

US EPA ARCHIVE DOCUMENT

DCN PH4P020
COMMENTS Exxon Company Usa
RESPONDER NV
SUBJECT CLNP
SUBJNUM 020
COMMENT

B. EPA should clarify that de minimis losses of commercial chemical products to wastewater systems do not trigger LDRs

EPA removed the language in 40 CFR 268.1.e.4 that clearly stated that de minimis losses of commercial chemical products do not trigger LDRs. Exxon requests that EPA clarify in 40 CFR Part 268 that the de minimis loss provision for commercial products still exists. This issue is of significant concern to Exxon Company, U.S.A. where our two largest refineries share a wastewater treatment plant with co-located petrochemical plants manufacturing commercial chemical products.

RESPONSE

EPA first proposed to create a de minimis provision for losses of characteristic wastes in the report entitled “Supplemental Information Concerning the Environmental Protection Agency’s Potential Responses to the Court Decision on the Land Disposal Restrictions Third Third Final Rule” prepared for the Notice of Data Availability on the Reponse to the Court Decision, published January 19, 1993. In the report, the Agency requested comments on “whether an approach similar to the mixture rule exception in 40 CFR 261.3(a)(iv)(D) should apply to de minimis losses of ICR [ignitable, corrosive, and reactive] wastes” (emphasis added). Again in this same report the Agency said “Consequently, the Agency is considering an alternative whereby de minimis losses of ICR wastes (emphasis added) to wastewater treatment systems would not be considered to be prohibited wastes.” (See page 39.) Confusion has arisen because the language of 261.3(a)(iv)(D) referring to “commercial chemical products or chemical intermediates” rather than specifying “characteristic wastes” was copied into 268.1. The Agency clarified the provision in the regulation of the Phase III final rule by changing 268.1(e)(4) to specify wastes instead of products and intermediates. Unfortunately, in the Phase III Withdrawal Rule published on the same day, a typographical error occurred which indicated that the Agency was withdrawing 268.1(e)--referring to de minimis losses in general--rather than 268.1(e)(4)(ii)--referring to the de minimis losses provision that applied only to underground injection wells injecting decharacterized wastes. Therefore, in the Phase IV final rule the Agency is clarifying that the general de minimis provision of 268.1(e) remains in the regulations and applies to characteristic wastes rather than products or intermediates.

DCN PH4P047
COMMENTS Merck
RESPONDER NV
SUBJECT CLNP
SUBJNUM 047
COMMENT

g. The other miscellaneous changes under 268.7 will also provide clarification and greatly ease the burden of trying to understand the requirements under this section.

RESPONSE

The Agency appreciates your interest in, and support of our efforts to streamline the LDR program and reduce paperwork burden on the regulated community.

DCN PH4P035

COMMENTS Utility Solid Waste Activities Grp

RESPONDER NV

SUBJECT CLNP

COMMENT VII. USWAG SUPPORTS THE SIMPLIFICATION OF THE LDR NOTIFICATION

REQUIREMENTS. The proposed administrative changes to the LDR requirements would eliminate several unnecessary regulatory burdens while facilitating compliance with the LDR regulations. In particular, USWAG supports the following proposed changes: Modification of the regulations to require that a generator whose waste meets the appropriate treatment standard need only supply a one-time notification and certification to the disposal facility, unless the waste composition changes. 60 Fed. Reg. at 43678. Elimination of the requirement that a facility treating waste in a 90-day accumulation unit to meet treatment standards must first submit a waste analysis plan ("WAP") to EPA or an authorized state for approval. Id. Reducing the LDR record retention time from five years to three years. Id. These proposed modifications will greatly assist in streamlining the LDR requirements. In addition, EPA proposes to allow small quantity generators with contractual agreements in place for the reclamation of their waste to be subject to reduced certification and notification requirements, provided that the agreements comply with 40 C.F.R. § 262.20(e). Id. at 43693 (proposed 40 C.F.R. § 268.7(a)(10)). USWAG believes that this reduced set of requirements should be equally applicable in situations where large quantity generators have tolling agreements in effect, and therefore, should be extended to cover such arrangements. Extending the scope of this reduced set of requirements will have the desirable benefit of encouraging agreements for hazardous waste reclamation by reducing the administrative burdens currently associated with such transactions.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort. The LDR provision pertaining to small quantity generators with tolling agreements was designed to capture the same universe as those captured by § 262.20(e), generators of more than 100 but less than 1000 kg of hazardous waste per year, thus it is not appropriate to extend the provisions of § 268.7(a)(10) to large quantity generators. The Agency has provided relief to large quantity generators, however, by changing the requirement to provide LDR notices and certifications with each shipment of hazardous waste to a one-time notice and

certification, provided the waste does not change and the receiving facility does not change.

DCN PH4P065

COMMENTER Safety-Kleen Corp.

RESPONDER NV

SUBJECT CLNP

COMMENT 2. Safety-Kleen requests that the Agency finalize the proposed improvements to the existing land disposal restrictions program separate from the rest of the Phase III and IV proposals if the Agency decides to defer action on the rest of these proposals. Safety-Kleen is concerned with the possibility that the LDR Phase III and IV proposals may not be finalized for several months or even years, thus extending the time during which we must comply with the existing LDR requirements. Both the Phase III and Phase IV proposals offer LDR program modifications that the EPA is not under a court order or other time constraint to finalize, and that would benefit the regulated community without harming human health or the environment. For example, the Agency is proposing to revise the LDR notification form record retention requirement to be equivalent to that required for manifests (3 years); to eliminate reference to the California List wastes because they have all been incorporated into other LDR provisions; and to eliminate redundant tables and language that only serve to confuse the regulated community.

RESPONSE

The Agency appreciates your interest in, and support of our efforts to streamline the LDR program and reduce paperwork burden on the regulated community.

DCN PH4P065

COMMENTS Safety-Kleen Corp.

RESPONDER NV

SUBJECT CLNP

COMMENT 8. Safety-Kleen supports the Agency's efforts to "clean up" the LDR regulations. Safety-Kleen supports the Agency's efforts to eliminate confusion and contradiction in the LDR rules. Safety-Kleen agrees that most of these changes will serve to clarify and simplify the LDR regulations without adverse effects on human health and the environment. Safety-Kleen is particularly supportive of the proposal to modify the LDR notification form retention requirements to correspond directly with most other RCRA record retention requirements (3 years). The inconsistency between the three-year manifest retention requirements and the five-year LDR notice retention requirements has created confusion in the regulated community, particularly because the LDR form is generally attached to the manifest upon receipt and in the facility files. Clearly, if a three-year records retention requirement is appropriate for the manifest information, it is also appropriate for the LDR notification form information.

RESPONSE

The Agency appreciates your interest in, and support of our efforts to streamline the LDR program and reduce paperwork burden on the regulated community.

DCN PH4P008
COMMENTS Florida DEP
RESPONDER PV
SUBJECT CLNP
SUBJNUM 008
COMMENT

268.7(a)(5): I agree with the proposal to delete the requirement for generators to submit Waste Analysis Plans. No one is submitting them anyway. I agree that generators should have WAPs available for inspection.

268.7 Notice requirements I would prefer to see all of these provisions deleted. Instead, EPA should adopt an official uniform waste profile form. Each TSDf already requires a generator to submit a waste profile prior to accepting the waste as part of the §264.13 Waste Analysis plan. These forms should be adopted uniformly, with updates required if the process generating the waste changes. As part of §262.11 and §262.40, each generator should be required to keep a waste profile on each hazardous and solid waste generated at the facility for 3 years from the date of last disposal, excluding office paper trash and garbage.

Analytical data (if available) would be attached to and become part of the waste profile. The waste profile already includes information on the process, the waste codes, and physical information that would affect treatment. The Waste Profile would only need to be submitted to the TSDf onetime, not with every shipment.

We see a lot of generators and brokers conspiring to evade LDRs and RCRA altogether by omitting essential information on the waste profile. If the generators were forced to sign certifications that were RCRA enforceable on these documents, there would be a greater incentive to comply. The currently optional boxes I and R, reserved for the EPA waste number could be used for the generators' waste profile numbers. The recent changes in DOT regulations make the EPA waste number box redundant. There have been recent discussions on elimination of the manifest form, and relying on DOT bills of lading. This would be a lot more palatable to the regulators if bills of lading referenced the generator EPA ID number and a specific waste profile number. Generators would keep copies of the DOT bills of lading instead of manifests. TSDfs can keep copies as part of their operating record, cross referenced to waste profile.

A couple of sample forms are attached that are already in use. To improve the forms, I would add check off boxes for the waste

categories "virgin" "used" "byproduct" and "sludge." I would also add spaces for the treatability group and statements regarding whether the waste/constituents meet treatment standards. A statement should be added per §268.7(a)(6) for wastes that become excluded subsequent to generation. Although waste profiles are not an EPA requirement, they are in universal use. If they became an official form, generator paperwork would be reduced and easier to understand.

RESPONSE

Thank you for your support of the change made to 40 CFR 268.7(a)(5). As for your suggestion to do away with all notification/certification requirements in 268.7 and rely instead on the waste profile, the Agency is unable to make such a broad change at this time. As you point out in your comment, the waste profile is not required by EPA regulations. To adopt it as a uniform notification document would require the coordination of EPA, DOT, the states, the regulated community, environmental groups, and others. Such an effort was not possible within the time constraints of promulgating the Phase IV final rule.

DCN PH4P008
COMMENTS Florida DEP
RESPONDER PV
SUBJECT CLNP
SUBJNUM 008
COMMENT

Generator recordkeeping regulations are scattered throughout many sections which are referred to only by reference in Part 262. This makes it difficult for the generators to conduct self audits. Along with the revisions to §268.7, Section 262.40 should be revised as follows:

(c) A generator must keep records of any test results, waste analyses, or other determinations made in accordance with §262.11 and §268.7 for at least 3 years from the date that the waste was last sent to on-site or off site treatment (including recycling), storage or disposal, including disposal of accumulated wastes in on site waste water treatment units.

(d) Pursuant to §268.7(a), a generator must keep copies of all land disposal restriction notices and certifications made for wastes sent off site for treatment, storage or disposal. A generator must also keep copies of the waste analysis plan, records and certification statements for wastes treated on site or excluded from the definition of solid or hazardous waste subsequent to the point of generation.

(e) A generator must keep records of all inspections of required emergency equipment and units accumulating or treating hazardous waste pursuant to §262.34. (Add a reference to subparts AA, BB and CC recordkeeping if EPA does not withdraw these provisions for generators.)

(f) A generator must keep copies of all personnel training records, including job titles and position descriptions for persons managing hazardous waste as required under 265.16.

(g) The periods of retention referred to in this section...(renumber and correct typo!)

Also: revise §262.44(a) to read :§262.40 (a), (c), (d), (e) and (g), recordkeeping.

RESPONSE

The Agency thanks the commenter for their suggestions. They are beyond the scope of this rulemaking, however, they will be considered as part of the effort to revise the LDR regulations further in future LDR rulemakings.

DCN PH4P008
COMMENTS Florida DEP
RESPONDER PV
SUBJECT CLNP
SUBJNUM 008
COMMENT

Pg. 43692, middle column 268.7(a)(5)(iii): There appears to be a typographical error in the new §268.7(a)(5)(iii). It should reference §269.7(a)(3), not (4). In addition, there is no provision here for sending decharacterized wastes off site for further treatment at a non RCRA facility. I suggest this section should read:

(iii) Wastes shipped off site pursuant to this paragraph, or disposed in an on-site Subtitle D facility, must comply with the notification requirements of §268.7(a)(3) or §268.9(d), as appropriate.

RESPONSE

The Agency agrees there was a typographical error, and has incorporated language suggested by the commenter into the regulation. The suggested language will be considered in future revisions of the regulations.

DCN PH4P008
COMMENTS Florida DEP
RESPONDER PV
SUBJECT CLNP
SUBJNUM 008
COMMENT

268.9(d)(1)(ii) Reference to "EPA hazardous waste code" should read "EPA hazardous waste number(s)". This section is still fairly obscure. In low concentration wastes, it is impossible to determine if a sample of spent solvent is ignitable because of the listed solvent constituent (such as acetone) or the unlisted solutes (such as styrene, alcohols or aliphatic hydrocarbons). Since the F001-F005 listings are almost guaranteed to exhibit a characteristic, why not just make the UTS applicable to all spent solvent wastes?

RESPONSE

EPA has changed the word "code" to "number" as suggested language by the commenter.

In reference to the whether ignitable wastes are ignitable because of the listed solvent constituent or the unlisted solutes, a waste that is identified as F001-F005 is not subject to the requirement to identify and treat underlying hazardous constituents just because it also exhibits the ignitable characteristic. In such a case, the treatment standards for the listed waste govern, which are, by the way, UTS levels.

DCN PH4P008
COMMENTS Florida DEP
RESPONDER PV
SUBJECT CLNP
SUBJNUM 008
COMMENT

Revisions to 268.30-36, Appendix VII Deletion: The appendix is still useful to inspectors who are trying to determine if a waste was restricted at the time it was generated. I think that any waste that became subject to restrictions within the previous 3 years should be included in the appendix, especially if the recordkeeping time is reduced to 3 years. In addition, any national capacity variances effective during this period should be noted in the appendix. Alternatively, the appendix should cover back through the time covered by the statute of limitations. If this is done, the text revisions to §268.30-36 are acceptable.

RESPONSE

The Agency has developed a new Appendix VII that incorporates the information suggested by the commenter, and has revised sections 268.30 -- 268.37 to include newly restricted wastes.

DCN PH4P013
COMMENTS New York DEC
RESPONDER PV
SUBJECT CLNP
SUBJNUM 013
COMMENT

DEC agrees with the EPA that there is a definite need to streamline the LDR regulation for understandability and ease of compliance. Removal of unnecessary, outdated, confusing language is highly recommended. DEC has endeavored to eliminate unnecessary language from its LDR regulation since its inception. DEC has been limited in this effort, due to the inclusion of certain language in 40 CFR Part 268, while meeting the requirements for State authorization.

Specifically, DEC agrees with all of the proposed changes outlined in III.A 1 through 6. Much of the difficulty and confusion experienced with the LDR are due to the complexity of the regulation and its integration with other hazardous waste management regulations. These proposed changes will do much to relieve that regulatory burden for generators, facilities, and state regulators as well. Also, the proposed changes greatly increase the clarity of the regulation, such as the elimination of the references to the California List in 40 CFR 268.7, and the elimination of 40 CFR 268.32. A great deal of confusion about applicability of the California List has arisen in the past.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort, and your support of the LDR clarification effort.

DCN PH4P013
COMMENTS New York DEC
RESPONDER PV
SUBJECT CLNP
SUBJNUM 013
COMMENT

DEC also agrees with the EPA's proposed simplification of the notification and certification requirements of 40 CFR 268.7. DEC has experienced many problems with notifications and certifications in the past and may propose in its next rulemaking to adopt these changes and require, with minor exceptions, that only 40 CFR 268.7 requirements apply in New York in lieu of current state requirements. A workable, simplified recordkeeping approach for the LDR will allow New York State to defer to 40 CFR 268.7 (and related recordkeeping clarifications) and eliminate an unintentional duplication that now exists for the regulated community in New York State.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort.

DCN PH4P017
COMMENTS Commenter Kodak
RESPONDER PV
SUBJECT CLNP
SUBJNUM 017
COMMENT

Finally, we applaud your plan to reduce the paperwork associated with compliance with the LDR regulations .

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort.

DCN PH4P017
COMMENTS Commenter Kodak
RESPONDER PV
SUBJECT CLNP
SUBJNUM 017
COMMENT

Paperwork Reduction

Kodak Supports the Portions of the Proposed Rule that Simplify Paperwork. We support the following changes, because they will reduce paperwork and save money without affecting environmental protection:1. The use of a one-time notification and certification to the receiving facility for generators of waste whose composition does not change and which meets the treatment standards for the receiving facility in § 268.7(a)(3).2. Consolidation of paperwork requirements into a table in § 268.7(a)(4) for generators and a table in § 268.7(b)(4) for treatment facilities to simplify compliance reporting.3. Elimination of the requirement in § 268.7(a)(5) for generators managing wastes in tanks or containers to submit their waste analysis plans to the state or EPA .4. Reduction of record retention requirements in § 268.7(a)(8) from 5 to 3 years.

Recommendations Kodak recommends the adoption of the preceding changes that reduce paperwork.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort.

DCN PH4P024
COMMENTS Union Camp
RESPONDER PV
SUBJECT CLNP
SUBJNUM 024
COMMENT

R. UCC supports reduction of reporting requirements
UCC supports EPA for its efforts to reduce reporting requirements for generators to submit waste analysis plans to the state and region EPA (required by 268.7(a)(5)). This will make a big dent in reducing the paper work burden on the regulated community, as well as the agencies. These documents are already available for agency inspection at facilities required to have them. UCC further encourages EPA to further reduce the reporting burden to the regulated community in other areas of the regulations. Resources can be spent in much more fruitful ways.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort. The Agency is committed to finding additional ways to simplify the LDR regulations and reduce paperwork in future rulemakings.

DCN PH4P027
COMMENTS Rollins Environmental
RESPONDER PV
SUBJECT CLNP
SUBJNUM 027
COMMENT

The EPA is proposing several technical modifications to the Land Disposal Restrictions (LDR) Program. The purpose of these changes is to "clean up", revise and simplify some of the requirements of this program. RES fully supports this effort to streamline and simplify the LDR's. Our only concern is that in some cases streamlining may actually compromise human health or the environment.

The vast majority of the proposed technical modifications do "clean up", revise, or simplify the program without any compromising of human health or the environment. However, there are two proposed changes that could have a negative impact. In the Agency's proposed change to section 268.5 a petitioner could request a two year "case-by-case extension" from meeting the LDR's. Presently, the language limits the petitioner to a one year extension with the possibility of another one year extension after the filing of a second petition. We support retaining the existing requirement for a for each one year extension.

We support retaining the existing requirement for two primary reasons:

The commercial hazardous waste industry has grown and matured sufficiently to safely handle the wastes that are being considered for extensions, there is sufficient capacity within this industry to handle these wastes; and

Granting two year extensions leads to the large scale disposal of untreated wastes prior to the expiration of the extension, as opposed to treatment to minimize threats to human health and the environment.

RESPONSE

The Agency is persuaded that granting a second-year renewal at the the time the case-by-case extension is applied for is a disincentive to speedy development of treatment capacity. Therefore, the Agency is not promulgating its proposed approach and the final rule does not make such a change to the regulations at 40 CFR 268.5.

DCN PH4P027
COMMENTS Rollins Environmental
RESPONDER PV
SUBJECT CLNP
SUBJNUM 027
COMMENT

RES is also concerned about a change in the "Paperwork Requirements Table". We support the intent of this table, that is to centralize and simplify the LDR paperwork requirements. However, in column 268.7(a)(2) the Agency is not requiring the listing of underlying hazardous constituents (UHC's) on the LDR notification for D001, 2 or D012-43 wastes. These constituents should continue to be listed on this notification.

RESPONSE

In the Phase III rule, the Agency changed its requirements for identification of underlying hazardous constituents in characteristic wastes. The change indicated that if the generator or waste management facility was going to analyze for the presence of ALL UHCs in a characteristic waste, then none of the UHCs had to be included in the LDR notification. The Phase IV rule maintains this provision. Therefore if only a subset of UHCs is reasonably expected to be present in a formerly characteristic waste, they must be included on the LDR notification.

DCN PH4P028
COMMENTS Texas Utilities Services
RESPONDER PV
SUBJECT CLNP
SUBJNUM 028
COMMENT

Texas Utilities supports the change in 40 CFR 268.7 related to testing, tracking, and recordkeeping for generators, treaters, and disposal facilities. The proposal would allow a generator to make a one-time notification of a waste's hazardous characteristics so long as those characteristics do not change. This is a "common sense" simplification of the process. In addition, although a 90 day accumulator would still be required to prepare a waste analysis plan, the plan would not have to be submitted to EPA or the state, which would be an administrative and paperwork savings for the agencies and business. Finally, the reduction of LDR record retention requirements from five to three years would benefit those that use surface impoundments for treatment, without having any impact on human health and the environment.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort.

DCN PH4P031
COMMENTS Department of Energy
RESPONDER PV
SUBJECT CLNP
SUBJNUM 031
COMMENT

DOE also supports EPA's continuing efforts to clarify and simplify the LDR regulations. Nevertheless, the Department has several comments on the specific regulatory language proposed by the Agency.

III. Improvements to Land Disposal Restrictions Program

III.A. Cleanup of Part 268 Regulations

1. p. 43677, col. 2 -- EPA states that it is proposing to "clean up" existing regulatory language that is outdated, confusing, or unnecessary by clarifying some sections, and by condensing or removing other sections.

DOE supports EPA's continuing efforts to improve and simplify the regulations governing the Land Disposal Restrictions Program. The following comments are provided in response to the specific changes suggested within this proposed rule.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort.

DCN PH4P031
COMMENTS Department of Energy
RESPONDER PV
SUBJECT CLNP
SUBJNUM 031
COMMENT

2. p. 43677, col. 3, Sec. 268.5 -- EPA states that 40 CFR 268.5(e) would be amended to clarify that an applicant could be granted additional time (up to one year) beyond the one-year case-by-case extension to comply with LDR treatment standards. The preamble further indicates that a showing of the need for the additional time would have to be made in the application first submitted for the case-by-case extension.

a. DOE agrees that giving individual waste generators an opportunity to request additional time as part of the application for the original case-by-case extension of the effective date is an appropriate revision to the regulations. An approach of this type could be applied to DOE mixed wastes. For instance, certain mixed waste streams generated by DOE are not presently amenable to treatment using typical hazardous waste treatment technologies, and it is known that more than one year will be required for technology development. Therefore, allowing the application for a case-by-case extension to cover two years would improve the efficiency of the case-by-case extension process.

b. DOE believes that the preamble language which discusses giving individual waste generators an opportunity to request additional time on a case-by-case extension could be misleading. As written, the preamble seems to indicate that additional time may be granted only if requested when first applying for a case-by-case extension. The proposed regulatory language presented at 60 FR 43691, on the other hand, does not contain the limitation implied by the preamble language. In fact, it specifically states that additional time can be requested either in the original application, or at a later date. DOE supports the proposed regulatory language, and requests that EPA clarify, in the preamble to the final rule, its intent with respect to when requests for additional time (beyond a one-year case-by-case extension) may be made.

RESPONSE

The Agency has reconsidered its proposal to grant a second-year renewal of a case-by-case extension at the the time the petition is made for the extension. Opposing comments stated that allowing renewals to be granted when the petition is granted would be a discentive to the

speedy development of treatment capacity. Therefore, final rule does not incorporate such a change to the regulations at 40 CFR 268.5.

DCN PH4P031
COMMENTS Department of Energy
RESPONDER PV
SUBJECT CLNP
SUBJNUM 031
COMMENT

3. pp. 43677, col. 3 and 43678, cols. 1&2, Sec. 268.7 -- EPA proposes to § 40 CFR268.7 to reflect changes in LDR notification requirements, to clarify existing LDR notification requirements, and to generally simplify LDR notification requirements. The simplifications proposed include requiring generators to submit notifications to receiving facilities only once for wastes that meet the appropriate LDR treatment standards (i.e., a notice and certification with each shipment would no longer be mandated; if the waste composition or the process generating the waste changes, a new notice and certification must then be submitted) and deleting the requirement that generators submit waste analysis plans to States and Regions.

a. DOE supports EPA's proposal to eliminate the existing requirement for a hazardous waste generator to submit a waste analysis plan to the EPA or authorized state when treatment occurs in an accumulation container, tank or containment building for the purposes of compliance with LDR regulations. This approach will reduce the burden on the generator, as well as on EPA or the authorized state by eliminating the need to review such documents.

b. DOE agrees with removal of the requirement to send a notice and certification to the treatment or storage facility with each shipment of waste that meets the treatment standards. Under the new requirements, a generator (whose waste meets the appropriate treatment standards) will be required to submit a one-time notice and certification to the receiving facility unless the waste stream or process changes. The new requirements will provide major relief from burdensome paperwork requirements.

c. DOE has the following specific comments on the proposed regulatory language for 40CFR 268.7:

(1) pp. 43691, col. 3 - 43693, col. 3

(a) 40 CFR 268.7(a)(1) -- This rewritten section contains, in part, the following sentences:

In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed. These treatment standards are also found in §268.40 and are described in detail in §268.42, Table 1. These wastes do not need to be tested. DOE suggests that the last sentence quoted above may cause

confusion in cases where more than one waste code are present in a waste stream, and only one of the waste codes present has a treatment standard that is a specified technology. In such cases, testing may be necessary. DOE requests that EPA revise the quoted language to clarify testing requirements in situations where more than one waste code are present, and the LDR treatment standard for only one waste code is a specified technology.

(b) 40 CFR 268.7(a)(2) -- This rewritten section indicates that a generator who determines that its waste does not meet the LDR treatment standards must notify the treatment or storage facility, and the notice must include the information in column "268.7(a)(2)" of the "Notification Requirements Table" in §268.7(a)(4)[emphasis added].

(I) The table in §268.7(a)(4) is actually titled "Paperwork Requirements Table." DOE suggests consistency between the regulatory text and the table. This comment also applies to the proposed §§268.7(a)(3) and 268.7(a)(4).

(ii) Based on existing 40 CFR §268.7(a)(1) [see 60 FR 244-245 (01/03/95)], it seems like a check () should appear next to item 4 in column "268.7(a)(2)" of the Paperwork [sic] Requirements Table in §268.7(a)(4)[requiring the notice to state the date that the waste is subject to the LDR prohibition on land disposal]. DOE requests clarification on whether EPA intended to change the existing information requirement by omitting the check ().

(c) 40 CFR 268.7(a)(3) -- The first sentence of this rewritten section reads, "If the waste meets the treatment standard: The generator must send a one-time notice and certification to each treatment or storage facility receiving the waste." [emphasis added] In writing the above-quoted sentence, it appears that the existing requirement (see existing 40 CFR 268.7(a)(2)) that the generator provide a notice and certification to land disposal facilities that receive waste meeting the treatment standard (as well as to treatment or storage facilities) was inadvertently omitted. Therefore, DOE suggests that the phrase italicized and underlined above be revised to say, "treatment, storage, or land disposal facility."

(d) 40 CFR 268.7(a)(3) -- The second and third sentences of this rewritten section read, "The notice must state that the waste meets the applicable treatment standards set forth in §268.40 or §268.45. The notice must also include the information indicated in column "268.7(a)(3)" of the Notification Requirements Table in §268.7(a)(4)." Based on existing 40 CFR 268.7(a)(2), it seems like checks () should appear next to items 2 and 3 in column "268.7(a)(3)" of the

Paperwork [sic] Requirements Table in §268.7(a)(4) [requiring, respectively, that the notice state the constituents of concern in certain wastes, as well as the wastewater/nonwastewater category and subcategory within the waste code (if any), and include waste analysis data, when available]. DOE requests clarification on whether EPA intended to change the existing information requirement by omitting the checks ().

(e) 40 CFR 268.7(a)(3) -- The fourth sentence of this rewritten section reads, "However, generators of hazardous debris excluded from the definition of hazardous waste under §261.3(e)(2) of this chapter are not subject to these requirements."

On March 3, 1992 [57 FR 7628], EPA promulgated an interim final rule which simultaneously removed and reissued 40 CFR 261.3, including the "mixture" and "derived- from" rules. The revised 40 CFR 261.3 included a termination date or "sunset provision" (40 CFR 261.3(e)) for the reinstated "mixture" and "derived-from" rules.

