

US EPA ARCHIVE DOCUMENT

**VIII. Submission to Congress and the Comptroller General** *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. 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 this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 5, 1999.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

#### PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), (346a) and 371.

2. In § 180.487, by revising paragraph (a) to read as follows:

#### § 180.487 Pyriithiobac sodium; tolerances for residues.

(a) *General.* Time-limited tolerances to expire on September 30, 2001 are established for residues of the herbicide, pyriithiobac-sodium, sodium 2-chloro-6-[(4,6-dimethoxypyrimidin-2-yl)thio]benzoate, in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration/Revocation Date
Cottonseed .....	0.02	9/30/01

\* \* \* \* \*

[FR Doc. 99-27392 Filed 10-19-99; 8:45 am]

BILLING CODE 6560-50-F

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 261, 262, and 268

[FRL-6458-8]

RIN 2050-AE05

#### Land Disposal Restrictions Phase IV: Final Rule Promulgating Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; technical correction.

**SUMMARY:** On May 11, 1999, the Agency published technical amendments correcting the Land Disposal Restrictions (LDR) Phase IV final rule. In today's rule, we are correcting two minor typographical errors and one omission in the May 11th rule. Also, we are correcting three other errors in the LDR Phase IV final rule that came to our attention after the May 11th technical amendments were promulgated.

**EFFECTIVE DATE:** This rule is effective on October 20, 1999.

**ADDRESSES:** The public may obtain a copy of this technical correction at the RCRA information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** For general information contact the RCRA Hotline at (800) 424-9346 (toll free) or (703) 920-9810 in the Washington, DC metropolitan area. For information on this rule contact Peggy Vyas (5302W), Office of Solid Waste, 401 M Street, SW, Washington, DC 20460, (703) 308-5477, e-mail address is

"vyas.peggy@epamail.epa.gov".

#### SUPPLEMENTARY INFORMATION:

#### I. Reasons and Basis for Today's Action

The Agency recently published five rules all related to various aspects of the final Phase IV Land Disposal Restrictions (LDR) rule. These are: the May 12, 1997 LDR final rule (the so-called "Mini" Phase IV Rule, 62 FR 25998), the May 26, 1998 LDR Phase IV final rule (63 FR 28556), the August 31, 1998 administrative stay regarding certain zinc micronutrient fertilizers (63 FR 46332), the September 4, 1998 emergency revisions to the treatment standards for carbamate production wastes (63 FR 172), and the September

24, 1998 revisions to the treatment standards for spent aluminum potliners (63 FR 51254).

On May 11, 1999, the Agency published technical amendments correcting and clarifying certain aspects of all of these rules (64 FR 25408). The May 11th rule contained two minor typographical errors and one omission that we are correcting along with three other errors in the original May 26, 1998 LDR Phase IV final rule that have recently come to our attention.

#### II. Corrections to the May 11, 1999 Technical Amendments

##### A. Arsenic Treatment Standard in K088

In the September 24, 1998 (63 FR 51254) revision of the treatment standards for spent potliners from primary aluminum reduction (K088), the Agency inadvertently omitted the treatment standard adopted for fluoride wastewaters from the entry for K088 in the table of treatment standards in § 268.40. The May 11, 1999 technical amendments restored the fluoride wastewater treatment standard. However, in doing so, EPA inadvertently printed an incorrect measurement unit for the K088 treatment standard for arsenic (a standard which in fact required no correction at all).

The treatment standard for the nonwastewater form of arsenic in K088 (as revised on September 24, 1998) is 26.1 mg/kg, which is to be measured by the total amount of arsenic in the treatment residue. In the May 11, 1999 rule, the treatment standard was incorrectly given as 26.1 mg/l TCLP (a more conventional leaching test not using acid digestion). Today's rule removes the erroneous reference to "mg/l TCLP" for the nonwastewater arsenic standard for the K088 entry in the § 268.40 table.

