Moreover, in this rulemaking EPA provided a 30-day extension of the initial comment period and an additional 75-day period for submission of supplemental and rebuttal comments on the proposal. The purpose of this supplemental period was to allow members of the public to address issues raised by other commenters during the comment period and at the public hearing on January 8, 1985. Accordingly, EPA believes that petitioners have had ample opportunity to respond to all comments on the proposal, including the comments that persuaded EPA to modify certain parts of the proposal. With the exception of Ormet, which did not comment on the proposed revisions, the petitioners have presented essentially the same comments that were provided during the public comment period.

Nevertheless, EPA has examined the merits of the petitions and has concluded that petitioners' arguments do not warrant reconsideration of this rulemaking. All of the modifications cited by petitioners are logical outgrowths of comments submitted during the comment period on the proposal. None were based on any new factual information that had not been subject to public scrutiny.

A summary of the petitioners' objections and EPA's responses is provided below. Additionally, EPA has prepared a support document containing responses to petitioners' major contentions. This document has been placed in Docket A–83–49. Copies can be obtained from the Central Docket Section or by writing to Mr. Eric Ginsburg at the address given above.

Presumptive Emission Limit for Credit Exceeding Formula GEP

The final regulations require that sources undertake demonstrations to justify credit for stack height exceeding the height determined by formulae provided in 40 CFR 51.1(ii)(2). In so doing, the sources are required to meet an emission limit that is equivalent to the new source performance standards (NSPS), unless demonstrated to be infeasible on a case-by-case basis. Further discussion of the basis for this requirement is contained in the preamble to the regulations and in the response to comments document contained in Docket A–83–49.

The petitioners argue that the presumptive NSPS emission limit should be eliminated on the following grounds:

—No authority is provided under section 123 to adopt such a limit,

—The limit was not subject to adequate public notice and opportunity for comment, and

—The EPA has not properly considered the retroactivity analysis prescribed by the court in *Sierra Club* v. *EPA* in applying the limit retroactively.

The EPA disagrees with all three of these arguments. While specifying an emission limit such as the presumptive NSPS limit is not required by the Act in so many words, its adoption is consistent with and pursuant to the instructions from the U.S. Court of Appeals in its decision to remand the definition of "excessive concentrations" to EPA. The use of a technology-based emission limit, specifically including NSPS, in fluid modeling demonstrations was, in fact, discussed in the November 9, 1984, proposal. While that notice proposed the use of several alternative emission rates, comments received during the initial and supplemental comment periods convinced EPA that there were serious flaws in two of the three alternatives. Comments were received during the comment periods which addressed the use of NSPS as a prerequisite emission control requirement for credit above formula GEP, and which either supported or opposed the use of minimum emission control requirements as a general prerequisite for stack height credit. Finally, EPA has previously described the basis for its decision to apply the presumptive NSPS limit retroactively in both the preamble to the regulations and in the response to comments document, and the petitioners have introduced no additional information that was not presented during the comment periods.

Definition of "Nearby" Applied to Terrain.

In response to the court decision, EPA adopted a definition of the term "nearby" which restricted the amount of downwash credit that may be obtained based on the effects of upwind terrain features. This definition was first proposed on November 9, 1984, and was adopted in the final rule without change.

Petitioners have argued that EPA has misinterpreted the court decision on this subject and has ignored the factual record concerning terrain-induced downwash in adopting its restriction. These objections merely repeat arguments made during the initial and supplemental comment periods, providing no additional information that would lead EPA to conclude that revision of the regulations is warranted.

The petitioners have interpreted the "nearby" definition to be a technical term that was intended by the court and Congress to grant credit for any significant downwash. In fact, both the legislative history of section 123 and the court decision clearly show that "nearby" was to be strictly construed to limit the extent to which credit for objects far away from the source might frustrate congressional intent to control air pollution through constant emission controls rather than increased dispersion.

Conclusion

For the reasons described above, I have determined that the petitions for reconsideration filed by Ormet, AEP, and Consol present no new information warranting the reopening of stack height rule revisions promulgated on July 8, 1985. Accordingly, the petitions are denied.

Although the requirements of section 307(d) do not apply, under section 307(b)(1) of the Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of today's date.

Dated: April 21, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86–9404 Filed 4–28–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 60 and 61

[A–3–FRL–3009–3; Docket No. AM703MD]

New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants, Revision of the State of Maryland's Delegation of Authority

AGENCY: Environmental Protection Agency.

ACTION: Delegation of Authority.

SUMMARY: This Notice changes the Maryland Air Management Administration's (AMA) Delegation of Authority for NSPS and NESHAP. On May 10, 1985, EPA delegated to the AMA the authority to receive delegation of future NSPS and NESHAP standards upon promulgation in the Federal Register. Maryland will now automatically receive delegation of authority to implement and enforce any future NSPS or NESHAP standards on the effective date as published in the *Maryland Register* for that standard.

EFFECTIVE DATE: January 23, 1986.

ADDRESSES: Information relating to this Information Notice can be obtained at the following office:

U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Esther Steinberg (3AM21).

FOR FURTHER INFORMATION CONTACT: Michael Giuranna of EPA, Region III, Air Programs Branch, at (215) 597–9189.

