based on these data, the Agency has used an analytical recovery of 85 percent to calculate a corrected average concentration of 0.80 mg/l. Next, multiplying the corrected value by a variability factor of 7.15 (calculated from the same selenium treatability data) gives a treatment standard of 5.7 mg/l selenium in the TCLP leachate. The Agency is transferring the stabilization performance from D010 to P103, P114,

U204, and U205 because EPA believes this waste to be most representative of wastes requiring stabilization and not recovery.

Because this treatment standard (5.7 mg/l) is above the level of leachable selenium that defines the waste as D010 (1.0 mg/l), D010 wastes that are generated at a level between 5.7 mg/l and 1.0 mg/l meet the treatment standard but are still considered to be hazardous wastes (assuming the TCLP value exceeds 1.0 mg/l) and, therefore, must be land disposed in a subtitle C facility.

(2) *Standards for Selenium-Containing Wastewaters.* Based on the lime, manganese sulfate, and ferric precipitation wastewater treatment data used to calculate the proposed standards for the arsenic wastewaters, the Agency proposed a treatment standard of 0.79 mg/l selenium for the selenium in D010, P103, P114, U204, and U205 wastewaters (54 FR 48431). The Agency also proposed a second option of limiting the treatment standard for D010 wastewaters to the characteristic level of 1.0 mg/l.

The Agency solicited comments regarding the transfer of the arsenic performance data to selenium wastewaters and specifically solicited additional treatment data for wastewaters containing treatable levels of selenium that would classify the wastewaters as D010 prior to treatment. Although several commenters support EPA's determination that arsenic and selenium typically exist in aqueous conditions as oxo-anions and do not exhibit the cationic behavior of other metals, they do not agree that all selenium and arsenic species can be removed by the use of the same treatment technology (i.e., chemical precipitation).

One commenter sent treatment data indicating that precipitation of selenium using ferric chloride at pH 7.0, calcium hydroxide at pH 12.1, aluminum at pH 7.0, ferrous iron at pH 7.0, or sodium sulfide at pH 6.5 could not achieve the level of 0.79 mg/l selenium. Another commenter said that selenium cannot be removed from wastewaters using lime, but can be removed by sulfide treatment. The commenter stated that for the treatment to be effective a pH of less than 2.0 is required.

The Agency received information about the treatment performance of selenium removal using sulfide treatment. This information indicates that selenium can be reduced in wastewaters to the characteristic level (i.e., 1.0 mg/l selenium). Additionally, the precipitate contains elemental

selenium, which can be recovered and sold for reuse. Based on the new performance data the Agency is promulgating a treatment standard of 1.0 mg/l selenium for the selenium in D010, P103, P114, U204, and U205 wastewaters.

BDAT TREATMENT STANDARDS FOR 103, P114, U204, and U205

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, TCLP leachate (mg/l)
Selenium.....	5.7

BDAT TREATMENT STANDARDS FOR D010, P103, P114, U204, and U205

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Selenium.....	1.0

i. Silver

- D011—Characteristic for Silver
- P099—Potassium silver cyanide
- P104—Silver cyanide

(1) *D011.* In the proposed rule for nonwastewaters and wastewater forms of D011, the Agency proposed treatment standards and methods of treatment below the characteristic level (0.072 mg/l measured by TCLP and 0.29 mg/l). Commenters indicated that these levels were unachievable for many D011 wastes, such as silver thiosulfate complex waste generated from the photoprocessing industry. This waste is very stable and is not always amenable to recovery or stabilization. The Agency also proposed an option of capping the treatment standards for D011 at the characteristic level. Based on the comments received, the Agency has determined that this second option better represents the overall achievability of treatment for D011 wastes.

(a) *Wastewaters.* In the proposed rule, the Agency proposed a treatment standard for D011 wastewaters of 0.29 mg/l based on data from the EPA Office of Water's Effluent Guidelines program. In addition, the Agency solicited comments on whether it should specify the use of chloride as the precipitating reagent for all wastewaters containing silver. Commenters opposed specifying

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precipitating reagents stating that most wastewater streams contain more than one metal and the use of a required precipitating agent for one metal could interfere with the precipitation of any other metals in the waste stream. The Agency agrees with the commenter's position and is therefore not specifying precipitating agents for silver.

The Agency also solicited comments on the applicable technologies to treat silver wastewaters to the proposed concentration based standard. Based on a review of the comments, the Agency received information that indicated that ion exchange is an applicable technology for silver wastewaters, but will not be able to achieve the proposed standards. Therefore, because of the lack of treatment data and because of the diversity of D011 wastewaters, the Agency is promulgating the treatment standard for D011 wastewaters at the characteristic level of 5.0 mg/l as measured by the EP toxicity.

(b) Nonwastewaters. The Agency proposed three options for treatment standards for D011 nonwastewaters. One option was based on the inherent economic value of silver and the general lack of treatment data for wastes containing various levels of silver. This option proposed "Recovery as a Method of Treatment". Another option proposed was to transfer the performance of stabilization for F006 wastes to silver non-wastewater (i.e. a numerical treatment standard of 0.072 mg/l as measured by the TCLP). The third alternative for the characteristic wastes was to establish the treatment level at the characteristic level of 5.0 mg/l as measured by the EP toxicity. The Agency solicited data on the treatment of D011 nonwastewaters. No data was received but many comments pointed out that the proposed treatment standard is unachievable. The commenters claimed that silver in many D011 nonwastewaters can not be recovered because these wastes contain silver sulfate complexes. In addition, many commenters stated that the treatment standard of 0.072 mg/l is not achievable due to the diversity of the D011 wastes. The Agency agrees with the commenters that some of the D011 wastes can not be recovered or be treated to the treatment level. The commenters did not provide any treatment data for D011 nonwastewaters but did provide substantial technical arguments (based on the chemical nature of wastes classified as D011 nonwastewaters) that recovery is not an applicable technology for all D011 nonwastewaters and that the performance of stabilization for

D011 nonwastewaters may not achieve similar treated concentrations of silver. Therefore, the Agency is promulgating the treatment standards for D011 nonwastewaters at the characteristic level of 5.0 mg/l measured by the EP toxicity.

(2) P099 and P104. The Agency is promulgating the wastewater treatment standard for silver as proposed. The Agency received no comments disputing the technical feasibility of the transfer of the Effluent Guidelines data to P099 and P104 wastewaters. As a point of clarification, the Agency is promulgating a numerical treatment standard as opposed to a method of treatment for silver. Treatment standards for cyanides contained in P099 and P104 wastewaters, and cyanides as well as silver in P099 and P104 nonwastewaters, were promulgated in the Second Third final rule on June 23, 1989 (54 FR 26614).

BDAT TREATMENT STANDARDS FOR D011

[Wastewaters]	
Regulated constituent	Maximum for any single grab sample total composition (mg/l)
Silver	5.0

BDAT TREATMENT STANDARDS FOR D011

[Nonwastewaters]	
Regulated constituent	Maximum for any single grab sample total leachate by TCLP (mg/l)
Silver	5.0

BDAT TREATMENT STANDARDS FOR P099 AND P104

[Wastewaters]	
Regulated constituent	Maximum for any 24 hour composite sample total composition (mg/l)
Silver	0.29

See also the promulgated standards for cyanides in the Second Third Final Rule.

j. Thallium

- P113—Thallic oxide
- P114—Thallium (I) selenite
- P115—Thallium (I) sulfate
- U214—Thallium (I) acetate
- U215—Thallium (I) carbonate

- U216—Thallium (I) chloride
- U217—Thallium (I) nitrate

In today's rule, the Agency is promulgating nonwastewater and wastewater treatment standards for P113, P115, U214, U215, U216, and U217 thallium wastes as proposed. No comments were received addressing the proposed approach for regulating these wastes.

The Agency proposed to establish a thallium nonwastewater treatment standard for P114, thallium selenite, expressed as recovery or stabilization as a required method of treatment. A thallium wastewater treatment standard was also proposed, 0.14 mg/l. These thallium treatment standards are not being promulgated today. The Agency is promulgating, however, P114 treatment standards for selenium nonwastewaters and wastewaters (see preamble section III.A.3.h.). The Agency is taking this action because it believes that the treatment of selenium in P114 will also provide substantial treatment of thallium.

The Generator Survey indicates that most thallium nonwastewaters are characterized as inorganic salts used as research chemicals, or off-specification or out-dated materials. The Agency believes that due to the relatively high economic value of thallium, generators have an economic incentive to investigate recovery options and source reduction techniques. There may be cases, however, at very low concentrations and low waste volumes when recovery may not be a viable alternative for thallium wastes. No comments were received on the proposed nonwastewater standard, therefore, the Agency promulgating the nonwastewater treatment standard expressed as required methods: "Recovery or Stabilization". (See § 268.42 Table 1 in today's rule for a detailed description of the technology standard referred to by the five letter technology code in the parentheses.)

Most thallium wastewaters are characterized as metallic acidic liquids. Thallic hydroxide is very insoluble, therefore, thallium wastes can be treated by chemical oxidation followed by chemical precipitation with hydroxide reagents, settling and filtration, in order that most of the thallic compounds will precipitate out into the sludge. The Agency proposed a treatment standard for thallium wastewaters based on data from the EPA Office of Water's Effluent Guidelines program of 0.14 mg/l. No comments were received on this proposed treatment standard, therefore, the Agency is promulgating as proposed.

BDAT TREATMENT STANDARDS FOR P113, P115, U214, U215, U216, AND U217

(Nonwastewaters)

Thermal recovery (RTHRM) or stabilization (STABL) as a method of treatment

BDAT TREATMENT STANDARDS FOR P113, P115, U214, U215, U216, AND U217

(Wastewaters)

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Thallium.....	0.14

k. Vanadium

P119—Ammonium vanadate
P120—Vanadium pentoxide

At proposal, the Agency had no data from the treatment of P119 and P120 nonwastewaters upon which to establish concentration-based treatment standards. The Agency had data, however, on the recovery of vanadium from spent catalysts that typically contain about 5% vanadium. The Agency also anticipated that wastes containing vanadium could also be stabilized. This recovery and stabilization information were the basis of the proposed nonwastewater treatment standard for P119 and P120 expressed as required methods of treatment: thermal recovery or stabilization. Commenters generally supported the proposed nonwastewater treatment standard.

One commenter, however, suggested that the thermal recovery treatment standard should be revised to include recovery by dissolution, chemical precipitation, followed by thermal treatment. The Agency agrees that pretreatment practices such as dissolution, chemical precipitation, cation exchange, or resin adsorption that are performed in tanks or containers are not precluded by today's final treatment standard. However, since these recovery processes are not precluded by any treatment standard (as long as the recovery is not performed in land disposal units) and since the Agency currently lacks information to clarify a description of a specific thermal recovery process for vanadium wastes in § 268.42 Table 1 (i.e., it is uncertain that the thermal recovery process for vanadium matches the description for thermal recovery listed under the five letter technology code

identified as RATHERM), the Agency is promulgating a standard for P119 and P120 that only specifies stabilization as a method of treatment.

A treatment standard was proposed for vanadium wastewaters of 0.042 mg/l based on data from the EPA Office of Water's Effluent Guidelines program. Commenters asserted that this wastewater treatment standard and was unattainable and was probably due to the effects of dilution. Upon reexamination of these data, the Agency tends to agree that this low level was due to dilution and is, therefore, not promulgating this treatment standard in today's rule. The Agency received data that were classified as Confidential Business Information during the comment period from a proprietary wastewater treatment technology. Since these data reflect the actual treatment of P119 and P120 wastewaters (and the Agency has no other treatment data for these wastes) the Agency has decided to use them to calculate today's final wastewater treatment standard of 28 mg/l.

The proposed rule included a statement that P119 and P120 nonwastewaters can be generated as spent catalysts from chemical production or as fly ash from the iron and steel industry. Commenters pointed to this statement as a mistake, and requested clarification on the definition of P119 and P120 wastes. The Agency regrets the confusion that was caused by this statement and agrees that it was a mistake. The statement would actually apply to vanadium-containing compounds that do not meet the definition of listed P119 and P120 wastes (i.e., they are not unused commercial chemical products). Spent catalysts and iron and steel industry fly ash are not classified as P119 and P120.

Commenters requested that the Agency establish another treatability group for P119 and P120 nonwastewaters because containers or container liners from the shipment of ammonium metavanadate or vanadium pentoxide as commercial chemical products may become P119 or P120 hazardous waste. The Agency disagrees that another treatability group is needed. In the event that a non-empty container from the shipment of P119 or P120 is generated and today's treatment standard cannot be met, the generator may petition the Agency for a variance from the treatment standard.