On October 30, 1992, EPA removed the sunset provision (40 CFR §261.3(e)) from the regulations because many commenters on the interim final rule urged the Agency to provide additional time for evaluation of revisions to the "mixture" and "derived-from" rules and expressed concern about the expiration date [see 57 FR 49279]. Since 40 CFR 261.3(e) has been removed from the regulations, and since, even before it was removed, §261.3(e) did not address hazardous debris, DOE believes the reference to §261.3(e)(2) in the above-quoted sentence from proposed 40 CFR 268.7(a)(3) is an error. Based on the existing regulatory language in 40 CFR 268.7(a)(2), DOE believes that the reference in the quoted sentence should be to either 40 CFR 261.3(f)(1) or 261.3(f)(2) [excluding certain hazardous debris from regulation], instead of to 40 CFR 261.3(e)(2).

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort. The commenter references to apparent mistakes in the Paperwork Requirements table have been noted by other commenters. EPA is working to eliminate the confusion surrounding the table and will publish a revised table with the final rule. The commenter points out the fact that in 268.7(a)(3), a one-time notification has been required only for generators sending waste to treatment or storage facilities. This notification provision should also apply to generators that send waste to a disposal facility as pointed out by the commenter. This has been corrected in the final rule. The commenter addressed a statement in 268.7(a)(1), claiming that it could be confusing. EPA agrees that this statement could be confusing and that if more than one waste code is

present, testing may be necessary; language has been added to clarify this situation. The commenter correctly pointed out that the 261.3(e) was not the right citation--the citation has been corrected to refer to 261.3(f).

DCN PH4P031
COMMENTS Department of Energy
RESPONDER PV
SUBJECT CLNP
SUBJNUM 031
COMMENT

(f) 40 CFR 268.7(a)(4) -- DOE requests clarification of this rewritten section. Existing regulations at 40 CFR 268.7(a)(3) require generators of hazardous waste that is subject to an exemption from LDR treatment standards (e.g., a case-by-case extension under §268.5, an exemption under §268.6, or a nation-wide capacity variance under subpart C) to include the following information on a notice to any facility receiving the waste:

I. EPA Hazardous Waste Number; ii. Constituents of concern for certain wastes, as well as the wastewater/nonwastewater category and subcategory (if any) within the waste code; iii. Manifest number; iv. Waste analysis data, when available; v. Certain information for hazardous debris that will be treated using the alternative treatment technologies provided by §268.45;vi. Certain information for hazardous debris that will be treated in accordance with the requirements applicable to the contaminating waste; and vii. Date on which the waste is subject to the prohibition on land disposal.

These existing requirements are changed by rewritten section 40 CFR 268.7(a)(4).Specifically, items ii, iv, v, and vi are no longer required. Further, a new requirement for a certification statement has been added. EPA does not discuss or explain these changes in the preamble. Therefore, DOE requests clarification about whether EPA intended to make such changes. Generally, the changes seem appropriate for exempt wastes, and DOE would support them if they are being proposed.

RESPONSE

The omission of these data and the requirement for a new certification were intentional changes. EPA considers them to have been proposed through general preamble language and through the regulatory language that the commenter refers to.

DCN PH4P031
COMMENTS Department of Energy
RESPONDER PV
SUBJECT CLNP
SUBJNUM 031
COMMENT

(g) 40 CFR 268.7(a)(4), Paperwork [sic] Requirements Table -- DOE suggests that EPA consider expanding this table to include the paperwork requirements for lab packs.

(h) 40 CFR 268.7(a), Paperwork [sic] Requirements Table (item 2) -- This item, under the "Required Information" column, is worded as follows: "The constituents for F001-F005, F039, and underlying hazardous constituents, unless the waste will be treated and monitored for all constituents (in which case none are required to be listed). The notice must include the applicable wastewater/nonwastewater category (see §§268.2(d) and (f)) and subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanide)."

DOE requests clarification of the first sentence of proposed item 2. Should this sentence be modified to read, "The constituents of concern for F001-F005 and F039 wastes, and underlying hazardous constituents for all characteristically hazardous wastes (as defined by 40 CFR 261.21 - 261.24), unless the waste will be treated and monitored for all constituents (in which case none are required to be listed)" ?

RESPONSE

EPA agrees with the commenter and applied the new one-time notification provision to lab packs, along with other hazardous wastes that do not meet the treatment standard as generated. The wording of 40 CFR 268.7(a) has been clarified as suggested by the commenter.

DCN PH4P031
COMMENTS Department of Energy
RESPONDER PV
SUBJECT CLNP
SUBJNUM 031
COMMENT

(I) 40 CFR 268.7(a), Paperwork [sic] Requirements Table (item 5)
-- This item, under the "Required Information" column, provides the wording for a certification statement, but neither the item nor accompanying regulatory text indicates who is required to sign the certification.

DOE suggests that the language of existing 40 CFR 268.7(a)(2)(ii) indicating that the certification must be signed by an authorized representative of the generator be included either in the Table, or in accompanying regulatory text.

RESPONSE

EPA has added the information indicating who is required to sign the certification required under 268.7(a)(2)(ii).

DCN PH4P031
COMMENTS Department of Energy
RESPONDER PV
SUBJECT CLNP
SUBJNUM 031
COMMENT

(j) 40 CFR 268.7(a)(5)(iii) -- EPA's proposed language for this section reads: "(iii) Wastes shipped off-site pursuant to this paragraph must comply with the notification requirements of §268.7(a)(4)."

DOE requests verification that the cross-reference is correct. It appears that it should be §268.7(a)(3) (discussing generator notification requirements when waste meets the treatment standard) rather than §268.7(a)(4) (discussing reporting and recordkeeping for wastes that are excepted from treatment requirements).

RESPONSE

The commenter is correct, EPA inadvertently referred to 268.7(a)(4) when in fact the reference should be to 268.7(a)(3). This has been corrected in the final rule.

DCN PH4P031
COMMENTS Department of Energy
RESPONDER PV
SUBJECT CLNP
SUBJNUM 031
COMMENT

(m) 40 CFR 268.7(b)(4) -- See comment III.A, item 3.c.(1)(e) above concerning the cross-reference in this section to 40 CFR 261.3(e). It appears that this provision [proposed §268.7(b)(4)] should be revised to refer to §261.3(f).

4. p. 43678, col. 3, Sec. 268.30 - 268.37 -- EPA proposes to remove 40 CFR 268.31 through 268.37, and to replace the existing 40 CFR 268.30 with a new section that identifies the prohibition dates of the wastes covered by the LDR Phase IV rule.

a. The following specific comments are offered in response to the language proposed for new 40 CFR 268.30.

(1) p. 43694, cols. 1-3

(a) 40 CFR 268.30(a) -- DOE requests that EPA confirm that the effective date for the prohibition from land disposal of D004-D011 and F032, F034 and F035 actually should be November 20, 1995 as stated in this section. DOE believes EPA intended this proposed regulatory language to contain the parenthetical "[insert date 90 days from publication of final rule]" rather than an actual

date.(b) 40 CFR 268.30(b) -- DOE requests that EPA confirm that the effective date for the prohibition from land disposal of soil and debris contaminated with F032, F034 and F035 and radioactive wastes mixed with D004 - D011 wastes (as measured by the TCLP) actually should be August 22, 1997 as stated in this section.

DOE believes EPA intended this proposed regulatory language to contain the parenthetical "[insert date two years from publication of final rule]" rather than an actual date.

(c)40 CFR 268.30(c) -- DOE requests that EPA confirm the correctness of the dates in this proposed section. DOE believes that, in the proposed language, the parenthetical "[insert date 90 days from publication of final rule]" should replace "November 20, 1995" and the parenthetical "[insert date two years from publication of final rule]" should replace "August 22, 1997."

RESPONSE

The commenter is correct that the cross-reference should be to 261.3(f). In addition, the effective dates of the treatment standards for wood preserving wastes were wrong. These have been corrected in the final rule.

DCN PH4P031
COMMENTS Department of Energy
RESPONDER PV
SUBJECT CLNP
SUBJNUM 031
COMMENT

5. p. 43678, col. 3, Appendices -- EPA proposes amending 40 CFR Part 268, Appendix VI to clarify that characteristic wastes that also contain UHCs must be treated not only by a "deactivating" technology to remove the characteristic, but also treated to achieve the UTS for UHCs.

DOE does not object to the clarification which EPA proposes. However, DOE notes that the treatment standard prescribed raises a troubling issue for deactivation by detonation of explosives(D003) containing toxic metals. In the LDR Phase III proposed rule, EPA proposed modifying the table in 40 CFR 268.40, "Treatment Standards for Hazardous Wastes," to indicate that the LDR treatment standard for both wastewater and nonwastewater forms of "D003 Explosives Subcategory" would be "DEACT and meet §268.48 standards." [60 FR 11702, 11742 (03/02/95)] This proposed treatment standard for the D003 Explosives Subcategory is replicated in the LDR Phase IV proposed language for the table in §268.40. [60 FR 43654, 43694 (08/22/95)] There is no obvious way, in certain explosive wastes, that UHC metals can be treated to meet UTS either before or after deactivation by detonation. Since detonation is the primary method by which explosives are deactivated, DOE perceives this issue to be potentially significant. Therefore, the Department requests the Agency to address this issue and to provide the opportunity for the affected regulated community to submit information for the Agency's consideration.

RESPONSE

The Agency has established a treatment standard of "deactivation" with no requirement to meet UTS for UHCs for unexploded ordnance subject to an emergency response. The Agency believes that this treatment standard will expedite treatment of unexploded ordnance in situations that cause imminent threats to human health and the environment. In situations other than an emergency response, UHCs must be treated in characteristic reactive wastes. In cases when it is not possible to treat or confirm compliance with UHC levels, one may petition for a variance from the treatment standard.

DCN PH4P034
COMMENTS CMA UIC Task Force
RESPONDER PV
SUBJECT CLNP
SUBJNUM 034
COMMENT

The UIC Group has worked with EPA in the Agency's development of a regulatory system that is protective of human health and the environment while enabling reasonable mechanisms for timely compliance. We support EPA's efforts to streamline record keeping requirements and to make the land disposal restrictions (LDR) program easier to comprehend by deleting outdated language. EPA continues to work towards eliminating requirements that create additional regulatory burden without providing additional protection of the environment by clarifying the applicability of the de minimis exemption. The UIC Group, however, urges EPA to adhere to the Joint Stipulation agreed to by CMA and EPA on May 28, 1993, which provides exemptions for injection of decharacterized wastes.

RESPONSE

EPA first proposed to create a de minimis provision for losses of characteristic wastes in the report entitled "Supplemental Information Concerning the Environmental Protection Agency's Potential Responses to the Court Decision on the Land Disposal Restrictions Third Third Final Rule" prepared for the Notice of Data Availability on the Reponse to the Court Decision, published January 19, 1993. In the report, the Agency requested comments on "whether an approach similar to the mixture rule exception in 40 CFR 261.3(a)(iv)(D) should apply to de minimis losses of ICR [ignitable, corrosive, and reactive] wastes" (emphasis added). Again in this same report the Agency said "Consequently, the Agency is considering an alternative whereby de minimis losses of ICR wastes (emphasis added) to wastewater treatment systems would not be considered to be prohibited wastes." (See page 39.) Confusion has arisen because the language of 261.3(a)(iv)(D) referring to "commercial chemical products or chemical intermediates" rather than specifying "characteristic wastes" was copied into 268.1. The Agency clarified the provision in the regulation of the Phase III final rule by changing 268.1(e)(4) to specify wastes instead of products and intermediates. Unfortunately, in the Phase III Withdrawal Rule published on the same day, a typographical error occurred which indicated that the Agency was withdrawing 268.1(e)--referring to de minimis losses in general--rather than 268.1(e)(4)(ii)--referring to the de minimis losses provision that applied only to underground injection wells injecting decharacterized wastes. Therefore, in the Phase IV final rule the Agency is clarifying that the general de minimis provision of 268.1(e) remains in the regulations and applies to characteristic wastes rather than products or intermediates.

DCN PH4P036
COMMENTS COMMENTER American Iron & Steel Ins
RESPONDER PV
SUBJECT CLNP
SUBJNUM 036
COMMENT

AISI generally supports EPA's proposal to "clean up" the existing LDR regulations at 40C.F.R. Part 268 by clarifying existing provisions, simplifying the current regulatory language, and deleting sections that are outdated or otherwise no longer necessary. See 60 Fed. Reg. at 43,677.

The current LDR regulations are unnecessarily complicated, confusing, and in some cases even misleading. In order to facilitate compliance, it is imperative that the rules be clear, concise, and accurate. Although the Agency's proposal does not achieve this goal completely, it is a significant step in the right direction. Accordingly, AISI urges the Agency to adopt the "housecleaning" amendments to the Part 268 regulations.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort.

DCN PH4P041
COMMENTS Commenter Sterling
RESPONDER PV
SUBJECT CLNP
SUBJNUM 041
COMMENT

Also for this reason, we support EPA's proposal to revise the notification provisions of 40 C.F.R. § 268.7 to eliminate the requirement to identify regulated constituents on waste streams injected in Class I wells with approved petitions. These constituents have already been identified in the petition process and a requirement to further analyze and report on these constituents affords no additional environmental benefit--but could impose additional, costly burdens on deep well operators.

RESPONSE

The Agency reminds the commenter that the EPA hazardous waste number(s) for any wastes must be included on the one-time notification that is placed in the facility's records, as must the wastewater/nonwastewater category. In addition, the manifest number is included on the one-time notification, and the facility must include when the waste will be subject to LDR prohibitions. The Agency significantly reduced the amount of information required on the notice, however, by eliminating the requirement to put underlying hazardous constituents potentially present in characteristic wastes. It would appear that the commenter is referring to this paperwork reduction, and the Agency thanks the commenter for their interest in and support of the paperwork burden reduction effort.

DCN PH4P047
COMMENTS Merck
RESPONDER PV
SUBJECT CLNP
SUBJNUM 047
COMMENT

Merck supports the Agency's attempt to clean up the existing regulatory language for the LDR program. The regulatory language that currently exists is confusing and as such needlessly complicates compliance efforts. We believe that clarification of this language will help to ensure a high level of compliance in the regulated community and conserve resources. Specifically we support the following changes:

1. Section 268.4 is being changed to clarify that there are no additional recordkeeping requirements in 268.4 over and above what's required by 264.13 and 265.13.
2. Section 268.5 is being clarified to indicate that an applicant could be granted additional time beyond the one year case-by-case extension;
3. a. Section 268.7 is being modified to clarify what notifications are required and to simplify the regulatory language. It is critical that the Agency ensure that the drafted language actually achieves this objective to prevent further confusion from being added to the program.

The consolidation of generator paperwork requirements into a table at 268.7(a)(4) and treatment facility requirements at 268.7(b)(4) would greatly help the Agency achieve this goal. Consolidation of all requirements from the existing tables at 268.41, 268.42 and 268.43 into a consolidated table will also strongly support this goal.

b. We support the removal of references to the California list and concur with the Agency that there is no longer a reason to evaluate wastes against this list, since most characteristics of the California list wastes are addressed in other treatment standards under LDR.

c. Limiting the notification of the receiving facility to a one time notice for wastes that meet the treatment standards and do not change is an intelligent approach that will still ensure enough information is exchanged for tracking purposes while minimizing the regulatory burden.

d. Section 268.7(a)(8) will allow generators managing wastes in containers, tanks, or containment buildings to only keep the Waste Analysis Plan on-site rather than submitting it to the Agency for review. We believe this proposed change is an intelligent

acknowledgment of the limitations of Agency resources and therefore the need to prioritize them to where they are most needed; and the superior knowledge generators have of the characteristics of their waste. This change is necessary to ensure that wastes are not stored on-site for excessive periods of time awaiting Agency review of Plans. There is adequate guidance available to ensure that Plans address the issues then need to and further support of their adequacy can be assured through inspections by the Agency.

e. Changing record retention times from five to three years will allow companies to manage LDR records with other RCRA records, thus freeing company resources for other RCRA work.

f. The Agency has indicated an intent to change the lab pack notification requirements of 268.7(a)(8) to only include the requirements of 268.7(a)(2), 268.7(a)(6), and 268.7(a)(7) based on the assumption that the alterative treatment standards for lab packs are based on a method of treatment and therefore is no need to know if the wastes are wastewater's or nonwastewaters. We concur with this assumption and support the elimination of any paperwork that is not absolutely necessary.

RESPONSE

The Agency has finalized the changes pointed out by the commenter, with one exception: no change is being made to 40 CFR 268.5 to allow a renewal to be applied for at the time the petition is made for a case-by-case exemption. Therefore, the regulations at 268.5 remain unchanged. The Agency thanks the commenter for their interest in and support of the paperwork burden reduction effort.

DCN PH4P048
COMMENTS Chemical Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 048
COMMENT

1. Section 268.5 - Procedures for case-by-case extensions to an effective date. (60 Fed. Reg. at 43,677)

The Agency is proposing to amend §268.5(e) to clarify an applicant can be granted additional time (up to one year) beyond the one-year case-by-case extension, when the applicant first applies for the extension.

CWM supports this amendment to reflect that the additional one-year extension can be requested and received with the initial application request.

RESPONSE

The Agency has reconsidered its proposal to grant a second-year renewal of a case-by-case extension at the time the petition is made for the extension. Opposing comments stated that allowing renewals to be granted when the petition is granted would be a disincentive to the speedy development of treatment capacity. Therefore, final rule does not incorporate such a change to the regulations at 40 CFR 268.5.

2. Section 268.7 - Waste Analysis and Recordkeeping (60 Fed. Reg. at 43677)

CWM supports the Agency's proposal to streamline the waste acceptance procedure by eliminating obsolete (references to 268.41) and inconsistent requirements (e.g., 5 years for record retention) from the existing regulations. It has been CWM's experience that the existing notification/certification requirements of this section do not yield useful information when evaluating methods for managing a restricted waste. Therefore, CWM supports the Agency's efforts to delete non-beneficial paperwork from the hazardous waste regulations. Provided below are detailed comments on each section of the proposed amendments to the LDR recordkeeping requirements.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden

reduction effort.

a. 268.7(a)(2)

1. California List Applicability

The Agency has proposed to delete any references to § 268.32 and RCRA 3004(d), California List wastes because the Agency believes that existing treatment standards supersede all Statutory standards. CWM generally agrees with the Agency in its evaluation; however, notwithstanding the Agency's desire to make this change the following California List wastes appear to be restricted under RCRA 3004(d): Liquid waste containing greater than or equal to 50 ppm Polychlorinated Biphenyls (PCBs); Liquid or nonliquid wastes with greater than or equal to 1,000 ppm Halogenated Organic Compounds (HOCs) listed in Appendix III; and Liquid waste containing greater than or equal to 134 ppm Nickel or 130 ppm Thallium.

It is CWM's understanding that a hazardous waste (e.g., D002) containing PCBs at greater than 50 ppm must be treated using incineration (INCIN) or fuel substitution (FSUBS). CWM believes that this standard is correct because when there is an inconsistency between RCRA and TSCA regulations, the most stringent standard governs. This citation is found in §761.1(e). A review of both regulations finds that the regulatory standard of INCIN or FSUBS could be construed to be more stringent than existing PCB requirements. Under existing PCB disposal regulations, specific liquid PCB wastes are eligible for disposal in a TSCA approved chemical landfill without undergoing additional treatment. Specific examples include:

Liquid hazardous waste containing PCBs less than 500 ppm which have been treated (i.e., chemically) to render the waste non-liquid.

See § 761.60(a)(3) & .75(b)(8)(ii); and

Containerized liquid hazardous waste containing PCBs less than 500 ppm which meet § 264.314(d).

It is CWM's opinion that requiring a generator to meet a specific treatment technology would be more stringent than the existing PCB regulations which do not require a specified treatment technology.

CWM also requests that the Agency clarify its rationale with respect to why the other California List (i.e., HOCs and specific metals) wastes listed earlier are no longer subject to Statutory restrictions. CWM believes that the California List restriction is applicable to a F005 listed waste which contains greater than 1,000 ppm of HOCs. In this example the waste contains toluene, which was used for its solvent properties, and chloromethane at greater than

1,000 ppm. Past guidance from the Agency has been that the California List HOC standards do not apply where the waste is subject to a part 268, Subpart D treatment standard for a specified HOC. In addition, the Agency has stated that where a hazardous waste contains both HOCs and non-HOC constituents, the waste would be prohibited from land disposal until it has met the treatment standard for both HOC and non/HOC constituents. See 52 Fed.Reg. at 25,773. In this example there is no treatment standard for chloromethane in subpart D. In accordance with the guidance given by the Agency, CWM believes, at a minimum, that such waste would be subject to the 268.42(a)(2) treatment standard of INCIN. Because of the complexity and confusion which has surrounded the California List, CWM strongly recommends that the Agency provide clear and concise guidance as to the applicable LDR regulations for such waste streams.

Further, CWM believes that a liquid waste which is listed as an F006 hazardous waste and contains thallium at greater than 130ppm would be subject to a California Listing restriction. In this example, CWM requests that the Agency determine the waste's applicable LDR standards. Specifically, would the waste require treatment to meet the F006 listing under section 268.40 and to the Statutory level for nickel, or would the waste only be subject to the F006 listing under section 268.40? CWM believes that the waste should only be subject to the 268.40 requirements for nickel under the F006 listing.

CWM does not believe that it is appropriate to assume that all California List standards have been superseded. CWM believes that it is critical that the Agency evaluates whether this unique type of hazardous waste continues to have a treatment standard identified under RCRA 3004(d). CWM believes that it is the Agency's responsibility to provide the regulated community with clear guidance on this complex issue.

If the Agency's review determines that all California List standards have been superseded, the CWM supports the Agency's decision to delete any reference which requires a notification of the treatment standards for these waste. On the other hand, if the Agency determines that specific California List standards continue to exist, CWM recommends that the Agency identify the types of restrictions which may apply and list them. Listing such applicable restrictions should eliminate any future confusion regarding the California List.

RESPONSE

The Agency continues to believe that all the treatment standards for California List wastes have been superseded by more specific standards (55 FR at 22675; 52 FR at 29993). The Agency believes that the treatment standards for listed hazardous wastes are the most specific. Next would be the characteristic waste treatment standards with their associated treatment standards for underlying hazardous constituents (UHCs).

In 1990, the Agency stated its belief that all standards had been superseded at that time with the exceptions of (1) liquid hazardous wastes that contain over 50 ppm PCBs; (2) 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 1000ppm HOCs; and (3) liquid hazardous wastes that exhibit a characteristic and also contain over 134 mg/l nickel and 130 mg/l of thallium. These three exceptions have now become subject to more specific standards as explained below. All of the wastes in these examples are subject to the LDR requirement that all UHCs reasonably expected to be present in a characteristic hazardous waste at the point of generation must be treated to meet Universal Treatment Standards (UTS) (and, of course, the hazardous characteristic would also have to be treated prior to land disposal).

What is eliminated under this approach, however, is the requirement in some cases to incinerate the waste rather than treat in any way other than impermissible dilution to meet UTS levels. The Agency does not view this as in any way making the regulations less stringent. The Agency sets methods of treatment when the residues cannot be analyzed to see if they meet UTS, or when the technology is clearly far superior to other types of treatment for a particular waste. Neither of these conditions exist for the examples provided by the commenter. In the case of PCBs, they must meet UTS and then be disposed in a TSCA-approved landfill. The Agency believes that regulations under two statutes are as protective as required incineration of the PCBs. While the Agency once believed that it was necessary to require incineration of high-HOC wastes, it is possible that they can be adequately treated-- i.e. treated in a way that destroys or removes these constituents from the waste before disposal --by other technologies to meet the UTS concentration levels. Therefore the California List treatment standards are superseded and are no longer in effect in the RCRA program.

2. Notifications required for each shipment

Existing regulations require that for each shipment of waste a generator must notify the treatment or storage facility in writing of specific information. In an effort to assist the Agency in streamlining the LDR regulations CWM proposes the following option which CWM believes will provide a greater benefit to generators of restricted waste.

The Agency established a notification requirement for each shipment when the first Land Disposal Restrictions were promulgated. See 51 Fed. Reg. at 40,572 (November 7, 1996). Beginning with this

prohibition and continuing through the Phase II LDR rule, the Agency has consistently stated that the disposal facility has the ultimate responsibility in ensuring that all restricted wastes meet applicable treatment standards before being land disposed. This burden has directly effected how commercial hazardous waste management companies develop and maintain waste approval procedures. Waste approval procedures are designed to evaluate whether wastes are acceptable for management. One of the steps in the process to determine whether to approve or disapprove a waste stream for management is to determine what treatment standards are applicable and whether the waste requires treatment. This information must be received prior to shipment in order for a treatment or storage facility to determine if the waste is acceptable for receipt and treatment. The information required in 268.7(a)(1), except for the manifest number, has already been obtained and maintained in a file which identifies the waste stream. This is accomplished through the waste profile and approval process at all CWM facilities. Through this process CWM operations know prior to receipt of the waste whether it requires treatment. Therefore, the notifications submitted by a generator with each shipment only provide redundant information. In addition, the waste stream approval process used by CWM includes a comprehensive review process which provides significant information on the critical physical and chemical parameters of the waste being handled. In fact, the CWM waste stream review and approval process is similar to the recycling tolling agreements which are entered into by small quantity generators (SQGs). Since June 1, 1990 such agreements have allowed SQGs to send a one-time LDR notice to the receiving facility. See existing §268.7(a)(10) for requirements applicable to tolling agreements. The Agency promulgated this minimal notification requirement because of the belief that such tolling agreements provided the receiving facility with sufficient knowledge of the nature of the waste, and that recycled waste was picked up at regular intervals. This fact is also true of hazardous waste which is not destined for recycling. The CWM approval process is used to identify the different waste streams generated by a customer. Like waste streams are managed under one profile. If the waste stream deviates from the parameters established by the waste profile, the deviated waste is required to be profiled differently. The end result is that CWM has obtained the necessary information, prior to shipment, to manage the waste in accordance with permit conditions, LDR regulations, and operational conditions. It is CWM's belief

that a tolling agreement is substantively similar to a well documented waste approval process. The main difference is that the waste approval process provides more detailed on a broader range of materials than most conventional tolling agreements. The test of significant knowledge is easily met. Approved waste are also linked to a business contract which established an arrangement for properly transporting the waste for proper treatment, storage, and disposal.

Therefore, CWM recommends that the Agency amend the regulations under existing § 268.7(a) & (b)(4) & (5) to require a notification and certification be required only with the initial shipment.

Unless the waste stream (e.g., profile) changes, the generator would not be burdened with submitting paperwork and keeping a copy of this paperwork in their files. This will contribute a significant reduction to the burden hour currently mandated by the Agency's requirement to send notices with every shipment.

In summary, CWM recommends that the Agency amend section 268(a) to read:

"If the waste does not meet the treatment standard: With the initial shipment of waste to each treatment or storage facility, the generator must notify the treatment or storage facility in writing."

RESPONSE

The commenter's suggested language has been considered in writing the regulation.

3. Notification of date waste is subject to prohibition

This requirement was added during the technical amendments to the Phase II LDR rule. Subsequent conversations with personnel from the Waste Treatment Branch confirmed that it was not the Agency's intent to require this information. It was inadvertently added to this section. In addition, this requirement has historically been applicable only to restricted waste which was subject to case-by-case extension, capacity variance, etc.