SUPPLEMENTARY INFORMATION: The Maryland AMA was originally delegated authority to implement and enforce the NSPS program on September 15, 1978 (44 FR 69362) and the NESHAP program on January 28, 1980 (45 FR 13192). Those delegations required the AMA to submit a new request for delegation for any standard not included in the original delegation. On May 10, 1985 (50 FR 34140), EPA revise Maryland's delegation so that the AMA would receive automatic delegation of future NSPS and NESHAP standards upon promulgation of such standards in the **Federal Register.** However, this caused a delay in implementing and enforcing new NSPS or NESHAP standards because a new standard would not be enforceable by Maryland until the standard was promulgated in the *Maryland Register*, the effective date of the standard being 60 days after publication. Furthermore, State pomulgation could be up to a year after promulgation in the **Federal Register.** On January 9, 1986, EPA sent a letter to the Maryland AMA informing them that we intended to revise their NSPS/NESHAP delegation so that they would automatically receive delegation of NSPS and NESHAP standards upon promulgation in the *Maryland Register.* Maryland replied in a letter of January 23, 1986, that a regulation does not become enforceable by them until the effective date published in the *Maryland Register.* Therefore, they suggested we revise their delegation to enable Maryland to receive delegation on the effective date.

This Notice informs the public that as of January 23, 1986, Maryland's delegated authority to enforce NSPS and NESHASP standards has been revised. Recognizing Maryland's regulatory adoption procedures, delegation to Maryland will now occur automatically on the effective date for specific NSPS and NESHAP regulations as published in the *Maryland Register.*

The Office of Management and Budget has exempted this Information Notice from the requirements of section 3 of Executive Order 12291.

Authority: Sections 111(c) and 112(d), Clean Air Act (42 U.S.C. 7411(c) and 7412(d)).

Dated: April 9, 1986.

James M. Seif,

Regional Administrator.

[FR Doc. 86–9519 Filed 4–28–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 261

[SW-FRL-3009-9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting final exclusions for the solid wastes generated at three particular generating facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32, as well as denying an exclusion to a petitioner for the waste generated at his particular facility. This action responds to delisting petitions received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "generator-specific" basis from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at these facilities from listing as hazardous wastes under 40 CFR Part 261.

EFFECTIVE DATE: April 29, 1986.

ADDRESSES: The public docket for these final exclusions and the final denial is located in Room S–212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, and is available for public viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll-free at (800) 424–9346, or (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION: On November 27, 1985, EPA proposed to exclude specific wastes generated by several facilities, including: (1) Arco Chemical Company, located in Miami, Florida (see 50 FR 48928); (2) Dover Corporation, Norris Division, located in Tulsa, Oklahoma (see 50 FR 48932); and (3) United Technologies Automotive, Inc. located in Jeffersonville, Indiana (see 50 FR 48941). In addition, EPA proposed to deny the petition submitted by General Motors Corporation, located in Saginaw, Michigan (see 50 FR 48924).[1] These actions were taken in response to petitions submitted by these companies (pursuant to 40 CFR 260.20 and 260.22) to exclude their wastes from hazardous waste control. In their petitions, these companies have argued that certain of their wastes were non-hazardous based upon the criteria for which the waste was listed. The petitioners have also provided information which has enabled the Agency to determine whether any other toxicants are present in the wastes at levels of regulatory convern. The purpose of today's actions is to make final those proposals and to make our decisions effective immediately. More specifically, today's rule allows three of these facilities to manage their petitioned wastes as non-hazardous. The exclusions remain in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[2] In addition, generators still are obliged to determine whether these wastes exhibit any of the characteristics of hazardous waste.

The Agency notes that the petitioners granted final exclusions in today's **Federal Register** have been reviewed for both the listed and non-listed criteria. As required by the Hazardous and Solid Waste Amendments of 1984, the Agency evaluated the wastes for the listed constituents of concern as well as for all other factors (including additional constituents) for which there was a reasonable basis to believe that they could cause the wastes to be hazardous. These petitioners have demonstrated through submission of raw materials data, EP toxicity test data for all EP toxic metals, and test data on the four hazardous waste characteristics that their wastes do not exhibit any of the hazardous waste characteristics, and do not contain any other toxicants at levels of regulatory concern.

EPA also proposed to deny an exclusion for specific wastes generated by General Motors Corporation, located

[1] In the same **Federal Register** notice, the Agency also proposed to exclude specific wastes generated by: (1) American Cyanamid Company, Hannibal, Missouri (see 50 *FR* 48912); (2) Continental Can Company, Milwaukee, Wisconsin (see 50 *FR* 48915); (3) General Motors Corporation, Fisher Body Division, Elyria, Ohio (see 50 *FR* 48917); (4) Keymark Corporation, Fonda, New York (see 50 *FR* 48922; (5) Bommer Industries Incorporated, Landrum, South Carolina (see 50 *FR* 48930); (6) Star Expansion Company Mountainville, New York (see 50 *FR* 48934); (7) Texas Eastman Company, Longview, Texas (see 50 *FR 48937);* (8) Eli Lilly and Company, Clinton, Indiana, (see 50 *FR* 48945); (9) General Electric Company, Shreveport, Louisiana (see 50 *FR* 48949); and (10) Waterloo Industries, Pocahontas, Arkansas (50 *FR* 48951). The Agency will address these proposed decisions in a later **Federal Register** notice.

[2] The current exclusions apply only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new exclusion is granted.