BDAT TREATMENT STANDARDS FOR P119 AND P120

(Nonwastewaters)

Stabilization (STABL) as a method of treatment

BDAT TREATMENT STANDARDS FOR P119 AND P120

(Wastewaters)

Regulated constituent	24 hour composite sample, total composition (mg/l)
Vanadium.....	28

4. Treatment Standards for Remaining F and K Wastes

a. F002 and F005

F002—The following spent halogenated solvents: Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichloro-fluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

F005—The following spent non-halogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

EPA is promulgating treatment standards for 1,1,2-trichloroethane, benzene, 2-ethoxyethanol, and 2-nitropropane. EPA has revised its proposed approach for wastewaters in response to comments. These four organic compounds were added as hazardous constituents to the F002 and F005 spent solvents in 1986 (see 51 FR 6737, February 25, 1986). Today's treatment standards only apply to these four new solvents. Treatment standards for other solvents in F002 and F005 remain as promulgated in the 51 FR 40572, November 7, 1986, Solvents and Dioxins Rule. A technical description of these four new spent solvents can be found in the Listing Document for F002 and F005, as amended in 1986, and in 40 CFR 261.31.

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The Agency received comments addressing various issues related to these wastes. One commenter pointed out that there were discrepancies between the proposed treatment standards for 1,1,2-trichloroethane in both wastewater and nonwastewater forms of F002. The discrepancies occurred in the concentration-based standards presented in the preamble, and the regulation (see 54 FR 48461, November 22, 1989). A similar discrepancy occurred in the wastewater treatment standard for 2-nitropropane in F005. EPA thanks the commenter for pointing out these typographical errors. The proposed BDAT Background Document Amendment for F002 and F005 confirms that the concentration-based standard for 2-nitropropane in wastewater forms of F005 in the preamble discussion was in error. The concentration-based standards printed in the regulatory tables for 1,1,2-trichloroethane wastewaters and nonwastewaters likewise were in error. The preamble and the proposed background Document Amendment presented the correct treatment standards. The correct treatment standards are being finalized in today's rule.

(1) *Revisions to the Proposed Rule for Wastewaters.* Other commenters urged the Agency to develop treatment standards for wastewater forms of F002 and F005 based on residues from wastewater treatment technologies rather than incineration scrubber waters. Commenters felt that EPA has several performance data from wastewater treatment technologies treating wastewaters containing the same or similar constituents to F002 and F005 which EPA can use in order to develop treatment standards. Commenters emphasize that these performance data better represent the treatment of organic-containing wastewaters rather than incineration scrubber waters alone.

As stated in the Final Rule for Land Disposal Restrictions for Second Third Wastes (54 FR 28629) and reiterated in the proposed rule for Third Third Wastes (54 FR 48390), when the Agency sets appropriate wastewater treatment data from well-designed and well-operated wastewater treatment units, it refers to use these data rather than scrubber water concentrations to develop wastewater treatment standards.

Commenters to the proposed First Third, Second Third, and Third Third rules almost unanimously supported that EPA should promulgate wastewater standards based on the performance of

specific wastewater treatment rather than incinerator scrubber water constituent levels. After reviewing all available data and comments, the Agency agrees with these comments, and is promulgating concentration-based treatment standards for 1,1,2-trichloroethane and benzene based on wastewater treatment data rather than scrubber water for all wastes that were proposed in the Third Third rule. While the Agency did not specifically identify the standards based on wastewater treatment data as alternatives for F and K wastewaters, the Agency believes that this is a logical outgrowth of the notice and comment process. As such, the Agency is today modifying the wastewater treatment standards for F002 and F005.

(2) *Treatment Standards for 1,1,2-Trichloroethane (F002) and Benzene (F005).* The treatment standards promulgated today for organics in wastewater forms of F002 and F005 are based on performance data generated from one, or a combination of two or more of the following BDAT technologies: Biological treatment, steam stripping, carbon adsorption, liquid extraction, and others. (See Section III.A.6.(3) of today's preamble for a discussion of these performance data.) Those treatment standards are expressed as concentration levels for 1,1,2-trichloroethane (F002) and benzene (F005).

The treatment standards promulgated for organics in nonwastewater forms of F002 and F005 are based on incineration. These treatment standards are expressed as concentration based standards for 1,1,2-trichloroethane (F002) and benzene (F005).

Each treatment standard is based on the treatment of another waste containing the same or similar constituents to the one of concern. EPA believes that none of the constituents in F002 and F005 are likely to interfere with the treatment of organics in F002 and F005. As a result, EPA is transferring the available performance data to these two wastes.

(3) *Treatment Standards Expressed as Methods of Treatment for 2-ethoxyethanol and 2-nitropropane.* Comments were received indicating drastic detection limits discrepancies in nonwastewater forms that contain 2-nitropropane. The proposed treatment standards relied on pilot scale data from the stripping of synthetic wastewaters along with incineration performance data for a waste containing a constituent as difficult to treat as 2-nitropropane. Based on the available data, EPA believes that 2-nitropropane

may not be amenable to analytical quantification and thus, a concentration-based treatment standard is not a viable regulatory option at this time. (See section III.A.5.b)

Another problematic constituent is 2-ethoxyethanol. As with 2-nitropropane, the proposed treatment standards relied on in-house treatment studies and performance data from similar wastes. For 2-ethoxyethanol, EPA specifically conducted bench-scale studies for the biological treatment of synthetic wastewaters spiked with 2-ethoxyethanol. Modifications to existing analytical test methods were needed in order to enable EPA to analyze these two organic constituents in wastewaters and nonwastewaters. EPA has determined that the available information is insufficient to promulgate concentration-based treatment standards for wastewater and nonwastewater forms of F005 at this time. As a result, EPA is withdrawing the proposed concentration based treatment standards for F005 wastes that contain 2-nitropropane and 2-ethoxyethanol respectively (i.e., F005 wastes that are listed due to the presence of these constituents). EPA is instead promulgating required methods as the treatment standard.

EPA proposed incineration or steam stripping followed by carbon adsorption as methods of treatment for F005 wastewaters containing 2-nitropropane. This proposal relied on in-house pilot scale steam stripping studies of 2-nitropropane as well as a transfer of steam stripping data for wastewaters containing nitrobenzene. EPA's in-house treatment study indicated that 2-nitropropane is likely to form an azeotrope with water. Therefore, any technology-based treatment standard that specifies steam stripping for these wastes must also specify (or at least emphasize) operating conditions capable of treating this type of azeotrope (or prevent its generation). At this time, EPA lacks sufficient information to develop such detailed standards. EPA is thus withdrawing steam stripping as part of an alternative technology-based treatment standard.

The Agency has determined that chemical oxidation followed by carbon adsorption as well as wet air oxidation followed by carbon adsorption represent BDAT for F005 wastes listed for 2-nitropropane. This determination is based on available performance data for wastewaters containing organic constituents that are as difficult to treat as 2-nitropropane. EPA does not expect any of the other constituents in F005 wastewaters to interfere with the

treatment of 2-nitropropane when treated by these technologies. As a result, EPA is promulgating these two treatment trains along with incineration as technology-based treatment standards for F005 wastewaters listed for 2-nitropropane.

Based on the revisions to the proposed treatment standards for F005 wastewaters containing 2-nitropropane, EPA is also withdrawing its proposed criteria for defining wastewaters in this category of F005 wastewaters (i.e., less than 4% TOC and less than 1% TSS.) The definition of wastewaters and nonwastewaters is thus consistent with those established for all hazardous wastes (i.e., as defined in section 268.2(a)(6) of today's rule but not including the wastewater definitions excluded in § 268.2(a)(6) (i) through (iv).)

EPA is promulgating the proposed technology-based treatment standards for F005 wastes listed for 2-ethoxyethanol as incineration or biodegradation. EPA believes that these technologies are BDAT based on a transfer of information on the treatment of n-butyl alcohol using activated sludge. EPA believes that n-butyl alcohol is as difficult to treat as 2-ethoxyethanol.

For nonwastewater forms of F005 containing these two constituents, EPA is promulgating a treatment standard of "Incineration" as a method of treatment. EPA is specifying further that incinerators operate in accordance with the technical requirements of part 264 subpart O or part 265 subpart O. Residues from incineration are not precluded from land disposal. However, nonwastewater forms of F005 resulting from the required wastewater treatment processes must comply with the incineration treatment standards as a pre-requisite for land disposal.

BDAT TREATMENT STANDARDS FOR F002, LISTED FOR 1,1,2-TRICHLOROETHANE

[Nonwastewaters]

Regulated constituent	Maximum for any single, grab sample, total composition (mg/kg)
1,1,2-Trichloroethane	7.6

BDAT TREATMENT STANDARDS FOR F002, LISTED FOR 1,1,2-TRICHLOROETHANE

[Wastewaters]

Regulated constituent	Maximum for any composite sample, total composition (mg/l)
1,1,2-Trichloroethane	0.030

BDAT TREATMENT STANDARDS FOR F005, LISTED FOR BENZENE

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Benzene.....	3.7

BDAT TREATMENT STANDARDS FOR F005, LISTED FOR BENZENE

[Wastewaters]

Regulated constituent	Maximum for any composite sample, total composition (mg/l)
Benzene.....	0.070

BDAT TREATMENT STANDARDS FOR F005, LISTED FOR 2-NITROPROPANE OR 2-ETHOXYETHANOL

[Nonwastewaters]

Incineration (INCIN) as a method of treatment

BDAT TREATMENT STANDARDS FOR F005, LISTED FOR 2-ETHOXYETHANOL

[Wastewaters]

Incineration (INCIN); or biodegradation (BIODG) as methods of treatment

BDAT TREATMENT STANDARDS FOR F005, LISTED FOR 2-NITROPROPANE

[Wastewaters]

Incineration (INCIN); chemical oxidation (CHOXD) followed by carbon adsorption (CARBN); or wet air oxidation (WETOX) followed by carbon adsorption (CARBN) as methods of treatment

b. F006 and F019

In today's final rule, the Agency is promulgating an amendment to Method 9012, used for analyzing wastes for cyanides. In this amendment, the Agency is specifying that in order to determine compliance with the promulgated treatment standards for nonwastewaters in cyanides, a facility must use a 10 gram sample size and a distillation time of 1 hour and fifteen minutes.

In the June 23, 1989 Second Third final rule, the Agency promulgated treatment standards for amenable and total cyanide constituents for the electroplating, heat treating, and acrylonitrile F and K wastes (54 FR 26610-26615). The Agency transferred certain of these treatment standards to the cyanide wastes listed as P waste codes. The analytical method used to measure cyanide concentrations in treatment residues (thereby determining compliance with the treatment standard) was SW-846 Method 9012.

Commenters suggested that the Agency not amend the analytical method and that the Agency conduct a study that investigates improvements for the analytical method for cyanides and treatment of F006 wastes. The Agency appreciates the commenters' concerns about the analytical method. The Agency is aware that analytical problems exist for measuring total and amenable cyanides in nonwastewaters. The Agency believes that these problems exist because there is no specific sample size and distillation time specified in Method 9012. Because a generator or treater may use any sample size or distillation time, the Agency has decided to amend the analytical method 9012 by promulgating constraints on sample size and distillation time of 10 grams and one hour and fifteen minutes, respectively. In fact, the sample size and the distillation time used to develop the treatment standards for F006, F007, F008, and F009 nonwastewaters were 10 grams and one hour and fifteen minutes, respectively (see RCRA Docket LD10-L0032, letter dated May 1, 1989).

By promulgating these specifications on sample size and distillation time, the Agency believes that compliance with the BDAT treatment standard will occur as a result of actual treatment. EPA does not believe that this promulgated clarification to the analytical method affects the achievability of the cyanide standards already promulgated. After the close of the Second Third rulemaking, a potential loophole in the cyanide analytic method was brought to EPA's attention. The Agency solicited

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information from generators and treaters as to the sample size and distillation time used as standard operating procedures. These facilities indicated that they were achieving the F006 nonwastewater cyanide standard by using a sample size of less than 5 grams and a distillation time of 1 hour (see administrative record for cyanide wastes in today's notice. Also, see 54 FR 48447 noting this information for public comment in this rulemaking). Therefore, the Agency believes that the data in the Second Third rule documenting achievability of the cyanide treatment standard reflects the analytic procedure being promulgated today.

(1) *F006 Wastewaters.* Today's rule promulgates wastewater treatment standards for amenable and total cyanides and metal constituents for F006 wastewaters as proposed. (Nonwastewater standards for F006 metal constituents were promulgated in the First Third final rule, and nonwastewater standards for F006 cyanides were promulgated in the Second Third final rule.) Wastewater treatment standards are based on the performance of alkaline chlorination for the amenable and total cyanides, and chromium reduction followed by chemical precipitation using lime and sulfides and sludge dewatering for the metals. Detailed information on F006 waste characterization and the technical feasibility of the transfer of the performance of the treatment systems can be found in the Final Addendum to the Best Demonstrated Available Technology (BDAT) Background Document for F006.

