

US EPA ARCHIVE DOCUMENT

(Approved by the Office of Management and Budget under control number 2900-0085)

5. In § 20.900, paragraphs (b) and (c) are revised; and paragraph (e) is added, to read as follows:

§ 20.900 Rule 900. Order of consideration of appeals.

* * * * *

(b) *Appeals considered in docket order.* Except as otherwise provided in this Rule, appeals are considered in the order in which they are entered on the docket.

(c) *Advancement on the docket.* A case may be advanced on the docket on the motion of the Chairman, the Vice Chairman, a party to the case before the Board, or such party's representative. Such a motion may be granted only if the case involves interpretation of law of general application affecting other claims, if the appellant is seriously ill or is under severe financial hardship, or if other sufficient cause is shown. "Other sufficient cause" shall include, but is not limited to, administrative error resulting in a significant delay in docketing the case. Such motions must be in writing and must identify the specific reason(s) why advancement on the docket is sought, the name of the veteran, the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), and the applicable Department of Veterans Affairs file number. The motion must be filed with: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Where a motion is received prior to the assignment of the case to an individual member or panel of members, the ruling on the motion will be by the Vice Chairman, who may delegate such authority to a Deputy Vice Chairman. If a motion to advance a case on the docket is denied, the appellant and his or her representative will be immediately notified. If the motion to advance a case on the docket is granted, that fact will be noted in the Board's decision when rendered.

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(e) *Postponement to provide hearing.* Any other provision of this Rule notwithstanding, a case may be postponed for later consideration and determination if such postponement is necessary to afford the appellant a hearing.

(Authority: 38 U.S.C. 7107, Pub. Law No. 103-446, § 302)

§ 20.609 [Amended]

6. In § 20.609, paragraph (i) is amended by removing "the Court of Veterans Appeals" from the next to the last sentence and adding, in its place, "the United States Court of Appeals for Veterans Claims".

§§ 20.714, 20.717, and 20.900 [Amended]

7. Sections 20.714(a)(5), 20.717(b), and 20.900(d) are amended by removing "the United States Court of Veterans Appeals" wherever it appears and, in each such section, adding in its place "the United States Court of Appeals for Veterans Claims".

[FR Doc. 00-6613 Filed 3-16-00; 8:45 am]

BILLING CODE 83201-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 268, 271, and 302

[FRL-6560-4]

RIN 2050-AD59

Organobromine Production Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Listing of CERCLA Hazardous Substances, Reportable Quantities; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing the vacature of regulatory provisions governing the identification of certain wastes as listed hazardous wastes. EPA is amending its regulations to conform with an order issued by the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir.) in *Great Lakes Chemical Corporation v. EPA* (No. 98-1312), that vacated Agency regulations listing certain organobromine wastes as hazardous wastes under the Resource Conservation and Recovery Act (RCRA).

EPA also is modifying the land disposal restrictions treatment standards in 40 CFR part 268 by deleting these wastes and the associated treatment standards. In addition, EPA is vacating the Reportable Quantity (RQ) requirements for these notifications. Under the court's order, and as amended in today's rule, the vacated federal hazardous waste listings and regulatory requirements based on those listings are to be treated as though they were never in effect. State regulations, which may be more stringent than

federal rules, were not necessarily affected by the court's ruling.

EFFECTIVE DATE: This rule will be effective on March 17, 2000.

ADDRESSES: EPA does not seek comment on this document. EPA will keep the official record for this action in paper form. The official record of this action is identified by Docket Number F-98-OBLF-FFFFF. The public may view supporting materials in the RCRA Information Center (RIC), located at EPA, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, we recommend that you make an appointment by calling (703) 603-9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15/page.

Supporting materials are available for viewing in the RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters, US EPA Ariel Rios (5101), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424-9346 or TDD (800) 553-7672 (hearing impaired). In the Washington, D.C., metropolitan area, call (703) 412-9810 or TDD (703) 412-3323. For information on specific aspects of the rule, contact William (Rick) Brandes of the Office of Solid Waste (5304W), U.S. Environmental Protection Agency, US EPA Ariel Rios, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. [E-mail address and telephone numbers: Brandes.william@epa.gov, (703) 308-8871.]

SUPPLEMENTARY INFORMATION: The court order vacating the listing determination will be added to Docket Number F-98-OBLF-FFFFF, the public docket for the rule that listed the organobromine wastes as hazardous. The rule, "Organobromine Production Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Listing of CERCLA Hazardous Substances, Reportable Quantities," was issued in the **Federal Register** at 63 FR 24596 (May 4, 1998). EPA will keep the official record for this action in paper form. The official record is the paper record maintained at the address in the **ADDRESSES** section.