Therefore, CWM supports the Agency's proposal to delete it from the proposed §268.7(a)(2).

RESPONSE

The Agency acknowledges the commenter's support.

4. Paperwork Requirements Table

The Agency has proposed listing the requirements applicable for the different notification forms by addressing each requirement in a table. The concept is good but CWM believes that the check marks used to identify each requirement are hard to distinguish. Therefore, CWM is concerned that a generator or regulator could misread which section is checked. CWM recommends that the Agency add a line, which separates each row in the required information column and each citation column, for easier confirmation of which row is checked.

This proposed table outlines the notification requirements for hazardous debris which will be treated using the alternative treatment technologies identified in §268.45. The Agency proposes to delete the reference that the date of prohibition be listed for each hazardous debris. This requirement was added during the technical amendments to the Phase II LDR rule. Conversations with personnel from the Waste Treatment Branch confirmed that it was not the Agency's intent to require this information for hazardous debris. It was inadvertently added to the debris section. Therefore, CWM supports the Agency's proposal to delete it as a requirement from the existing §268.7(a)(3).

RESPONSE

The Agency modified the table to make it easier to read. The Agency acknowledges the commenter's support on the proposed change to the debris requirements.

b. 268.7(a)(3)

1. Clarify "naturally" meets

This section is intended to address hazardous waste which at the initial point of generation "naturally" meet treatment standards. The Agency proposes to reduce the notification and certification requirements for generators which have such waste streams from each shipment to a one-time notice. CWM supports this proposal.

CWM recommends that the Agency clarify this requirement to clearly indicate that this section is applicable to restricted

hazardous waste which meet the LDR treatment standards as generated. The proposed language is ambiguous enough that a generator could misinterpret this section. For example, hazardous waste solvents (e.g., F004), when generated do not meet BDAT, may be subsequently mixed with a solid waste. After mixture the resultant waste is physically solid and meets the applicable treatment standards for F004. A generator could mistakenly misread 268.7(a)(3) to mean that they could send a one-time notice to a disposal facility. (This is assuming that the Agency continues to require a notification with each shipment.) Therefore, CWM recommends that the Agency add the following language to this section so that it is clear that the one-time notification is applicable only to nontreated waste:
"If the waste meets the treatment standards at the original point of generation;"

RESPONSE

The Agency has considered the language suggested by the commenter in the regulation.

2. Receiving facility applicability

The language proposed in this section only addresses waste which "naturally" meets treatment standards and will be sent to a treatment or storage facility. If a hazardous waste "naturally" meets BDAT it is highly probable that the waste will be sent directly to a disposal facility.

CWM recommends that the Agency amend the proposed language so that it is clear that this requirement is applicable to generators who send waste which "naturally" meets treatment standards to disposal facilities also. Amending the language to address a disposal facility will eliminate any potential confusion for the regulated community. CWM recommends that the Agency add the following language:

"If the waste meets the treatment standard: The generator must send a one-time notice and certification to each treatment, storage, or disposal facility receiving the waste."

RESPONSE

The Agency has considered the language suggested by the commenter in the regulation.

3. Definition of one-time notice

The Agency has proposed to reduce the frequency which a generator must submit a notification and certification for waste which "naturally" meets applicable treatment standards and is not prohibited from land disposal from every shipment to a one-time notice. CWM supports the Agency's proposal to reduce the frequency of supplying LDR forms. This reduction will greatly reduce the unnecessary burden which generators and TSD's have in maintaining duplicative records. (See discussion on the necessity to provide LDR notices in section IV.A.2.a.2. above.) In addition, CWM recommends the following clarification to the Agency's approach. The Agency should identify a specific point in time when a LDR notice must accompany the waste. The term one-time is ambiguous and does not reflect whether shipments received prior to the notice meet BDAT. Therefore, CWM recommends that the Agency amend the proposed language to require that the LDR notice and certification accompany the initial shipment. By requiring a generator to certify that the waste meets BDAT with the initial shipment, the generator will assume some responsibility for determining if subsequent shipments of the same waste is prohibited.

Requiring this specific frequency leaves no room for different interpretations. For example, one-time many mean that shipments may be sent for 6 months before a generator provides a certification of meeting treatment. While this time frame may be technically acceptable, CWM does not believe that this is the Agency's intent. Additionally, CWM is very concerned that an inspector with an agency may pursue enforcement action because they believe that the LDR notice should have been send earlier in the example given above. In order to avoid unnecessary resources and costs associated with determining each stat and Region interpretation, the Agency should amend the proposed language to read:

"If the waste meets the treatment standard: The generator must send a notice and certification with the initial shipment to each treatment, storage, or disposal facility receiving the waste."

RESPONSE

The Agency has considered the language suggested by the commenter in the regulation.

4. Certification required for waste which "naturally" meets BDAT
The proposed certification for waste which "naturally" meets BDAT has been changed to incorporate language which addresses waste which is exempt from treatment standards. Existing regulations do not require a certification to accompany waste subject to case-by-case extensions or capacity variances. While the Agency may view this change as minor it becomes a very significant issue for commercial hazardous waste management facilities, because certification changes require changes to LDR forms which are used by CWM's customers.

This proposed change will result in a financial loss due to the discarding of thousands of pre-printed forms currently in stock because they cannot be converted in a cost effective manner to include the new certification. Changing a LDR form results in the following: 1) art fees for creating a new master form for mass copying; 2) purchasing existing LDR forms with the incorrect certification currently in stock from the printer; 3) disposal or recycling of the old forms; 4) printing and distribution of the new forms with the new certification; and 5) Computer system changes must be made to LDR information maintained in CWM's waste approval system which will print out completed LDR forms for CWM's customers. While these conditions are favorable for the printing industry it is very costly for the waste management company who provides their customers with LDR forms. CWM does not support the Agency's proposal to change the existing certification language for wastes which "naturally" meet applicable treatment standards. The Agency must understand, that changing one word in a LDR required certification causes CWM thousands of dollars. The last changes in the LDR certification language in the Phase II LDR technical correction (60 Fed. Reg. at 242; January 3, 1995) cost CWM approximately \$3,500. This change occurred after CWM had just received the LDR notifications as a result of the Phase II final rule changes (59 Fed.Reg. at 47,982; September 9, 1995). These changes cost the commercial hazardous waste management industry as a whole thousands of dollars in additional compliance costs which are not beneficial to public health and the environment. In fact, it causes the opposite effect on the environment because natural resources are needlessly utilized.

RESPONSE

The Agency has reconsidered the certification language as suggested by the commenter, and omitted reference to wastes subject to an exemption.

c. 268.7(a)(4)

1. Definition of one-time notice

This section addresses notification requirements for hazardous waste that meet certain exemptions which allow the waste to be land disposed without meeting applicable treatment standards. CWM support the Agency's proposal to reduce the frequency of supplying LDR forms from each shipment to a one-time notice. This reduction will greatly reduce the unnecessary burden which generators and TSDf's have in maintaining duplicative records. As noted above, CWM recommends that the Agency identify a specific point in time when a LDR form must accompany the waste. The term one-time is ambiguous and leaves a lot of room for different interpretations to develop.

Thus, CWM recommends that the Agency amend the proposed language to require that the LDR form accompany the initial shipment.

Requiring this specific frequency places some responsibility on the generator to correctly identify the status of their waste under 268 regulations. CWM recommends that the Agency amend the proposed language to read:

"If a generator's waste is so exempt, then the generator must submit with the initial shipment a notice to each land disposal facility receiving the waste."

RESPONSE

The Agency has considered the language suggested by the commenter in the regulation.

2. New requirement to submit a certification

The Agency's proposed language references the need to submit a certification. When reviewing the informational requirements outlined for exempt waste in the proposed "paperwork requirements table", the Agency has added a requirement to provide a certification for such waste. CWM is concerned that

the Agency is imposing new and additional recordkeeping requirements. Under existing requirements located in § 268.7(a)(3) there is no requirement to provide a certification of any kind to a disposal facility when LDR exempt waste is shipped. Adding a requirement to submit a certification statement for exempt waste, even one-time, contradicts the Agency's attempt to reduce the recordkeeping requirements under the LDR regulations.

New LDR forms maintained by CWM for use by generators will also have to be developed to include the new certification language. As previously discussed above in section IV.A.2.b.4, this proposal, if promulgated, will result in the discarding of thousands of forms currently in stock because they cannot be converted in a cost effective manner to include the new certification. CWM strongly urges the Agency to evaluate the necessity in requiring a new certification. Changing one word in an LDR required certification costs commercial hazardous waste management companies thousands of dollars in additional compliance costs which are not beneficial to public health and the environment. In fact, it causes the opposite effect on the environment because natural resources are needlessly utilized.

Therefore, CWM requests that the Agency delete the checkmark from the proposed paperwork requirements table which identifies that a certification must be submitted with waste subject to an exemption identified under § 268.7(a)(4). Keeping this requirement in the final rule will undermine the Agency's attempt to streamline the LDR process.

RESPONSE

The Agency has reconsidered the certification language as suggested by the commenter, and omitted language indicating a certification is necessary for wastes subject to an exemption.

d. 268.7(a)(5)

1. Submittal of mini-WAPs

This section details the requirement for a generator who treats a restricted waste to meet BDAT in a 90-day accumulation tank, container, or containment building. Existing requirements include the submittal of a waste analysis plan (WAP), to the EPA, 30 days prior to conducting treatment. The Agency proposes to delete the requirement for submittal of the WAP, and only require

its availability on-site.

CWM supports the Agency's proposal to delete the requirement to submit a "90-day generator mini-WAP" to the EPA. This will avoid the unnecessary administrative delays currently associated with the requirement for the Agency to review the contents of the mini-WAP. Even though an approval is not required under federal regulations, CWM believes that some Agencies have an internal policy that when a document is required to be submitted, it must be reviewed. These types of policies have discouraged generators from treating their waste on-site. The removal of a requirement to submit such a document provides a simple, self-implementing standard that will help promote innovative treatment technologies.

RESPONSE

The Agency acknowledges the commenter's support on the proposed change to the 90-day generator WAP requirements.

2. Information required for generator treated waste

The proposed section (iii) of § 268.7(a)(5) notes that site generated waste treated in 90-day accumulation units, when shipped off-site, must comply with § 268.7(a)(4). Section §268.7(a)(4) is applicable to hazardous waste which is exempt from meeting treatment standards. This section requires that a generator submit a certification that the waste meets applicable treatment standards at the point of generation. The date the waste is subject to a prohibition is also required to be identified on the LDR notice. The identification of a prohibited date is not currently required for generators who treat on-site in 90 day units.

CWM believes that it would be more appropriate to reference The proposed §268.7(b)(4)(i) which outlines treatment facility requirements. Since the generator is treating the waste to meet applicable treatment standards under the LDR program, it does not make sense to use a certification which has been developed for use with exempted wastes.

In addition to the certification issue, CWM believes that the Agency should clarify whether a generator, not a commercial treater, who performs partial treatment on a restricted waste is required to use any certification or should a certification be used only when all applicable treatment standards have been met. A review of existing and proposed LDR notification regulations does

not identify a clear direction on whether the generator is required to notify under such circumstances. Provided below are two examples which illustrate the point:

Example number 1 involves a company which generates an electroplating sludge (i.e., F006) which requires treatment for both cyanides and metals. The generator treats the cyanide present in the waste in a 90-day accumulation tank. However, the metals still require treatment and must be sent off-site. Is the generator required to submit a certification that the waste meets a treatment standard? A review of the existing and proposed regulations does not clearly identify how a generator should address such a situation. CWM believes that the most appropriate requirement is to list F006 twice on the LDR notice. After one F006 listing, the generator indicates that the waste requires treatment. After the other F006 listing the generator would supply the certification required by a treatment facility located in existing § 268.7(b)(5)(I).

Example number 2, involves a generator with a hazardous waste which exhibits the characteristic of corrosivity and lead (i.e., D002 and D008). The generator neutralizes the waste for corrosivity in a 90-day accumulation container, which is not subject to CWA discharges, and does not treat the lead compound present to meet BDAT. A review of existing and proposed LDR notification regulations does not identify a clear direction on how the generator is required to notify under such circumstances. CWM believes that the generator in this example should submit with its initial shipment to an off-site treatment or storage facility, the certification required by treatment facilities in § 268.7(b)(5)(iv) of the existing LDR regulations which covers characteristic wastes treated to remove the characteristic, but which contains UHCs that still require treatment. Although this certification does not exactly correspond with the example provided it appears to be the most appropriate of the existing certifications.

In an effort to assist the Agency in its objective of providing streamlined regulations, CWM recommends that the Agency amend the proposed language in §268.7(a)(5)(iii) to read:

"Wastes shipped off-site pursuant to this paragraph must comply with the notification certification requirements of §268.7(b)(5)(I) if all applicable treatment standards have been met, or the certification requirements of §268.7(b)(5)(iv) if UHCs require treatment in decharacterized waste."

RESPONSE

The commenter's suggestion that the certification used for treatment facilities is more applicable to generators treating in 90-day tanks than the one that has been required (for generators) for several years is beyond the scope of this rulemaking. It will, however, be further considered by the Agency in future rulemakings. The Agency prefers not to address specific examples of the applicability of the regulations (as submitted by the commenter) in this Response to Comments Document. Rather, if these examples are raised in a letter to the Agency, interpretations of the regulations will be made.

e. §268.7(a)(8)

The Agency has proposed to reduce the record retention period for LDR notices from 5 years to 3 years. CWM supports the Agency's proposal to require LDR information to be retained onsite for 3 years from the date such information was generated. This will simplify LDR record retention requirements by making them consistent with other hazardous waste record retention requirements.

RESPONSE

The Agency acknowledges the commenter's support on the proposed change to the record retention requirements.

f. §268.7(a)(9)

1. Notification requirements for lab packs

This section outlines the requirements for lab packs which are eligible to use the alternative treatment standard of incineration. In sum, the Agency proposes that there is no need to identify whether a lab pack contains hazardous debris or wastes which are wastewaters/nonwastewaters (WW/NWW), because the alternative treatment standard is a specified technology. See 60 Fed. Reg. at 43,678. CWM agrees with the Agency's proposal and the need to delete the requirement to provide this information. However, the proposed language in § 268.7(a)(9) notes that with each shipment the generator must comply with paragraph (a)(2). One of the requirements in this paragraph is the need to

identify applicable WW/NWW categories. The Agency must correct this error or the Agency's intent to reduce useless information will not be implemented. CWM recommends that the Agency amend The proposed language in § 268.7(a)(9).

Further, CWM recommends that the Agency delete the general requirement under § 268.7(a)(9) to identify the applicable subcategory would be the same as why it is appropriate to delete the WW/NWW category. Restricted waste placed into a lab pack which are eligible for the specified technology or incineration (INCIN) do not have numerical standards to meet. Therefore, there is no need to identify what subcategory the waste meets. It is also important to note that streams are not prohibited from placement into a non-Appendix lab pack by subcategory. Again, the need to identify a subcategory is needless when the treatment standard is a specified technology.

In summary, CWM recommends that the Agency amend The proposed language in § 268.7(a)(9) to read as follows:

"If a generator is managing a lab pack waste... the generator must submit a notice to the treatment facility in accordance with paragraph (a)(2) of this section, except for The identification of wastewater/nonwastewater categories and waste specific subcategories (such as D003 reactive cyanide)."

RESPONSE

The Paperwork Requirements Table 1 has been changed to include a column for lab packs. It should be noted that there are no requirements to identify the waste constituents or subcategories for the hazardous wastes placed in a lab pack.

2. Lab pack certification

This section requires that a generator use a specific certification when a lab pack will be managed using the alternative treatment standard of incineration (INCIN). The language for the certification has changed several times during the last year. A review of The proposed language reveals that the Agency has once again changed the certification language. The proposed language is the same language which was promulgated on September 19, 1994 under the Phase 11 LDR rule. See 59 Fed. Reg. at 48,045. On January 3, 1995 the Agency published technical amendments to the Phase 11 LDR rule and changed the certification language for lab packs. See 60 Fed. Reg. at 245.

CWM does not believe that there is any positive environmental benefit related to these changes. As noted in earlier comments, insignificant changes to the wording of a certification cause the commercial hazardous waste industry significant costs to create new LDR forms and buy back and recycle existing inventory. In addition, the confusion which is created in the regulated community is unnecessary. Therefore, CWM strongly urges the Agency to amend the proposed lab pack information so that it is identical to the January 3, 1995 technical amendment version. To do otherwise will unnecessarily heap huge amounts of paperwork burden and cost on the regulated community.

RESPONSE

The Agency is finalizing the certification language as proposed. The primary difference in language advocated by the commenter and the language that is being finalized is that the final language includes a statement that the lab pack is being sent to a combustion facility for treatment. Other commenters requested this language be added to the certification, convincing the Agency that it is important to certify that the treatment method required by the lab pack alternative treatment standard is being carried out.

9. §268.7(b)

1. California List Applicability

The LDR notification and certification requirements for facilities treating hazardous waste, in accordance with standards established under 268, are outlined in this section. The most significant proposed amendment identified is the removal of the contents of existing § 268.7(b)(2) which reference the California list wastes. As CWM commented in section IV.A.2.a.1. above, the Agency must first determine whether any hazardous wastes continue to compel application of the California List statutory label. If the Agency determination is legally binding it can delete all references to California List waste. CWM would support the conclusion.

RESPONSE

The Agency believe that all the treatment standards for California List wastes have been superseded by more specific standards (55 FR at 22675; 52 FR at 29993). The Agency believes

that the treatment standards for listed hazardous wastes are the most specific. Next would be the characteristic waste treatment standards with their associated treatment standards for underlying hazardous constituents (UHCs).

The Agency stated in the In 1990, the Agency stated its belief that all standards had been superseded at that time with the exceptions of (1) liquid hazardous wastes that contain over 50 ppm PCBs; (2) 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 1000ppm HOCs; and (3) liquid hazardous wastes that exhibit a characteristic and also contain over 134 mg/l nickel and 130 mg/l of thallium. These three exceptions have now become subject to more specific standards as explained below. All of the wastes in these examples are subject to the LDR requirement that all UHCs reasonably expected to be present in a characteristic hazardous waste at the point of generation must be treated to meet Universal Treatment Standards (UTS) (and, of course, the hazardous characteristic would also have to be treated prior to land disposal).

What is eliminated under this approach, however, is the requirement in some cases to incinerate the waste rather than treat in any way other than impermissible dilution to meet UTS levels. The Agency does not view this as in any way making the regulations less stringent. The Agency sets methods of treatment when the residues cannot be analyzed to see if they meet UTS, or when the technology is clearly far superior to other types of treatment for a particular waste. Neither of these conditions exist for the examples provided by the commenter. In the case of PCBs, they must meet UTS and then be disposed in a TSCA-approved landfill. The Agency believes that regulations under two statutes is as protective as required incineration of the PCBs. While the Agency once believed that it was necessary to require incineration of high-HOC wastes, it is possible that they can be adequately treated-- i.e.treated in a way that destroys or removes these constituents from the waste before disposal -- by other technologies to meet the UTS concentration levels. Therefore the California List treatment standards are superseded and are no longer in effect in the RCRA program.

2. Characteristic waste with UHCs

The Agency has proposed to require the identification and treatment of applicable UHCs for D004-D011 characteristic wastes. CWM provides comments regarding its disagreement with requiring UHC treatment standards for characteristic metal wastes later in this document. If the Agency finalizes this approach, CWM recommends that the Agency amend existing § 268.7(b)(5)(iv) to reference D003-DO11. This section requires a specific certification to be filed when the characteristic has been removed but UHCs still require treatment. The addition of these waste codes will clarify what LDR notification and certification requirements are expected for characteristic waste.

CWM recommends that the Agency amend the existing language in§

268.7(b)(5)(iv) to read as follows:

"For applicable characteristic wastes D001-D043 that are:

The word "applicable" should be added because not all characteristic hazardous waste is subject to treatment standards for UHCs. For example, D002 waste which is managed in a CWA regulated unit is not subject to UHC identification. This wording would help clarify which characteristic waste is subject to this section.

RESPONSE

The Agency is not finalizing treatment standards--including requirements to treat UHCs--for toxic characteristic (TC) metal wastes in this final rule. The commenter's suggestion will be considered in the context of the Phase IV final rule that will be promulgated in April of 1998, when treatment standards for TC metal wastes will be finalized.

h. §268.7(b)(4)(iii)

This section outlines the requirements for a treatment facility which treats organic wastes and uses the analytical detection limit as an alternative means of verifying compliance without analytical problematic constituents. The proposed language references §268.43(c) which was deleted and moved as a result of the Phase II LDR final rule. See 59 Fed. Reg. at 48,046. The alternative means is now located under §268.40(d). In an effort to assist the Agency in their review of deleting and replacing obsolete citations, CWM recommends that the Agency add the citation §268.40(d). in place of the obsolete citation of §268.43(c)". This will ensure consistency and eliminate confusion from the regulated community.

RESPONSE

The commenter's suggestion has been incorporated into the final rule.

i. §268.7(c)(1)

This section outlines the requirements for the disposal of recyclable material used in a manner constituting disposal. The existing regulation references that such facilities must comply with the generator standards (paragraph a) or treatment standards (paragraph b) of §268 which are applicable. The proposed section eliminates the reference for complying with treatment

standards (paragraph b). CWM does not fully understand why this reference has been omitted and the Agency does not explain why it is appropriate to delete such a requirement. Therefore, CWM believes that it was an inadvertent omission and recommends that the Agency add this reference to the final section.

RESPONSE

The commenter's suggestion has been incorporated into the final rule.

3. Section 268.9 - Special rules regarding wastes that exhibit a characteristic.(60 Fed. Reg. at 43,678)

a. The Agency proposes to amend 268.9(a) and (b) to clarify how wastes should be identified when they are both listed and exhibit a hazardous characteristic. Existing regulations require that for the LDR notification a waste must be identified as a listed waste and also as a characteristic waste, unless the listed waste has a treatment standard for the constituent or addresses the hazardous characteristic that causes the waste to also be characteristically hazardous. If the listed waste has treatment standards that address all characteristics, then the characteristic waste codes do not apply.

CWM generally supports this clarifying change to 268.9(a) & (b);however, because the Agency did not print the proposed changes to paragraph (b) (See 60 Fed. Reg. 43,694) CWM cannot comment on the specific change. Therefore, CWM recommends that the language in paragraph (b) stay the same. CWM recommends this because CWM believes that the language in paragraph (b)adequately conveys the requirements.

In addition, CWM believes that the Agency should provide three clear examples of the clarification in the final rule preamble discussion. Examples are the best means of providing guidance. CWM has three examples it recommends the Agency use. Example #1 involves the waste code K061 which contains lead at greater than 5.0 ppm determined by TCLP. Since K061 has a treatment standard for lead, the D008 characteristic for lead would not apply.

Example #2 involves a waste stream that has specified technology for its treatment standard. For example, U042 (2-Chloroethyl vinyl ether) has a specified technology of INCIN, and exhibits the characteristic of Ignitibility (D001) because it has a flash point of 8°F. Because the specified technology of

INCIN is listed in 268Appendix VI as a technology available for Deactivating (DEACT) a characteristic waste, CWM believes that the proper assignment of a waste code would be UO42. There is no need to add D001. As the Agency can see, this example is not as obvious as the first.

Example #3 involves the applicability of D001 to a F003, F005solvent waste that exhibits the characteristic of ignitability. The Agency stated in a September 28, 1994, letter to Ms. Susan Prior, Laidlaw Environmental Services, that for land disposal restriction purposes that for F003, F005 solvent wastes that exhibit the characteristic of ignitability that the waste should also be identified as D001 (See Attachment 1). CWM agrees with this position, however, because this guidance was issued in a letter CWM requests that the Agency include this example in the preamble discussion. CWM urges the Agency to provide these three examples in the final rule preamble discussion because many in the generating community still do not understand these principles.

RESPONSE

The commenter's suggestion has been incorporated into the final rule.

b. The amendment to paragraph (d)(1)(ii) is to clarify that if all underlying hazardous constituents, reasonably expected to be present in a characteristic waste, are monitored by the treatment facility then the generator is not required to list any of the UHCs on the LDR notification. If, however, a subset (e.g. 230 of 240 UHCs) will be monitored then all constituents must be included on the LDR notification.

CWM believes that this requirement should be modified to include less notifications when a subset group of UHCs cannot be accepted at a treatment facility. CWM continues to believe that this requirement provides no meaningful environmental benefit. For example, an incinerator may not be permitted to accept a subset of codes or constituents (e.g., dioxin and furan wastes) for thermal destruction. As a result of this permit requirement each generator is asked during the preacceptance process whether the waste stream contains dioxins and furans. If the waste stream contains these compounds the waste stream is not accepted for processing. The facility evaluates its treatment residues for all other 268.48constituents after treatment. Because the facility

does not monitor for six dioxin and furan compounds each generator is required to send in additional documentation identifying all UHCs present in the waste stream. CWM believes that is unreasonable when The facility already knows that the six dioxin and furan compounds are not present in the waste through the approval process. The facility should be able to accept these waste streams without the additional burden imposed to require additional UHC documentation that provides no additional environmental benefit. CWM urges the Agency to reevaluate this issue especially in the case of permit restrictions.

RESPONSE

EPA continues to look for ways to further reduce paperwork burden; however, in order to ensure that the Agency's ability to protect human health and the environment is not compromised by these changes, we are only implementing those changes that have been thoroughly analyzed and which have been previously proposed. As stated previously, the Agency will continue to implement changes to the paperwork requirements where practicable and your suggested changes will be evaluated during this process

4. Section 268.30 - 268.37 (Fed. Reg. at 43,678)

The Agency is proposing to remove 268.31 through 268.37 because the treatment standards for wastes in these sections are now in effect, and all of these wastes are now prohibited from land disposal. Thus, the sections are no longer necessary. In addition, the Agency is proposing to replace old 268.30 with a new section that provides the prohibition dates of the wastes included in this proposal.

CWM does not support the Agency's proposal to remove these sections. CWM believes that these sections provide useful historical information, and that the removal of these sections will give the appearance that the wastes are no longer prohibited. Therefore, CWM urges the Agency to maintain these sections.

As an alternative CWM recommends that the Agency remove Subpart B to 268 which contains the schedule for land disposal restrictions. CWM believes that removing 268.10, 268.11, and 268.12 will result in a clearer, simpler revision.

RESPONSE

The Agency has updated Appendix VII and Appendix VIII to Part 268 to include the effective dates of treatment standards for all prohibited hazardous wastes, therefore the prohibition language for the earlier LDR rulemakings is no longer necessary. The sections have been superseded or have been deleted as proposed. EPA disagrees with the commenter's drafting suggestion since the California List wastes are all prohibited, just under other provisions. Since the California List was meant as a stop-gap until these later prohibitions took effect (as noted by EPA in a number of places such as the Third Third rule preamble), eliminating the California List prohibition now that the other rules have been promulgated makes sense. Furthermore, sections 268.10, 268.11, and 268.12 were removed in a previous rulemaking.

5. Part 268 Appendix I - TCLP

The Agency is proposing to remove Appendix I, because the TCLP test method reference to SW-846 will be incorporated into the text of the regulatory language.

CWM supports this proposed change.

RESPONSE

The Agency acknowledges the commenter's support for this change in the regulations.

6. Part 268 Appendix II - Treatment Standards (As Concentrations in the Treatment Residual Extract).

The Agency is proposing to remove Appendix II to Part 268 because it incorrectly refers to treatment standards in 268.41, 268.42, and 268.43, and there is no longer a need to reference the solvent treatment standards.