In addition, commenters believe that the transfer of the treatment for K062 wastewaters to F006 wastewaters is inappropriate. The Agency disagrees with the commenters and believes that the transfer is technically feasible because of the high concentration of metals in K062 as compared to F006 wastewaters, making these wastes more difficult to treat. Furthermore, in determining today's promulgated standards, the Agency also evaluated performance data that were developed by EPA's Office of Water for hydroxide precipitation, sedimentation, and filtration for wastes from the metal finishing industry. However, the Agency did not use these data to develop today's promulgated F006 metal standards because the metal finishing waste characterization data indicated that the untreated concentrations of these metals in these wastewaters were low compared to those in F006 wastewaters. The Agency believes, therefore, that these treatment data for

the metal finishing wastewater streams do not represent treatment of F006 wastewaters and may result in wastewater treatment standards that would be unachievable for actual F006 wastewaters. Thus, the Agency is not promulgating F006 wastewater treatment standards based on these data.

BDAT TREATMENT STANDARDS FOR F006

[Wastewaters]	
Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Cyanides (Total).....	1.2
Cyanides (Amenable).....	.86
Cadmium.....	1.6
Chromium.....	.32
Lead.....	.040
Nickel.....	.44

(2) *F019.* Today's rule promulgates treatment standards for amenable and total cyanides and total chromium in F019 wastewaters and nonwastewaters. The treatment standards for the amenable and total cyanides in the F019 wastewater and nonwastewaters are based on the performance of alkaline chlorination. The treatment standard for the chromium in the F019 wastewater is based on chromium reduction followed by precipitation with lime and sulfide and sludge dewatering. Treatment standard for the chromium in the F019 nonwastewater is based on stabilization.

In the proposed rule, the Agency solicited comments on two options. The first option proposed concentration-based treatment standards for cyanides based on the performance data for wet air oxidation (that is the 390 mg/kg and 20 mg/kg for total and amenable cyanides, respectively). The second option proposed was to transfer the concentration-based treatment standards for cyanides based on the performance of alkaline chlorination for F006-F009 (electroplating wastes) to F019 wastes (that is the 590 mg/kg and the 30 mg/kg for total and amenable cyanides, respectively).

Based on a review of the comments, the majority of the commenters suggested that the Agency promulgate a standard based on the 590 mg/kg limit. The commenters suggest that the electroplating wastes are similar to the F019 waste because of the iron concentration in the untreated wastes. Therefore, the Agency is promulgating cyanide standards based on a transfer of the performance of the treatment

system for electroplating wastes. The Agency believes that the transfer is technically feasible because of the following reasons. First, the Agency believes, as stated in the Final Second Third Rule, that these wastes contain high concentration of iron complex cyanides. The waste characterization data for F006 through F009 indicate that the influent iron concentrations, in some cases, are similar to the F019 wastes based on available waste characterization data. Second, at the time of the proposed rule, the only relevant treatment data available to the Agency to establish treatment standards for these wastes were the performance of wet air oxidation of F019 wastes and from the transferred performance of alkaline chlorination for F006 through F009 wastes. The Agency was reluctant to use the wet air oxidation data to develop treatment standards for F019 because of the analytical discrepancies in the influent concentration of cyanides of typical F019 wastes, suggesting strongly that the wastes treated were unrepresentative. Therefore, the Agency solicited comments on the use of wet air oxidation or any other technology used to develop treatment standards for F019 wastes. During the comment period, the Agency received no treatment data and many comments questioned whether wet air oxidation is applicable technology for these wastes or is demonstrated on a full scale basis. Therefore, the Agency's only alternative in developing cyanide treatment standards for the waste—given the lack of any other data and absence of comment—is to transfer the performance of alkaline chlorination of the electroplating wastes to the F019 wastes.

In addition, the Agency is promulgating a treatment standard for amenable cyanides in F019 nonwastewaters based on the reproducibility of the analytical method for total cyanides. Details of the calculation of the amenable cyanide standards can be found in the background document. The Agency used a similar procedure for developing treatment standards for amenable cyanides in F006-F012 wastes in the Second Third Final Rule (see 54 FR 26611).

The Agency is promulgating treatment standards for total chromium in F019 wastewaters based on the performance of chromium reduction, lime and sulfide precipitation, and sludge dewatering for K062 wastewaters. The Agency believes that this is a technically feasible transfer due to the influent total chromium concentration of 7000 ppm for

K062 is similar to the concentration of chromium in F019 wastewaters.

The Agency is also promulgating treatment standards for total chromium in F019 nonwastewaters based on a transfer of performance data from the stabilization of F006 wastes. The Agency believes that the transfer of the performance of stabilization data from F006 to F019 is technically feasible due to the higher concentration of metals within F006 wastes (i.e. up to 3000 ppm).

BDAT TREATMENT STANDARDS FOR F019

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Cyanides (total).....	1.2
Cyanides (amenable).....	0.86
Chromium (total).....	0.32

BDAT TREATMENT STANDARDS FOR F019

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Cyanides (total).....	590
Cyanides (amenable).....	30
	Maximum for any single grab sample, TCLP (mg/l)
Chromium (total).....	5.2

c. F024

F024—Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in 261.31 or 261.32.)

Wastes identified as F024 are generated primarily by facilities in the organic chemicals manufacturing industry, specifically those engaged in the production of chlorinated aliphatic hydrocarbons. Detailed technical descriptions of the production processes generating these wastes can be found in

the listing background document prepared by EPA for this waste code.

Today's rule amends the treatment standards promulgated on June 23, 1989, for F024 (54 FR 26615) by revising the treatment standards to take account of the presence of chlorinated dibenzodioxins and furans in some nonwastewater and wastewater forms of F024, and still allow for proper treatment of these wastes. Today's rule also promulgates the treatment standards proposed on November 22, 1989, for metal constituents in nonwastewater forms of F024. BDAT treatment standards for nonwastewater metals are based on stabilization of F024 incinerator ash using a cement binder. Other treatment technologies that can achieve these concentration-based treatment standards are not precluded from use by this rule. EPA is promulgating treatment standards for three metal constituents, chromium, lead, and nickel, in nonwastewater forms of F024. The complete list of regulated constituents and treatment standards for this waste are presented in the tables at the end of this section. Treatment standards for volatile and semivolatile organic constituents in F024 nonwastewaters and volatile and semivolatile organic and metal constituents in F024 wastewaters were promulgated on June 23, 1989 (54 FR 26615) and are not being amended by this rulemaking unless specifically stated.

Several commenters confirmed EPA's inquiry in the Third Thirds proposed rule (54 FR 48450) that some treatment facilities that previously treated F024 are now refusing to do so because the treatment standards for F024 include standards for various chlorinated dibenzo-dioxins and furans. Commenters agreed that this is the case and documented the current refusal of commercial treatment facilities to accept this waste, whether or not the waste actually contained any chlorinated dibenzo-dioxins and/or furans. All of the commenters agreed that the existence of a dioxin standard is the basis for the refusal to treat. This has resulted in a capacity shortage for treatment of F024 wastes. Commenters further stated that if the treatment standards for other organic constituents in F024 were met, they believed that the treatment standards for the chlorinated dibenzo-dioxins and furans would also be met. Two commenters suggested specific constituents that may be used as surrogates for the chlorinated dibenzo-dioxins' and furans' treatment standards.

The Agency may elect not to regulate every BDAT List constituent that is present or suspected to be present in a listed waste. Frequently, EPA elects an appropriate subset of constituents for regulation in order to facilitate compliance and enforcement. In selecting constituents for regulation, the Agency considers, among other factors, the relative difficulty involved in treating each constituent by the treatment technology identified as BDAT. The subset of constituents selected should ensure that other constituents of concern are adequately treated when the treatment standards for the regulated constituents are met. Waste characteristics affecting the performance of the treatment technology (WCAPs) are used to identify the hardest to treat constituents present in a waste. These constituents may then be selected for regulation and used as surrogates for other non-regulated constituents of concern to ensure that they are adequately treated. For incineration technologies, WCAPs include a constituent's boiling point for nonwastewater residuals and a constituent's bond dissociation (BDE) for wastewater residuals. Constituents with higher boiling points and BDEs are considered to be more difficult to treat than those with lower boiling points and BDEs for nonwastewater and wastewater residuals, respectively.

The Agency did not feel the surrogates suggested for the chlorinated dibenzo-dioxins and furans in F024 wastes by the two commenters were appropriate because they were not more difficult to treat than these constituents (with boiling points ranging from 400 to 500 degrees Celsius and BDEs ranging from 960 to 2,490 kcal/mole), and therefore would not ensure adequate treatment of the chlorinated dibenzo-dioxins and furans. Also, the Agency attempted on its own to develop surrogates, but was unable to identify an appropriate surrogate that was present at treatable levels in all of the wastes containing the chlorinated dibenzo-dioxin and furan constituents. At best, achieving all of the non-dioxin/furan standards' serves as a generalized indication that treatment for dioxins and furans was probably also effective.

The concentration-based treatment standards that were promulgated for the chlorinated dibenzo-dioxins and furans in F024 (54 FR 26615) may hinder effective treatment because of the refusal of treatment facilities to accept these wastes due to the perceived stigma of managing wastes containing chlorinated dioxins and furans. Also, as noted, the Agency is unable to select an

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appropriate particular surrogate which would ensure adequate treatment of these constituents. Finally, the Agency believes that incineration technologies can effectively treat chlorinated dibenzo-dioxins and furans based on the results obtained from the Agency-sponsored incineration treatment test of F024 wastes containing these constituents.

Therefore, based on the above considerations, the Agency is revising the treatment standards promulgated on June 23, 1989 to specify incineration as a method of treatment for F024 wastes (organic constituents only). If these wastes are incinerated, the record indicates that dioxins and furans, as well as all of the other hazardous constituents in the waste will be substantially destroyed. To ensure that incineration is fully effective, the Agency will also retain in the rule the existing standards for organics promulgated in the Second Third rule. Thus, there will be no specific standard for dioxins and furans in the rule, which should alleviate the treatment industry's reluctance to accept these waste. The § 268.7 certification would refer to the designated method for treating this waste, and certify that the standards for organic hazardous constituents (which do not include dioxins and furans) have been satisfied. Standards for metals would remain as numerical limits, however. These standards are discussed below. (Ordinarily the Agency would not alter a regulatory standard due to industry recalcitrance. In this case, however, the clear existence of a problem, the Agency's desire to have industry resume treatment of these wastes (there was no capacity shortfall until EPA promulgated the Second Third treatment standard), and the statutory prohibitions on disposal and storage (which foreclose all legitimate waste management options) have led EPA to revise the treatment standard.)

Two commenters stated that the proposed treatment standards for metal constituents may preclude F024 from being accepted at commercial incineration facilities. The Agency feels that the treatment standards calculated from stabilization testing of F024 incinerator ash appropriately reflect the level of performance achievable via stabilization for chromium, lead, and nickel in F024. In addition, EPA has not received treatment performance data from the regulated community indicating that the proposed treatment standards cannot be met. Therefore, the Agency has no reason to believe that the treatment standards proposed for chromium, lead, and nickel in

nonwastewater forms of F024 cannot be reliably met on a routine basis and is not revising the proposed treatment standards in today's rule.

One commenter expressed concern that other forms of incineration (i.e., liquid and gas phase incineration) are precluded from use in meeting the treatment standards for organic constituents in F024 if rotary kiln incineration is specified as BDAT. Liquid injection incineration and fluidized bed incineration may provide equivalent levels of treatment to rotary kiln incineration and, therefore, may be considered equivalent BDAT technologies for organic constituents in liquid and solid forms of F024, respectively. As is the case for all concentration-based treatment standards promulgated in the land disposal restrictions program, the use of other treatment technologies that can achieve the promulgated concentration-based treatment standards in F024 is not precluded by the second third rule (54 FR 26615). Nor is the incineration standard specified as an alternative treatment standard in today's rule based on any particular type of incineration.

One commenter stated that the treatment standards promulgated for the nine volatile and semivolatile organic constituents in nonwastewater forms of F024 (54 FR 26615) were set below practical quantitation limits (PQLs) and should be revised. The commenter is incorrect. The treatment standards for these nine organic constituents in nonwastewater forms of F024 were based on the detection limits of these constituents achieved on F024 residuals analyzed following the Agency-sponsored incineration treatment test. The PQLs the commenter refers to were obtained from analyzing a non-F024 incinerator ash.

One commenter expressed concern that the definition of F024 had been revised to include wastewaters. The wastewater treatment standards adopted for F024 are applicable to wastewater residuals derived from the treatment or leaching of nonwastewater forms of F024 as defined in 40 CFR 261.31. This does not include process wastewaters from the production of chlorinated aliphatic hydrocarbons.