##### B. Carbamate Treatment Standards

In the September 4, 1998 (63 FR 172) revision of the treatment standards for listed hazardous wastes from carbamate production, the Agency added a paragraph (i) to § 268.40, which inadvertently replaced the existing paragraph (i). The May 11, 1999 technical correction failed to properly reinstate the old paragraph. Today's rule reinserts paragraph § 268.40(i) from the September 4, 1998 rule and redesignates it as § 268.40(j).

##### C. Citation Within § 262.34(a)(4)

Part 262.34 contains the requirements for accumulating hazardous waste prior to treatment. In the May 11, 1999 technical correction, the Agency

amended § 262.34(d)(4) to change an internal citation reference from § 268.7(a)(4) to § 268.7(a)(5) to reflect some other regulatory changes to LDR paperwork requirements that had been adopted on May 12, 1997 (62 FR 25998). However, a parallel correction was not made to § 262.34(a)(4), which also contains the same outdated reference to § 268.7(a)(4). Today we are amending § 262.34(a)(4) to refer to § 268.7(a)(5).

### III. Corrections to the May 26, 1998 LDR Phase IV Final Rule

#### A. Vacated K-Code Wastes

In the LDR Phase IV final rule, the Agency removed K064, K065, K066, K090, and K091 from the table of treatment standards in § 268.40. These five K-code wastes were vacated on April 9, 1999 in *Great Lakes Chemical Co. v EPA* (No. 98–1312 (D.C. Cir.)). However, these wastes still appear in the table of K-code hazardous wastes found in § 261.32. Today's rule removes these vacated K-code wastes from the list in § 261.32.

#### B. § 268.7(a)(3)(ii)

Also in the LDR Phase IV final rule, the Agency revised paragraph § 268.7(a)(3)(ii) by adding a one-time notification for shipping hazardous soil. However, in doing so, the Agency inadvertently replaced other language in that paragraph. Today's rule reinstates the original language and redesignates it as paragraph § 268.7(a)(3)(iii).

#### C. Measuring Compliance With Soil Standards

Lastly, the LDR Phase IV final rule promulgated treatment standards for contaminated soil. The preamble states that compliance with the 90% reduction treatment standard should be measured using the toxicity characteristic leachate procedure (TCLP) for metals and three non-metals: carbon disulfide, cyclohexanone, and methanol (see 63 FR at 28602). Although the preamble to the final rule made it clear that the TCLP test should be used for carbon disulfide, cyclohexanone, and methanol, the regulatory language found in § 268.49(c)(1)(A) did not. We are addressing this discrepancy in today's rule by amending the regulatory language to match the preamble because the preamble accurately represents the Agency's position.

### IV. Analysis Under Executive Order 12866, Executive Order 12875, Executive Order 12898, Executive Order 13045, Executive Order 13084, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, and the Paperwork Reduction Act

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the May 12, 1997, the May 26, 1998, the September 4, 1998, and the September 24, 1998 **Federal Register** documents.

### V. Submission to Congress and the General Accounting Office

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 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 October 20, 1999. 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).

### VI. Immediate Effective Date

EPA is making this rule effective immediately. The rule adopts amendments which are purely technical in that they correct inadvertent printing errors, or mistakes which are clearly inconsistent with the Agency's stated intent. Comment on such changes is unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B). For the same reasons, there is good cause to make the rule effective immediately pursuant to 5 U.S.C. 553(d)(3).

### List of Subjects

#### 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

#### 40 CFR Part 262

Hazardous waste, Labeling, Manifest, Reporting and recordkeeping requirements.

#### 40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

Dated: September 21, 1999.

**Michael Shapiro,**

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

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

### PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

#### Subpart A—General

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

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

#### § 261.32 [Amended]

2. The table in § 261.32 is amended by removing the entries for K064, K065, K066, K090, and K091.

**PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE**

3. The authority citation for part 262 continues to read as follows:

**Authority:** 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

**Subpart C—Pre-Transport Requirements**

4. Section 262.34 is amended by revising paragraph (a)(4) to read as follows:

**§ 262.34 Accumulation time.**

\* \* \* \* \*

(a) \* \* \*

(4) The generator complies with the requirements for owners or operators in subparts C and D in 40 CFR part 265, with § 265.16, and with 40 CFR 268.7(a)(5).