CWM supports this proposed text removal.

RESPONSE

The Agency acknowledges the commenter's support for this change in the regulations.

7. Part 268 Appendix 11 - List of Halogenated Organic Compounds Regulated Under 268.32.

The Agency is proposing to remove Appendix 111 which contains

alist of halogenated organic compounds regulated under 268.32 because the California List treatment standards have been superseded by Universal Treatment Standards, thus there is no longer a need for a listing of halogenated organic compounds because they are California List wastes. CWM disagrees with the Agency's statement that all California List treatment standards have been superseded by the Universal Treatment Standards, and that there is no longer a need for a listing of halogenated organic compounds. CWM believes that the California List requirements are still in effect. (See the previous discussion regarding 268.7(a)(2) on page 5 of these comments). For example, if a K061 contains any of the halogenated organic compounds listed in appendix 111, that are not characteristically hazardous, in a quantity greater than 1000 mg/kg then pursuant to 268.42(a)(2) the waste must be incinerated in accordance with the requirements of 40 CFR part 264 Subpart O or 265 Subpart O. Because California List HOCs can still require a waste stream to be incinerated under California List CWM believes that the Agency must maintain the list of California List HOCs in Appendix III to part 268. As stated in earlier comments CWM would support to Agency's final determination if the Agency determines that statutorily California List requirements are no longer in effect. If the Agency makes this determination it must ensure that clear guidance is provided to the regulated community.

RESPONSE

The Agency believes that all the treatment standards for California List wastes have been superseded by more specific standards (55 FR at 22675; 52 FR at 29993). Therefore, Appendix II has been removed from Part 268.

8. Part 268 Appendix VI - Recommended Technologies to Achieve Deactivation of Characteristics in Section 268.42
The Agency is proposing to amend Appendix VI to clarify that characteristic wastes that also contain UHCs must be treated not only by a "deactivating" technology to remove the characteristics, but also treated to achieve the UTS for UHCs. CWM supports this language clarification.

RESPONSE

The Agency acknowledges the commenter's support for this change in the regulations.

9. Part 268 Appendix VII - Effective Dates of Surface Disposed Wastes Regulated in the LDRs

The Agency is proposing to remove Appendix VII because all of the wastes listed in the table have treatment standards now in effect, thus there is no need to know the effective dates.

CWM supports this proposed change.

RESPONSE

Other commenters requested that this Appendix be retained, especially because Subpart C is being revised to accommodate the newly listed and identified wastes for which treatment standards are being promulgated in recent rulemakings. Therefore, the Agency has updated Appendix VII to Part 268 to include the effective dates of treatment standards for all prohibited hazardous wastes

10. Part 268 Appendix VIII - National Capacity Variances for UIC Wastes

The Agency is proposing to remove Appendix VIII because the effective dates for these wastes when deep well injected are past and are no longer needed.

CWM believes that the current list of wastes in Appendix VIII can be removed; however, because the Agency is proposing national capacity variances for deep well injected Phase IV wastes the Appendix should be maintained. The appendix should then list the Phase IV wastes subject to a UIC capacity variance.

RESPONSE

Other commenters requested that this Appendix be retained, especially because Subpart C is being revised to accommodate the newly listed and identified wastes for which treatment standards are being promulgated in recent rulemakings. Therefore, the Agency has updated

Appendix VIII to Part 268 to include the effective dates of treatment standards for all prohibited hazardous wastes being deepwell injected.

11. Part 268 Appendix IX - Extraction Procedure (EP) Toxicity
The Agency is proposing to remove Appendix IX because as of this proposed rule all characteristic metal treatment standards are based on toxicity using the TCLP rather than the Extraction Procedure (EP).
CWM supports this proposed change.

RESPONSE

The Agency acknowledges the commenter's support for this change in the regulations.

12. Part 268 Appendix X - Recordkeeping, Notification, and/or Certification Requirements.
The Agency is proposing to remove Appendix X because it summarizes paperwork requirements that are proposed to be changed in the Phase III proposal and this proposal.
CWM believes that the Agency's proposed tables in 268.7(a) and(b) that discuss the regulatory requirements would allow for the removal of Appendix X if the tables are finalized as CWM has previously commented under IV.A.2.a.4 on page 11 of these comments.

RESPONSE

The Agency acknowledges the commenter's support for this change in the regulations.

DCN PH4P052
COMMENTS Pacific Gas & Electric
RESPONDER PV
SUBJECT CLNP
SUBJNUM 052
COMMENT

Pacific Gas and Electric Company (PG&E) supports the simplification of the Land Disposal Restriction (LDR) notification requirements. PG&E appreciates the opportunity for comment on EPA's LDR Phase IV Proposal (60 Fed. Reg. 43654 (August 22, 1995)). The proposed administrative changes to the LDR requirements would eliminate several unnecessary regulatory burdens while facilitating compliance with the LDR regulations. In particular, PG&E supports the following proposed changes:

Modification of the regulations to require that a generator whose waste meets the appropriate treatment standard need only supply a one-time notification and certification to the disposal facility, unless the waste composition changes. 60 Fed. Reg. at 43678.
Elimination of the requirement that a facility treating waste in a 90-day accumulation unit to meet treatment standards must first submit a waste analysis plan ("WAP") to EPA or an authorized state for approval. Id.

Reducing the LDR record retention time from five years to three years. Id.

These proposed modifications will greatly assist in streamlining the LDR requirements. In addition, EPA proposes to allow small quantity generators with contractual agreements in place for the reclamation of their waste, to be subject to reduced certification and notification requirements, provided that the agreements comply with 40 C.F.R. § 262.20(e). Id. at 43693(proposed 40 C.F.R. § 268.7(a)(10)). PG&E believes that this reduced set of requirements should be equally applicable in situations where large quantity generators have tolling agreements in effect, and therefore, should be extended to cover such arrangements. Extending the scope of this reduced set of requirements will have the desirable benefit of encouraging agreements for hazardous waste reclamation by reducing the administrative burdens currently associated with such transactions.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort. In reference to the commenters suggestion regarding LQGs, the LDR provision

pertaining to small quantity generators with tolling agreements was designed to capture the same universe as those captured by § 262.20(e), generators of more than 100 but less than 1000 kg of hazardous waste per year, thus it is not appropriate to extend the provisions of § 268.7(a)(10) to large quantity generators. The Agency has provided relief to large quantity generators, however, by changing the requirement to provide LDR notices and certifications with each shipment of hazardous waste to a one-time notice and certification, provided the waste does not change and the receiving facility does not change.

DCN PH4P056
COMMENTS Westinghouse
RESPONDER PV
SUBJECT CLNP
SUBJNUM 056
COMMENT

Issue 2: Improvements to Land Disposal Restrictions
Program Reference: Preamble at Section III.A.3., regarding Section 268.7, page 43678

Comment #1 EPA requested comments on deleting the requirement that generators submit waste analysis plans in §268.7(a)(5) to the states and the regions. We support deleting the requirement because it does not provide additional protection of human health or the environment. Regulators will still be able to inspect the site and obtain copies of generator related documentation. The proposed change will make generator waste analysis plan requirements consistent with requirements associated with contingency, training, or inspection plans, none of which have to be submitted for review.

Comment #2

The EPA solicited comment on whether labpack information requirements should be reduced. Westinghouse supports EPA's initiative to eliminate unnecessary paperwork requirements for labpacks.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort. EPA appreciates your comments on the elimination of unnecessary paperwork requirements for labpacks and has decided to promulgate the proposed change to a one-time notice and certification for labpacks that contain the same hazardous waste each time that are shipped to the same treatment facility in the final rule.

DCN PH4P056
COMMENTS Westinghouse
RESPONDER PV
SUBJECT CLNP
SUBJNUM 056
COMMENT

Issue 6: Regulatory Language Found in Section 268.1 Reference:
Regulatory text at page 43691

In order to prevent the imposition of LDR on the beneficial reuse of biosolids by land application, an additional exemption should be added to Section 268.1 stating: "Sludges regulated under 40 CFR 503 are exempt from Part 268."

RESPONSE

The commenter's suggestion is beyond the scope of this final rule, therefore, no change has been made.

Issue 7: Recordkeeping Requirements Reference: Regulatory text at page 43691-43692

Section 268.7 describes frequencies for notifications and certifications (one-time or with each shipment). Westinghouse recommends that EPA add clarification to these frequencies to account for situations where all phases of management are under a single EPA/state identification number. For example, if a waste movement is defined as an off-site shipment because it is being shipped on a public right-of-way, but is being sent to a TSD unit which operates under the same EPA/state ID number as the generator and the transporter on contiguous property, did EPA intend for the notification and certification requirements pertaining to that shipment to be as if the shipment was being made to another entity with a separate EPA/state ID number? In this cause, the same permittee may be the generator, transporter, treater, and disposer of the waste but the waste was moved on a road that may classify the movement as an off-site shipment. Westinghouse manages several DOE sites which store significant quantities of mixed waste in accordance with the Federal Facility Compliance Act. When the waste is treated and disposed, will the sites be subject to the certification and notification requirements that describe the frequency of "each shipment" even though the waste is completely managed on-site? This information

was intended for off-site shipments and did not consider how long mixed wastes would have to be stored until sufficient treatment and disposal technologies are available. What certification frequency is appropriate for several thousand waste drums which are removed from storage and treated on a batch basis? Should the owner/operator look at compliance with the certification requirements on a per-batch basis as waste is removed from storage, or can the owner/operator look at the waste stream as a whole to eliminate unnecessary paperwork? Furthermore, does each treated drum require sampling to determine whether a concentration-based treatment standard is met, or can compliance with the treatment standard be based on a per-batch basis?

RESPONSE

The Agency prefers not to address specific examples of the applicability of the regulations (as submitted by the commenter) in this Response to Comments Document. Rather, if these examples are raised in a letter to the Agency, interpretations of the regulations will be made. EPA believes as a general matter that responding to questions such as these without a specific factual context can lead to confusion or error, and consequently declines to do so here.

Issue 8: Regulatory Language Found in Section
268.7(a)(3)Reference: Regulatory text at page 43692
Throughout the proposed text of 40 CFR 268.7, reference is made to
40 CFR 261.3(e). The correct reference should be 261.3(f).

RESPONSE

The Agency has corrected this error in the final rule.

DCN PH4P064
COMMENTS Commenter Dow Chemical
RESPONDER PV
SUBJECT CLNP
SUBJNUM 064
COMMENT

Dow supports the proposed improvements to the Land Disposal Restrictions program. We appreciate EPA's efforts to clean-up and clarify outdated, confusing, or unnecessary language.

In particular, we approve of the changes proposed for 268.7 that eliminates redundancy or removes obsolete material and simplifies the requirements for generators. A one-time notification and certification to the receiving facility for those wastes that meet the appropriate treatment standard, is a definite improvement over the current system. The decision to change the record retention time period in 268.7(a)(8) from five years to three years is a significant improvement that will minimize confusion over recordkeeping and will be consistent with the manifesting recordkeeping requirements.

Dow supports the change found in 268.9 that states that if all underlying hazardous constituents reasonably expected to be present in a characteristic waste will be monitored, then the generator need not list any of them on the LDR notification.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort.

DCN PH4P074
COMMENTS DOD
RESPONDER PV
SUBJECT CLNP
SUBJNUM 074
COMMENT

DoD is highly supportive of EPA efforts to simplify LDR requirements. While the suggestions made in this section of the proposed rule are minor simplifications, DoD does support this step in the right direction. DoD agrees that the proposed changes in this section make the reading of the LDR regulations more straightforward. Additionally, the streamlined notification and reduction to a three-year records retention period is very helpful for a large organization such as DoD. DoD does want to mention the following points:

a. Proposed 40 CFR 268.7(a)(4) now contains a certification requirement which was not present in the previous corresponding section of 268.7 (a)(3). The proposed rule discusses a streamlining measure for this section, but fails to explicitly mention that a certification requirement is being added. 60 Federal Register at 43678. DoD requests EPA to specifically request comment on whether a certification requirement should be added. DoD does support the one-time notification streamlining concept proposed.

RESPONSE

The Agency did not intend to add a certification requirement at 40 CFR 268.7(a)(4), and any indication that a certification is required has been removed from the regulatory language in the final rule. The Agency acknowledges the commenter's support of the one-time notification concept.

b. Proposed 40 CFR 268.5 (iii) refers to proposed 268.7(a)(4). Did EPA mean instead to refer to proposed 268.7(a)(3), as this section would correspond to the previous edition of the regulation? If EPA is changing the reference in proposed 268.5(iii), DoD requests EPA to explain why this changed reference is suggested and allow for public comment on this issue after EPA's explanation.

RESPONSE

The commenter has found an inadvertant error in the proposed rule, however, the proposed language at 40 CFR 268.5 has been removed because the Agency is not finalizing that provision in this final rule. There is, therefore, no cross reference to 268.7 in today's rule.

c. In proposed 268.7(a)(9), the certification language omits the previously used phrase, "...or solid wastes not subject to regulation under 40 CFR part 261." DoD requests EPA to explain why this change in certification language is requested and to allow for public comment after EPA's explanation. This certification should be amended to include the phrase, "...based on knowledge and belief," at the beginning of the certification.

RESPONSE

The Agency does not believe that the language suggested by the commenter is appropriate, and is therefore not incorporating it into the final rule. The commenter asks why the certification omits the phrase, "...or solid wastes not subject to regulation under 40 CFR part 261." This change was made in the technical amendments to the Phase II final rule. The explanation given at that time was: "The certification language that reads '*or solid wastes not subject to regulation under 40 CFR part 261*' is being removed and is no longer considered necessary, because the regulated community has in appendix IV a list of wastes that are prohibited from placement in a lab pack. The Agency believes that deleting this statement is not a substantive change, but rather alleviates unnecessary language."

DCN PH4P075
COMMENTS Commenter Elf Atochem
RESPONDER PV
SUBJECT CLNP
SUBJNUM 075
COMMENT

Elf Atochem believes that both the current and proposed LDR notification requirements are far more burdensome than necessary to ensure compliance with substantive LDR requirements. Specifically, Elf Atochem believes that both the existing and proposed LDR notification provisions impose substantial information tracking requirements that serve no useful purpose.

EPA has already taken steps to reduce unnecessary LDR paperwork burdens by limiting the requirement that LDR paperwork track individual underlying hazardous constituents. EPA SHOULD now provide additional relief by eliminating the requirement to track waste codes and treatability groups for characteristic wastes that have been "decharacterized" but that remain subject to UTS treatment requirements. In lieu of the need to track waste codes and treatability groups related to nonhazardous wastes or residues, it should be sufficient to track only the fact that UTS treatment standards apply. This seemingly modest amount of streamlining would provide enormous regulatory relief in some situations, without compromising the Agency's ability to ensure compliance with substantive LDR requirements.

The need for such relief is graphically illustrated in the case of residues from carbon regeneration. Briefly, Elf Atochem manufactures and supplies activated carbon for use in a variety of waste treatment and manufacturing process applications. As an additional part of this business, Elf Atochem accepts spent activated carbon generated by its customers, regenerates the carbon in a rotary kiln, and sells the regenerated activated carbon for reuse. Because the regeneration of spent activated carbon produces residual materials (ash and baghouse dust) that are ultimately disposed of in a landfill, LDR requirements may be triggered.

The difficulty Elf Atochem faces is that the specific LDR treatment requirements that apply to residues from the regeneration of spent activated carbon appear to include any LDR requirements that may have attached at the point of generation to any characteristic ancestor waste that is traceable to the residue in question. The problem is aggravated by the fact that activated carbon is often used to treat commingled wastes, and that spent

carbon from a wide variety of sources is then commingled for regeneration. Consequently, in order to identify the specific constituents for which treatment is required, it appears that it may be necessary to identify all of the sources of the spent carbon from which regeneration residues are derived, to identify all of the wastes treated with each of those individual sources of spent activated carbon, to identify all of these wastes (and all of their ancestors) that exhibited hazardous characteristics at their point of generation, and to identify all underlying hazardous constituents that were present in such distant-ancestor characteristic wastes at their point of generation.

Fortunately, the book-keeping needed to track individual underlying hazardous constituents can be eliminated if testing is performed to ensure that residues meet UTS levels for all UTS constituents prior to land disposal. See 60 Fed. Reg. at 43,678 col. 2. In effect, it is possible to ensure substantive compliance - without the need for complex compliance evaluation - through the expedient of assuming that every UTS constituent is an underlying hazardous constituent that requires treatment.

Unfortunately, it appears that substantial compliance evaluation and book-keeping is necessary anyway to track the original waste codes and treatability groups of any and all ancestor characteristic wastes. This information tracking - which is not necessary to ensure substantive LDR compliance - is necessary solely to satisfy LDR paperwork requirements. The specific paperwork requirements involved are as follows.

First, it appears that operators that use activated carbon to treat wastes that exhibit hazardous characteristics - or that exhibited hazardous characteristics at their point of generation - must prepare LDR notifications recording detailed information concerning these "original" wastes. At least in the case of nonhazardous spent carbon, it appears that the notification must identify the waste codes and treatability groups that applied to these "original" wastes at their point of generation. Such operators must also identify any underlying hazardous constituents present in these "original" ancestor wastes at their point of generation, unless the residues ultimately land disposed will be tested for all UTS constituents prior to land disposal.

The more serious problem is that further LDR notification and certification requirements apply when residuals from the regeneration of spent activated carbon are shipped off-site by the regeneration facility for subsequent management. Again, at

least in the case of nonhazardous residues, it appears that the paperwork required must include "a description of the waste as initially generated." 40 C.F.R. §268.9(d). It thus appears that the regeneration facility would be required to list the waste codes and treatability groups that applied at the point of generation to any characteristic or formerly-characteristic wastes that were treated with any of the spent carbon from which the regeneration residues were in turn derived. In addition, the regeneration facility would need to identify the underlying hazardous constituents present in these "distant ancestor" wastes, again unless residues will be monitored for all UTS constituents prior to land disposal. *Id.*

The paperwork management tasks presented by these requirements are obviously considerable, and they are certainly far more burdensome than necessary to advance the environmental objectives of the LDR program. The limitations on the need to track underlying hazardous constituents is important, because residuals from Elf Atochem's carbon regeneration activity will consistently meet UTS levels for organic constituents, and they will meet UTS levels for all constituents if they are stabilized prior to land disposal. Elf Atochem should therefore be able to obviate the need to track individual underlying hazardous constituents. Unfortunately, however, the requirement to track waste codes and treatability groups for characteristic wastes still presents extraordinary compliance challenges in the context of carbon regeneration activities. These requirements provide no practical benefit that could not be obtained through far simpler requirements.

Where a waste is subject to UTS treatment standards because one of its ancestors exhibited a hazardous characteristic, it appears that the waste code and treatability group of the original ancestor waste is of no continuing relevance once the hazardous characteristic has been removed. A statement that a waste is subject to UTS treatment standards should by itself be sufficient, together with an identification of the underlying hazardous constituents involved unless residuals will be monitored for all UTS constituents prior to land disposal. EPA should therefore eliminate the requirement that LDR certifications identify the original characteristic waste codes and treatability groups that apply in any case in which the UTS treatment standard applies. This change would dramatically simplify paperwork

requirements without any sacrifice of relevant information.

RESPONSE

The Agency continues to believe that RCRA mandates “cradle to grave” management of hazardous wastes. Characteristic wastes must be identified, therefore, even if they have lost the hazardous characteristic. The Agency has streamlined the process, however, by requiring in 40 CFR 268.9 that only a one-time notice be placed in the files when a characteristic waste loses its characteristic.

DCN PH4P076
COMMENTS Society of the Plastics Industry
RESPONDER PV
SUBJECT CLNP
SUBJNUM 076
COMMENT

SPI supports EPA's efforts to streamline LDR requirements for generators who manage their own waste, such as by proposing to require only a one-time notification and certification to the receiving facility, eliminating the requirement to submit waste analysis plants to States and regions, and reduce record retention periods from five to three years. 60 Fed. Reg. at 43677. It would be of further help for the final rule to remind manufacturers of their inherent obligations, and to inform them that the use of POLYM does not trigger the need for treatment, storage and disposal facility ("TSD") permitting. Although permitting is not required if a generator chooses to manage waste in tanks, containers or containment buildings to meet the applicable LDR standards, other RCRA generator and LDR obligations apply. 51 Fed. Reg. 10168 (March 24,1986). SPI believes that facilities will be able to perform the required polymerization well within the accumulated storage time limits. The involved facilities are familiar with safe handling techniques and the associated particulars of polymerization technology.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort. The use of POLYM, if it is performed within 90 days in a tank or container, does not trigger the need for a RCRA treatment, storage and disposal facility ("TSD") permit. The generator is required, however, to prepare a 1-time notification and keep it in the on site files under 268.7(a).

DCN PH4P085
COMMENTER EDF
RESPONDER PV
SUBJECT CLNP
SUBJNUM 085
COMMENT

A. Case-By-Case Extensions

On a generic basis, EPA proposes to amend 40 CFR 268.5 to allow case-by-case extensions of the effective date of up to two years when first requested by the applicant. See 60 FR43677. The proposal conflicts with the express language of Section 3004(h)(3) of RCRA, authorizing only one year extensions, and a maximum one year renewal. The structure of Section 3004(h)(3) of RCRA is intended to discourage unnecessary extensions of time by ensuring the provision is utilized only in "extraordinary circumstances," with regard to both initial applications and the appropriate durations of effective date extensions. ²³ The procedure of reviewing the validity of the extension annually, and inviting public comment on the extension and the renewal, are important elements of accomplishing this Congressional intent.

²³ See S. Rep. 98-284, 98th Cong., 1st Sess. 19 (1983).

RESPONSE

EPA agrees with the commenter and has decided not to finalize the case-by-case extension renewal as proposed. Section 268.5 will remain as is was before the proposal, i.e., provide opportunity to be granted a one year case-by-case extension, with the requirement that a one-year renewal can be granted upon application at the end of the first year of the extension.

DCN PH4P085
COMMENTS EDF
RESPONDER PV
SUBJECT CLNP
SUBJNUM 085
COMMENT

B. Generator Sampling Plans

EPA proposes to delete the requirement in 40 CFR 268.7 that generators managing restricted wastes submit their waste sampling plans to the EPA Region or authorized state for review and approval. EPA proposes this deletion as a "streamlining" measure, but fails to indicate whether and how these sampling plans will be reviewed if they are not submitted to the appropriate regulatory agency. Presumably, EPA would rely upon generator inspections to perform this task, but as recent data regarding generator inspection frequency indicates, many sampling plans will remain unreviewed for decades if review is linked to inspections.

Through a Freedom of Information Act request submitted in March 1994 to various EPA Regional offices, EDF obtained data regarding generator inspection frequency in FY 1993 and 1994. In FY 1993, the following percentage of large quantity generators (LQGs) received inspections in Region V: IL (3.67%), IN (4.89%), MI (7.9%), OH (4.75%). For small quantity generators (SQGs), the applicable percentages were: IL (0.41%), IN (0.32%), MI (4.45%), OH (0.77%). In FY 1994, projected inspection LQG percentages were: IL (2.43%), IN (2.97%), MI (3.5%), OH (8.98%). No SQG inspections were projected in these states in FY 1994.

Region III provided similar but slightly higher percentages for Pennsylvania. In FY 1993, 12% of LQGs, 3.3% of SQGs, and 71% of TSDs were inspected. In FY 1994, inspection projections were 8% for LQGs, 3.5% for SQGs, and 52% for TSDs. Significantly, while Regional staff believed Pennsylvania would exceed the 8% target level for LQGs, approximately 60% of the LQG inspections were directed toward generators that have never received a RCRA inspection before.

These inspection frequencies can be expected to decrease since EPA no longer specifies minimum target inspection frequencies for either LQGs or SQGs. Accordingly, EPA can hardly ensure a generator's waste sampling plan will produce valid land disposal restriction determinations if review of the plan awaits an inspection, and a generator may not ever be inspected (in the case of many SQGs) or will not be inspected in the next 25 years (in the case of some LQGs).

RESPONSE

The FY 1996/1997 Memorandum of Agreement (MOA) between EPA Headquarters and the Regions provides for greater risk-based targeting, and encourages the Regions and States to focus more attention on hazardous waste generators, a universe which previously had low enforcement priority. Therefore, the Agency believes that an increasing number of generators will be inspected, allowing an opportunity for the WAPs in question to also be inspected. In addition, the Agency believes that the generator has an incentive to comply with the requirement to prepare the WAP because it assists them in demonstrating that they are in compliance with all regulations applicable to proper waste identification, thereby ensuring a safe operating environment and protection of human health and the environment. Furthermore, the generator is likely aware that there are serious penalties (up to \$ 25000/day) for noncompliance, so even if generators are not inspected frequently, they must seriously weigh the consequences of noncompliance.

DCN PH4P089
COMMENTS ASTSWMO
RESPONDER PV
SUBJECT CLNP
SUBJNUM 089
COMMENT

(3) Notification requirements should be reduced.

In response to streamlining measures for generators that meet the appropriate treatment standards which are only required to submit a one-time notification and certification to the receiving facility[26 3.7(a)(3)], the Task Force agrees with the proposed simplification of these notification and certification requirements. In addition, the Task Force believes that the notification should only be a one-time activity for all generators for shipments to a specific receiving facility. In a case where the generator changes the receiving facility, a new notification would be required.

The notification requirement was established to disallow generators from diluting the wastes in order to circumvent an effective date or otherwise alter the applicable treatment standard (51 FR40620). In the Phase IV proposal (60 FR 43678), Appendix VII and VIII of Part 268 contained all the effective dates for treatment standards and are proposed to be deleted because there is no need to know the effective dates, waste by waste, as all the wastes in the table have treatment standards now in effect. The second issue concerning the altering of applicable treatment is not as

significant an issue as it was during the early implementation of the Land Disposal Restrictions. Specifically, the adoption of Universal Treatment Standards now has the consequence of minimizing the differences between treatment standards for different wastes and minimizes any inappropriate switching of applicable treatment standards.

Furthermore, the information necessary for treatment of the waste is dictated by the treatment facility, and these off-site facilities require a preacceptance waste profile to determine treatability of the waste. Present notification information such as constituents to be monitored, wastewater or nonwastewater, and subcategory placed on the notification form will be obtained by the treatment facility in order for them to properly certify that the waste was properly treated.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort.