BDAT TREATMENT STANDARDS FOR F024

[Nonwastewaters]

Incineration (INCIN) as a method and meet the following standards

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
2-Chloro-1,3-butadiene	0.28
3-Chloropropene	0.28
1,1-Dichloroethane	0.014
1,2-Dichloroethane	0.014
1,2-Dichloropropane	0.014
cis-1,3-Dichloropropene	0.014
trans-1,3-Dichloropropene	0.014
Bis(2-ethylhexyl)phthalate	1.8
Hexachloroethane	1.8

Regulated constituent	Maximum for any single grab sample TCLP (mg/l)
Chromium (total)	0.073
Lead	0.021
Nickel	0.088

BDAT TREATMENT STANDARDS FOR F024

[Wastewaters]

Regulated constituent	Maximum for any single grab sample total composition (mg/kg)
2-Chloro-1,3-butadiene	0.28
3-Chloropropene	0.28
1,1-Dichloroethane	0.014
1,2-Dichloroethane	0.014
1,2-Dichloropropane	0.014
cis-1,3-Dichloropropene	0.014
trans-1,3-Dichloropropene	0.014
Bis(2-ethylhexyl)phthalate	0.036
Hexachloroethane	0.036
Chromium (total)	0.35
Nickel	0.47

d. F025 Waste

F025—Condensed light ends, spent filters and filter aids and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five with varying amounts and positions of chlorine substitution.

On December 11, 1989, (54 FR 50968) EPA amended its regulations under RCRA by listing as hazardous one generic category of waste generated during the manufacture of chlorinated aliphatic hydrocarbons by free radical catalyzed processes having carbon

chain lengths ranging from one to five (EPA Hazardous Waste No. F025). The listing of EPA Hazardous Waste No. F025 becomes effective on June 11, 1990. In anticipation of this listing, the Agency proposed concentration-based treatment standards for F025 wastes in the November 22, 1989 land disposal restrictions proposal (54 FR 48450) for third third wastes. The Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to determine specific treatment standards which the waste must achieve prior to land disposal within six months of the listing of the waste as hazardous.

Therefore, today's rule promulgates final treatment standards for wastewater and nonwastewater forms of F025 waste as proposed.

F025 wastes are characterized as condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons. For the purposes of establishing treatment standards, the wastes have been grouped into two subcategories: condensed light ends and filters/aids and desiccants. Available characterization data suggest that different constituents may be contained in each of these subcategories. As such, the Agency is promulgating concentration-based treatment standards to reflect these differences in physical and chemical composition. Concentration-based treatment standards for all wastewater and nonwastewater forms of F025 are promulgated today based on the transfer of performance data used in the development of treatment standards for specific U and P wastes that are constituents in the various F025 subcategories. (See sections III.A.2.c. and III.A.2.d. for additional information). Because no comments were received on the proposed regulation for any of the specific constituents of F025 wastewaters or nonwastewaters, the Agency assumes that generators and treaters of F025 agree with EPA's assessment of the treatment of this waste. Further information on the development of treatment standards can be found in the Background Document for F025 Wastes in the RCRA docket.

BDAT TREATMENT STANDARDS FOR F025

[Nonwastewaters]
[Light Ends Subcategory]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Chloroform.....	6.2
1,2-Dichloroethane.....	6.2
1,1-Dichloroethylene.....	6.2
Methylene chloride.....	31
Carbon tetrachloride.....	6.2
1,1,2-Trichloroethane.....	6.2
Trichloroethylene.....	5.6
Vinyl chloride.....	33

BDAT TREATMENT STANDARDS FOR F025

[Wastewaters]
[Light Ends Subcategory]

Regulated constituent	Maximum for any 24-hour composite sample, total composition (mg/l)
Chloroform.....	0.046
1,2-Dichloroethane.....	0.21
1,1-Dichloroethylene.....	0.025
Methylene chloride.....	0.089
Carbon tetrachloride.....	0.057
1,1,2-Trichloroethane.....	0.054
Trichloroethylene.....	0.054
Vinyl chloride.....	0.27

BDAT TREATMENT STANDARDS FOR F025

[Nonwastewaters]
[Spent Filters/Aids and Desiccants Subcategory]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Chloroform.....	6.2
Methylene chloride.....	31
Carbon tetrachloride.....	6.2
1,1,2-Trichloroethane.....	6.2
Trichloroethylene.....	5.6
Vinyl chloride.....	33
Hexachlorobenzene.....	37
Hexachlorobutadiene.....	28
Hexachloroethane.....	30

BDAT TREATMENT STANDARDS FOR F025

[Wastewaters]
[Spent Filters/Aids and Desiccants Subcategory]

Regulated constituent	Maximum for any 24-hour composite sample, total composition (mg/l)
Chloroform.....	0.046
Methylene chloride.....	0.089
Carbon tetrachloride.....	0.057

BDAT TREATMENT STANDARDS FOR F025—Continued

[Wastewaters]
[Spent Filters/Aids and Desiccants Subcategory]

Regulated constituent	Maximum for any 24-hour composite sample, total composition (mg/l)
1,1,2-Trichloroethane.....	0.054
Trichloroethylene.....	0.054
Vinyl chloride.....	0.27
Hexachlorobenzene.....	0.055
Hexachlorobutadiene.....	0.055
Hexachloroethane.....	0.055

e. K001 and U051

K001—Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.

U051—Creosote

As noted in the November 22, 1989 proposal (54 FR 48410), U051 wastes differ from other U wastes in that the waste is not defined by one chemical or constituent, but by a group of chemicals defined by the generic term of "creosote". Creosote is a derivative of coal that contains a wide range of constituents including cresols, phenols, naphthalene, benz(a)anthracene, benzo(a)pyrene, fluoranthene, chrysene, indeno(1,2,3-cd)pyrene and acenaphthalene. Today's rule promulgates final treatment standards for U051 (creosote) wastewaters and nonwastewaters as proposed. The regulated constituents are naphthalene, pentachlorophenol, phenanthrene, pyrene, toluene, xylenes and lead. The treatment standards for the organic constituents were established based on the performance of incineration of K001 waste. Treatment standards for lead were based on the transfer of performance standards from the stabilization of lead in K001 nonwastewaters and chemical precipitation of lead in K001 wastewaters. Treatment standards for K001 wastewaters and nonwastewaters were promulgated in the First Third final rule on August 8, 1988. Because no comments were received on the proposed regulation for any of the specific constituents of U051, EPA assumes that generators and treaters of this waste agree with EPA's assessment of the treatment of U051 wastes.

The Agency is also promulgating, as proposed, revisions to the concentration-based treatment standards for K001 organics due to a mathematical error that was made in the

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calculation of the original standards. These revisions have been reflected in the U051 standards. Additional information on the revised standards can be found in the Addendum to the K001 and U051 Background Document.

As EPA noted in the November 22, 1989 proposal (54 FR 48410), if U051 is simply discarded before it is used (for example because it is off-specification) then it would be unlikely to have all of the same contaminants as K001 wastes. On the other hand, when U051 is spilled at a wood preserving site, then it could contain the same contaminants, in particular pentachlorophenol and lead, as K001 wastes due to the high potential for cross-contamination due to prior use of pentachlorophenol at the site. Since the Agency anticipates that most of the U051 wastes come from spill residues at wood preserving sites, EPA is conservatively promulgating standards that include those constituents that are likely to be present in this form of the waste. In situations where a facility never used pentachlorophenol or where the U051 is only anticipated to be generated as an off-spec product (and pentachlorophenol was never used in the production equipment), EPA anticipates that the facility's waste analysis plan could be revised so that only the constituents that are likely to be present in that form of the waste are monitored.

BDAT TREATMENT STANDARDS FOR K001 AND U051
[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Naphthalene.....	1.5
Pentachlorophenol	7.4
Phenanthrene.....	1.5
Pyrene.....	1.5
Toluene.....	28
Xylene(s).....	33
	Maximum for any single grab sample, TCLP (mg/l)
Lead.....	0.51

BDAT TREATMENT STANDARDS FOR K001 AND U051
[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Naphthalene.....	0.031
Pentachlorophenol	0.18
Phenanthrene.....	0.031
Pyrene.....	0.028
Toluene.....	0.028
Xylene(s).....	0.032
Lead.....	0.037

f. K002, K003, K004, K005, K006, K007, K008

- K002—Wastewater treatment sludge from the production of chrome yellow and orange pigments.
- K003—Wastewater treatment sludge from the production of molybdate orange pigments.
- K004—Wastewater treatment sludge from the production of zinc yellow pigments.
- K005—Wastewater treatment sludge from the production of chrome green pigments.
- K006—Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).
- K007—Wastewater treatment sludge from the production of iron blue pigments.
- K008—Oven residue from the production of chrome oxide green pigments.

In today's rule, the Agency is promulgating nonwastewater and wastewater treatment standards for waste codes K002 through K008. BDAT for metal constituents in K002, K003, K004, K005, K006 (anhydrous), K007, and K008 nonwastewaters are based on the performance of chemical precipitation, sludge dewatering, and filtration. BDAT for chromium in K006 (hydrated) is based on the performance of stabilization for F006 wastes. BDAT for cyanides in K005 and K007 wastewaters is based on the performance of alkaline chlorination. BDAT for metal constituents in K002, K003, K004, K005, K006, K007, and K008 are based on chromium reduction, chemical precipitation, and sludge dewatering. For K005 and K007 nonwastewaters, the Agency is reserving the treatment standard for amenable and total cyanides. The Agency believes that these wastes contain treatable concentrations of cyanides. Because the Agency did not propose treatment standard for cyanides in these wastes, in this rule the Agency is providing notice that standards will be proposed for restrictions in a future rulemaking. Detailed technical descriptions of the specific production processes generating

these wastes can be found in the Background Document for Inorganic Pigment Wastes.

(1) *Nonwastewaters.* In the Second Third Final Rule (53 FR 26594, June 23, 1989), EPA promulgated treatment standards of "No Land Disposal Based on No Generation" for K005 and K007 wastes. In today's final rule, the Agency is revoking these standards and is promulgating numerical treatment standards because a source wishing to manufacture these pigments in the future would be forced to apply for a variance from the treatment standard (40 CFR 268.44).

In the First Third Final Rule, EPA also promulgated a standard of "No Land Disposal Based on No Generation" for K004 and K008. EPA modified this standard to apply only to certain newly generated waste as part of the May 2, 1989, Final Rule (54 FR 18836). On January 11, 1989, EPA also proposed to modify this designation to "No Land Disposal Based on Recycling". During the comment period for the Second Third Proposed Rule, EPA received information that the recycling operation under consideration for these wastes may involve a limited captive market for the waste by-product; therefore, not all generators would be able to sell their processed K004 and K008. As a result, EPA revoked the "No Land Disposal Based on No Generation" standard in the Second Third Final Rule (54 FR 26617) and is promulgating numerical treatment standards for these wastes in today's rule.

For the K002, K003, K004, K005, K006 (anhydrous), K007, and K008 nonwastewaters, EPA is transferring the performance of the treatment of precipitation, sludge dewatering, and filtration for K062 nonwastewaters to these wastes. The Agency believes that these wastes are similar to K062 because the wastewaters from which K062 sludge are derived are similar in nature to the inorganic pigment wastewaters (i.e., consisting of inorganic constituents).

In the case of hydrated K006 nonwastewaters, EPA is promulgating treatment standards for this waste based on a performance of stabilization of F006. The Agency believes that this is a technically feasible transfer because of the chromium content and other dissolved metals which are in higher concentrations in F006 than K006. The Agency received supportive comments on the transfer feasibility of F006 to K006.

(2) *Wastewaters.* EPA is promulgating treatment standards based on the chrome pigment effluent guidelines for

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discharges from this industrial category regulated under the National Pollutant Discharge Elimination System (NPDES) (40 CFR 415.340). The final standards are taken directly from the concentrations as stated in the "Development Document for Effluent Limitations Guidelines, New Source Performance Standards, and Pretreatment Standards for the Inorganic Chemicals Manufacturing Point Source Category, June, 1982. These standards are based on chromium conversion and lime precipitation to remove metals.

For K005 and K007 wastes, the Agency is promulgating treatment standards for total cyanides. These treatment standards are based on the performance of alkaline chlorination for pigment wastes. The Agency received no comments disputing the technical feasibility of the transfer from Effluent Limitations Guidelines data to pigment wastewaters. Although the effluent limitations guidelines and standards contain both 30 day and one day numbers, the RCRA treatment standard specifies only the one day standards.

Land disposal restrictions and corresponding implementation and enforcement procedures have been based on either a grab or a composite standard. Consistent with other BDAT treatment standards, the Agency is therefore promulgating only the one day standards which were proposed. These standards will provide appropriate control of the waste prior to land disposal without the need for a 30 day monitoring.

BDAT TREATMENT STANDARDS FOR K002, K003, K004, K005, K006 (ANHYDROUS), K007 AND K008

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Chromium (Total).....	0.094
Lead	0.37

BDAT TREATMENT STANDARDS FOR K005 AND K007

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Chromium (Total).....	0.094
Lead	0.37
Cyanides (Total).....	Reserved.