\* \* \* \* \*

**PART 268—LAND DISPOSAL RESTRICTIONS**

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

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

**Subpart A—General**

6. Section 268.7 is amended by adding paragraph (a)(3)(iii) to read as follows:

**§ 268.7 Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities.**

(a) \* \* \*

(3) \* \* \*

(iii) If the waste changes, the generator must send a new notice and certification to the receiving facility, and place a copy in their files. Generators of hazardous debris excluded from the definition of hazardous waste under § 261.3(f) of this chapter are not subject to these requirements.

\* \* \* \* \*

7. Section 268.40 is amended by revising paragraph (j), and the table at the end of the section is amended by revising the entry for K088 to read as follows:

**§ 268.40 Applicability of treatment standards.**

\* \* \* \* \*

(j) Effective September 4, 1998, the treatment standards for the wastes specified in 40 CFR 261.33 as EPA Hazardous Waste numbers P185, P191, P192, P197, U364, U394, and U395 may be satisfied by either meeting the constituent concentrations presented in the table "Treatment Standards for Hazardous Wastes" in this section, or by treating the waste by the following technologies: combustion, as defined by the technology code CMBST at § 268.42 Table 1 of this Part, for nonwastewaters; and, biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at § 268.42 Table 1 of this Part, for wastewaters.

**TREATMENT STANDARDS FOR HAZARDOUS WASTES**

[Note: NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory <sup>1</sup>	Regulation hazardous constituent		Wastewaters—Concentration in mg/l <sup>3</sup> ; of technology code <sup>4</sup>	Nonwastewaters—Concentration in mg/kg <sup>5</sup> unless noted as "mg/l TCLP"; or technology code
		Common name	CAS <sup>2</sup> No.		
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
K088 .....	Spent potliners from primary aluminum reduction..	Acenaphthene .....	83–32–9	0.059	3.4
		Anthracene .....	120–12–7	0.059	3.4
		Benz(a)anthracene .....	56–55–3	0.059	3.4
		Benzo(a)pyrene .....	50–32–8	0.061	3.4
		Benzo(b)fluoranthene .....	205–99–2	0.11	6.8
		Benzo(k)fluoranthene .....	207–08–9	0.11	6.8
		Benzo(g,h,i)perylene .....	191–24–2	0.0055	1.8
		Chrysene .....	218–01–9	0.059	3.4
		Dibenz(a,h)anthracene .....	53–70–3	0.055	8.2
		Fluoranthene .....	206–44–0	0.068	3.4
		Indeno(1,2,3-c,d)pyrene .....	193–39–5	0.0055	3.4
		Penanthrene .....	85–01–8	0.059	5.6
		Pyrene .....	129–00–0	0.067	8.2
		Antimony .....	7440–36–0	1.9	1.15 mg/l TCLP.
		Arsenic .....	7440–38–2	1.4	26.1
		Barium .....	7440–39–3	1.2	21 mg/l TCLP.
		Beryllium .....	7440–41–7	0.82	1.22 mg/l TCLP.
		Cadmium .....	7440–43–9	0.69	0.11 mg/l TCLP.
		Chromium (Total) .....	7440–47–3	2.77	0.60 mg/l TCLP.
		Lead .....	7439–92–1	0.69	0.75 mg/l TCLP.
		Mercury .....	7439–97–6	0.15	0.025 mg/l TCLP.
		Nickel .....	7440–02–0	3.98	11 mg/l TCLP.
		Selenium .....	7782–49–2	0.82	5.7 mg/l TCLP.
		Silver .....	7440–22–4	0.43	0.14 mg/l TCLP.
		Cyanide (Total) <sup>7</sup> .....	57–12–5	1.2	590
		Cyanide (Amenable) <sup>7</sup> .....	57–12–5	0.86	30
		Fluoride .....	16984–48–8	35	NA.