Contents of This Final Rule

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I. Background

On May 4, 1998, EPA published in the **Federal Register** (63 FR 24596) a final rule listing as hazardous wastes under RCRA two wastes generated by the organobromine production industry. The rule added 2,4,6-tribromophenol to the list of commercial chemical products that are hazardous wastes only when they are discarded. This list is found at 40 CFR 261.33 and is divided into acutely hazardous wastes ("P-wastes") and other toxic wastes ("U-wastes"). 2,4,6-tribromophenol was designated waste code U408. Sweepings, off-specification product, and spent filter media from the production of 2,4,6-tribromophenol were added to the list of hazardous wastes from specific sources and designated as waste code K140. As part of the listing determination, and in accordance with Agency regulations, EPA also listed in Appendix VII of 40 CFR part 261 the hazardous constituents in the wastes upon which the listings were based.

The May 4, 1998 final rule also designated the two organobromine wastes as hazardous substances under the Comprehensive, Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601, and added them to the hazardous substance list at 40 CFR 302.4 with adjusted reportable quantities (RQs) of 100 pounds. EPA also promulgated land disposal restriction (LDR) regulations for the organobromine wastes. EPA amended its requirements for approval of state hazardous waste programs by adding the organobromine listings and LDR regulations to Tables 1 and 2 of 40 CFR 271.1. These tables list the regulations that establish the requirements and prohibitions applicable to state hazardous waste programs.

On April 9, 1999, the D.C. Circuit in *Great Lakes Chemical Corporation v. EPA*, ordered that the organobromine listing determinations be vacated. Accordingly, EPA is removing from the Code of Federal Regulations (CFR) the listings vacated by the court and all references to those listings. Today's document notifies the public that EPA is deleting from the lists of hazardous waste found in 40 CFR part 261, subpart D two wastes previously designated as hazardous waste codes K140 and U408. The first waste, previously designated as K140, is sweepings, off-specification product and spent filter media from the production of 2,4,6-tribromophenol. The

second waste, previously designated as U408, is 2,4,6-tribromophenol (commercial chemical product). EPA also is deleting 2,4,6-tribromophenol from the list of hazardous constituents in Appendix VIII of 40 CFR part 261. In addition, EPA is modifying the land disposal restrictions treatment standards in 40 CFR part 268 by deleting these wastes and the associated treatment standards. EPA also is vacating the Reportable Quantity (RQ) requirements for these notifications.

The effect of vacating the hazardous waste listing determination for these wastes is to clarify that these two wastestreams are not subject to the hazardous waste management and treatment standards under RCRA, as well as not subject to emergency notification requirements for releases of hazardous substances to the environment.

II. Amended Regulations

In 40 CFR 261.32, the following K-waste listing is deleted: K140—Floor sweepings, off-specification product and spent filter media from the production of 2,4,6-tribromophenol.

In the table in 40 CFR 261.33(f) the following U-waste listing is deleted:

Hazardous waste number	Chemical abstracts number	Substance
U408	118-79-6	2,4,6-Tribromophenol.

EPA also is deleting 2,4,6-tribromophenol from the hazardous constituent list in Appendix VII of 40 CFR Part 261. The Agency is deleting any mention of the vacated hazardous waste codes in Appendix VIII.

While the regulations for waste management at 40 CFR parts 262 through 266 are not affected by the court's action with regard to the vacature of the hazardous waste listing determinations for K140 and U408, it is clear that the regulations are not applicable to the vacated hazardous waste listings (unless those wastes exhibit a hazardous waste characteristic described in 40 CFR part 261, subpart C). However, to the extent that the wastes described in the vacated listings were included in federal permits before the ruling, appropriate action may need to be taken by permittees and permitting authorities to amend the permits. Any need to revise state permits will depend on state law. Since state law may be more stringent than federal law, there may be circumstances in which a facility managing organobromine wastes

may be required to retain the state permits.

The land disposal restriction (LDR) regulations for hazardous wastes are amended to remove K140 and U408. Specifically, the Agency is amending 40 CFR 268.33 to remove LDR requirements for K140 and U408 and amending the table in 40 CFR 268.40 to remove the entries for K140 and U408. In addition, 2,4,6-tribromophenol is removed from the Universal Treatment Standards table in 40 CFR 268.48.

Today's final rule also removes the vacated K140 and U408 wastes from CERCLA designation as hazardous substances. Accordingly, these wastes are removed from the list of CERCLA hazardous substances at 40 CFR 302.4.

III. State Authority

The tables in 40 CFR 271.1 are amended to reflect the issuance of this document so that states will understand they are not required by the federal Resource Conservation and Recovery Act to adopt the hazardous waste listings for K140 and U408. Since today's rule does not establish any new regulations, no additional requirements or obligations are imposed on the states by its promulgation. RCRA section 3009 provides that states may not issue regulations less stringent than those authorized under subtitle C or RCRA. However, section 3009 of RCRA also provides that states may impose more stringent requirements than those regulations promulgated by EPA under subtitle C. Thus, regulations vacated by the court in *Great Lakes Chemical Corporation v. EPA* may be permissible under state law.