BDAT TREATMENT STANDARDS FOR K006 (HYDRATED)

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Chromium (Total).....	5.2

BDAT TREATMENT STANDARDS FOR K002, K003, K004, K006 (ANHYDROUS AND HYDRATED), AND K008

[Wastewaters]

Regulated constituent	Maximum for any composite sample, total composition (mg/l)
Chromium (Total).....	2.9
Lead	3.4

BDAT TREATMENT STANDARDS FOR K005, AND K007

[Wastewaters]

Regulated constituent	Maximum for any composite sample, total composition (mg/l)
Chromium (Total).....	2.9
Lead	3.4
Cyanides (Total).....	0.74

g. K011, K013 and K014

K011—Bottom stream from the wastewater stripper in the production of acrylonitrile.

K013—Bottom stream from acetonitrile column in the production of acrylonitrile.

K014—Bottoms from the acetonitrile purification column in the production of acrylonitrile.

In the Second Third Final Rule, the Agency promulgated treatment standards for the K011, K013, and K014 nonwastewaters (54 FR 28614, June 23, 1989). Treatment standards for the nonwastewaters were based on the performance of incineration. In addition, the Agency proposed treatment standards for K011, K013, and K014 wastewaters in the Second Third proposed rule on January 11, 1989 (54 FR 1056). Commenters on the proposed wastewater standards indicated that they were in the process of developing wet air oxidation data for these wastewaters.

Since the Agency concurred that wet air oxidation was an applicable technology for these wastes and since the other data available to the Agency for treatment of these wastewaters were

relatively incomplete, the Agency chose not to promulgate the proposed wastewater treatment standards at that time. After the close of the comment period, commenters submitted their performance data for treatment of K011, K013, and K014 wastewaters using wet air oxidation, which demonstrated substantial reduction of waste toxicity and mobility. As a result, the Agency is promulgating treatment standards for organics and total cyanides in K011, K013, and K014 wastewaters. Treatment standards are based on the performance of wet air oxidation for the organics and cyanides.

Many commenters had questions on the TOC cutoff level for K011, K013, and K014 wastewaters. These commenters suggested that because the TOC levels in wastewaters fluctuate, the Agency should develop a higher cutoff level. The Agency agrees that the TOC levels in wastewaters may fluctuate above the level proposed and is accordingly redefining the cutoff level for wastewaters. Therefore, the Agency is defining K011, K013, and K014 wastewaters (as generated) as containing less than 5 percent (%) Total Organic Content (TOC) and less than 1% Total Suspended Solids (TSS). The Agency believes that the 5% cutoff level is applicable based on the available waste characterization data for K011, K013, and K014 wastes. As generated, all of these wastes are liquid and contain primarily water, yet they sporadically contain over 1% TOC (but not more than 5%) and would have been classified as nonwastewaters based on the Agency's standard cut-off of 1% TOC.

In addition, the technology of choice for K011, K013, and K014 liquids with less than 5% TOC is wet air oxidation. Since wet air oxidation is typically designed to handle slightly higher than 5% TOC levels (10% TOC is cited in guidance as a typical maximum level for wet air oxidation, but wet air oxidation systems are usually designed for lower levels) the Agency determined that it is an appropriate technology for these wastes and that the TOC cut-off level for K011, K013, and K014 wastewaters should be adjusted accordingly.

In addition, the Agency has received comments indicating that the standard for acrylonitrile is too low for these wastes. Commenters requested that the Agency reevaluate the calculation of the treatment standard (i.e., the variability factor) for this constituent. The Agency does not agree with the commenters that the acrylonitrile standard is unachievable. Based on the analysis of the data, the concentration of

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acrylonitrile in the treated waste was below the detection limit. The BDAT methodology states that when all of the treated data for one constituent are at the level of detection, then the Agency believes that the data are normally distributed. Therefore, the variability factor is 2.8. The Agency calculates a treatment standard by multiplying the variability factor times the mean of the treated wastes. Therefore, this analysis is within the BDAT methodology. Furthermore, the Agency received no additional treatment data during the comment period for the proposed rule, demonstrating that the standard for acrylonitrile (based on actual treatment performance data for these wastes) is too low.

BDAT TREATMENT STANDARDS FOR K011, K013, K014

[Wastewaters <5% TOC and <1% TSS]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Acetonitrile.....	38
Acrylamide.....	19
Acrylonitrile.....	0.06
Benzene.....	0.02
Cyanides (total).....	21

h. K015

K015—Still bottoms from the distillation of benzyl chloride.

The Agency is today promulgating final treatment standards for nonwastewater forms of K015 as proposed. The Agency is promulgating treatment standards for five organic and two metal constituents. Treatment standards for the organic constituents are based on a transfer of performance data from the incineration of K019 and K087 wastes.

The Agency is also promulgating concentration-based treatment standards for the metal constituents nickel and chromium based on the transfer of performance data from K048-K052 waste. The Agency received several comments regarding the nickel standard for K015. The commenters stated that the numerical standard for nickel was extremely low and urged the Agency to reconsider the proposed standard. The treatment standard for nickel was proposed based on a transfer from K048-K052 wastes which were also proposed as part of the November 22, 1989 notice. The Agency received as part of the K048-K052 proposal, additional data and information from commenters that altered the proposed

treatment standard for nickel. See section III.A.4.o. of today's preamble for a complete discussion of the comments. As a result of the change made to the K048-K052 treatment standard for nickel, the Agency has determined that a modification to the nickel treatment standard for K015 is appropriate and is therefore revising and promulgating the modified standard in today's rule. Further information on the development of treatment standards can be found in the Addendum to the Background Document for K015 Wastes in the RCRA docket.

BDAT TREATMENT STANDARDS FOR K015

[Nonwastewaters]

[Revised From No Land Disposal]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Anthracene.....	3.4
Benzal chloride.....	6.2
Benzo (b/k) fluoranthene.....	3.4
Phenanthrene.....	3.4
Toluene.....	6.0

	Maximum for any single grab sample, TCLP (mg/l)
Chromium (Total).....	1.7
Nickel.....	0.2

i. K017 and K073

K017—Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.

K073—Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.

Today's rule promulgates final treatment standards for K017 and K073 wastewaters and nonwastewaters. The Agency noted in the November 22, 1989 proposal (54 FR 48393) that treatment standards for K017 and K073 wastes were originally scheduled to be promulgated as part of the First Third rulemaking (i.e., they were to be promulgated by August 8, 1988). The Agency did not however promulgate standards for K017 or K073 by August 8, 1988, and as a result, land disposal of these wastes were subject to the "soft hammer" provisions of 40 CFR 268.8, until May 8, 1990.

Concentration-based treatment standards for nonwastewater forms of K017 are being promulgated based on

the transfer of performance data from incineration of nonwastewater forms of F024 (wastes from the production of chlorinated aliphatics such as distillation residues, heavy ends, tars, and reactor clean-out wastes) waste. Concentration-based treatment standards are also being promulgated today for nonwastewater forms of K073 based on the transfer of performance data from incineration of nonwastewater forms of K019 (heavy ends from the distillation of ethylene dichloride in ethylene dichloride production) waste. No comments were specifically received on the proposed regulation for K017 and K073 wastes, however, the Agency did receive one comment on the difficulties of analyzing for specific BDAT list constituents in incinerator ash. The reader is referred to section III.A.5.(a)(5)(b.) of today's preamble for a complete discussion of this comment. As a result of this comment, the Agency is revising the nonwastewater standards for the regulated constituents in K017 to reflect these analytical concerns.

In the November 22, 1989 notice, the Agency proposed concentration-based treatment standards for wastewater forms of K017 and K073 based on incinerator scrubber water (F024 and K019 scrubber water respectively). At this time, the Agency also proposed two sets of treatment standards for the majority of U and P wastewaters for which concentration-based standards could be established. One set of standards was based on incinerator scrubber water while the alternate set of standards was based on a transfer of treatment performance data for wastewaters containing these constituents from various data sources. The reader is referred to the discussion in section III.A.5.(a)(1.) of today's preamble for additional information.

Commenters to the proposed rule for First Third, Second Third and Third Third wastes however, almost unanimously supported the option of promulgating wastewater treatment standards based on the performance of specific wastewater treatment rather than incinerator scrubber water constituent levels. Upon review of all available data and comments, the Agency agrees with this comment and is today promulgating concentration-based treatment standards based on wastewater treatment data rather than scrubber water for wastes that were proposed in the Third Third rule.

While the Agency did not specifically identify the standards based on wastewater treatment data as alternatives for F and K wastewaters,

the Agency believes that this is a logical outgrowth of the notice and comment process. As such, the Agency is today modifying and promulgating the wastewater standards for both K017 and K073 wastewaters based on the performance of wastewater treatment. Information on the technical development of the constituent specific treatment standards for these wastes can be found in the K017 and K073 background documents. Detailed information on the development of the wastewater treatment standards by constituent can be found in the background document entitled, Final Best Demonstrated Available Technology (BDAT) Background Document for U and P Wastes and Multi-Source Leachate (F039) Volume A: Wastewater Forms of Organic U and P Wastes and Multi-Source Leachates (F039) For Which There Are Concentration-Based Treatment Standards.

BDAT TREATMENT STANDARDS FOR K073

[Wastewaters]	
Regulated constituent	Maximum for any 24-hour composite sample, total composition (mg/l)
Carbon tetrachloride.....	0.057
Chloroform.....	0.046
Hexachloroethane.....	0.055
Tetrachloroethene.....	0.056
1,1,1-Trichloroethane.....	0.054

j. K021

K021—Aqueous spent antimony catalyst from fluoromethane production.

Final treatment standards are being promulgated today for nonwastewater forms of K021 wastes as proposed. The treatment standards for organics are based on the transfer of performance data from incineration of nonwastewater forms of K019 (heavy ends from the distillation of ethylene dichloride in ethylene dichloride production) waste. No comments were received on the proposed standards. Concentration-based treatment standards for antimony in nonwastewater forms of K021 are being promulgated today based on the transfer of performance data from the stabilization of ash from the incineration of nonwastewater forms of K048 (dissolved air flotation (DAF) float from the petroleum refining industry) and K051 (API separator sludge from the petroleum refining industry) wastes.

In the November 22, 1989, proposal (54 FR 48394), the Agency simultaneously proposed alternative concentration-based treatment standards for antimony nonwastewater based on the performance of vitrification of arsenic wastes (see section III.A.5.(a.) of the November 22, 1989, notice describing the development of this arsenic standard for D004 wastes) and antimony wastewaters based on the performance of lime precipitation, sedimentation and filtration (see the November 22, 1989, notice (54 FR 48393) describing the development of wastewater treatment standards for U and P wastes). At that time, the Agency solicited comment from the public on the appropriateness of these alternative transfers. However, because no comments or data were received for either set of standards for antimony, EPA assumes that generators and treaters of K021 wastes agree with EPA's initial assessment of the treatment of antimony based on the transfer of performance data from K048 and K051 wastes. Therefore, the Agency is promulgating the proposed

concentration-based treatment standards for antimony based on the transfer of performance data from these wastes. Details on this transfer and the other nonwastewater standards for K021 wastes can be found in the Background Document for K021 wastes in the RCRA docket.

In the November 22, 1989, notice, the Agency also proposed concentration-based treatment standards for wastewater forms of K021 based on incinerator scrubber water from K019 waste. The Agency also proposed two sets of wastewater treatment standards for the majority of U and P wastewaters for which concentration-based standards could be established. One set of standards was based on incinerator scrubber waste while the alternate set of standards was based on a transfer of treatment performance data from wastewaters containing these constituents from various data sources. The reader is referred to the discussion in section III.A.5.(a.)(1.) of today's preamble for additional information.

As stated in the Final Rule for Land Disposal Restrictions for Second Third Wastes (54 FR 28629) and reiterated in the proposed rule for Third Third Wastes (54 FR 48390), when the Agency has appropriate wastewater treatment data from well-designed and well-operated wastewater treatment units, it prefers to use these data rather than scrubber water concentrations to develop wastewater treatment standards.

Commenters to the proposed rules for the First Third, Second Third and Third Third wastes however, almost unanimously supported the option of promulgating wastewater treatment standards based on the performance of specific wastewater treatment rather than incinerator scrubber water constituent levels. Upon review of all available data and comments, the Agency agrees with the commenters, and is today promulgating concentration-based treatment standards based on wastewater treatment data rather than scrubber water for wastes that were proposed in the Third Third rule.

While the Agency did not specifically identify the standards based on wastewater treatment data as alternatives for F and K wastewaters, the Agency believes that this is a logical outgrowth of the notice and comment process. As such, the Agency is today modifying and promulgating the wastewater standards for K021 wastewaters based on the performance of wastewater treatment. Detailed information on the development of the

BDAT TREATMENT STANDARDS FOR K017

[Nonwastewaters]	
Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
1,2-Dichloropropane.....	18
1,2,3-Trichloropropane.....	28
1,2-Dichloroethyl ether.....	7.2

BDAT TREATMENT STANDARDS FOR K017

[Wastewaters]	
Regulated constituent	Maximum for any 24-hour composite sample, total composition (mg/l)
1,2-Dichloropropane.....	0.85
1,2,3-Trichloropropane.....	0.85
1,2-Dichloroethyl ether.....	0.033

BDAT TREATMENT STANDARDS FOR K073

[Nonwastewaters]	
Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Carbon tetrachloride.....	6.2
Chloroform.....	6.2
Hexachloroethane.....	30
Tetrachloroethene.....	6.2
1,1,1-Trichloroethane.....	6.2

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wastewater treatment standards by constituent can be found in the background document entitled, Final Best Demonstrated Available Technology (BDAT) Background Document For U and P Wastes and Multi-Source Leachates (F039) Volume A: Wastewater Forms of Organic U and P Wastes and Multi-Source Leachates (F039) For Which There Are Concentration-Based Treatment Standards.