Footnotes to Treatment Standard Table 268.40

<sup>1</sup> The waste descriptions provided in this table do not replace waste descriptions in 40 CFR 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

<sup>2</sup> CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

<sup>3</sup> Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.

<sup>4</sup> All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

<sup>5</sup> Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264 Subpart O or Part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

<sup>7</sup> Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

8. Section 268.49 is amended by revising paragraphs (c)(1) (A) and (B) to read as follows:

**§ 268.49 Alternative LDR treatment standards for contaminated soil.**

\* \* \* \* \*

- (c) \* \* \*  
(1) \* \* \*

(A) For non-metals except carbon disulfide, cyclohexanone, and methanol, treatment must achieve 90 percent reduction in total constituent concentrations, except as provided by paragraph (c)(1)(C) of this section.

(B) For metals and carbon disulfide, cyclohexanone, and methanol, treatment must achieve 90 percent reduction in constituent concentrations as measured in leachate from the treated media (tested according to the TCLP) or 90 percent reduction in total constituent concentrations (when a metal removal treatment technology is used), except as provided by paragraph (c)(1)(C) of this section.

\* \* \* \* \*

[FR Doc. 99-27138 Filed 10-19-99; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

[I.D. 100899B]

**Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Opening of General category New York Bight fishery.

**SUMMARY:** NMFS opens the Atlantic Bluefin Tuna (BFT) General category New York Bight fishery. This action is being taken to provide for General category fishing opportunities in the

New York Bight area only and to ensure additional collection of biological assessment and monitoring data.

**DATES:** Effective 1 a.m. on October 16, 1999, until the date that the set-aside quota is determined to have been taken, which will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin or Pat Scida, 978-281-9260.

**SUPPLEMENTARY INFORMATION:**

Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT landings quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories. The General category landings quota, including time-period subquotas and the New York Bight set-aside, are specified annually as required under § 635.27(a)(1). The 1999 General category quota and effort control specifications were issued June 1, 1999 (64 FR 29806, June 3, 1999).

**Opening of the New York Bight fishery**

The New York Bight set-aside area is defined as the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W. long. (Shinnecock Inlet) and running SSE 150° true, and north of 38°47' N. lat. (Delaware Bay). Under § 635.27(a)(1)(iii), NMFS may make available all or part of the 10 mt landings quota set aside for the New York Bight area when the coastwide General category fishery has been closed in any quota period. Previously, NMFS closed the coastwide General category fishery on October 3, 1999. At that time, NMFS announced that it would open the New York Bight fishery when it is determined that large medium and giant

BFT are available in the New York Bight area. Allowing a few days transition between the closure of the coastwide fishery and the opening of the New York Bight fishery reduces concerns regarding enforcement of regulations applicable to that area. The New York Bight fishery will open effective 1 a.m., Saturday, October 16, 1999, until the date that the set-aside quota of 10 mt is determined to have been taken, which will be published in the **Federal Register**.

For vessels permitted in the General category: Upon the effective date of the New York Bight opening, retaining or landing large medium or giant BFT is authorized only within the set-aside area, until the set-aside quota for that area has been harvested. BFT harvested from waters outside the defined set-aside area may not be brought into the set-aside area. General category permit holders may tag and release BFT in all areas while the General category is closed, subject to the requirements of the tag-and-release program at § 635.26.

For vessels permitted in the Charter/Headboat category: When participating in the General category New York Bight fishery, i.e., fishing for large medium and giant BFT intended for sale, Charter/Headboat category vessels are subject to the same rules as General category vessels. Charter/Headboat category vessels may continue to fish in all areas under the Angling category regulations while the Angling category is open. Vessels permitted in the Charter/Headboat category that are still eligible for the Angling category trophy fish allowance under § 635.23(c)(1) or (2) may land one large medium or giant BFT prior to May 31, 2000. Trophy BFT may not be sold.

The announcement of the New York Bight fishery closure date will be filed with the Office of the Federal Register, and further communicated through the Highly Migratory Species (HMS) Fax Network, the Atlantic Tunas Information Line, NOAA weather radio,