DCN PH4P091
COMMENTS FMC
RESPONDER RC/NV
SUBJECT CLNP
SUBJNUM 091

COMMENT I. FMC Supports the Agency in their Efforts to Improve the Land Disposal Restriction program. FMC fully supports and applauds the Agency for their efforts to improve the Land Disposal Restrictions (LDR) program. /1 FMC has previously advocated steps to streamline the Land Disposal program. In our comments to both the Phase II /2 and to Phase III /3 proposals, FMC requested modifications to the LDR that would streamline the system without sacrificing protection of human health and the environment. As the Agency is aware, as stated in the August 22, 1995 proposal, the current LDR program is one of the most confusing and burdensome (excess paperwork and recordkeeping) systems within the environmental program. The proposed modifications go a long way toward revising the system. FMC believes there are further modifications that can be made to make the LDR program more workable. At the Agency's convenience, we would be happy to meet with you to discuss further modifications.

a. The Agency is Correct in Removing Outdated, Confusing and Duplicative Requirements 1/ 60 Fed. Reg. 43677, 8/22/95 2/ J.F. Schmidt to USEPA, 11/15/93, Docket No. F-92-CS2P-FFFFF 3/ R.J. Fields to USEPA, 5/1/94, Docket No. F-95-PH3P-FFFFF FMC concurs with the Agency in removing the outdated, confusing and duplicative requirements regarding: - §268.4:/ 4 Treatment in Surface Impoundments - §268.7:/5 Notification requirements One time Certifications Deletions of extraneous tables and references in 268.4143 Deletion of the California Standards Deletion of WAP submittals Record retention time to 3 years Reference to SW-846 methodologies (see below) - §268.9:/6 Code clarification - §268.30-37:/7 Timing on prohibitions - Appendices b. The Agency is Correct in Deleting Appendix I but Needs to Modify the New Language FMC concurs with the EPA in its intent to revise §268.32 regarding /8 the change from Appendix I to SW-846 /9 but requests that the Agency revise the language to allow for either a modified method or additional methods as approved by EPA. This can be done by adding at the end of the proposed change (after "EPA Publication SW-846.n) the following: "or other methods as approved by the Regional Administrator or Authorized State". In some circumstances the TCLP methodology cannot be used for various

reasons such as matrix interference from various constituents, detectability issues and general safety procedures due to constituents (whether or not listed in 40 CFR §261 Appendix VIII) that are contained in the waste. Generators, treaters or disposal facilities which seek to use a modified method would have to follow the procedures for "Petitions for equivalent testing or analytical methods" to use a revised method. /10 4/ 60 Fed. Reg. 43677 5/ ibid 6/ 60 Fed. Reg. 43678 7/ ibid 8/ ibid 9/ "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" 10/ 40 C.F.R.§260.21

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort. The Agency views the commenter's suggestion that modified test methods be allowed to be used instead of the TCLP is far beyond the scope of the proposed change to omit an Appendix from Part 268. Therefore, the Agency has not considered this comment in the context of the final rule.

DCN PH4P093
COMMENTS Commenter Heritage Environmental
RESPONDER PMC
SUBJECT CLNP
SUBJNUM 093
COMMENT

Heritage Supports EPA's Proposed Improvements to the Notice and Certification Requirements (40 CFR 268.7)

Heritage supports EPA's proposal to allow generators a one-time notice and certification for situations where the waste meets applicable treatment standards. However, Heritage requests that EPA clarify that the one-time notice may be sent to a disposal facility, as well as a storage or treatment facility. The preamble discussion of this proposed change states that the one-time notice would be submitted to the "receiving facility," which would include a treatment, storage or disposal facility (60 FR 43678). The proposed regulatory language for 268.7(a), however, specifies the one-time notice would be submitted to "each treatment or storage facility receiving the waste" (60 FR 43691), implying this option is not available for wastes shipped to a disposal facility.

RESPONSE

The Agency appreciates the commenters suggestion for further streamlining of the LDR paperwork requirements. In this rule, EPA has made significant changes to the LDR program and its paperwork requirements, greatly reducing the reporting and recordkeeping burden on the regulated community. EPA continues to look for ways to further reduce this burden. However, in order to ensure that the Agency's ability to protect human health and the environment is not compromised by these changes, we are only implementing those changes that have been thoroughly analyzed and which have been previously proposed. As stated previously, the Agency will continue to implement changes to the paperwork requirements where practicable and your suggested changes will be evaluated during this process.

DCN PH4P093
COMMENTS Commenter Heritage Environmental
RESPONDER PMC
SUBJECT CLNP
SUBJNUM 093
COMMENT

Heritage also requests that EPA clarify that a treatment facility shipping a waste that meets the applicable treatment standards also may send a one-time notice and certification to the receiving facility. RCRA-permitted treatment facilities are under much greater scrutiny with regard to their LDR compliance. Treatment facility RCRA permits typically include a rigorous sampling and analysis protocol to verify compliance with applicable treatment standards. These facilities also typically generate more shipments per facility that meet applicable requirements than generating facilities, since their purpose is to treat the waste to meet these standards prior to disposal. The same rationale used to justify the reduced requirement for generators would also apply to treatment facilities. This reduction in paperwork burden would free more resources to perform other more effective compliance duties, such as reviewing other paperwork (i.e., manifests) and identifying potential waste discrepancies. This proposed modification will greatly reduce the paperwork burden on both generators and receiving facilities. The determination as to whether a waste meets the applicable treatment standards is analogous to the initial hazardous waste determination for a waste stream. Both determinations are made at the point of initial generation and are usually performed initially, then updated on a routine or as-necessary basis, depending on the variability of the waste stream or changes to the generating process. Generators of hazardous waste are not required to submit a hazardous waste determination with each shipment. Similarly, generators should not be required to submit an LDR notice with each shipment that merely repeats the same information.

RESPONSE

The Agency appreciates your comments suggesting that treatment facilities shipping waste that meet the applicable treatment standards may also send a one-time notification and certification to the receiving facility. It was the intent of EPA to include these facilities in this requirement and the final rule will reflect this.

DCN PH4P093
COMMENTS Commenter Heritage Environmental
RESPONDER PMC
SUBJECT CLNP
SUBJNUM 093
COMMENT

In fact, Heritage requests that EPA change the entire LDR notice and certification requirement to a one-time only requirement, unless the waste changes. There seem to be few benefits to the requirement for an LDR notice with each shipment, as the information once submitted on the initial notice, seldom changes for most waste streams. Receiving facilities already know the applicable treatment standards based on the waste codes approved for a waste stream and included on other shipping papers received with each shipment. Once the appropriate information regarding the LDR compliance of a specific waste stream is received and filed by the receiving facility, it can easily be referenced for future shipments. The one-time notice system would significantly reduce LDR notice errors, as the generator and TSDI would be able to concentrate on the completeness and correctness of the initial notice. Under the current system, the paperwork is so overwhelming and complex, generators often make errors which divert many of the receiving facilities' resources towards follow-up and correction, and increases the potential for overlooking an inaccurate notice.

RESPONSE

EPA appreciates your comments on this issue and has incorporated your suggested change that the one-time notification include all facilities in the final rule.

DCN PH4P093
COMMENTS Heritage Environmental
RESPONDER PMC
SUBJECT CLNP
SUBJNUM 093
COMMENT

Heritage also suggests that it would further simplify the LDR program to consolidate the sections regarding generator and treatment facility notice and certification requirements (40 CFR 268.7(a) and (b)). Since generators may perform treatment on-site and many treatment facilities are generators, it would be less confusing and less cumbersome to specify notice and certification requirements to a situation (e.g., the waste requires treatment, the waste meets the treatment standards, etc.), rather than to a facility's regulatory status. Only one certification statement would be required if a waste met all of the applicable treatment standards, particularly since many wastes are multi-coded and would require more than one certification under the current system.

RESPONSE

The Agency appreciates the commenters suggestion for further streamlining of the LDR paperwork requirements. In this rule, EPA has made significant changes to the LDR program and its paperwork requirements, greatly reducing the reporting and recordkeeping burden on the regulated community. EPA continues to look for ways to further reduce this burden. However, in order to ensure that the Agency's ability to protect human health and the environment is not compromised by these changes, we are only implementing those changes that have been thoroughly analyzed and which have been previously proposed. As stated previously, the Agency will continue to implement changes to the paperwork requirements where practicable and your suggested changes will be evaluated during this process.

DCN PH4P093
COMMENTS Commenter Heritage Environmental
RESPONDER PMC
SUBJECT CLNP
SUBJNUM 093
COMMENT

Heritage Supports Other Proposed Improvements to the Current LDR Rules

Heritage supports EPA's efforts to streamline and simplify other LDR requirements and language of the rules. In particular, Heritage supports the proposed changes to the text of 40 CFR 268.7 regarding testing, tracking and recordkeeping requirements. The clarification of the language requiring identification of F001-F005 and F039 constituents and the paperwork requirements tables help to clarify the information required in an LDR notice and certification.

RESPONSE

The Agency thanks you for your comments and support of proposed changes to the LDR requirements and language of the rules. The proposed changes, for the most part, are included in the final rule.

DCN PH4P093
COMMENTS Commenter Heritage Environmental
RESPONDER PMC
SUBJECT CLNP
SUBJNUM 093
COMMENT

Heritage also supports EPA's proposal to modify the waste analysis plan requirement for generators that treat in tanks or containers on-site. By maintaining the requirement to prepare and implement a waste analysis plan and keep the plan on site, but removing the requirement to submit the plan, EPA has streamlined the rule and still maintained its substantive features. In addition, EPA's proposal to clarify the language at 40 CFR 268.9 requiring identification of characteristics in listed wastes and modifying the constituent list for F039 at 40 CFR 268.40 to reference universal treatment standard constituents will improve and clarify the LDR requirements as well.

RESPONSE

The Agency appreciates your support of the proposed changes to the waste analysis plan requirements and attempts to clarify language regarding identification of characteristics in listed wastes. The Agency is not, however, changing the treatment standard for F039 as proposed, as explained in the preamble to the final rule and elsewhere in this response to comments document.

DCN PH4P093
COMMENTS Commenter Heritage Environmental
RESPONDER PMC
SUBJECT CLNP
SUBJNUM 093
COMMENT

Lastly, Heritage agrees with EPA's proposal to make the records retention period for LDR documents three (3) years, rather than five (5) years. This is consistent with other RCRA and non-RCRA records retention periods. Such consistency will reduce the unnecessary confusion created by varying the required retention period.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort.

DCN PH4P094
COMMENTS General Motors Corp.
RESPONDER PV
SUBJECT CLNP
SUBJNUM 094
COMMENT

Streamlining LDR Notification Requirements (60 FR 43677)

Generators are currently required to file this notification and certification every time a waste shipment is generated. The original intent of this requirement was to make certain that the receiving facility was aware of the applicability of the LDR's, since the generator was most familiar with the waste and regulations. As the LDR program has matured it has become apparent that the TSDFs are very knowledgeable of the rules and often assist the generator in filling out the notification forms used by the generator to notify the TSDF. LDR notifications no longer serve any purpose.

General Motors recommends that the requirements for LDR notifications be deleted. Although EPA's proposal to reduce the notification and certification to a one-time requirement for new and modified waste streams is a substantial improvement over the current process, a deletion of the LDR notifications would be most effective in streamlining the notification process.

RESPONSE

The Agency does not agree that the LDR notification should be eliminated at this time. EPA continues to look for ways to further reduce paperwork burden; however, in order to ensure that the Agency's ability to protect human health and the environment is not compromised by these changes, we are only implementing those changes that have been thoroughly analyzed and which have been previously proposed. As stated previously, the Agency will continue to implement changes to the paperwork requirements where practicable and your suggested changes will be evaluated during this process

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Improvements To Land Disposal Restriction Program (60 FR 43677)
Clean Up of Part 268 Regulations
Section 268.5: Procedures for case-by-case extensions to an
effective date (60 FR 43677)

The Agency proposes to amend §268.5(e) to clarify that an applicant can be granted additional time (up to one year) beyond the one-year case-by-case extension, when the applicant first applies for the case-by-case extension. The HWMA supports this amendment to reflect that the additional one-year extension can be requested and received with the initial application request.

RESPONSE

Although the idea of granting additional time beyond the one-year case-by-case extension when the applicant first applies was proposed by the Agency, it is not being included in the final rule. Concerns were raised by commenters about the affect such a change would have on the LDR case-by-case extension process. EPA believes that if an applicant did not have to file a second petition to gain additional time, then that applicant would not have sufficient incentive to make a good-faith effort during the initial one-year period as required. Therefore, the Agency is not making any changes to the case-by-case extension application process in the final rule.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Section 268.7 - Waste Analysis and Recordkeeping (60 FR 43677)
HWMA supports the Agency's proposal to streamline the waste acceptance procedure by eliminating obsolete (e.g., references to § 268.41) and inconsistent requirements (e.g., 5 years for record retention) from the existing regulations. Our members believe that the existing notification/certification requirements of this section do not yield useful information when they evaluate whether they can manage the restricted waste. HWMA supports the Agency's efforts to delete non-beneficial paperwork from the hazardous waste regulations because these requirements have done nothing but provide Agency inspectors with a potentially easy compliance issue when evaluating a generator's LDR records. Below are more detailed comments on each section of the recordkeeping requirements.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Section 268.7(a)(2): California List Applicability

The Agency proposes to delete any references to § 268.32 and RCRA § 3004(d), California List wastes, because existing treatment standards supersede all statutory standards. We generally agree with this evaluation; however, the following California List wastes should continue to be restricted under RCRA 3004(d) as follows:

Liquid waste containing greater than or equal to 50 ppm

Polychlorinated Biphenyls (PCBs);

Liquid or nonliquid wastes with greater than or equal to 1,000 ppm

Halogenated Organic Compounds (HOCs) listed in Appendix III; and

Liquid waste containing greater than or equal to 134 ppm Nickel or 130 ppm Thallium

Our members' understanding is that a hazardous waste (e.g., D002) containing PCBs at greater than 50 ppm must be treated using incineration or fuel substitution. HWMA believes that this standard is correct because when there is an inconsistency between RCRA and TSCA regulations, the most stringent standard governs (40 CFR § 761.1(e)). A review of both regulations reveals that the statutory standard of incineration or fuel substitution could be construed to be more stringent than existing PCB requirements. Under these PCB disposal regulations, specific liquid PCB wastes are eligible for disposal in a TSCA approved chemical landfill without undergoing additional treatment.

Specific examples include:

Liquid hazardous waste containing PCBs less than 500 ppm which have been treated (i.e., chemically) to render the waste non-liquid (See § 761.60(a)(3) and 75(b)(8)(ii)); and

Containerized liquid hazardous waste containing PCBs less than 500 ppm which meet § 264.314(d).

Our opinion is that requiring a generator to meet a specified treatment technology would be more stringent than the existing PCB regulations which do not require a specified treatment technology. HWMA also requests that the Agency provide the rationale for why other California List (i.e., HOCs and specific metals) wastes listed earlier are no longer subject to statutory restrictions.

Our

members believe that the California List restriction is applicable to a F005 listed waste which contains greater than 1,000 ppm of HOCs. In this example, the waste contains toluene, which was used for its solvent properties, and chloromethane at greater than 1,000 ppm. Past guidance from the Agency has been that the California List HOC standards do not apply where the waste is subject to Part 268, Subpart D treatment standards for a specified HOC. In addition, the Agency has stated that where a hazardous waste contains both HOCs and non-HOC constituents, the waste would be prohibited from land disposal until it has met the treatment standard for both HOC and non/HOC constituents (52 FR 25773). In this example, there is no treatment standard for chloromethane in Subpart D. In accordance with the guidance issued by the Agency, such waste would be subject to the §268.42(a)(2) treatment standard of incineration. Because of the complexity and confusion which has surrounded the California List, the Agency needs to provide clear and concise guidance as to the applicable LDR regulations for such waste streams.

HWMA also believes that a liquid waste which is listed as an F006 hazardous waste and contains thallium at greater than 130 ppm would be subject to a California Listing restriction. In this example, the Agency needs to determine the applicable LDR standards. Specifically, would the waste require treatment to meet the F006 listing under section 268.40 and to the statutory level for nickel, or would the waste only be subject to the F006 listing under section 268.40?

Until the Agency can answer the questions posed, the regulated community must assume that it is appropriate to assume that all California List standards have been superseded. The Agency needs to evaluate whether statutorily this unique type of hazardous waste continues to have a treatment standard identified under RCRA §3004(d). If the Agency's review determines that all California List standards have been superseded, then we support the Agency's decision to delete any reference which requires a notification of their treatment standards. However, if the Agency determines that specific California List standards continue to exist, we recommend that the Agency identify the types of restrictions which may apply and list them. Listing such applicable restrictions should eliminate any future confusion over the California List.

RESPONSE

The Agency continues to believe that all the treatment standards for California List wastes have been superseded by more specific standards (55 FR at 22675; 52 FR at 29993). The Agency believes that the treatment standards for listed hazardous wastes are the most specific. Next would be the characteristic waste treatment standards with their associated treatment standards for underlying hazardous constituents (UHCs).

The Agency stated in the In 1990, the Agency stated its belief that all standards had been superseded at that time with the exceptions of (1) liquid hazardous wastes that contain over 50 ppm PCBs; (2) 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 1000ppm HOCs; and (3) liquid hazardous wastes that exhibit a characteristic and also contain over 134 mg/l nickel and 130 mg/l of thallium. These three exceptions have now become subject to more specific standards as explained below. All of the wastes in these examples are subject to the LDR requirement that all UHCs reasonably expected to be present in a characteristic hazardous waste at the point of generation must be treated to meet Universal Treatment Standards (UTS) (and, of course, the hazardous characteristic would also have to be treated prior to land disposal).

What is eliminated under this approach, however, is the requirement in some cases to incinerate the waste rather than treat in any way other than impermissible dilution to meet UTS levels. The Agency does not view this as in any way making the regulations less stringent. The Agency sets methods of treatment when the residues cannot be analyzed to see if they meet UTS, or when the technology is clearly far superior to other types of treatment for a particular waste. Neither of these conditions exist for the examples provided by the commenter. In the case of PCBs, they must meet UTS and then be disposed in a TSCA-approved landfill. The Agency believes that regulations under two statutes is as protective as required incineration of the PCBs. While the Agency once believed that it was necessary to require incineration of high-HOC wastes, it is possible that they can be adequately treated-- i.e.treated in a way that destroys or removes these constituents from the waste before disposal -- by other technologies to meet the UTS concentration levels. Therefore the California List treatment standards are superseded and are no longer in effect in the RCRA program.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Section 268.7(a)(2): Notification of date waste is subject to prohibition

This requirement appears to have been inadvertently added to the rule during the technical amendments to the Phase II LDR rule based on members conversations with personnel from the waste Treatment Branch. In addition, the requirement has historically been applicable only to restricted waste which was subject to case-by-case extension, a capacity variance, etc. Therefore, HWMA supports the Agency's proposal to delete it from the proposed §268.7(a)(2).

RESPONSE

The Agency acknowledges the commenter's support.

Section 268.7(a)(2): Paperwork Requirements Table

The Agency proposes listing the requirements applicable for the different notification forms by addressing each requirement in a table. The concept is sound: however, the check marks used to identify each requirement are hard to distinguish. A generator or regulator could misread which section is checked. The Agency should add a line, which separates each row in the required information column and each citation column, for easier confirmation of which row is checked.

In addition, the proposed table outlines the notification requirements for hazardous debris which will be treated using the alternative treatment technologies identified in §268.45. The Agency proposes to delete the reference that the date of prohibition be listed for each hazardous debris. This requirement was inadvertently added during the technical amendments to the Phase II LDR rule based on members' conversations with personnel from the Waste Treatment Branch. Therefore, HWMA supports the Agency's proposal to delete it as a requirement from the existing §268.7(a)(3).

RESPONSE

The Agency modified the table to make it easier to read. The Agency acknowledges the commenter's support on the proposed change to the debris requirements.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Section 268. 7(a)(3): Clarify "naturally" meets treatment standards

This section addresses hazardous waste which, when originally generated, "naturally" meets treatment standards. The Agency proposes to reduce the notification and certification requirements for generators which have such waste streams from each shipment to a one-time notice. We generally support this proposal and recommend that the Agency clarify this requirement to clearly indicate that this section is applicable to restricted hazardous waste which meet the LDR treatment standards as generated. The wording proposed is ambiguous enough that a generator could misinterpret this section. The addition of the following language to this section is recommended so that it is clear that the one-time notification is applicable only to nontreated waste:
"If the waste meets the treatment standards upon original generation:"

RESPONSE

The commenter's suggested language has been considered in writing the regulation.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Section 268. 7(a)(3): Receiving facility applicability

The language in this section only addresses waste which "naturally" meets treatment standards and will be sent to a treatment or storage facility. If a hazardous waste is not prohibited from land disposal, it is highly probable that the waste will be sent directly to a disposal facility.

Therefore, the Agency should amend the proposed language so that it is clear that this requirement also is applicable to generators who send waste which "naturally" meets treatment standards to disposal facilities. Amending the language to address a disposal facility will eliminate any potential confusion for the regulated community. The following language change is recommended:
"If the waste meets the treatment standard: The generator must send a one-time notice and certification to each treatment, storage, or disposal facility receiving the waste."

RESPONSE

The Agency has considered the language suggested by the commenter in the regulation.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Section 268. 7(a)(3): Definition of one-time notice
HWMA supports the Agency's proposal to reduce the frequency with which a generator must submit a notification and certification for waste which "naturally" meets applicable treatment standards and is not prohibited from land disposal from every shipment to a one-time notice. This reduction greatly reduces the burden on generators and TSDFs in maintaining duplicative records(see previous section, above).

However, the Agency needs to identify a specific point in time when an LDR notice must accompany the waste. The term, "one-time," is ambiguous and does not reflect whether shipments received prior to the notice meet BDAT. The Agency should amend the proposed language to require that the LDR notice and certification accompany the initial shipment. By requiring a generator to certify that the waste meets BDAT with the initial shipment, the generator will assume some responsibility for determining if subsequent shipments of the same waste are prohibited.

In addition, this requirement does not leave room for different interpretations which may cause an inspector with an agency to pursue enforcement action. In order to avoid unnecessary resources and costs associated with determining each state's and Region's interpretation, the Agency should amend the proposed language to read:

"If the waste meets the treatment standard: The generator must send a notice and certification with the initial shipment to each treatment, storage, or disposal facility receiving the waste."

RESPONSE

The Agency has considered the language suggested by the commenter in the regulation.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Section 268.7(a)(3): Certification required for waste which "naturally" meets BDAT

The proposed certification for waste which "naturally" meets BDAT has been changed to incorporate language which addresses waste which is exempt from treatment standards. Existing regulations do not require a certification to accompany waste subject to case-by-case extensions or capacity variances. While the Agency may view this change as minor it becomes a very significant issue for some hazardous waste management facilities because certification changes require changes to LDR forms which are used by customers.

This repeated exercise results in the discarding of thousands of forms currently in stock because they cannot be converted in a cost-effective manner to include the new certification. While these conditions are favorable for the printing industry, it is very costly for a waste management company that provides its customers with LDR forms.

HWMA does not support the Agency's proposal to change the existing certification language for wastes which "naturally" meet applicable treatment standards. The changing of one word in an LDR-required certification can cost hazardous waste management companies hundreds of thousands of dollars in additional compliance costs which are not beneficial to public health and the environment. In fact, the opposite effect on the environment results because of the natural resources are needlessly utilized.

RESPONSE

The Agency has reconsidered the certification language as suggested by the commenter, and omitted reference to wastes subject to an exemption.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Section 268. 7(a)(4): Definition of one-time notice

This section addresses notification requirements for hazardous wastes that meet certain exemptions which allow the waste to be land disposed without meeting applicable treatment standards. HWMA supports the Agency's proposal to reduce the frequency of supplying LDR forms from each shipment to a one-time notice. This reduction will greatly reduce the unnecessary burden which generators and TSDFs bear in maintaining duplicative records. As stated above, the Agency needs to identify a specific point in time when a LDR form must accompany the waste. The term, "one-time," is ambiguous and leaves room for different interpretations.

Again, the Agency should amend the proposed language to require that the LDR form accompany the initial shipment. Requiring this specific frequency places some responsibility on the generator to correctly identify the status of its waste under part 268 regulations. The following addition is recommended to the proposed language:

"If a generator's waste is so exempt, then the generator must submit with the initial shipment a notice to each land disposal facility receiving the waste."

RESPONSE

The Agency has considered the language suggested by the commenter in the regulation.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Section 268.7(a)(4) New requirement to submit a certification
The Agency's proposed language references the need to submit a certification. When reviewing the informational requirements outlined for exempt waste in the proposed "paperwork requirements table," the Agency has added a requirement to provide a certification for such waste. The Agency appears to be imposing new and additional recordkeeping requirements. Under existing requirements located in §268.7(a)(3), there is no requirement to provide a certification of any kind to a disposal facility when LDR exempt waste is shipped. Adding a requirement to submit a certification statement for exempt waste, even one-time, undermines the Agency's attempt to reduce the recordkeeping requirements under the LDR regulations. New LDR forms for use by generators will also have to be developed to include the new certification language. As discussed above, this proposal could result in the discarding of thousands of forms currently in stock because they cannot be converted in a cost effective manner to include the new certification. The Agency needs to evaluate the necessity of requiring a new certification. We recommend, therefore, that the Agency delete the check mark from the proposed paperwork requirements table which identifies that a certification must be submitted with waste subject to an exemption identified under §268.7(a)(4). Keeping this requirement in the final rule will undermine the Agency's attempt to streamline the LDR process.

RESPONSE

The Agency has reconsidered the certification language as suggested by the commenter, and omitted language indicating a certification is necessary for wastes subject to an exemption.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Section 268.7(a)(5): Submittal of mini-WAPs

This section details the requirements for a generator that treats a restricted waste to meet BDAT in a 90-day accumulation tank, container, or containment building. Existing requirements include the submittal of a waste analysis plan (WAP) to EPA 30 days prior to conducting treatment. The Agency proposes to delete the requirement for submittal of the WAP and only require its availability on-site.

HWMA supports the deletion of the requirement because of the administrative delays associated with an Agency reviewing the contents of the mini-WAP. Even though an approval is not required under federal regulations, we believe that some Agencies have an internal policy that when a document is required to be submitted, it must be reviewed. These types of policies have discouraged generators from treating their waste on-site. The removal of a requirement to submit such a document will help promote innovative treatment technologies.

RESPONSE

The Agency acknowledges the commenter's support on the proposed change to the 90-day generator WAP requirements.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Section 268.7(a)(5): information required for generator treated waste

Subsection (iii) of §268.7(a)(5) notes that site generated waste treated in 90-day accumulation units, when shipped off-site, must comply with §268.7(a)(4). Section §268.7(a)(4) is applicable to hazardous waste which is exempt from meeting treatment standards. This section requires that a generator submit a certification that the waste meets applicable treatment standards upon its generation. The date the waste is subject to a prohibition is also required to be identified on the

LDR notice. The identification of a prohibited date is not currently required for generators who treat on-site in 90-day units.

HWMA believes it is more appropriate to reference the proposed §268.7(b)(4)(I) which outlines treatment facility requirements.

Since the generator is treating the waste to meet applicable treatment standards under the LDR program, it does not make sense to use a certification which has been developed for use with restricted waste which meets BDAT without treatment (i.e., "naturally" meets).

In addition to the certification issue, the Agency should clarify whether a generator, not a commercial treater, that performs partial treatment of a restricted waste is required to use any certification or should a certification be used only when all applicable treatment standards have been met. A review of existing and proposed LDR notification regulations does not identify a clear direction on how the generator is required to notify under such circumstances.

In order streamline the regulations, the Agency should amend the proposed language in §268.7(a)(5)(iii) as follows:

"Wastes shipped off-site pursuant to this paragraph must comply with the notification and certification requirements of §268.7(b)(5)(I) if all applicable treatment standards have been met, or the certification requirements of §268.7(b)(iv) if UHCs require treatment in decharacterized waste."

RESPONSE

The Agency has changed the cross-references as suggested by the commenter.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Section 268. 7(a)(8): Retention period for LDR notices
The Agency proposes to reduce the record retention period for LDR notices from five years to three years. We support this change because LDR record retention requirements will finally be consistent with other hazardous waste record retention requirements.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Section 268.7(a)(9): Notification requirements for lab packs
This section outlines the requirements for lab packs which are eligible to utilize the alternative treatment standard of incineration. The preamble section notes that the Agency believes that there is no need to identify whether a lab pack contains hazardous debris or wastes which are wastewaters/nonwastewaters (WW/NWW) because the alternative treatment standard is a specified technology (60 FR 43678). HWMA agrees with this position that identifying the treatability group (i.e., WW/NWW, debris) for waste packaged in a lab pack subject to alternative treatment standards serves no useful or practical purpose.