BDAT TREATMENT STANDARDS FOR K021

[Nonwastewaters]

[Revised from no land disposal]

	Maximum for any single grab sample, total composition (mg/kg)
Carbon tetrachloride.....	6.2
Chloroform.....	6.2
	Maximum for any single grab sample, TCLP (mg/l)
Antimony.....	0.23

BDAT TREATMENT STANDARDS FOR K021

[Wastewaters]

Regulated constituent	Maximum for any 24-hour composite sample, total composition (mg/l)
Chloroform.....	0.046
Carbon tetrachloride.....	0.057
Antimony.....	0.60

k. K022, K025, K026, K035, and K083

K022—Distillation bottom tars from the production of phenol/acetone from cumene.

K025—Distillation bottoms from the production of nitrobenzene by the nitration of benzene.

K026—Stripping still tails from the production of methyl ethyl pyridines.

K035—Wastewater treatment sludges generated in the production of creosote.

K083—Distillation bottoms from aniline production.

EPA is promulgating treatment standards for K022 (wastewaters only), and all forms of K025, K026, K035, and K083. Treatment standards promulgated today for K025 and K083, revoke the "No Land Disposal Based on No Generation" treatment standards promulgated on August 8, 1988 and modified on May 2, 1989. (See 53 FR 31167 and 31174 (August 17, 1988) and 54 FR 18836 (May

2, 1989).) A technical description of these five wastes can be found in the Listing Background Documents for each waste.

(1) *Revisions to the Standards for Wastewaters.* EPA developed the proposed treatment standards based on the transfer of performance data from wastes believed to be as difficult to treat as K022, K025, K026, K035, and K083. The proposed treatment standards for both wastewater and nonwastewater forms of these five wastes, if applicable, were based on residues from incineration. Several commenters urged EPA to develop treatment standards for the organics regulated in wastewaters based on performance data resulting from wastewater treatment technologies. Specifically, commenters urged EPA to adopt the same performance data used by EPA in developing treatment standards for multi-source leachate. Other commenters urged the Agency to use performance data from the Office of Water.

As stated in the Final Rule for Land Disposal Restrictions for Second Third Wastes (54 FR 26629) and reiterated in the proposed rule for Third Third wastes (54 FR 48390), when the Agency has appropriate wastewater treatment data from well-designed and well-operated wastewater treatment units, it prefers to use these data rather than scrubber water concentrations to develop wastewater treatment standards. Commenters to the proposed rule for First Third, Second Third and Third Third wastes almost unanimously supported the option of promulgating wastewater treatment standards based on the performance of specific wastewater treatment rather than incinerator scrubber water constituent levels. Upon review of all available data and comments, the Agency agrees with the commenters and is today promulgating concentration-based treatment standards based on wastewater treatment data rather than scrubber water for wastes that are proposed in the Third Third rule.

While the Agency did not specifically identify the standards based on wastewater treatment data as alternatives for F and K wastewaters, the Agency believes that this is a logical outgrowth of the notice and comment process. As such, the Agency is today modifying the concentration-based treatment standards for K022, K035, and K083 wastewaters. However, EPA is withdrawing the proposed concentration-based treatment standards for the K025 and K026 wastewaters, EPA is instead,

promulgating technology-based treatment standards.

(2) *Treatment Standards for K022 Wastewaters.* The concentration-based treatment standards promulgated today for K022 are based on performance data generated from one, or a combination of two or more of the following BDAT technologies: biological treatment, steam stripping, carbon adsorption, liquid extraction, and others. (See Section III.A.6.(3) of today's preamble for a discussion of these performance data for multi-source leachate.) Treatment standards promulgated for metals (chromium and nickel) in wastewater forms of K022 are based on chemical precipitation followed by vacuum filtration of wastewaters containing the metals of concern.

One commenter objected to EPA's rationale for regulating chromium and nickel in K022 wastewaters by relying on performance data from the treatment of listed hazardous wastes that only contained metals. The commenter pointed out that EPA should rely on performance data for metal-bearing wastewater that also contains organics. According to the commenter, this is because K022 wastewaters are likely to contain organics and the performance data from which the Agency was transferring standards lack organics. The commenter believes organics could interfere with the treatment of chromium and nickel. The commenter, however, failed to provide data or information that indicate that the proposed treatment standards for metals could not be achieved for K022 wastewaters. The Agency stands by its rationale for transferring performance data of metal bearing wastewaters to K022 wastewaters.

EPA believes these organics exist at low concentrations such that they would not interfere with the treatment of metals and that if they do exist at higher concentrations, they can easily be treated using chemical or wet air oxidation followed by carbon adsorption in order to reduce their potential interference with metals treatment. At the same time, these organics would then be able to comply with the K022 wastewater treatment standards for organics promulgated in today's rule. As an alternative, these wastewaters (i.e., if they were even higher in concentration) could also be incinerated in order to comply with the organics standards and then treated for metals. All three of these technologies have been demonstrated to treat similar wastes containing both metals and organics.

(3) *Treatment standards for K035 and K083.* The concentration-based treatment standards promulgated today for K035 and K083 wastewaters are based on performance data generated from one, or a combination of two or more of the following BDAT technologies: biological treatment, steam stripping, carbon adsorption, liquid extraction, and others. (See section III.A.6.(3) of today's preamble for a discussion of these performance data for multi-source leachate.) The treatment standard promulgated for nickel in wastewater forms of K083 is based on chemical precipitation followed by vacuum filtration.

EPA is promulgating treatment standards for organics in nonwastewater forms of K035 and K083, primarily as proposed. The treatment standards are based on the incineration wastes believed to be as difficult to treat as K035 and K083. In addition, EPA does not believe that the constituents in K035 and K083 are likely to interfere with treatment to the extent of making the promulgated treatment standards unachievable. The treatment standard promulgated for nickel in nonwastewater forms of K083 is based on the stabilization of incineration ash. The Final BDAT Background Document for each one of these wastes provides detailed information on the development of these treatment standards.

Cyclohexanone is one of the constituents that was proposed for regulation in K083 waste. EPA has identified other constituents for regulation in K083 wastes that are as difficult to treat. At this time, EPA is withdrawing cyclohexanone from the list of regulated constituents in K083 nonwastewater. However, EPA is still promulgating treatment standards for cyclohexanone in K083 wastewaters. Available performance data does not indicate any difficulties in analyzing for cyclohexanone in K083 wastewaters.

(4) *Treatment Methods for K025 and K026.* For K025 and K026, EPA pointed at its preference for promulgating a method of treatment over a concentration based standard for these two wastes. This is because there is a lack of characterization data for these wastes which raises the uncertainty as to whether regulation of a very few known BDAT list constituents in these two wastes will provide regulation of other BDAT list constituents that could be in K025 and K026. The performance data from the treatment of wastes believed to be as difficult to treat as K025 and K026 support that wastewater and nonwastewater forms of these two

wastes can be treated to meet the promulgated BDAT requirements.

As a result, EPA is promulgating incineration for nonwastewater forms of K025 and K026, and as an alternative for the corresponding wastewater forms. In addition, EPA is also promulgating liquid-liquid extraction followed by steam stripping followed by carbon adsorption as the treatment standard for K025 wastewaters.

BDAT TREATMENT STANDARDS FOR K022

[Wastewaters]	
Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Acetophenone.....	0.010
Phenol.....	0.039
Chromium (Total).....	0.35
Nickel.....	0.47

[Wastewaters]	
Regulated constituent	Maximum for any composite sample, total composition (mg/l)
Toluene.....	0.080
Diphenylamine.....	0.52
Diphenylnitrosamine.....	0.40

BDAT TREATMENT STANDARDS FOR K025

[Wastewaters]	
Regulated constituent	Incineration (INCIN); or liquid-liquid extraction (LLEX) followed by steam stripping (SSTRP) followed by carbon adsorption (CARBN) as methods of treatment
Regulated constituent	Incineration (INCIN); or liquid-liquid extraction (LLEX) followed by steam stripping (SSTRP) followed by carbon adsorption (CARBN) as methods of treatment

BDAT TREATMENT STANDARD FOR K025

[Nonwastewaters]	
Regulated constituent	Incineration (INCIN) as a method of treatment
Regulated constituent	Incineration (INCIN) as a method of treatment

BDAT TREATMENT STANDARDS FOR K026

[Wastewaters and Nonwastewaters]	
Regulated constituent	Incineration (INCIN) as a method of treatment
Regulated constituent	Incineration (INCIN) as a method of treatment

BDAT TREATMENT STANDARDS FOR K035

[Wastewaters]	
Regulated constituent	Maximum for any composite sample, total composition (mg/l)
Benz (a) anthracene.....	0.059
Chrysene.....	0.059
Fluoranthene.....	0.068
Naphthalene.....	0.059
Phenanthrene.....	0.059
Pyrene.....	0.067
o-Cresol.....	0.11
m,p-Cresols.....	0.77

[Wastewaters]	
Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Phenol.....	0.039

The treatment standard for m,p-Cresols is expressed as the sum of the meta- and para-cresol isomers because of the difficulties in distinguishing the individual isomers analytically.

BDAT TREATMENT STANDARD FOR K035

[Nonwastewaters]	
Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Acenaphthene.....	3.4
Anthracene.....	3.4
Benz (a) anthracene.....	3.4
Benzo (a) pyrene.....	3.4
Chrysene.....	3.4
Dibenz (a,h) anthracene.....	3.4
Fluoranthene.....	3.4
Fluorene.....	3.4
Indeno (1, 2, 3-cd) pyrene.....	3.4
Naphthalene.....	3.4
Phenanthrene.....	3.4
Pyrene.....	8.2

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BDAT TREATMENT STANDARDS FOR K083

[Nonwastewaters]

[Revised from no land disposal]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Benzene	6.6
Aniline	14
Diphenylamine/diphenylnitrosamine.....	14
Nitrobenzene	14
Phenol	5.6
Cyclohexanone.....	30

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Nickel	0.088

BDAT TREATMENT STANDARDS FOR K083

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Aniline	0.81
Phenol	0.039
Cyclohexanone	0.38
Nickel	0.47

Regulated constituent	Maximum for any composite sample, total composition (mg/l)
Benzene.....	0.14
Diphenylamine.....	0.52
Diphenylnitrosamine	0.40
Nitrobenzene.....	0.068

Elimination System (NPDES) data (including the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) data base); (2) the Hazardous Waste Engineering Research Laboratory (HWERL) database; (3) the Office of Solid Wastes' BDAT data (from previous land disposal restriction rules); and (4) additional wastewater treatment data from literature articles on wet air oxidation and powder activated carbon treatment (PACT).

In the November 22, 1989 notice, the Agency proposed treatment standards for organics in K029, K095, and K096 wastewaters based on the transfer of performance data from rotary kiln incineration of K019 (heavy ends from the distillation of ethylene dichloride in ethylene dichloride production) nonwastewaters. Although no comments were received on the proposed rule, the Agency has modified the proposed treatment standards to reflect actual treatment performance data for wastewaters.

In the November 22, 1989 notice, the Agency proposed two sets of wastewater treatment standards for the majority of U and P wastewaters for which concentration-based standards could be established. One set of standards was based on incinerator scrubber waters while the alternate set of standards was based on a transfer of treatment performance data for wastewaters containing these constituents from the above mentioned data sources. The reader is further referred to the discussion in section III.A.5.(a.)(1.) of today's preamble for additional information.

As stated in the Final Rule for Land Disposal Restrictions for Second Third Wastes (54 FR 26629) and reiterated in the proposed rule for Third Third Wastes (54 FR 48390), when the Agency has appropriate wastewater treatment data from well-designed and well-operated wastewater treatment units, it prefers to use these data rather than incinerator scrubber water concentrations to develop wastewater treatment standards.

Commenters to the proposed rule for First Third, Second Third and Third Third wastes almost unanimously supported the options of promulgating wastewater treatment standards based on the performance of specific wastewater treatment rather than incinerator scrubber water constituent levels. Upon review of all available data and comments, the Agency agrees with the commenters and is today promulgating concentration-based treatment standards based on wastewater treatment data rather than

scrubber water for wastes that were proposed in the Third Third rule. While the Agency did not specifically identify the standards based on wastewater treatment data as alternatives for F and K wastewaters, the Agency believes that this is a logical outgrowth of the notice and comment process. As such, the Agency is today modifying the wastewater treatment standards for K029, K095, and K096 wastes.