IV. Good Cause Exemption from Notice-and-Comment Rulemaking Procedures

The Administrative Procedure Act generally requires agencies to provide prior notice and opportunity for public comment before issuing a final rule (5 U.S.C. 553(b)). Rules are exempt from this requirement if the issuing agency finds for good cause that notice and comment are unnecessary (5 U.S.C. 553(b)(3)(B)).

EPA has determined that providing prior notice and opportunity for comment on the regulations amending the RCRA hazardous waste management requirements to comply with the court decision vacating the hazardous waste listing determinations for waste codes K140 and U408, is not necessary. The regulations are no longer legally in effect by order of the federal court of appeals. Thus, amending the hazardous waste regulations has no legal impact and only states the current legal status of the rules.

For the same reasons stated above, EPA believes there is good cause for making the amending regulations immediately effective. (See 5 U.S.C. 553(d))

V. Administrative Assessments

Under Executive Order 12866 (58 FR 51735, October 4, 1993), today's action has no regulatory impact because it merely reflects the current legal status of the regulations. This "regulatory action" does not impose annual costs of \$100 million or more and is not a subject to review by the Office of Management and Budget. Because this action only amends the CFR to comply with the current legal status of the rules, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). This action will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive Order 13084 (63 FR 27655, May 10, 1998). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

This rule does not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an

information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Today's final rule will have no effect upon minority and/or low-income populations. The amending regulations promulgated today reflect current law and are meant only to amend the Code of Federal Regulations to comply with the current legal status of the rules. Therefore, today's rule is not subject to Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations."

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 17, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 148

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 268

Environmental protection, Hazardous materials, Waste management, Reporting and recordkeeping requirements, Land disposal restrictions, Treatment standards.

40 CFR Part 271

Environmental protection, Administrative practice and procedure,

Confidential business information, Hazardous material transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: March 8, 2000.

Timothy R. Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set forth in the preamble, title 40, chapter 1 of the Code of Federal Regulations is proposed to be amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Sec. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

§ 148.18 [Amended]

2. Section 148.18 is amended by removing and reserving paragraph (f).

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

§ 261.32 [Amended]

4. Section 261.32 is amended in the table under "Organic Chemicals" by removing the entry for K140.

§ 261.33 [Amended]

5. Section 261.33(f) is amended in the table by removing in its entirety the entry for U408 (2,4,6-Tribromophenol).

Appendix VII to Part 261 [Amended]

6. Appendix VII to Part 261 is amended by removing the entire entry for EPA hazardous waste number K140.

Appendix VIII to Part 261 [Amended]

7. Appendix VIII to Part 261 is amended by removing the entire entry for 2,4,6-Tribromophenol.

PART 268—LAND DISPOSAL RESTRICTIONS

8. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart C—Prohibitions on Land Disposal**§ 268.33 [Amended]**

9. Section 268.33 is removed and reserved.

Subpart D—Treatment Standards**§ 268.40 [Amended]**

10. In § 268.40, the table is amended by removing the entire entries for K140 and U408.

§ 268.48 [Amended]

11. In § 268.48, the table is amended by removing the entire entry for 2,4,6-Tribromophenol.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

12. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

13. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**, and by adding the following entries to Table 2 in chronological order by date of publication in the **Federal Register** to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
* March 17, 2000	* Vacated Organobromine wastes	* [insert FEDERAL REGISTER page numbers].	* November 4, 1998.
*	*	*	*

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
* November 4, 1998	* Prohibition on land disposal of organobromine wastes).	* 3004(g)(4)(c) and 3004(m)	* 3/17/00. [insert FR page numbers].
* November 4, 1998	* Prohibition on land disposal of radioactive waste mixed with the newly listed and identified wastes, including soil and debris (Vacated organobromine wastes).	* 3004(m) and 3004(g)(4)(c)	* 3/17/00. [insert FR page numbers].
*	*	*	*

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PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

14. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

15. Section 302.4 is amended by removing the entries in Table 302.4, in their entirety, for “2,4,6-Tribromophenol,” and for “K140 Floor sweepings, off-specification product and spent filter media from the production of 2,4,6-tribromophenol.”

Appendix A to § 302.4 [Amended]

16. Appendix A to § 302.4—Sequential CAS Registry Number List of CERCLA Hazardous Substances is amended by removing the entire entry for CAS Registry Number 118796.

[FR Doc. 00-6393 Filed 3-16-00; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 300**

[FRL-6561-9]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Sand Springs Petrochemical Complex Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Sand Springs Petrochemical