We also support the Agency's decision to delete the requirement to provide this information. However, the proposed language in §268.7(a)(9) notes that with each shipment the generator must comply with paragraph (a)(2). One of the requirements in this paragraph is the need to identify applicable WW/NWW categories. The Agency needs to correct this error or the intent to reduce useless information will not be implemented.

In addition, the Agency should delete the requirement to identify the applicable subcategory/subdivision. The rationale for deleting the subcategory would be the same as that for deleting the WW/NWW category. Restricted waste placed into a lab pack which is eligible for the specified technology of incineration does not have numerical standards to meet. Therefore, there is no need to identify what subcategory the waste meets. It is also important to note that waste streams are not prohibited from placement into a non-Appendix lab pack by subcategory. Again, the need to identify a subcategory is needless when the treatment standard is a specified technology.

In summary, the Agency should amend the proposed language in §268.7(a)(9) as follows:

"If a generator is managing a lab pack waste the generator must submit a notice to the treatment facility in accordance with paragraph (a)(2) of this section, except for identification of wastewater/nonwastewater categories and waste specific subcategories(such as D003 reactive cyanide)."

RESPONSE

The Paperwork Requirements Table 1 has been changed to include a column for lab packs. It should be noted that there are no requirements to identify the waste constituents or subcategories for the hazardous wastes placed in a lab pack.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Section 268.7(a)(9): Lab pack certification

This section requires that a generator use a specific certification when a lab pack will be managed using the alternative treatment standard of incineration. The language for the certification has changed several times during the last year and a review of the proposal reveals that the Agency has once again changed the certification language. The proposed language is the same language which was promulgated on September 19, 1994, under the Phase II LDR rule (59 FR 48045). However, on January 3, 1995, the Agency published technical amendments to the Phase II LDR RULE and changed the certification language for lab packs (60 FR 245). HWMA does not believe that there is any positive environmental impact supporting these changes. As noted earlier, insignificant changes to the wording of a certification can cause the hazardous waste industry significant costs to create new LDR forms and buy back and recycle existing inventory. In addition, the confusion which is created in the regulated community is unnecessary. Therefore, the Agency should amend the proposed lab pack information so that it is identical to the January 3, 1995 technical amendment version.

RESPONSE

The Agency is finalizing the certification language as proposed. The primary difference in language advocated by the commenter and the language that is being finalized is that the final language includes a statement that the lab pack is being sent to a combustion facility for treatment. This addition was requested by other commenters that convinced the Agency that it is important to certify that the treatment method required by the lab pack alternative treatment standard is being carried out.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Section 268.7(b): California List Applicability

The LDR notification and certification requirements for facilities treating hazardous waste, in accordance with standards established under §268, are outlined in this section. The most significant proposed amendment identified is the removal of the contents of existing §268.7(b)(2) which references the California List wastes. As before, the Agency must determine whether California List wastes which exist are no longer subject to RCRA. If the determination is legally binding, then HWMA supports the Agency's proposal to delete all references to California List waste.

RESPONSE

The Agency believe that all the treatment standards for California List wastes have been superseded by more specific standards (55 FR at 22675; 52 FR at 29993). The Agency believes that the treatment standards for listed hazardous wastes are the most specific. Next would be the characteristic waste treatment standards with their associated treatment standards for underlying hazardous constituents (UHCs).

The Agency stated in the In 1990, the Agency stated its belief that all standards had been superseded at that time with the exceptions of (1) liquid hazardous wastes that contain over 50 ppm PCBs; (2) 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 1000ppm HOCs; and (3) liquid hazardous wastes that exhibit a characteristic and also contain over 134 mg/l nickel and 130 mg/l of thallium. These three exceptions have now become subject to more specific standards as explained below. All of the wastes in these examples are subject to the LDR requirement that all UHCs reasonably expected to be present in a characteristic hazardous waste at the point of generation must be treated to meet Universal Treatment Standards (UTS) (and, of course, the hazardous characteristic would also have to be treated prior to land disposal).

What is eliminated under this approach, however, is the requirement in some cases to incinerate the waste rather than treat in any way other than impermissible dilution to meet UTS levels. The Agency does not view this as in any way making the regulations less stringent. The Agency sets methods of treatment when the residues cannot be analyzed to see if they meet UTS, or when the technology is clearly far superior to other types of treatment for a particular waste. Neither of these conditions exist for the examples provided by the commenter. In the case of PCBs, they must meet UTS and then be disposed in a TSCA-approved landfill. The Agency

believes that regulations under two statutes is as protective as required incineration of the PCBs. While the Agency once believed that it was necessary to require incineration of high-HOC wastes, it is possible that they can be adequately treated-- i.e.treated in a way that destroys or removes these constituents from the waste before disposal -- by other technologies to meet the UTS concentration levels. Therefore the California List treatment standards are superseded and are no longer in effect in the RCRA program.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Section 268.7(b): Characteristic waste with UHCs

The Agency proposes to require the identification and treatment of applicable UHCs for D004-D011 characteristic wastes. Comments regarding its disapproval to require UHC treatment standards for characteristic metal wastes appear later in this document.

However, if the Agency promulgates such a requirement, it should amend existing §268.7(b)(5)(iv) to reference D003-D011. This section requires a specific certification to be filed when the characteristic has been removed but UHCs still require treatment.

The addition of these waste codes will clarify what LDR notification and certification requirements are expected for characteristic waste. The Agency should amend the existing language in §268.7(b)(5)(iv) to read as follows:

"For applicable characteristic wastes D001-D043 that are:

The word "applicable" should be added because not all characteristic hazardous waste is subject to treatment standards for UHCs. For example, D002 waste which is managed in a CWA REGULATED unit is not subject to UHC identification. This wording would help clarify which characteristic waste is subject to this section.

RESPONSE

The Agency is not finalizing treatment standards--including requirements to treat UHCs--for toxic characteristic (TC) metal wastes in this final rule. The commenter's suggestion will be considered in the context of the Phase IV final rule that will be promulgated in April of 1998, when treatment standards for TC metal wastes will be finalized.

DCN PH4P097

COMMENTS Hazardous Waste Management

RESPONDER PV

SUBJECT CLNP

SUBJNUM 097

COMMENT

Section 268. 7(b)(4)(iii): Analytical detection limits

This section outlines the requirements for a treatment facility which treats organic wastes and uses

the analytical detection limit as an alternative means of verifying compliance without analytical problematic constituents.

The proposed language references §268.43 which was deleted and moved as a result of the Phase II LDR final rule (59 FR 48046).

The alternative is now located under §268.40(d). The Agency should add the citation "§268.40(d)" in place of the obsolete citation of "§268.43(c)."

RESPONSE

The commenter's suggestion has been incorporated into the final rule.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Section 268.7. (c)(1): Disposal of recyclable material
This section outlines the requirements for the disposal of recyclable material used in a manner constituting disposal. The existing regulation states that such facilities must comply with the generator standards (paragraph a) or treatment standards (paragraph b) of §268 whichever are applicable. The proposed section eliminates the reference for complying with treatment standards (paragraph b). HWMA does not fully understand why this reference has been omitted and the Agency does not explain why it is appropriate to delete such a requirement. We believe the Agency needs to add this reference to the final section.

RESPONSE

The commenter's suggestion has been incorporated into the final rule.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Section 268.7(a)(2): Notifications required for each shipment
Existing regulations require that for each shipment of waste a generator must notify the treatment or storage facility in writing of specific information. In an effort to streamline the LDR REGULATIONS, HWMA proposes the following option which will provide a great benefit to generators of restricted waste.

The Agency established a notification requirement for each shipment when the first LDRs were promulgated (51 FR 40572). Beginning with this prohibition and continuing through the Phase II LDR rule, the Agency has consistently stated that a disposal facility has the ultimate responsibility in ensuring that all restricted wastes meet applicable treatment standards before being land disposed. This burden has directly affected how hazardous waste management companies develop and maintain waste approval procedures to evaluate whether wastes are acceptable for management. One of the steps in the process to determine whether to approve or disapprove a waste stream for management is to determine what treatment standards are applicable and whether the waste requires treatment. This information must be received prior to shipment in order for a treatment or storage facility to determine if the waste is acceptable for receipt. The information required in §268.7(a)(1), except for manifest number, has already been obtained and maintained in a file which identifies the waste stream. Therefore, the notifications submitted by a generator with each shipment only provide information which is not used and redundant.

The Agency needs to amend the regulations under existing §268.7(a) and (b)(4) and (5) to require a notification and certification only with the initial shipment. Unless the waste stream changes, the generator should not be burdened with submitting paperwork and keeping a copy of this paperwork in its files. The following change to section 268.7(a) is recommended:

"If the waste does not meet the treatment standard: With the initial shipment of waste, the generator must notify the treatment or storage facility in writing."

RESPONSE

The Agency has changed the LDR notification process, in the final rule, requiring that a one-time notification be sent with the initial shipment if the waste does or does not meet the treatment standards. No further notification is required until such time as the waste, process or treatment, storage or disposal facility changes.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Section 268.9: Special rules regarding wastes that exhibit a characteristic (60 FR 43678)

The Agency proposes to amend §268.9(a) and (b) to clarify how wastes should be identified when they are both listed and exhibit a hazardous characteristic. Existing regulations require that, for the LDR notification, a waste must be identified as a listed waste and also as a characteristic waste, unless the listed waste has a treatment standard for the constituent or addresses the hazardous characteristic that causes the waste to also be characteristically hazardous. If the listed waste has treatment standards that address all characteristics, then the characteristic waste codes do not apply.

HWMA generally supports this clarifying change to §268.9(a) and (b); however, because the Agency failed to print the proposed changes to paragraph (b) (60 FR 43694), we cannot comment on the specific change. Therefore, HWMA recommends that the language in paragraph (b) state clearly that if the listed waste has a treatment standard that addresses all of the characteristics, then the characteristic waste codes do not attach to the waste stream.

In addition, the amendment to paragraph (d)(1)(ii) is to clarify that if all underlying hazardous constituents, reasonably expected to be present in a characteristic waste, are monitored by the treatment facility, then the generator is not required to list any of the UHCs on the LDR NOTIFICATION. If, however, a subset (e.g., 230 of 240 UHCs) will be monitored, then all constituents must be included on the LDR notification.

RESPONSE

The commenter's suggestion has been incorporated into the final rule.

DCN PH4P097
COMMENTS Commenter Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

HWMA believes that this requirement should be expanded to include less notifications when a subset group of UHCs cannot be accepted at a treatment facility because this requirement provides no benefit. When the facility already knows compounds are not present in the waste through an approval process this is an unreasonable requirement. A facility should be able to accept these waste streams without the burden of requiring additional UHC documentation that provides no environmental benefit. The Agency needs to reevaluate this issue especially in the case of permit restrictions.

RESPONSE

EPA continues to look for ways to further reduce paperwork burden; however, in order to ensure that the Agency's ability to protect human health and the environment is not compromised by these changes, we are only implementing those changes that have been thoroughly analyzed and which have been previously proposed. As stated previously, the Agency will continue to implement changes to the paperwork requirements where practicable and your suggested changes will be evaluated during this process

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Section 268.30 - 268.37 (CFR 43678)

The Agency proposes to remove §268.31 through §268.37 because the treatment standards for wastes in these sections are now in effect, and all of these wastes are not prohibited from land disposal. Thus, the sections are no longer necessary. In addition, the Agency proposed to replace old §268.30 with a new section that provides the prohibition dates for the wastes included in this proposal.

HWMA does not in support this proposal because these sections provide useful historical information, and the removal of these sections will give the appearance that the wastes are no longer prohibited. As an alternative, the Agency could remove Subpart B to §268 which contains the schedule for land disposal restrictions. Sections 268.10, 268.11, and 268.12 can be removed much easier than the proposed sections.

RESPONSE

The Agency has updated Appendix VII and Appendix VIII to Part 268 to include the effective dates of treatment standards for all prohibited hazardous wastes, therefore the prohibition language for the earlier LDR rulemakings is no longer necessary. The sections have been superseded or have been deleted as proposed. EPA disagrees with the commenter's drafting suggestion since the California List wastes are all prohibited, just under other provisions. Since the California List was meant as a stop-gap until these later prohibitions took effect (as noted by EPA in a number of places such as the Third Third rule preamble), eliminating the California List prohibition now that the other rules have been promulgated makes sense. Furthermore, sections 268.10, 268.11, and 268.12 were removed in a previous rulemaking.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Part 268 Appendix I - TCLP

The Agency proposes to remove Appendix I because the TCLP test method reference to SW-846 will be incorporated into the text of the regulatory language. HWMA supports this proposed change.

RESPONSE

The Agency appreciates the interest in and support of its efforts to reduce burden and streamline the LDR program.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Part 268 Appendix II - Treatment Standards (As Concentrations in the Treatment Residual Extract).

The Agency proposes to remove Appendix II to Part 268 because it incorrectly refers to treatment standards in sections 268.41, 268.42, and 268.43, and there is no longer a need to reference the solvent treatment standards. HWMA supports this proposed text removal.

RESPONSE

The Agency appreciates the interest in and support of its efforts to reduce burden and streamline the LDR program.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Part 268 Appendix III - List of Halogenated Organic Compounds Regulated Under 268.32.

The Agency proposes to remove Appendix III, which contains a list of halogenated organic compounds regulated under §268.32, because the California List treatment standards have been superseded by Universal Treatment Standards, and thus there is no longer a need for a listing of halogenated organic compounds because they are California List wastes. HWMA disagrees with the Agency's statement that all California List treatment standards have been superseded by the Universal Treatment Standards, and that there is no longer a need for a listing of Halogenated Organic compounds. Members believe that the California List requirements are still in effect (refer to the previous discussion regarding 268.7(a)(2)). For example, if a K061 contains any of the halogenated organic compounds listed in appendix III, that are not characteristically hazardous in a quantity greater than 1000 mg/kg, then pursuant to §268.42(a)(2), the waste must be incinerated in accordance with the requirements of 40 CFR Part 264, Subpart O or Part 265, Subpart O. Because California List HOCs can still require a waste stream to be incinerated under the California List, the Agency must maintain the inventory of California List HOCs in Appendix III to Part 268. As stated earlier, we are indifferent to the Agency's final determination of this matter. However, if the Agency makes this determination, it must ensure that clear guidance is provided to the regulated community.

RESPONSE

The Agency believes that all the treatment standards for California List wastes have been superseded by more specific standards (55 FR at 22675; 52 FR at 29993). Therefore, Appendix II has been removed from Part 268.

DCN PH4P097
COMMENTS Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Part 268 Appendix VI - Recommended Technologies to Achieve
Deactivation of Characteristics in Section 268.42

The Agency proposes to amend Appendix VI to clarify that
characteristic wastes that also contain UHCs must be treated not
only by a "deactivating" technology to remove the characteristics,
but also treated to achieve the UTS for UHCs. HWMA supports this
language clarification.

RESPONSE

The Agency appreciates the interest in and support of its efforts to reduce burden
and streamline the LDR program.

DCN PH4P097

COMMENTS Hazardous Waste Management

RESPONDER PV

SUBJECT CLNP

SUBJNUM 097

COMMENT

Part 268 Appendix VII- Effective Dates of Surface Disposed Wastes Regulated in the LDRs

The Agency proposes to remove Appendix VII because all of the wastes listed in the table have treatment standards now in effect; therefore, there is no need to know the effective dates.

HWMA supports this proposed change.

RESPONSE

The Agency has updated Appendix VII to Part 268 to include the effective dates of treatment standards for all prohibited hazardous wastes.

DCN PH4P097

COMMENTS Hazardous Waste Managemen

RESPONDER PV

SUBJECT CLNP

SUBJNUM 097

COMMENT

Part 268 Appendix VIII - National Capacity Variances for UIC Wastes

The Agency proposes to remove Appendix VIII because the effective dates for these wastes, when deep well injected, are past. HWMA believes that the current list of wastes in Appendix VIII can be removed; however, because the Agency is proposing national capacity variances for deep well injected Phase IV wastes, the Appendix should be maintained. The appendix should list the Phase IV wastes subject to a UIC capacity variance.

RESPONSE

The Agency has updated Appendix VIII to Part 268 to include the effective dates of treatment standards for all prohibited hazardous wastes that are deepwell injected.

DCN PH4P097
COMMENTS Commenter Hazardous Waste Management
RESPONDER PV
SUBJECT CLNP
SUBJNUM 097
COMMENT

Part 268 Appendix X - Recordkeeping, Notification, and/or
Certification Requirements

The Agency proposes to remove Appendix X because it summarizes
paperwork requirements that are proposed to be changed in the Phase
III proposal and this proposal. HWMA believes that The proposed
tables in §268.7(a) and (b) that discuss the regulatory
requirements would allow for the removal of Appendix X if the
tables are finalized as discussed.

RESPONSE

The Agency appreciates the interest in and support of its efforts to reduce burden
and streamline the LDR program.

DCN PH4P107
COMMENTS Uniroyal Chemical Co.
RESPONDER PV
SUBJECT CLNP
SUBJNUM 107
COMMENT

4. Uniroyal Chemical supports changing the record retention period for land disposal records to three years to be consistent throughout the RCRA Program.

In order to ensure that all records were kept for the appropriate time period, Uniroyal Chemical has been in the practice of maintaining all disposal related records for five years due to the inconsistency in the regulatory requirements. We appreciate the revision as it will result in shorter record retention for our facilities, more space will be created, and less time will need to be spent on file management. The existence of records which are four and five years old is not useful as there has been no need to refer to these records unless one was being inspected by an environmental agency.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort.

DCN PH4P109
COMMENTS Ford
RESPONDER PV
SUBJECT CLNP
SUBJNUM 109
COMMENT

The rule proposes a streamlining measure to the land disposal regulation notification process. It is proposed that a generator whose waste meets the appropriate treatment standards only be required to submit a one-time notification and certification to the treatment storage or disposal facility (TSDF). Generators are currently required to file this notification and certification every time a waste shipment is generated.

The original intent of this requirement was to make certain that the receiving facility was aware of the applicability of the LDR's, since the generator was most familiar with the waste and the regulations. As the LDR program has grown in complexity it has become apparent that the TSDF's are most knowledgeable of the rules and often assist the generator in filling out the notification forms used by the generator to notify the TSDF. LDR notifications no longer serve any purpose. Ford recommends that the requirements for LDR notifications be deleted. Although the proposal to reduce the notification to a one-time requirement for new and modified waste streams is a substantial improvement over the current process, a deletion of the LDR notifications would best accomplish the goal of streamlining the notification process. This is a paperwork change that would save substantial expense of resources with no adverse environmental impact.

RESPONSE

The Agency does not agree that the LDR notification should be eliminated at this time. EPA continues to look for ways to further reduce paperwork burden; however, in order to ensure that the Agency's ability to protect human health and the environment is not compromised by these changes, we are only implementing those changes that have been thoroughly analyzed and which have been previously proposed. As stated previously, the Agency will continue to implement changes to the paperwork requirements where practicable and your suggested changes will be evaluated during this process

DCN PH4P109
COMMENTS Ford
RESPONDER PV
SUBJECT CLNP
SUBJNUM 109
COMMENT

Revisions to Waste Analysis Plan Submittal Requirements for Generators

Currently generators treating prohibited waste in tanks, containers, or containment buildings to meet applicable treatment standards are required to file a waste analysis plan with the EPA Regional Administrator or the authorized state agency at least 30 days prior to the treatment activity. The proposed rule would eliminate the generator filing requirement. The generator would still be required to prepare a detailed waste analysis plan and keep the plan on site in the generator's records. This proposed streamlining of the generator's report filing requirements should be adopted. The managing of this additional paperwork by the agency, states and the regulated community do not add any value to waste management and compliance processes. The plan still would be developed, documented and made available for inspection at the facility so that agency enforcement tools remain intact.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort.

DCN PH4P109
COMMENTS Ford
RESPONDER PV
SUBJECT CLNP
SUBJNUM 109
COMMENT

Revision of LDR Notification Record Retention Period

The proposed rule changes the record retention time period for LDR notification forms from five years to three years. This would make the LDR records retention requirements consistent with the record retention requirements for waste manifests, which are closely related documents. Ford supports this revision. Similar record retention periods for all paperwork associated with waste shipments will assist facilities' environmental staff in meeting records retention requirements.

Ford believes that these recommendations, if implemented, would result in an equally or more effective rule that is less burdensome to both the regulated community and the regulatory agency.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort.

DCN PH4P113
COMMENTS Chemical Manufacturers Assn
RESPONDER PV
SUBJECT CLNP
SUBJNUM 113
COMMENT

E. CMA commends the Agency for its efforts to "clean up" the existing regulatory language of the land disposal restrictions (LDR) and suggests that the Agency finalize it separate from the Phase III and Phase IV proposals if they be delayed.

Both the Phase III and Phase IV proposals offer needed fixes to the existing LDR program that the regulated community would benefit from without harming human health or the environment. While CMA has suggested holding up promulgation of the LDR Phase III and Phase IV proposals (see Section VII of these comments), we believe that there are no reasons to hold up finalizing the "clean ups" that the agency has proposed. Specifically, CMA supports finalizing of the following proposed "clean ups":

Phase III

removal of § 268.2(f)(1), § 268.2(f)(2), § 268.2(f)(3) from the definition of wastewaters

removal of § 268.8

removal of § 268.10, § 268.11, and § 268.12 from Subpart B

Phase IV

revisions to § 268.4(a)(2)(iv) to clarify that there are no additional recordkeeping requirements

other than those found in § 264.13 and § 265.13

revisions to § 268.5(e) to clarify that a case- by-case extension to an effective date on a land

disposal restriction can be granted for up to two years

revisions to § 268.7 to clarify the existing notification

requirements. CMA especially concurs with the Agency on: reducing notification requirements for generators whose waste stream meets the LDR standards in § 268.7(a)(3); not requiring generators that treat their wastes

to submit waste analysis plans to the Regional Administrator in §

268.7(a)(5); reducing the record retention time from 5 to 3 years

in § 268.7(a)(8); and streamlining the lab pack notification requirements to only include the requirements of § 268.7(a)(2), § 268.7(a)(6), and §268.7(a)(7).

revisions to § 268.9 to clarify that a waste stream which carries

both listed and characteristic codes that the characteristic codes do not attach when the listed treatment standards address each characteristic

removal of §§ 268.30 - 268.37 removal of Appendices I, II, II, VII, VIII, IX and X

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort. Most, but not all, of the proposed changes listed above are being made in the Phase IV final rule. The Agency is not promulgating a change to 268.5 to allow that renewals for case-by-case extensions could be applied for at the time the initial case-by-case extension is applied for. Furthermore, Appendices VII and VIII are being revised rather than deleted.

DCN PH4P104

COMMENTS SSINA

RESPONDER RC/NV

SUBJECT CLNP

SUBJNUM 104

COMMENT V. PARAGRAPH (B) UNDER 40 C.F.R. ~ 268.9 SHOULD BE REVISED IN CONJUNCTION WITH PARAGRAPH (A) TO AVOID UNINTENDED TREATMENT

REQUIREMENTS FOR LISTED HAZARDOUS WASTES In the preamble to LDR Phase IV, the Agency states that paragraphs (a) and (b) under 40 C.F.R. § 268.9 will be revised to explain "how wastes should be identified when they are both listed and characteristic wastes." 60 Fed. Reg. at 43,678. However, the Agency only proposes revisions to paragraph (a) in LDR Phase IV. Paragraph (b) is not revised in LDR Phase IV. The Agency should revise paragraph (b) in conjunction with paragraph (a). Otherwise, some listed wastes will inadvertently and inappropriately be treated as both a listed and a characteristic waste. This will impose unintended treatment requirements for some listed hazardous wastes. Responding to the proposed rulemaking for LDR Phase III, SSINA previously commented that paragraph (b) should be revised in conjunction with paragraph (a). See, Letter from SSINA to EPA (May 1, 1995). These comments on the proposed LDR Phase III rule, 60 Fed. Reg. 11,702 (Mar. 2, 1995), are attached as Exhibit 3. The attached comments are consistent with the Agency's stated intent in the preamble to LDR Phase IV. The Agency summarizes its intention for the "clean up" of 40 C.F.R. § 268.9 by stating: The existing regulations require that for the LDR notification, a waste must be identified as a listed waste and also as a characteristic waste unless the listed waste has a treatment standard for the constituent or addresses the hazardous characteristic that causes the waste to also be characteristically hazardous. 60 Fed. Reg. at 43,678. However, revising paragraph (a) without revising paragraph (b) would not meet this "clean up" goal and would unintentionally impose extra treatment requirements for some listed hazardous wastes. Therefore, as SSINA previously indicated in its comments to LDR Phase III, the Agency should revise paragraph (b) in conjunction with paragraph (a). Paragraph (b) should be revised according to SSINA's previously submitted comments. See comments as attached as Exhibit 3.

RESPONSE

As explained in the Response to Comments Document for the Phase III final rule, the Agency sees no need to amend 268.9(b). Paragraph (b) requires that wastes mixtures be evaluated to determine if the listed portion of the waste has a treatment standard for the constituent that makes the characteristic portion of the waste characteristic. If so, then only the treatment standard for the listed waste must be met for the waste mixture. If, however, the listed waste does not address the constituent that makes the waste characteristic, a determination must be made on the characteristic portion of the waste and underlying hazardous constituents (UHCs) reasonably expected to be present in the waste must also be treated. The commenter's concern that paragraph (b) subjects all listed wastes which also exhibit a characteristic to a requirement to evaluate whether the waste contains UHCs is unfounded. EPA has already determined the constituents of concern for listed wastes and is not imposing a requirement to also determine the characteristic and UHCs in listed wastes.

DCN PH4A004

COMMENTS Heritage Environmental Se

RESPONDER RC

SUBJECT CLNP

SUBJNUM 004

COMMENTS Reduction-of Paperwork Requirements Heritage strongly supports

EPA's proposal to expand the one-time notice and certification allowance proposed in the original Phase IV proposed rule to generator wastes that do not meet treatment standards and wastes shipped from treatment facilities to other treatment facilities or disposal facilities. Expansion of the one-time notice and certification to treatment facilities is reasonable because treatment facility RCRA permits typically include a rigorous sampling and analysis protocol to verify compliance with applicable treatment standards. The same rationale used to justify the reduced requirement for generators would also apply to treatment facilities. There seem to be few benefits to the requirement for an LDR notice with each shipment, as the information once submitted on the initial notice seldom changes for most waste streams. Receiving facilities already know the applicable treatment standards based on the waste codes approved for a wastestream and included on other shipping papers received with each shipment. Once the appropriate information regarding the LDR compliance of a specific wastestream is received and noted by the receiving facility, it can easily be referenced for future shipments. The one-time notice system would significantly reduce LDR notice errors, as the generating facility and TSDf would be able to concentrate on the completeness and correctness of the initial notice. Under the current system, the paperwork is so overwhelming and complex, generators often make errors which divert many of the receiving facilities' resources towards follow-up and correction, and increases the potential for overlooking an inaccurate notice.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort.