The Agency is also revoking the 'reserved' status for metals in K029, K095 and K096 wastewaters. Existing waste characterization data for nonwastewaters indicates that these three wastes are essentially all organic and would not be expected to contain any BDAT list metal constituents. No comments were received disputing the Agency's conclusion.

The Agency is also promulgating treatment standards for metal constituents in K028 nonwastewaters based on the transfer of TCLP data from stabilization of F024 (wastes from the production of chlorinated aliphatics such as distillation residues, heavy ends, tars, and reactor clean-out) wastes. As was stated in the November 22, 1989 proposed rule (54 FR 48395), the Agency transferred the metal standards for K028 nonwastewaters based on performance data from proposed standards for F024. Several comments however, were received on the metal standards for F024 and subsequently K028, stating that the metal standards were too low. See section III.A.4.c. for a discussion of these comments.

The Agency is however, promulgating as proposed the concentration-based treatment standards for metals in F024 wastes. Consequently, the Agency is also promulgating the treatment standards for metals in K028 nonwastewaters as proposed.

BDAT TREATMENT STANDARDS FOR K028

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Chromium (total)	0.073
Lead	0.021
Nickel	0.088

These standards do not replace the standards for the organics in K028 nonwastewaters that were promulgated with the Second Third wastes.

1. K028, K029, K095 and K096 Wastes

K028—Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.

K029—Waste from the product steam stripper in the production of 1,1,1-trichloroethane.

K095—Distillation bottoms from the production of 1,1,1-trichloroethane.

K096—Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.

The Agency is promulgating final treatment standards for organics in K029, K095 and K096 wastewaters based on the transfer of treatment performance data from wastewaters containing the constituents of concern for K029, K095 and K096 wastes from various data sources including: (1) The Office of Water's Industrial Technology Division (ITD) and National Pollution Discharge

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BDAT TREATMENT STANDARDS FOR K029

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Chloroform.....	0.046
1,2-Dichloroethane.....	0.21
1,1-Dichloroethylene.....	0.025
1,1,1-Trichloroethane.....	0.054
Vinyl chloride.....	0.27

BDAT TREATMENT STANDARDS FOR K095

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
1,1,1,2-Tetrachloroethane.....	0.057
1,1,2,2-Tetrachloroethane.....	0.057
Tetrachloroethene.....	0.056
1,1,2-Trichloroethane.....	0.054
Trichloroethene.....	0.054
Hexachloroethane.....	0.055
Pentachloroethane.....	0.055

BDAT TREATMENT STANDARDS FOR K096

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
1,1,1,2-Tetrachloroethane.....	0.057
1,1,2,2-Tetrachloroethane.....	0.057
Tetrachloroethene.....	0.056
1,1,2-Trichloroethane.....	0.054
Trichloroethene.....	0.054
1,3-Dichlorobenzene.....	0.036
Pentachloroethane.....	0.055
1,2,4-Trichlorobenzene.....	0.055

m. K032, K033, K034, K041, K097, and K098 Wastes.

K032—Wastewater treatment sludge from the production of chlordane.

K033—Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.

K034—Filter solids from filtration of hexachlorocyclopentadiene in the production of chlordane.

K041—Wastewater treatment sludge from the production of toxaphene.

K097—Vacuum stripper discharge from the chlordane chlorinator in the production of Chlordane.

K098—Untreated process wastewater from the production of toxaphene.

The Agency is today promulgating final treatment standards for wastewater and nonwastewater forms of K032, K033, K034, K041, K097 and K098 wastes. The nonwastewater treatment standards are based on performance data from an EPA incineration test burn that was conducted in June 1989. (The reader is referred to the November 22, 1989 proposed rule for additional information on the test burn (54 FR 483901).) No comments were received on the proposed standards for any of the specific constituents of K032, K033, K034, K041, K097 or K098 nonwastewaters. Therefore, EPA assumes that generators of these wastes agree with the Agency's assessment of the treatability of these wastes and their individual constituents. Details on the selection of regulated constituents and the transfer of performance data for these K wastes are provided in the background document for these halogenated pesticide wastes which can be found in the RCRA docket.

In section III.A.1.(h.)(6.) of the proposed rule for Third Third wastes (54 FR 48390 (November 22, 1989)), the Agency specifically proposed two alternative sets of concentration-based standards for the majority of the U and P wastewaters for which concentration-based standards could be established. One set of standards was based on the concentration of constituents of concern as measured in incinerator scrubber water while the alternate set of standards was based on a transfer of treatment performance data for wastewaters from various data sources. These alternative standards were presented in section III.A.7. of the proposed Third Third rule (54 FR 48467) as treatment standards for wastewater forms of multi-source leachate, but were specifically identified as alternative standards for U and P wastewaters.

As stated in the Final Rule for Land Disposal Restrictions for Second Third Wastes (54 FR 26629) and reiterated in the proposed rule for Third Third Wastes (54 FR 48390), when the Agency has appropriate wastewater treatment data from well-designed and well-operated wastewater treatment units, it prefers to use these data rather than scrubber water concentrations to develop wastewater treatment standards. Commenters to the proposed rules for the First Third, Second Third and Third Third Wastes almost unanimously supported that EPA should promulgate wastewater standards based

on the performance of specific wastewater treatment rather than incinerator scrubber water constituent levels. After reviewing all available data and comments, the Agency agrees with the commenters, and is promulgating concentration-based treatment standards based on wastewater treatment data rather than scrubber water for K032, K033, K034, K041, K097 and K098 wastewaters. While the Agency did not specifically identify the standards based on wastewater treatment data as alternatives for these wastewaters, the Agency believes that this is a logical outgrowth of the notice and comment process.

More detailed information on the technical development of the constituent specific treatment standards for wastewaters can be found in the background document entitled, BDAT Background Document for Wastewaters containing BDAT list Constituents.

BDAT TREATMENT STANDARDS FOR K032

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Hexachlorocyclopentadiene.....	2.4
Chlordane.....	0.26
Heptachlor.....	0.066
Heptachlor epoxide.....	0.066

BDAT TREATMENT STANDARDS FOR K032

[Wastewaters]

Regulated constituent	Maximum for any 24-hour composite sample, total composition (mg/l)
Hexachlorocyclopentadiene.....	0.057
Chlordane.....	0.0033
Heptachlor.....	0.0012
Heptachlor epoxide.....	0.016

BDAT TREATMENT STANDARDS FOR K033

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Hexachlorocyclopentadiene.....	2.4

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BDAT TREATMENT STANDARDS FOR K033

[Wastewaters]	
Regulated constituent	Maximum for any 24-hour composite sample, total composition (mg/l)
Hexachlorocyclopentadiene.....	0.057

BDAT TREATMENT STANDARDS FOR K034

[Nonwastewaters]	
Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Hexachlorocyclopentadiene.....	2.4

BDAT TREATMENT STANDARDS FOR K034

[Wastewaters]	
Regulated constituent	Maximum for any 24-hour composite sample, total composition (mg/l)
Hexachlorocyclopentadiene.....	0.057

BDAT TREATMENT STANDARDS FOR K041

[Nonwastewaters]	
Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Toxaphene.....	2.6

BDAT TREATMENT STANDARDS FOR K041

[Wastewaters]	
Regulated constituent	Maximum for any 24-hour composite sample, total composition (mg/l)
Toxaphene.....	0.0095

BDAT TREATMENT STANDARDS FOR K097

[Nonwastewaters]	
Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Hexachlorocyclopentadiene.....	2.4
Chlordane.....	0.26
Heptachlor.....	0.066
Heptachlor epoxide.....	0.066

BDAT TREATMENT STANDARDS FOR K097

[Wastewaters]	
Regulated constituent	Maximum for any 24-hour composite sample, total composition (mg/kg)
Hexachlorocyclopentadiene.....	0.057
Chlordane.....	0.0033
Heptachlor.....	0.0012
Heptachlor epoxide.....	0.016

BDAT TREATMENT STANDARDS FOR K098

[Nonwastewaters]	
Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Toxaphene.....	2.6

BDAT TREATMENT STANDARDS FOR K098

[Wastewaters]	
Regulated constituent	Maximum for any 24-hour composite sample, total composition (mg/l)
Toxaphene.....	0.0095

n. K036 and K037

K036—Still bottoms from toluene reclamation distillation in the production of disulfoton

K037—Wastewater treatment sludges from the production of disulfoton

Today's rule promulgates treatment standards for the wastewater forms of K037 and the nonwastewater forms of K036 as proposed. Detailed technical descriptions of the specific production processes generating these wastes can be found in the background document for the listing of these wastes.

The Agency promulgated a treatment standard of "No Land Disposal Based on No Generation" for K036 nonwastewaters in the First Third final rule on August 8, 1988 (53 FR 31174, August 17, 1988). EPA amended this standard on May 2, 1989, to apply to wastes generated from the process described in the listing description and disposed after August 17, 1988 (54 FR 18836). In the November 22, 1989 proposed rule for Third Third wastes, the Agency proposed a transfer of concentration-based standards from K037 nonwastewaters (based on the performance of incineration in the First Third final rule) to other forms of K036 nonwastewaters, such as K036 spill residues. The basis of this transfer is the similarity of these two wastes, and the fact that Disulfoton, the regulated constituent in K036, is a regulated constituent in K037 as well.

The Agency promulgated concentration-based treatment standards for K037 wastewaters based on incinerator scrubber water concentration levels in the First Third final rule. In the November 22, 1989 proposed rule for Third Third wastes, the Agency proposed to revise this standard to be consistent with the other organophosphorus pesticide wastewaters, for which concentration-based standards based on biological treatment were promulgated in the Second Third final rule on June 23, 1989.

The Agency stated that the performance achievable by incineration and the performance of biological treatment represent BDAT for nonwastewater and wastewater forms, respectively, of the organophosphorus pesticides. Because the Agency received no comments on this proposal, the Agency is today promulgating concentration-based treatment standards for K036 nonwastewaters and concentration-based treatment standards for K037 wastewaters as proposed. Therefore, the Agency is able to promulgate concentration-based treatment standards for: Disulfoton in K036 nonwastewaters, and Disulfoton and toluene in K037 nonwastewaters. Standards applicable to nonwastewaters are based on the performance achieved by rotary kiln incineration and the concentration of organophosphorus pesticide measured in the ash residuals. Standards applicable to wastewaters are based on the performance achieved by biological treatment and the concentration of organophosphorus pesticide measured in the resultant effluent wastewaters. Where the treatment standards are expressed as concentration-based

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standards, other treatment technologies that can achieve these concentration-based treatment standards are not precluded from use by this rule. The regulated constituents and treatment standards for these wastes are presented in the tables at the end of this section.

The Agency points out that the promulgated concentration-based treatment standards for K037 wastewaters are based on the analysis of composite samples rather than grab samples. This sampling procedure is specified for compliance monitoring because the performance data on which these standards are based consisted of analysis of composite effluent samples.

BDAT TREATMENT STANDARDS FOR K036

[Nonwastewaters]

[Revised from no land disposal]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Disulfoton.....	0.1

BDAT TREATMENT STANDARDS FOR K037

[Wastewaters]

[Revised based on biotreatment data]

Regulated constituent	Maximum for any single composite sample, total composition (mg/l)
Disulfoton.....	0.025
Toluene.....	0.080

o. K042, K085, and K105 Wastes.

K042—Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.

K085—Distillation of fractionation column bottoms from the production of chlorobenzenes.

K105—Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.

The Agency is today promulgating final treatment standards for the wastewater and nonwastewater forms of K042, K085 and K105. The treatment standards for nonwastewaters are based on performance data from an EPA incineration test burn that was conducted in June, 1989. (The reader is referred to the November 22, 1989 proposed rule for additional information

on this test burn (54 FR 483901).) The wastewater treatment standards have been modified from the proposed rule and are being promulgated today based on a transfer of performance data from wastewater treatment.

In section III.A.1.(h)(6) of the proposed rule for Third Third wastes (54 FR 48390 (November 22, 1989)), the Agency specifically proposed two alternative sets of concentration-based standards for the majority of the U and P wastewaters for which concentration-based standards could be established. One set of standards was based on the concentration of constituents of concern as measured in incinerator scrubber water while the alternate set of standards was based on a transfer of treatment performance data for wastewaters from various data sources. These alternative standards were presented in section III.A.7. of the proposed Third Third rule (54 FR 48467) as treatment standards for wastewater forms of multi-source leachate, but were specifically identified as alternative standards for U and P wastewaters.

As stated in the Final Rule for Land Disposal Restrictions for Second Third Wastes (54 FR 26629) and reiterated in the proposed rule for Third Third Wastes (54 FR 48390), when the Agency has appropriate wastewater treatment data from well-designed and well-operated wastewater treatment units, it prefers to use these data rather than scrubber water concentrations to develop wastewater treatment standards. Commenters to the proposed rules for the First Third, Second Third and Third Third Wastes almost unanimously agreed that EPA should promulgate wastewater standards based on the performance of specific wastewater treatment rather than incinerator scrubber water constituent levels. After reviewing all available data and comments, the Agency agrees with the commenters, and is promulgating concentration-based treatment standards based on wastewater treatment data rather than scrubber water for K042, K085 and K105 wastewaters. More detailed information on the technical development of the constituent specific treatment standards for wastewaters can be found in the background document entitled, BDAT Background Document for Wastewaters containing BDAT list Constituents.

The Agency received several comments on the proposed standards for the PCB constituents in K085 waste. These standards were listed for seven of the common mixtures of PCBs known originally by the trade name of Aroclor (i.e., the proposed standards were listed

for Aroclor 1016, 1221, 1232, 1242, 1248, 1254, and 1260). One commenter stated that an unjustified treatment level for PCBs had been set and that the Agency did not give a rationale for the level selected. The commenter further urged the Agency to set a treatment standard at 50 ppm which is the regulated level under both TSCA and the RCRA California list provision. The Agency disagrees with the commenter. Under HSWA, EPA has been given authority to establish treatment standards at levels that minimize threats to human health and the environment. See S. Rept. No. 284, 98th Cong. 1st Sess. at 17, stating that California list levels—which include a 50 ppm PCB level—are only minimum starting points for establishing treatment standards. (See also 55 FR 6640, Feb. 26, 1990 explaining that current uncertainties as to waste toxicity and mobility warrant retention of the BDAT approach.)

EPA noted in the November 22, 1989 proposal (54 FR 48398), that untreated K085 wastes contain a wide range of PCB concentrations, however if K085 wastes exceed 50 ppm PCBs, they must be incinerated in a TSCA permitted facility (several of the commercial facilities that are permitted for RCRA wastes are also permitted for PCB-contaminated wastes under TSCA) as well as meeting the concentration-based treatment standards being promulgated today. EPA believes that this approach is consistent with the statutory mandate.

Another commenter stated that the proposed PCB concentration-based standard for K085 was inappropriately low because the presence of hexachlorobenzene or pentachlorobenzene at their K085 treatment standard concentration levels interferes with proper performance of SW-846 Method 8080's Electron Capture Detection instrumentation, and therefore PCB levels in K085 cannot be routinely quantified at the BDAT standard level. EPA believes, as stated in the preamble to the proposed rule (54 FR 48398) that incineration virtually destroys hexachlorobenzene and pentachlorobenzene, as well as PCBs, so their ash and scrubber water levels will be too low to cause interference. As stated in the section of this Preamble discussing how the Agency used detection limits to set standards, EPA deliberately set numerical treatment standards above detection limits by using multiple variability factors. Consequently numerical treatment standards for incineration based numbers represent the lowest numbers. an analytical instrumentation system can reliably report rather than the

concentration of the constituent actually present in the ash. EPA reiterates that treatability variances are available on a case-by-case basis for generators who cannot meet these standards. In addition, if the waste has been incinerated and analytical methods utilized in good faith, and the standard still proves to be below the detection limit, EPA will consider this to constitute compliance with the treatment standard (see preamble section III.A.1.g).

BDAT TREATMENT STANDARDS FOR K042

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
1,2,4,5-Tetrachlorobenzene	4.4
o-Dichlorobenzene	4.4
p-Dichlorobenzene	4.4
Pentachlorobenzene	4.4
1,2,4-Trichlorobenzene	4.4

BDAT TREATMENT STANDARDS FOR K042

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
1,2,4,5-Tetrachlorobenzene	0.055
o-Dichlorobenzene	0.088
p-Dichlorobenzene	0.090
Pentachlorobenzene	0.055
1,2,4-Trichlorobenzene	0.055

BDAT TREATMENT STANDARDS FOR K085

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Benzene	4.4
Chlorobenzene	4.4
o-Dichlorobenzene	4.4
m-Dichlorobenzene	4.4
p-Dichlorobenzene	4.4
1,2,4-Trichlorobenzene	4.4
1,2,4,5-Tetrachlorobenzene	4.4
Pentachlorobenzene	4.4
Hexachlorobenzene	4.4
Aroclor 1016	0.92
Aroclor 1221	0.92
Aroclor 1232	0.92
Aroclor 1242	0.92
Aroclor 1248	0.92
Aroclor 1254	1.8
Aroclor 1260	1.8

BDAT TREATMENT STANDARDS FOR K085

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Benzene	0.14
Chlorobenzene	0.057
o-Dichlorobenzene	0.088
m-Dichlorobenzene	0.036
p-Dichlorobenzene	0.090
1,2,4-Trichlorobenzene	0.055
1,2,4,5-Tetrachlorobenzene	0.055
Pentachlorobenzene	0.055
Hexachlorobenzene	0.055
Aroclor 1016	0.013
Aroclor 1221	0.014
Aroclor 1232	0.013
Aroclor 1242	0.017
Aroclor 1248	0.013
Aroclor 1254	0.014
Aroclor 1260	0.014

BDAT TREATMENT STANDARDS FOR K105

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Benzene	4.4
Chlorobenzene	4.4
o-Dichlorobenzene	4.4
p-Dichlorobenzene	4.4
2,4,5-Tetrachlorophenol	4.4
2,4,6-Tetrachlorophenol	4.4
2-Chlorophenol	4.4
Phenol	4.4

BDAT TREATMENT STANDARDS FOR K105

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Benzene	0.14
Chlorobenzene	0.057
o-Dichlorobenzene	0.088
p-Dichlorobenzene	0.090
2,4,5-Trichlorophenol	0.18
2,4,6-Trichlorophenol	0.035
2-Chlorophenol	0.044
Phenol	0.039

p. K044, K045, K046, and K047

K044—Wastewater treatment sludges from the manufacturing and processing of explosives.

K045—Spent carbon from the treatment of wastewater containing explosives.

K046—Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.

K047—Pink/red water TNT operators.

Today's rule revokes the "No Land Disposal Based on Reactivity" treatment standard for K044, K045, and K047 wastes and promulgates as proposed a treatment standard of "Deactivation". The Agency is also promulgating a nonwastewater treatment standard for lead in the K046 Reactive Subcategory as proposed (also see 54 FR 26607-608, June 23, 1989), based on the transfer of performance data from the stabilization of K046 nonreactive wastes. This treatment standard is based on the performance of deactivation for the reactive wastewaters followed by alkaline precipitation, settling, and filtration to form a nonreactive K046 nonwastewater that is then stabilized for lead.

The Agency received several comments indicating that the BDAT for the K046 Reactive Subcategory should be deactivation followed by stabilization as opposed to just stabilization. The Agency agrees with the commenters and is therefore revising BDAT as deactivation followed by stabilization. In addition, many commenters had questions on the definition of deactivation. To clarify this point, the Agency is defining deactivation for K044, K045, K046 and K047 wastes to be the process of removing the characteristic of reactivity, by technologies such as incineration or chemical oxidation. See 40 CFR part 268 appendix VI for a list of technologies that used alone or in combination can achieve this standard.

For all K046 wastewaters, the treatment standard is based on the performance of alkaline precipitation, settling, and filtration. The Agency is transferring the performance of this treatment system from K062 wastes. The K062 wastewaters are just as difficult to treat as the K046 wastewaters, based on the concentration of lead in K062 (up to 212 ppm) which is the same or higher than that which has been found in K046 wastewaters (up to 200 ppm).

BDAT TREATMENT FOR K044, K045, K047

[Nonwastewaters and Wastewaters]

[Revised from no land disposal]

Deactivation (Deact) as a method of treatment*

*See CFR 268.42 Table I for a description of this method of treatment.

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**BDAT TREATMENT STANDARDS FOR K046
REACTIVE AND NONREACTIVE SUBCATE-
GORIES**

(Wastewaters)

Regulated constituent	Maximum for any single composite sample, total composition (mg/l)
Lead	0.037

**BDAT TREATMENT STANDARDS FOR K046
REACTIVE SUBCATEGORY**

(Nonwastewaters)

Regulated constituent	Maximum for any single composite sample, TCLP (mg/l)
Lead	0.18

g. K048, K049, K050, K051, and K052

- K048—Dissolved air floatation (DAF) float from the petroleum refining industry.
K049—Slop oil emulsion solids from the petroleum refining industry.
K050—Heat Exchanger bundle cleaning sludge from the petroleum refining industry.
K051—API separator sludge from the petroleum refining industry.
K052—Tank bottoms (leaded) from the petroleum refining industry.

Wastes identified as K048, K049, K050, K051, and K052 are generated by facilities in the petroleum refining industry. Detailed technical descriptions of the specific processes generating these wastes can be found in the background document for the listing of these waste codes.

In today's rule, EPA is promulgating revised treatment standards for the organic and metal constituents in K048-K052 nonwastewaters and for cyanide in K048-K052 wastewaters. The specific regulated constituents and treatment standards for these wastes are listed in the tables at the end of this section. Treatment standards for organic and metal constituents in K048-K052 nonwastewaters and cyanide in K048-K052 nonwastewaters were promulgated on August 8, 1988 (53 FR 31159) and are not amended by this rulemaking.

The Agency has also decided to reschedule these wastes to the third-third and thus create a new prohibition effective date for them. The legal authority to take this action comes from

"EPA['s] * * * continuing authority to reschedule wastes from one third of the schedule to another." *Chemical Waste Management v. EPA*, 869 F. 2d 1528 n.2 (D.C. Cir. 1989) (noting rescheduling of the prohibition for multisource leachate that had already taken effect). Notwithstanding this authority, the Agency is not undertaking this rescheduling casually. The determining factor in EPA's view, is that even though the wastes were prohibited in the first third rule (and granted a two-year national capacity variance), petroleum industry members were in legitimate doubt as to what the ultimate treatment standards would be and, to some extent, what the technological basis for the standards would be.

In particular, the original standards promulgated by EPA were based on treatment of some of the less contaminated petroleum refining wastes. Subsequent efforts to reexamine and possibly amend the promulgated standards were delayed in part because of conflicting claims from the treatment industry regarding the equivalency of performance of three-stage and five-stage solvent extraction technology. The petroleum refining industry itself participated in research efforts regarding treatment tests on some of the more contaminated petroleum refining wastes and generated some useful data which was used in revising the promulgated standards.

The result of this involved process is that it could have been reasonably unclear to a petroleum refinery whether treatment standards could be achieved using solvent extraction technology one type of BDAT technology. Such a facility could have legitimately delayed its investment decision about what treatment technology to use to comply with the land disposal prohibitions. Given this situation, the Agency believes it is acting both reasonably and legally in exercising its authority to reschedule the wastes to the Third Third.

The Agency has also determined that there is inadequate treatment capacity for generated K048-K052 wastes. (See section III.B. below where the Agency is granting a national capacity variance for K048-K052 wastes). The revised standards for organic and metal constituents in K048-K052 nonwastewaters and for cyanide in K048-K052 wastewaters and the previously promulgated standards for organic and metal constituents in K048-K052 wastewaters and cyanide in K048-K052 nonwastewaters will become effective on November 8, 1990 at the completion of a six month national

capacity variance being issued for K048-K052 as part of the Third Third rule.

The treatment standard for cyanide in wastewater forms of K048-K052 is promulgated as proposed. Treatment standards for organic and metal constituents in K048-K052 nonwastewaters have been revised as described below.

During the public comment period, the Agency received additional treatment performance data for treatment of organic and metal constituents in K048-K052 nonwastewaters. Treatment performance data were received from four commenters, BP America, Exxon, Amoco, and API, for stabilization of metal constituents in K048-K052 nonwastewaters from five refineries. These data were obtained from stabilization treatment tests of solvent extraction raffinate, incinerator ash, and incinerator combustion gas scrubber water solids using a variety of binders.

The Agency received additional treatment performance data for CF Systems' solvent extraction system from four commenters: CF Systems, Exxon, Shell, and API. These data were obtained from solvent extraction treatment tests of organic constituents in K048-K052 nonwastewaters from ten refineries. Treatment performance data for RCC's B.E.S.T. solvent extraction system were also submitted from two commenters for treatment of organic constituents in K048-K052 nonwastewaters from three refineries. Treatment performance data for multicycle solvent extraction were submitted by one commenter for treatment of organic constituents in K048-K052 nonwastewaters from three refineries. Also, treatment performance data for BP America's filtration/solvent extraction/stabilization process were submitted by one commenter for treatment of organic constituents in K048-K052 nonwastewaters from one refinery. The Agency also has limited data submitted by Thermal Dynamics, Inc. for treatment of organic constituents in K048-K052 nonwastewaters using high temperature thermal distillation from one refinery. The basis for the amended treatment standards is summarized below.

(1) *BDAT Treatment Standards for Metal Constituents*. Today's rule amends the promulgated K048-K052 rulemaking (53 FR 31159) to delete the treatment standards for arsenic and selenium in nonwastewater forms of K048-K052. Today's rule also revises the treatment standard for nickel in nonwastewater forms of K048-K052.

The majority of the stabilization data submitted by industry could not be