DCN PH4A006

COMMENTS Department of Energy

RESPONDER RC

SUBJECT CLNP

SUBJNUM 006

COMMENT JIL Proposed Reduction in Paperwork Requirements for the Land Disposal Restrictions Program IIA Section 269.7 1. D. 2363, col. 3., and v. 2372. col. 3 - D. 2373, col, 1 - EPA proposes to change 40 CFR 268.7(a)(2) which currently requires generators to notify the treatment or storage facility in writing with each shipment of a waste that does not meet the LDR treatment standards. As revised, 40 CFR 268.7(a)(2) would require notification to the treatment or storage facility only with the first shipment of .such a waste. A new notice would be required only if changes occurred to the waste o r process generating the waste, or the waste was shipped to a different treatment or storage facility. The notice must include the information in column "268.7(a)(2)" of the Notification Requirements Table in 40 CFR 268.7(a)(4). DOE supports the proposed modification. However, as was stated in DOE's comments on the LDR Phase IV proposed rule, EPA should conform the title used in 40 CFR 268.7(a)(2) to refer to the table in 40 CFR 268.7(a)(4) with the actual title of the table. Presently the actual title is "Paperwork Requirements Table," rather than "Notification Requirements Table."

RESPONSE

The preamble and regulatory language correctly refer to the Paperwork Requirements Table 1 and Table 2 in the final rule.

As EPA states in the preamble, shredded circuit boards are often shipped in boxes, bulkbags, supersacks, drums, and other containers (61 ER 2363, cot. 1). DOE Comments, Proposed Rule regarding Land Disposal Restrictions -- Phase IV, Specific Comment III.A.3.c(1)(b)(I), p. 25 (11/20/95). In addition, DOE requests clarification in regards to the extent of the notification and certification requirements that apply in cases where a restricted waste is generated, stored, treated and disposed at the same site. -As EPA is aware, DOE operates large,

complex Facilities which may include within their boundaries, but not proximate to one another, both generating units and treatment, storage, or disposal units. In such circumstances, shipments of hazardous waste may occur entirely "on-site" (and such shipments must comply with certain notification requirements). DOE requests that EPA clarify how the proposed change to the LDR notification requirements (.as well as all other LDR notification requirements) apply to such on-site shipments.

RESPONSE

The Agency prefers not to address specific examples of the applicability of the regulations (as submitted by the commenter) in this Response to Comments Document. Rather, if these examples are raised in a letter to the Agency, interpretations of the regulations will be made. EPA believes as a general matter that responding to questions such as these without a specific factual context can lead to confusion or error, and consequently declines to do so here.

2. D. 2363, col. 3 - D. 2364, col. 1 - The proposed one-time notification and certification requirements for wastes that do not meet the treatment standard as generated would not apply to lab packs. The Agency asserts that the one-time notification requirement would be inappropriate for lab pack wastes because it is highly unlikely that lab packs will contain exactly the same hazardous wastes each time they are generated. EPA specifically requests comments on this issue. Although lab packs are highly variable in most cases, there are certain instances where generators ship, either on a regular or a periodic basis, routine and consistent lab packs. Typically,, lab packs are managed in accordance with 268.42 and may occur on a periodic basis. It would seem appropriate that for lab packs which are managed based on a consistent process or routine waste stream, the same one-time notification relief should be afforded that is being - proposed for other restricted wastes (provided the waste, the process, and the receiving facility do not change" from waste shipment to waste shipment). Generators (and treatment facilities shipping residuals for further treatment or ultimate disposal) will be required to make this determination for each waste stream. Generators of lab packs should be no different in this respect.

RESPONSE

The one-time notification requirement is being extended to lab packs.

3. D. 2364, col.1: and ip. 2373, col. 1 - EPA proposes to change 40 CFR 268.7(b)(4) which currently requires treatment facilities to notify subsequent treatment or disposal facilities of the LDR status of wastes or treatment residues with each shipment. As revised, 40 CFR 268.7(b)(4) would require notification by treaters only with the initial shipment. A new notice would be required only if changes occurred to the waste or treatment residues, or if shipment occurred to a different treatment or disposal facility. DOE supports the proposed modification. However, as was stated in DOE's comments on the LDR Phase IV proposed rule,' it appears that the reference to 40 CFR 261.3(e) in proposed 40 CFR 268.7(b)(4) should be changed to either 40 CFR 261.3(f)(1) or 261.3(f)(2), which exclude certain hazardous debris from regulation. EPA removed 40 CFR 261.3(e) from the regulations on October 30, 1992 [57 FR 49279]. Therefore, since 40 CFR 261.3(e) has been removed from the regulations, and since, even before it was removed, °261.3(e) did not address hazardous debris, DOE believes the reference to it in proposed °261.7(b)(4) is an error. 3 DOE Comments, Proposed Rule regarding Land Disposal Reactions -- Phase IV, Specific Comment III.A,3.c(1)(m), p. 28 (11/20/95).

RESPONSE

The commenter correctly pointed out that the 261.3(e) was not the right citation--the citation has been corrected to refer to 261.3(f).

DCN PH4A009
COMMENTS IPC
RESPONDER RC
SUBJECT CLNP
SUBJNUM 009

COMMENT Finally, IPC would like to commend EPA for proposing to streamline the reporting and record keeping burden associated with the Land Disposal Restrictions (LDR) Program. The proposal would establish a one-time notification process for wastes that do not meet LDR treatment standards at the point of generation. This process would - replace a current requirement that requires shippers to notify the receiving facility every time such waste is shipped. IPC appreciates EPA efforts to streamline and eliminate redundant and unnecessary administrative procedures that consume facility resources but which do not compromise the protectiveness or enforceability of the LDR program. IPC looks forward to EPA's issuance of additional streamlined record keeping and reporting rules in the future.

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort.

DCN PH4A011

COMMENTS NY State Dept. of Environ

RESPONDER RC

SUBJECT CLNP

SUBJNUM 011

COMMENT 5. Land Disposal Restrictions General This Department agrees with the EPA on their paperwork reduction initiatives for the LDR. The proposed changes outlined on pages 2372 and 2373 of the January 25, 1996 Federal Register are welcomed. However the revised text of 40 CFR 268.7 (b)(5) retains the references to 40 CFR 268.32 and RCRA 3004 (4). These references appear to be no longer applicable. The references are to the California list which is being eliminated. Section 268.32 is proposed as a renumbered section dealing with mineral processing wastes. To continue in its effort to "clean up" the LDR and remove unnecessary, outdated regulatory language EPA should take this opportunity to remove all references to the California list. There are several of these references remaining in PART 268 which will create confusion for the regulated community. We believe this to be simply an oversight, since EPA has previously stated the California list has been superseded by more specific treatment standards. New York State also believes that EPA should clarify how the California list has been superseded with regard to liquid hazardous waste containing over 50 ppm PCBs, or hazardous waste containing over 1,000 ppm halogenated organic compounds, (HOCs), and which is hazardous for a property that does not involve toxics. It is unclear that this is the case and this is a critical issue, as the California List is still imposed by RCRA 3004(d) and, therefore, can only be superseded by requirements that are at least, equally stringent. PCBs or HOCs as regulated hazardous constituents of a listed waste, or as underlying hazardous constituents of a characteristic non-metal waste would be addressed when the LDR specifies treatment for underlying hazardous constituents to the UTS level. But, for example, how will liquid hazardous waste (e.g., characteristically hazardous for a metal) that does not have PCBs as regulated hazardous constituents and contains over 50 ppm PCBs be regulated under the LDR? With the California list being eliminated from Part 268, New York (which regulates PCB wastes over 50 ppm as hazardous) would like to see in the final rule an explanation of how this has been superseded. For PCBs, is TSCA the answer? It would appear that TSCA would clearly impose requirements when liquid PCB levels exceed 500 ppm (i.e.,

land disposal is prohibited), but what supersedes the California list prohibitions when PCBS levels are in the range of 50-500 ppm? The regulated community in New York, and other states disposing of PCBs in New York, have had many confusing scenarios arise due to the statement by EPA that the entire California list has been superseded.

RESPONSE

The Agency continues to believe that all the treatment standards for California List wastes have been superseded by more specific standards (55 FR at 22675; 52 FR at 29993). The Agency believes that the treatment standards for listed hazardous wastes are the most specific. Next would be the characteristic waste treatment standards with their associated treatment standards for underlying hazardous constituents (UHCs).

The Agency stated in the In 1990, the Agency stated its belief that all standards had been superseded at that time with the exceptions of (1) liquid hazardous wastes that contain over 50 ppm PCBs; (2) 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 1000ppm HOCs; and (3) liquid hazardous wastes that exhibit a characteristic and also contain over 134 mg/l nickel and 130 mg/l of thallium. These three exceptions have now become subject to more specific standards as explained below. All of the wastes in these examples are subject to the LDR requirement that all UHCs reasonably expected to be present in a characteristic hazardous waste at the point of generation must be treated to meet Universal Treatment Standards (UTS) (and, of course, the hazardous characteristic would also have to be treated prior to land disposal).

What is eliminated under this approach, however, is the requirement in some cases to incinerate the waste rather than treat in any way other than impermissible dilution to meet UTS levels. The Agency does not view this as in any way making the regulations less stringent. The Agency sets methods of treatment when the residues cannot be analyzed to see if they meet UTS, or when the technology is clearly far superior to other types of treatment for a particular waste. Neither of these conditions exist for the examples provided by the commenter. In the case of PCBs, they must meet UTS and then be disposed in a TSCA-approved landfill. The Agency believes that regulations under two statutes is as protective as required incineration of the PCBs. While the Agency once believed that it was necessary to require incineration of high-HOC wastes, it is possible that they can be adequately treated-- i.e.treated in a way that destroys or removes these constituents from the waste before disposal -- by other technologies to meet the UTS concentration levels. Therefore the California List treatment standards are superseded and are no longer in effect in the RCRA program.

DCN PH4A016

COMMENTS Public Service Electric &

RESPONDER RC

SUBJECT CLNP

SUBJNUM 016

COMMENT LDR Notification Simplification of LDR Notification

Requirements PSE&G supports EPA's proposal to modify the LDR notification requirements by allowing a one-time notification for multiple shipments of the same waste that do not meet treatment standards, from the same generator to the same treatment facility. (61 Fed. Reg. 2363-64) PSE&G applauds the Agency for its interest in eliminating unnecessary regulatory burden, while insuring continued compliance with the LDR requirements and simplification of the LDR process. PSE&G requests the Agency consider elimination of the LDR notification requirement entirely as most wastes are now subject to the LDR program, and incorporate LDR notification information the Agency feels necessary into the Uniform Hazardous Waste Manifest.

RESPONSE

The Agency does not agree that the LDR notification should be eliminated at this time.

EPA continues to look for ways to further reduce paperwork burden; however, in order to ensure that the Agency's ability to protect human health and the environment is not compromised by these changes, we are only implementing those changes that have been thoroughly analyzed and which have been previously proposed. As stated previously, the Agency will continue to implement changes to the paperwork requirements where practicable and your suggested changes will be evaluated during this process

DCN PH4A017

COMMENTS Chemical Waste Management

RESPONDER RC

SUBJECT CLNP

SUBJNUM 017

COMMENT IX. Changes to §268.7 (61 Fed. Reg. at 2372) The Agency is proposing to reduce the LDR Notification/Certification requirements applicable to generators and treatment facilities. The Agency is proposing to change §268.7(a)(2), §268.7(a)(9), §268.7(b)(4), and §268.7(b)(5). Following are CWM's specific comments on each of these proposed changes. A. §268.7(a)(2) (61 Fed. Reg. at 2372) Under §268.7(a)(2), as proposed in the Phase IV LDR rule, a generator that is managing a restricted waste, and determines that the waste does not meet the applicable treatment standards is required to notify the treatment or storage facility in writing and include specific information. The Agency is proposing to change this requirement to a one-time notice to each treatment or storage facility receiving the waste, while also requiring the generator to place a copy in the file. No further action is necessary until the waste changes or the waste is sent to a different facility, at which time a new notice must be sent and a copy placed in the generator's file. CWM commends the Agency for proposing this regulatory change to the requirements. Changes such as this will help to alleviate the overwhelming paperwork burden for generators and permitted TSDFs .

RESPONSE

The Agency thanks you for your interest in and support of the paperwork burden reduction effort.

DCN PH4A017

COMMENTER Chemical Waste Management

RESPONDER RC

SUBJECT CLNP

SUBJNUM 017

COMMENT B. §268.7(a)(9) (61 Fed. Reg. at 2373) The Agency is proposing that generators managing a lab pack containing hazardous waste that wishes to use the alternative treatment standard for lab packs found at §268.42(c), must continue to provide a notice with each shipment to the treatment facility. In addition, the Agency is reducing the amount of information required with this notice, and is changing the certification statement that must accompany this notice. CWM believes that the proposal to require a notification with each shipment is unnecessary in the case of lab packs that are being managed under the alternative lab pack requirements of §268.42(c). CWM disagrees with the Agency's statement "that it is highly unlikely that lab packs will contain exactly the same hazardous wastes each time they are generated, since they are typically used to consolidate small amounts of a number of various chemical wastes to facilitate handling and treatments. CWM believes that lab packs do contain the same hazardous waste codes that are approved on a profile specific basis under a facilities waste analysis plan. CWM uses a profile to obtain detailed information on a generator's waste which includes the process generating the waste; the physical and chemical parameters of the waste, and whether the waste requires treatment. This information is then used to determine whether the waste can be managed at the facility. For example, an approved lab pack profile to an incineration facility will indicate specific waste codes. An approved lab pack profile may be approved for D001 wastes. Each shipment from that generator may contain different chemical compounds; however, each compound exhibits the characteristic of ignitability. This is an over simplified example, as many profiles contain multiple codes and some shipments may not include every waste code; however, the key is that the lab packs consistently contain the same waste codes or a subset of waste codes approved under a profile. Further, CWM believes that the 268.42 requirement to incinerate lab packs is a clear basis to reduce paperwork, and lends itself well to a one-time notification on a profile specific basis. CWM encourages the

Agency to re-examine this requirement, and to reduce the notification requirements to a one-time notice that is profile specific.

RESPONSE

The Agency has reexamined the lab pack issue and has decided to allow a one-time notification for lab packs unless the waste, process or receiving facility changes. The Paperwork Requirements Table 1 has been changed to include a column for lab packs. It should be noted that there are no requirements to identify the waste constituents or subcategories for the hazardous wastes placed in a lab pack.

DCN PH4A017

COMMENTS Chemical Waste Management

RESPONDER RC

SUBJECT CLNP

SUBJNUM 017

COMMENT C. §268.7(b)(4) (61 Fed. Reg. at 2373) The Agency is proposing to reduce the notification requirements for a treatment facility that ships waste or treatment residues to a land disposal facility to a one-time notification. If the waste changes or a new facility is used a new notice must be sent and a copy placed in the files. CWM supports this proposed change; however, CWM believes that the proposed language should be changed to reflect the specific information that is required. CWM recommends that the last sentence in (b)(4) be changed from "The one-time notice for all other waste shall include the requirements:" to reference the paperwork requirement tables for §268.7(b). It is not clear to CWM in the Phase IV rule published on August 22, 1995, which paragraph this table is located in, or what the specific requirements are as the language is currently proposed.

RESPONSE

The commenter's suggestion has been considered in revising the final rule.

DCN PH4A017

COMMENTS Chemical Waste Management

RESPONDER RC

SUBJECT CLNP

SUBJNUM 017

COMMENT D. §268.7(b)(5) (61 Fed. Reg. at 2373) The Agency is proposing to reduce the certification requirements for a treatment facility shipping waste or treatment residues to a land disposal facility where the waste has been treated to meet the applicable treatment standards to a one-time notification. CWM supports this proposed change; however, as stated in the comments on 268.7(b)(4), CWM believes that the language should be modified to reference the paperwork requirement table so that the regulated community can identify the specific information which must be included with this notice.

RESPONSE

The Agency is not convinced there is a need to modify 268.7(b)(5) as the commenter suggests. Wastes that are subject to paragraph (b)(5) are also subject to (b)(3), which directly references the Paperwork Requirements Table 2, setting out the information needed on the notification.

DCN PH4A017

COMMENTS Chemical Waste Management

RESPONDER RC

SUBJECT CLNP

SUBJNUM 017

COMMENT E. General §268.7 Comments Within the §268.7 paperwork requirement tables located in proposed §268.7(a) & (b), as well as under the current requirements, the Agency requires the identification of the waste code subdivisions/subcategories. In both the proposed and current language the Agency provides an example which states, "(such as D003 reactive cyanide)." CWM questions whether the entire regulatory subdivision/subcategory as it appears in §268.40 must be included on the notification/certification, or whether an abbreviation of the subdivision/subcategory can be used similar to the example the Agency uses in the current and proposed regulatory language. The reason for CWM's question is based on a conversation with EPA personnel shortly after the Ignitable/Corrosive rule was published on May 24, 1993. See 58 Fed. Reg. at 29,860. In this conversation EPA indicated that the complete subdivision/subcategory must be included on the notification/certification form. CWM believes that the complete regulatory subdivision/subcategory description is unnecessary provided that the information provided allows the treatment/disposal facility to determine the appropriate subdivision/subcategory. For example, CWM believes that use of "Reactive Cyanides" should be sufficient information rather than having to include "Reactive Cyanides subcategory based on 261.23(a)(5)". CWM specifically requests that the Agency provide detailed examples to address this issue in the final rule preamble discussion so that the specific requirements are clear to the regulated community. In addition, CWM encourages the Agency to allow the regulated community to use shortened versions of the subdivision/subcategory descriptions.

RESPONSE

It is the Agency's interpretation that shortened versions of the subdivision/subcategory descriptions are permitted so long as they can be easily understood.

DCN PH4A019

COMMENTS Westinghouse Electric Cor

RESPONDER RC

SUBJECT CLNP

SUBJNUM 019

COMMENT Clean Up of Part 268 Regulations Reference: Preamble at Part Two, Section U.B.3, page 2366 The regulatory citations in this preamble part, specifically, Section 268.7(b)(3) and (b)(4) do not correlate with the proposed regulation provided on page 2373. We believe the preamble should have referenced Sections 268.7(b)(4) and (b)(5).

RESPONSE

The commenter is correct. Changes have been made in the final rule.

DCN PH4A019

COMMENTS Westinghouse Electric Cor

RESPONDER RC

SUBJECT CLNP

SUBJNUM 019

COMMENT Proposed Reduction in Paperwork Requirements for the Land Disposal Restrictions Program Reference: Preamble at Part Two, Section H.D, page 2364 We support EPA's proposal to require a one-time-only LDR notification. The current requirement to provide a notification for each shipment by a generator or treatment facility is unnecessarily burdensome and does not provide commensurate protection of human health or the environment. This change will clarify notification requirements for generators that also treat, store, and/or dispose of their own waste. This situation is common at many facilities Westinghouse manages for the U.S. Department of Energy. For example, most mixed waste is stored until appropriate treatment becomes available. Under current regulations, LDR notifications are required for each on-site movement of waste.

RESPONSE

The Agency appreciates your interest in, and support of our efforts to streamline the LDR program and reduce paperwork burden on the regulated community.

DCN PH4A031

COMMENTER Laidlaw Environmental Ser

RESPONDER RC

SUBJECT CLNP

SUBJNUM 031

COMMENT Laidlaw strongly supports the Agency's proposals which reduce the recordkeeping and reporting burden for complying with the LDR requirements. 8.1 Laidlaw submits for consideration two additional changes that would ease confusion in the generator and waste management industry's. Part 268.7(a) of 40 CFR contains waste analysis and recordkeeping requirements for generators disposing of waste subject to the LDR requirements. Section 268.7(a)(1) contains the information required to be included on the notification submitted to the TSD to the TSD facility for waste subject to the LDR requirements. Specifically, 268.7(a)(1)(vi) requires the notice to include the date the waste is subject to the prohibitions. The language contained in 268.7(a)(1)(vi) was added by the Phase 11 technical corrections that were published on January 3, 1995, on page 242, column 3. The preamble language on this page states that "Paragraph (vi), with the language that appeared as paragraph (v) before the Phase 11 rule, is being, added in today's amendments." Our research of previous versions of the LDR requirements indicates that the language contained in 268.7(a)(vi) did not exist in this section prior to the Phase 11 rule. Further, this language was not included in the Phase 11 LDR proposed rule that was published on September 14, 1993. Laidlaw questions the Agency's reasoning for including the requirement to provide this information since it serves no apparent usefulness in complying with the LDR requirements. Over the last year, we have received numerous inquiries from waste generators on the reasoning for requesting this information. We also question the legality of requiring this information since there was no published notice of the new requirement or any ability, to make public comment. Laidlaw recommends that the Agency use this opportunity to drop the requirement to provide the information required by 268.7(a)(1)(vi). This information serves no apparent purpose toward insuring compliance with the LDR requirements by our TSD facilities. By dropping this requirement, EPA will be furthering its goal of simplifying the LDR program and reducing the recordkeeping burden of hazardous waste generators and TSD facilities.

RESPONSE

the final rule.

The commenter has discovered a mistake in the regulations that is corrected in

DCN PH4A032

COMMENTS Eastman Kodak Company

RESPONDER RC

SUBJECT CLNP

SUBJNUM 032

COMMENT We are also strongly in favor of the proposal to reduce the paperwork necessary for notification/certification of compliance with the Land Disposal Restrictions (LDR).

RESPONSE

The Agency appreciates your interest in, and support of our efforts to streamline the LDR program and reduce paperwork burden on the regulated community.

DCN PH4A032
COMMENTS Eastman Kodak Company
RESPONDER RC
SUBJECT CLNP
SUBJNUM 032
COMMENT

Reduce LDR Paperwork for Routine Waste Streams
Kodak supports the Agency's proposal to eliminate the need for LDR notifications/certifications for routine shipments of the same waste to the same treatment or disposal facility. Over the years both generators and Treatment, Storage and Disposal (TSD) facilities have learned to better understand the implications of the LDR treatment standards. Generators typically create a "waste profile" for a particular waste stream with a TSD facility, long before the first shipment is made. This "waste profile" establishes an understanding of analytical data, waste codes, and the applicable treatment standards. While sending a notification/certification form with the first off-site shipment may serve to confirm this information, subsequent copies have little or no environmental impact (other than killing trees to make the paper they are printed on). In the past, these additional copies have simply become busywork for the generator and TSD facility, and have become a target for paperwork violations of the regulations. We urge the Agency to take this step to focus the RCRA regulations on more substantive issues than a piece of paper, and to continue reducing the paperwork burden on the regulated community. We urge you to adopt the proposed exclusions and LDR paperwork reduction noted above as you finalize the Phase IV LDR rule. In addition, we urge the Agency to continue work to reinvent environmental regulations by further revising the definition of solid waste and looking for other ways of eliminating unnecessary paperwork.

RESPONSE

The Agency appreciates your interest in, and support of our efforts to streamline the LDR program and reduce paperwork burden on the regulated community.

DCN PH4A035
COMMENTS Metals Industries Recycling
RESPONDER RC
SUBJECT CLNP
SUBJNUM 035
COMMENT MIRC supports EPA's proposed LDR paperwork reductions.
RESPONSE

The Agency appreciates your interest in, and support of our efforts to streamline the LDR program and reduce paperwork burden on the regulated community.

DCN PH4A035

COMMENTS Metals Industries Recycli

RESPONDER RC

SUBJECT CLNP

SUBJNUM 035

COMMENT B. MIRC Supports EPA's Proposed LDR Paperwork Reductions and

Suggests a Conforming Change to the Land-applied Product Notification Under EPA's current LDR program, generators of hazardous wastes must determine whether the wastes meet applicable treatment standards at the point of generation and, if they do not, they must notify the treatment or storage facility in writing with each shipment. 40 C.F.R. § 268.7(a). 8.1 Similarly, RCRA treatment facilities are required to send a notification each time they ship a waste or treatment residue to land disposal facilities or to different treatment facilities for further management. Id. § 268.7(b). As part of EPA's 25 percent recordkeeping reduction goal, EPA has proposed to change these notification requirements to one-time notifications. NURC strongly supports these proposed amendments to 40 C.F.R. § 268.7 and applauds EPA for its effort to eliminate unnecessary recordkeeping burdens. MIRC requests that EPA also modify in a similar fashion the notification requirements under 40 C.F.R. § 268.7(b)(7). Under that subsection, when recyclable materials are used in a manner constituting disposal pursuant to section 266.20(b), the recycling facility must separately submit with each shipment of the material a certification (section 268.7(b)(5)) and a notification (section 268.7(b)(4)) to the Regional Administrator or designated representative. This "land-applied product" notification is identical to the section 268.7(b)(4) notification except that the recipient of the notice is the Regional Administrator rather than a treatment or disposal facility. See 53 Fed. Reg. 31138, 31198 (Aug. 17, 1988) (rationale for notification). As with the section 268.7(b)(4) notification, the paperwork burden far outweighs the minimal benefits, if any, of requiring a recycling facility to submit essentially the same certification and notification with every shipment when the nature of the material or process does not change from shipment to shipment. Consequently, MIRC recommends that EPA change the section 268.7(b)(7) notification requirement to a one-time notification similar to the proposed change to 40 C.F.R. § 268.7(b)(4). A one-time notification requirement for 40 C.F.R. § 268.7(b)(7) would greatly reduce the paperwork burden for recycling facilities while satisfying EPA's

information needs.

RESPONSE

The commenter's suggestion is beyond the scope of this rulemaking. It will, however, be considered as part of efforts to further reduce paperwork in the future.

DCN PH4A040

COMMENTS Kenecott Energy Co.

RESPONDER RC

SUBJECT CLNP

SUBJNUM 040

COMMENT b. One-time Notification [FR 2345] It appears (from the proposed regulatory language) that EPA intends the condition related to onetime notification to apply whether or not there is land placement. On the other hand, the preamble says "The one-time notification would be submitted by the operator of the land-based unit . . ." Where there is legitimate recycling with no speculative accumulation, and no land placement to raise the possibility of discard, EPA has no authority and no reason to require any notification. If EPA nevertheless requires notification, a one-time, brief submittal should be sufficient. It is believed that, for the majority, if not all, cases, any information provided in the notification would be available in existing operating permits, thus of questionable value. Such a redundant notification requirement might conflict with the Paperwork Reduction Act. In the case of land-based units, notification seems justified so that an agency can evaluate whether there is discard.

RESPONSE

The LDR requirements for one-time notifications attach at the point of generation of any hazardous waste destined for eventual land disposal.

DCN PH4A040

COMMENTER Kennecott Energy Co.

RESPONDER RC

SUBJECT CLNP

SUBJNUM 040

COMMENT II. Proposed Reduction in Paperwork Requirements for the Land Disposal Restrictions Program A. Section 268.7 Kennecott agrees with one-time notification of LDR forms and submittal of new forms only when the waste stream changes.

RESPONSE

The Agency appreciates your interest in, and support of our efforts to streamline the LDR program and reduce paperwork burden on the regulated community.

DCN PH4A044

COMMENTER Battery Council International

RESPONDER NV

SUBJECT CLNP

SUBJNUM 044

COMMENT BC strongly supports the Agency 's proposal to reduce paperwork requirements under the Resource Conservation and Recovery Act (RCRA) Land Disposal Restrictions (LDR) program. A one-time notification and certification requirement for materials repeatedly shipped from BC battery manufacturing plants to secondary smelters for reclamation will simplify the tracking of these wastes and reduce paperwork burdens, while still ensuring consistency in waste management and allowing proper RCRA enforcement. 1 Many BC battery manufacturers and secondary smelters have "tolling" arrangements,, buy-sell agreements, or otherwise regularly do business with each other, Under these mechanisms, the battery manufacturing plant repeatedly ships the same type of material (and approximately the same volume per shipment) to the secondary smelter for reclamation. The shipped materials include materials described in 40 C.F.R. Part 266, Appendix XI. 2 Recovered lead then is either returned to the manufacturer or sold to another consumer as a product. Recovered plastic from the batteries generally is handled in one of two ways: either the secondary smelter reprocesses the plastic on-site and ships the reprocessed plastic (i.e., molding resin) to the battery manufacturer or consumer for use in a product; or the plastic is shipped to a plastics reprocess or (usually designated by the battery manufacturer) to be made into molding resin and then returned to the battery manufacturer for use in a product. Under the current RCRA regulations, the battery manufacturer (or its shipper/agent) is to complete a separate LDR notification form for each of these shipments, Each form contains essentially the same information as the form sent to the smelter with the previous shipment. Thus, the smelter is not acquiring any new knowledge about the shipped materials, Moreover, smelter operations are not adjusted based on these certifications. The forms thus serve no meaningful purpose, BC estimates that in 1995 approximately 76 ,000 separate shipments of lead bearing materials were received by U ,S. secondary smelters. Under existing rules, each of these should have been accompanied by a LDR certificate, A one-time notification would tremendously

reduce this paperwork, eliminating the need for most of these forms, BC thus strongly supports this proposal. 1/ BC supported this proposed requirement during EPA 's Definition of Solid Waste Task Force Round table discussions. 2/ These include plates and groups, grids, posts, separators, battery casings and certain other lead-bearing materials generated or originally produced by the lead-acid battery manufacturing industry,

RESPONSE

The Agency appreciates your interest in, and support of our efforts to streamline the LDR program and reduce paperwork burden on the regulated community.

DCN PH4A047

COMMENTS Safety-Kleen Corp.

RESPONDER RC

SUBJECT CLNP

SUBJNUM 047

COMMENT C. SAFETY-KLEEN HAS THE FOLLOWING ADMINISTRATIVE AND

PROCEDURAL COMMENTS ON THE PROPOSED SUPPLEMENTAL PHASE IV
LDR

REGULATION 8. Safety-Kleen supports the change to requiring a one-time LDR notice to treatment and storage facilities for wastes that do not meet the LDR treatment standards, under 40 CFR 268.7(a)(1) The EPA's proposal to require a one-time LDR notification is a significant improvement for reducing paperwork burdens associated with manifesting, but Safety-Kleen believes that this burden could be reduced even further by eliminating the requirement for LDR notification for any waste destined for recycling. The LDR notification requirement should first apply when recycling residues are transported for disposal or treatment. Safety-Kleen encourages and supports all simplifications to the RCRA regulations that ease the paperwork burden on the regulated community. Because Safety-Kleen handles hundreds of thousands of manifests each year, each with an associated LDR notification, we strongly support the Agency's proposal to requiring only a one-time LDR notification for restricted wastes that are sent to storage and treatment facilities. The Agency's proposed conditions on the LDR paperwork management and updates appear to be fair and achievable. The EPA appears to be making the LDR notification revision to the wrong section of the regulations. The preamble states that the one-time notification will apply to wastes "which do not meet the appropriate treatment standards, but the composition of these wastes, or the process generating the wastes, or the treatment facility receiving wastes does not change ..." (61 FR 2363). In the LDR regulations, 40 CFR 268.7(a)(1) applies to "... a waste [that] does not meet the applicable treatment standards..... while 40 CFR 268.7(a)(2) applies to "... waste [that] can be land disposed without further treatment ..." The preamble is clear that the one-time notification would apply to the former category of wastes (i.e., 40 CFR 268.7(a)(1)). However, the proposed regulatory language indicates modifications to 40 CFR 268.7(a)(2). The proposed regulatory language must be changed to modify the appropriate

section of the rules.

RESPONSE

The commenter's suggestion that EPA should eliminate the requirement for LDR notification for any waste destined for recycling is beyond the scope of this rulemaking. It will, however, be considered as part of efforts to further reduce paperwork in the future. The commenter's concern about the regulatory language cross-referencing the wrong paragraph must be based on the regulatory language as it appears in the current issue of 40 CFR 268.7, rather than on the regulatory language as rewritten and renumbered in the proposed Phase IV rule. The Agency is finalizing the language as it was proposed, and the cross-referencing is correct based on this regulatory language.

DCN PH4A053

COMMENTER Inco Ltd., Internat'l Met

RESPONDER RC

SUBJECT CLNP

SUBJNUM 053

COMMENT We also support EPA 's proposed reduction in paperwork requirements regarding generator notifications to receiving facilities under the Land Disposal Restrictions program but believe a clarification is needed.

RESPONSE

The Agency appreciates your interest in, and support of our efforts to streamline the LDR program and reduce paperwork burden on the regulated community.

DCN PH4A053

COMMENTER Inco Ltd., Internat'l Met

RESPONDER RC

SUBJECT CLNP

SUBJNUM 053

COMMENT III. EPA 's Proposed Reduction in Paperwork Requirements Is

Sensible but Needs To Be Clarified. We support EPA 's proposal to allow one-time notification, rather than shipment-by-shipment notification, when waste that does not meet applicable treatment standards is shipped by a generator (or treatment facility) to the same receiving facility as prior shipments of the same type of waste. However, EPA should clarify the requirement that a new notification must be sent when "the waste . . . change[s]." See proposed Sections 268.7(a)(2) . 268.7(b)(4), 61 Fed. Reg. at 2373/1. The concept of a "change in the waste" is rather vague. An appropriate clarification might be to require a new notification whenever a change in the waste affects the determination of which treatment standards apply to the waste or which treatment standards are not met by the waste as generated.

RESPONSE

The Agency agrees that a new notification should be done whenever a change in the waste affects the determination of which treatment standards apply to the waste or which treatment standards are not met by the waste as generated.

DCN PH4A054

COMMENTS RSR Corporation

RESPONDER RC

SUBJECT CLNP

SUBJNUM 054

COMMENTS RSR strongly supports the proposed revisions to the notification provisions of 40 C.F.R. Section 268.7. The proposal to require a one-time notification and certification requirement under the Land Disposal Restrictions (LDR) requirements will greatly ease paperwork burdens while ensuring that shipments of secondary materials are appropriately tracked. A similar recordkeeping provision exists today for characteristically hazardous wastes that are decharacterized and shipped to RCRA Subtitle D facilities. This proposed revision also is consistent with EPA's initiative to reduce by 25 percent -the paperwork burden on the regulated community. Absent this revision, it will be difficult for EPA to achieve its paperwork reduction goals.

RESPONSE

The Agency appreciates your interest in, and support of our efforts to streamline the LDR program and reduce paperwork burden on the regulated community.

DCN PH4A054

COMMENTS RSR Corporation

RESPONDER RC

SUBJECT CLNP

SUBJNUM 054

COMMENT III. RSR SUPPORTS THE PROPOSED REVISIONS TO 40 C.F.R.

SECTION 268.7 RSR supports the proposed revisions to the notification provisions of 40 C.F.R. Section 268.7. The proposal to require a one-time notification and certification requirement under the Land Disposal Restrictions (LDR) requirements will simplify paperwork burdens while ensuring that shipments of secondary materials are appropriately tracked. The proposed revisions will not compromise protection of human health and the environment or enforcement of RCRA 's provisions. RSR believes the proposed regulatory change is long overdue. Indeed, this revision was one of the "low hanging fruit" that RSR urged EPA to pursue in the redefinition of solid waste roundtable effort in 1994. RSR urges EPA to act quickly on this proposed revision and similar issues raised in the redefinition of solid waste effort. Many battery manufacturers and secondary lead production facilities have so-called "tolling" arrangements, buy-sell agreements, or otherwise regularly ship lead-bearing materials back and forth to one another. Battery manufacturers typically ship the same type of materials (and roughly the same volume per shipment) to a secondary lead production facility for reclamation. These shipped materials include lead-acid batteries, materials on 40 C.F.R. Part 266 Appendix XI, and other lead-bearing materials. Under these arrangements, secondary lead production facilities reclaim the lead and/or plastic from these materials. The lead and plastic is then either resold to the manufacturer or sold to another customer as a product. According to data generated by the Battery Council International (BCI), and cited in BCI 's comments on this proposed rulemaking, in 1995 approximately 76, 000 separate shipments of leadbearing materials were received by U.S. secondary lead production facilities. There is little variation in the types or quantities of these materials. The composition of the materials, the processes generating the materials, and the facility receiving the materials also rarely change. Nonetheless, under the existing provisions of 40 C.F.R. Section 268.7, each of these shipments was required to have been

accompanied by a notification and, in some instances, a certification. In addition, each form sent to the secondary lead production facility contains the same information as the previous form. It is not uncommon for RSR to receive thousands of these forms every month. The forms must be reviewed and retained by RSR personnel, even though they provide little, if any, added protection to human health or the environment. A one-time notification would tremendously reduce this paperwork and the associated burden associated with filling out, reviewing, and retaining the forms. In fact, by EPA's own estimates, the proposed revision could result in an estimated reduction of 1,519,000 hours per year of paperwork burden. This is equivalent to 730 employee years. RSR believes the proposed changes will achieve greater reductions in paperwork burden than those estimated by EPA. EPA can save industry millions of dollars that now are wasted on paperwork requirements that, by EPA's own admission, can be removed without abridging in any way protection of human health and the environment. EPA has taken a similar approach to tracking requirements for characteristically hazardous wastes that are decharacterized and shipped to RCRA Subtitle D facilities. Under that provision, a one-time notice is required to be submitted to the EPA Regional office or authorized State agency. The notice must be updated if the waste or process changes. To RSR's knowledge, there have been no substantive concerns raised with EPA regarding this existing regulatory provision. This proposed revision also is consistent with EPA's initiative to reduce by 25 percent the paperwork burden on the regulated community and with President Clinton's report on Reinventing Environmental Regulation. By EPA's own admission, the LDR program is one of the largest programs in terms of recordkeeping and reporting. Nowhere are EPA's paperwork reduction efforts more sorely needed than in the LDR provisions. EPA clearly can make significant strides towards this 25 percent reduction goal and towards reinventing environmental regulation if it promulgates this proposed revision. Indeed, RSR is concerned that, absent this proposed revision, EPA will be hard pressed to meet this goal. EPA is claiming an overall reduction of 1.6 million hours in LDR paperwork requirements. The General Accounting Office (GAO), however, recently testified before Congress that this reduction is overstated. As explained by GAO in its testimony, in 1995 EPA revised its estimate of the paperwork burden for the LDR program from 755,000 hours to 5

million hours. The effect of this readjustment has resulted in a mistaken impression of the remaining LDR paperwork burden. As explained by GAO: The planned reduction in the paperwork burden of 1.6 million hours for the land disposal restrictions program is based on a reestimated paperwork burden of 5 million hours. Thus, it appears that about one-third of the total burden for that program has actually been reduced, leaving about 3.4 million hours. However, EPA will apply the 1.6 million reduction against the January 1995 baseline of 755,000 hours for the program, giving the mistaken impression that this burden has been eliminated. Moreover, EPA estimates that, even with its projected decreases, EPA's overall paperwork burden will continue to increase to about 117 million hours by the end of fiscal year 1996. This proposed revision thus is critical to ensuring EPA meets its paperwork reduction goals. RSR also supports EPA's implementation requirements associated with this one-time notification provision. It is appropriate that a new notice be sent to a facility if the waste changes, or the process changes, or the receiving treatment facility changes. RSR also supports the proposed requirement that mandates the receiving facility to maintain a copy of the one-time notification. Given the tremendous potential savings in paperwork reduction and burdens this proposed revision offers, and the fact that it would in no way compromise protection of human health or the environment or EPA's enforcement actions, RSR sees no reason barring promulgation of this revision. RSR strongly urges EPA to do so. RSR requests clarification on one issue raised in the rule. In the proposal, EPA states the following: EPA is proposing that when a treatment facility is shipping waste or treatment residue for further management at a land disposal facility or other treatment facility, and the waste, treatment residue or land disposal/treatment facility does not change, then the treatment facility will only be required to submit a one-time notification and certification to the receiving facility. RSR requests clarification that EPA does not intend for the notification or certification to be sent to a RCRA Subtitle D facility, if that type of facility is to receive the waste, and, of course, provided the waste is no longer hazardous. Such a requirement would be inconsistent with the provisions of 40 C.F.R. Section 268.9(d). For the reasons EPA did not require notices/certifications to be sent to Subtitle D facilities under that provision, RSR urges EPA to clarify that the one-time notice is not to be sent to RCRA

Subtitle D facilities, but to EPA Regional offices or authorized State agencies.

RESPONSE

The Agency appreciates your interest in, and support of our efforts to streamline the LDR program and reduce paperwork burden on the regulated community. A notification does not need to accompany wastes sent to a RCRA Subtitle D facility. It must, however, be placed in the generator's files in compliance with existing requirements of 268.9.

DCN PH4P008
COMMENTS Florida DEP
RESPONDER PV
SUBJECT CLNP
SUBJNUM 008
COMMENT

Pg. 43691, 268.1(e)(4)(ii): This section is a proposed revision to the proposed rule from the March 2, 1995 Federal Register. There is no §268.1(e)(4)(I) that is currently effective. EPA should have published the full text of the proposed changes. Waste water treatments systems can handle flows of several million gallons per day. Ten thousand gallons per day of a characteristic waste is not a de-minimis loss.

RESPONSE

The commenter is referring to language that was deleted from the regulations in the Phase III final rule on April 8, 1996 in response to the Land Disposal Program Flexibility Act of 1996. This comment is, therefore, moot.

DCN PH4P031
COMMENTS Department of Energy
RESPONDER
SUBJECT CLNP
SUBJNUM 031
COMMENT

- (k) 40 CFR 268.7(b)(3) -- See comment III.A, item 3.c.(1)(e) above concerning the cross-reference in this section to 40 CFR 261.3(e). It appears that this provision [proposed §268.7(b)(3)] should be revised to refer to §261.3(f).

- (l) 40 CFR 268.7(b), Paperwork Requirements Table (item 2) -- See comment III.A, item 3.c.(1)(h) above concerning the wording of this item. Should this item be modified to read, "The constituents of concern for F001-F005 and F039 wastes, and underlying hazardous constituents for all characteristically hazardous wastes (as defined by 40 CFR 261.21 - 261.24), unless the waste will be treated and monitored for all constituents (in which case none are required to be listed)" ?

RESPONSE

The commenter is correct that the cross-reference should be to 261.3(f). This has been corrected in the final rule. The wording of 40 CFR 268.7(b) has been clarified as suggested by the commenter.

DCN PH4P036
COMMENTS American Iron & Steel Ins
RESPONDER RC
SUBJECT CLNP
SUBJNUM 036
COMMENT

In one particular instance, however, AISI suggests that EPA streamline the regulations even further than the Agency proposes. Under the existing 40 C.F.R. § 268.7(a)(4), which would be redesignated 40 C.F.R. § 268.7(a)(5) under the proposed rule, generators treating prohibited wastes, to meet applicable treatment standards, in tanks, containers, or containment buildings regulated under 40 C.F.R. § 262.34 must develop and follow a waste analysis plan ("WAP") and submit that plan to appropriate EPA or state regulatory authorities. In the Phase IV rule, the Agency proposes to delete the requirement that the WAPs be submitted to the regulatory authorities. See 60 Fed. Reg. at 43,678. AISI supports this measure, but believes that the Agency should go further, and delete the requirement to develop and follow a WAP in the first instance. The WAP requirement applies only if the generator treats the waste to achieve the applicable LDR treatment standards. See 55 Fed. Reg. at 22,670 ("EPA does not believe ... that it needs to require waste analysis plans from 90-day generators who treat partially, but do not treat to achieve the treatment standard."). In such an event, however, the generator must certify that the waste is eligible for land disposal. See 40 C.F.R. § 268.7(a)(2). This certification requirement should be sufficient to ensure that the wastes are, in fact, treated to meet applicable treatment standards. Accordingly, the WAP requirement is redundant and should be deleted.

RESPONSE

The Agency does not agree with the commenter that the WAP requirement is redundant, and is not making the suggested change to the requirements.

DCN PH4P113
COMMENTS Chemical Manufacturers Assn
RESPONDER SS
SUBJECT MISC
SUBJNUM 113
COMMENT

IV. IMPROVEMENTS TO THE EXISTING LDR PROGRAM

A. EPA SHOULD GRANT AN EXEMPTION FROM LDR REQUIREMENTS DURING UNINTENTIONAL RELEASES OF HAZARDOUS MATERIALS.

CMA addresses here the issue of whether LDR requirements should apply to unintentional releases of listed and characteristic hazardous wastes. Despite best operating practices and engineering design, there will be times when unintentional non-de minimis spills and emergency releases will occur. Such discharges will trigger emergency responses that may require, for safety reasons, the discharge of hazardous (listed or characteristic) or decharacterized wastes into subtitle C or D surface impoundments. Currently 40 CFR 264.1(g)(8) and 265.1(c)(11) exempt the facility from Part 264/265 emergency response exemptions to eliminate the risk of a regulatory violation during the immediate response to a threatening situation, and thus, provide the facility with the maximum flexibility to address the situation.

CMA recommends that EPA amend 40 CFR 268.1 by adding the following section to subsection(e):

The following materials are not subject to any provisions of Part 268:

(6) Hazardous wastes that are unintentionally discharged, or materials which become hazardous waste after being unintentionally discharged, provided that upon detection, they are promptly treated or contained. After the immediate response is over, further containment, treatment, or disposal subsequent to that performed for emergency treatment or containment of such waste is subject to all applicable

RESPONSE

The comment is beyond the scope of this rulemaking. The Agency will consider this suggestion when making regulatory changes in future rulemakings.

DCN PH4P116
COMMENTS Oxychem
RESPONDER RC
SUBJECT CLNP
SUBJNUM 116
COMMENT

Oxychem supports the “clean-up” of Part 268 rules.

RESPONSE

The Agency acknowledges the commenter’s support.

DCN PH4A056

COMMENTS Utility Solid Waste Activity Group

RESPONDER RC

SUBJECT CLNP

SUBJNUM 056

COMMENT Finally, EPA has proposed a number of changes to the RCRA LDR program that USWAG supports.

RESPONSE

The Agency appreciates your interest in, and support of our efforts to streamline the LDR program and reduce paperwork burden on the regulated community.

DCN PH4A056

COMMENTS Utility Solid Waste Activ

RESPONDER RFC

SUBJECT CLNP

SUBJNUM 056

COMMENTS Vill. USWAG Supports Siml2lification of the LDR Notification

Requirements. EPA is proposing to modify the LDR notification requirements by allowing a one time notification for multiple shipments of the same waste that do not meet treatment standards from one generator to the same receiving facility. 61 Fed. Reg. at 2363-64. USWAG previously expressed its support for a one time notification for wastes that meet the treatment standards in the interests of regulatory efficiency and the elimination of a redundant paperwork requirement. See USWAG Comments on "Land Disposal Restrictions - Phase IV: Issues Associated with Clean Water Act Treatment Equivalency, and Treatment Standards for Wood Preserving Wastes and Toxicity Characteristic Metal Wastes," Docket No. F-95-PH4P-FFFFF (November 20, 1995). USWAG is fully supportive of both proposals, which will eliminate an unnecessary regulatory burden, facilitate compliance with the LDR requirements, and assist in the streamlining of the LDR program. In fact, because nearly all wastes are now subject to the LDR S, USWAG urges the Agency to eliminate the LDR notification requirement entirely and incorporate whatever information the Agency believes necessary into the hazardous waste manifest.

RESPONSE

The Agency appreciates your interest in, and support of our efforts to streamline the LDR program and reduce paperwork burden on the regulated community. The issue of eliminating LDR notification in favor of including the same information in the hazardous waste manifest is outside the scope of this rule. That suggestion will be considered in the context of future EPA regulations.

DCN PH4A070

COMMENTS FMC Corporation

RESPONDER RC

SUBJECT CLNP

SUBJNUM 070

COMMENT X. FMC Strongly Supports The Proposed Reduction In LDR

Paperwork, FMC greatly appreciates EPA's efforts to streamline the cumbersome and paper-intensive Land Disposal Restrictions recordkeeping and reporting requirements and strongly supports the proposed paperwork reductions.71 FMC agrees that there will be significant cost and manpower savings directly attributable to the proposed paperwork reductions. One time notifications instead of notices with each shipment will be a significant reduction in paperwork without any reduction in protection of human health and the environment.

RESPONSE

The Agency appreciates your interest in, and support of our efforts to streamline the LDR program and reduce paperwork burden on the regulated community.

DCN PH4A084

COMMENTS Chemical Manufacturers As

RESPONDER RC

SUBJECT CLNP

SUBJNUM 084

COMMENT CMA strongly supports the proposed reduction in LDR paperwork

CMA greatly appreciates EPA's efforts to streamline the cumbersome and paper intensive Land Disposal Restrictions record keeping and reporting requirements and strongly supports the proposed paperwork reductions. CMA agrees that there will be significant cost and manpower savings directly attributable to the proposed paperwork reductions. One time notifications instead of notices with each shipment will be a significant reduction in paperwork without any reduction in protection of human health and the environment.

RESPONSE

The Agency appreciates your interest in, and support of our efforts to streamline the LDR program and reduce paperwork burden on the regulated community.

DCN PH4P034
COMMENTS CMA UIC Task Force
RESPONDER PMC
SUBJECT CLNP
SUBJNUM 034
COMMENT

Retain existing regulation that exempts listed hazardous wastes from treatment standards applicable to characteristic wastes when the listed waste's treatment standards already address the hazardous constituents at issue.

RESPONSE

Section 268.9(b) is retained unchanged in the regulations.

DCN PH4P034
COMMENTS CMA UIC Task Force
RESPONDER PMC
SUBJECT CLNP
SUBJNUM 034
COMMENT

. Further modify the de minimis wastewater exemption to assure that analytical costs for compliance are reasonable and clarify that this exemption is applicable to all Class I wells, not just to those injecting nonhazardous wastes.

RESPONSE

In the Phase III Withdrawal Rule published April 8, 1996, a typographical error occurred which indicated that the Agency was withdrawing 268.1(e)--referring to de minimis losses in general--rather than 268.1(e)(4)(ii)--referring to the de minimis losses provision that applied only to underground injection wells injecting decharacterized wastes. Therefore, in the Phase IV final rule the Agency is clarifying that the general de minimis provision of 268.1(e) remains in the regulations and applies to characteristic wastes rather than products or intermediates. No further modification is being made to the provision because the need for such modification has not been demonstrated. This exemption applies to losses of characteristic wastes to wastewater treatment systems.

DCN PH4P020
COMMENTS Commenter Exxon
RESPONDER PMC
SUBJECT CLNP
SUBJNUM 020
COMMENT

D. De Minimis exemptions for characteristic wastewaters should be expanded

To avoid triggering extensive requirements for low risk facilities, EPA should adopt a de minimis exemption for characteristic wastewaters. This exemption should be in the form of a headworks-type exclusion for characteristic wastewaters whose volume comprises less than 1% of the total flow sent to CWA systems. The condition that UHCs not exceed ten times the UTS levels should be dropped from the Phase IV LDR proposal since the total volume of the streams is so small that the relationship between the UHC level and the UTS level is unimportant. This new exemption would recognize the minimal risk to health and the environment from de minimis streams and not mandate unnecessary investment.

RESPONSE

In the Phase IV final rule the Agency is clarifying that the general de minimis provision of 268.1(e) remains in the regulations and applies to characteristic wastes rather than products or intermediates. No further modification is being made to the provision because the need for such expansion has not been demonstrated. This exemption applies to losses of characteristic wastes to wastewater treatment systems.

It is possible that the commenter is writing this in the context of regulations proposed for the Phase III and Phase IV rules that would have applied to wastewaters managed in Clean Water Act (CWA) and CWA-equivalent wastewater treatment systems and Class I nonhazardous waste wells. The proposed regulations (including a special de minimis provision for such facilities) were made moot by the Land Disposal Program Flexibility Act of 1996, as explained in the withdrawal rule on April 8, 1996 (61 FR 15660).

DCN PH4P059
COMMENTS Exxon Chemicals Americas
RESPONDER PMC
SUBJECT CLNP
SUBJNUM 059
COMMENT

4. De Minimis Exemptions: ECA Recommends Modifications to the De Minimis Exemption Proposed for Wastewaters in CWA Systems
To avoid requiring facilities to develop extensive procedures and implement capital investments that are not warranted by the low risks being addressed by the proposed LDRPhase III and IV rules, EPA should ensure that de minimis provisions are adequately defined. The first step EPA should take is to ensure that the provision on de minimis losses of characteristic wastes to wastewaters which was included in the proposed LDR Phase III rule is maintained (60 FR 11740; 268.1(e)(4)(I)). This provision indicates that these de minimis losses are not subject to any provision of part 268. The provision referenced is for de minimis losses of characteristic wastes to wastewaters that are defined as:

"losses from normal material handling operations (e.g. spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; and relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; rinsate from empty containers or from containers that are rendered empty by that rinsing; and laboratory wastes not exceeding one per cent of the flow of wastewater into the facility's headworks on an annual basis."

An example of why this de minimis exemption is important is illustrated by one of ECA's plastics plants. This facility has three surface impoundments in a CWA system that receive streams such as cooling water, clean condensates, and stormwater. Because of the nature of these streams, there is no need for biological treatment. Current facilities allow for the capture of any residual plastic pellets that may be discharged and provide hold-up time prior to discharge (which would allow for hydrocarbon recovery in case of a spill). Within the process there is a stream that is 30% methanol and 70% water. Any drop from this stream would, at the point just before it enters the wastewater system, be a D001

stream and would exceed 10 times UTS for methanol even though it was just a drop. There is always the potential that a pump leak could result in some drops of this material entering the sewer system leading to the impoundments. Without the *de minimis* clause outlined above, and with a narrow point of generation definition, it would be possible that the LDR Phase IV rule could trigger extensive requirements on the surface impoundments (which would presumably be called pre-bio since there is no significant biological treatment) for only a few drops of material.

In addition to the example provided above, some facilities may have minor streams, either continuous or intermittent, that do not meet the definition of *de minimis* losses indicated above. Again, to avoid triggering extensive requirements for low risk facilities, EPA should add a second *de minimis* exemption for characteristic wastes. This exemption should be based on the condition that the total volume of the characteristic waste sent to the CWA system is less than 1% of the total flow at the headworks of the wastewater surface impoundment. There should be no condition that underlying hazardous constituents (UHC) not exceed 10 times UTS, since the total volume of the streams is so small and the effort to quantify UHC for small streams can be a substantial burden. In addition to the sampling and analytical costs, the cost of establishing sampling points in hard-piped systems can be very expensive. These costs, in addition to the costs associated with any additional treatment or surface impoundment modifications that might be required, would be disproportionate to any potential environmental benefit that could be achieved. It is important that EPA maintain focus on significant risk areas, versus overly regulating low/no risk cases, where costs far exceed any slight benefit.

RESPONSE

In the Phase IV final rule the Agency is clarifying that the general *de minimis* provision of 268.1(e) remains in the regulations and applies to characteristic wastes rather than products or intermediates. No further modification is being made to the provision because the need for such expansion has not been demonstrated. This exemption applies to losses of characteristic wastes to wastewater treatment systems.

It is possible that the commenter is writing this in the context of regulations proposed for the Phase III and Phase IV rules that would have applied to wastewaters managed in Clean Water Act (CWA) and CWA-equivalent wastewater treatment systems and Class I nonhazardous waste wells. The proposed regulations (including a special *de minimis* provision for such facilities) were made moot by the Land Disposal Program Flexibility Act of 1996, as explained in the withdrawal rule on April 8, 1996 (61 FR 15660).