DCN PH4P008
COMMENTER Florida DEP
RESPONDER PMC
SUBJECT MISC
SUBJNUM 008
COMMENT

Adopting ever more complicated rules is not going to make the CWA, CAA and RCRA interaction problem go away. Neither Option 1 nor Option 2 resolves the conflicts between the statutes.
One problem with current CWA and RCRA regulations is that NPDES outfalls are not all on large rivers or streams. In several Florida locations, only a seasonal creek or dry ditch would remain if the discharge was eliminated. When does a discharge swale become a stream? Effluent toxics leach from surface waste waters to the ground water regardless of whether the disposal "unit" is a ditch, a creek, a constructed impoundment, or a small lake.
It would be more sensible to adopt a realistic toxicity characteristic for wastewaters that included all hazardous constituents. The characteristic should be applicable to all waste waters, including POTW discharges. Failing that, EPA should combine this issue with the contaminated media issue and make the "wastewater" exit levels applicable to process wastewater mixed with listed or characteristic wastes. It would eliminate the need for section261.3(a)(2)(iv). The risk analysis for waste water exit criteria would have to be based on a realistic exposure analysis. Children still play in contaminated ditches and streams.

It is not always easy to tell the difference between a land based and non land based storage or disposal unit. Are drip pads sloped to a sump for air craft stripping or electroplating operations ancillary equipment and part of a tank system? Or is the drip pad a land based storage unit? If the pad has numerous unsealed cracks and joints does it then become a land unit? If the a drip pad had a liner, leak detection and a containment wall that complies with 40 CFR 265 Subpart J, it would be more clearly ancillary equipment to a tank system? If a definition of land based waste water treatment unit is adopted, EPA should also clarify the definition of "tank system" pertaining to WWTUs as defined in 260.10. There are no tightness standards for NPDES pretreatment systems. Releases of hazardous constituents from leaking WWTUs have resulted in soil and ground water contamination from both solvents and heavy metals. One example is Honeywell in Clearwater, Florida. The facility has an

extensive trichloroethylene plume beneath one of the buildings from a hole between a sump collecting electroplating waste water discharges and the pipe conveying the waste water to the sewer. (A vapor degreaser was located within the area drained by the plating room drip pad.) This solvent plume was not detected in the initial RCRA Facility Assessment or Investigation. It was only found when Honeywell dismantled the plating line. Plating facilities usually have duck boards on the floor of the room between the tanks, making it impossible to do regular inspections of the floor. The Honeywell release might never have been found or reported if the facility did not have a RCRA permit.
EPA does not know the scope of the contamination problem from WWTUs because in most cases the releases are not reportable under CERCLA. WWTUs develop slow leaks that do not release reportable quantities within 24 hours.

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RESPONSE:

The issues raised by the commenters are beyond the scope of this rule. They arose in response to the part of the original Phase IV proposal concerned with equivalent treatment of decharacterized wastes. That part is moot, due to the Land Disposal Flexibility Act.

DCN PH4P008
COMMENTER Florida DEP
RESPONDER PMC
SUBJECT MISC
SUBJNUM 008
COMMENT

D001 RORGS Standard: This standard leaves a large loophole. Still bottoms that no longer exhibit a hazardous characteristic may still have substantial concentrations of underlying hazardous constituents. However further treatment is not required, as EPA considered the still bottom to be a newly generated waste and non-hazardous. The RORGS standards should also be amended to require process residuals from organ to recovery to meet the universal treatment standard prior to disposal, unless treated by CMBST.

RESPONSE

Reconsideration of the RORGS (recovery of organics) standard for D001 wastes is beyond the scope of the Phase IV rule. At this time, EPA believes the RORGS method of treatment is sufficient to ensure minimization of threats to human health and the environment.

DCN PH4P017
COMMENTER Kodak
RESPONDER SS
SUBJECT MISC
SUBJNUM 017
COMMENT

Kodak supports the Chemical Manufacturing Associations comments on this rule and incorporates them by reference.

RESPONSE
The Agency notes the commenter's support for the comments submitted by Chemical Manufacturers Association.

DCN PH4P034
COMMENTER CMA UIC Task Force
RESPONDER PMC
SUBJECT MISC
SUBJNUM 034
COMMENT

Clarify that absent a change in the waste injected, facilities with approved no migration exemptions may add waste codes for newly-identified characteristic wastes as a nonsubstantive revision.

RESPONSE

The issue of revisions to no-migration petitions for UIC wells is beyond the scope of the Phase IV rule. The commenter may wish to contact the U.S.EPA Office of Water with his suggestion.

DCN PH4P024
COMMENTER Union Camp
RESPONDER PMC
SUBJECT MISC
SUBJNUM 024
COMMENT

EPA says sampling and analysis of sludge "are not overly burdensome." Collecting representative samples is not only time consuming and expensive, but also places an employee in a dangerous location. Boats may be required for facilities not having platforms or otherdevices to get to selected sampling points. This would require at least two employees, one abackup to assist in the event of accident.

RESPONSE

The commenter's concern arises from the Phase IV proposal discussion of management of sludges from surface impoundments holding decharacterized wastewaters. In that proposal, EPA discussed three options for ensuring that underlying hazardous constituents in decharacterized wastes were not released to the environment via leaks, sludges, and air emissions from surface impoundments in systems regulated by the Clean Water Act or Safe Drinking Water Act (60 FR 43655). Decharacterized wastes are wastes which initially exhibited a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity when generated but are no longer characteristic). On March 16, 1996, the President signed the Land Disposal Program Flexibility Act of 1996, which provides that the wastes in question are no longer prohibited from land disposal once rendered nonhazardous. As a result, on April 8, 1996, EPA withdrew its treatment standards for these wastes (61 FR 15660). Today's Phase IV final rule will not promulgate provisions for managing leaks, sludges, and air emissions from surface impoundments (EPA proposed options on August 22, 1995 (60 FR 43655-43677)). Furthermore, the treatment standards for TC metal wastes in today's rule do not apply to TC metal wastes if the characteristic is removed and the wastes are subsequently treated in a unit that is regulated by the Clean Water Act or, for underground injection wells, the Safe Drinking Water Act.

However, the Land Disposal Flexibility Act does mandate EPA to undertake a 5-year study to determine any potential risks posed by cross-media transfer of hazardous constituents from these surface impoundments. The findings of this study, begun by the Agency in April, 1996, may result in proposed regulations for these units, if risks are in fact found that would warrant such regulation.

DCN PH4P113
COMMENTER Chemical Manufacturers Association
RESPONDER PMC
SUBJECT MISC
SUBJNUM 113
COMMENT

2. Additional comments regarding general applicability.
a) CMA requests that the Agency modify its process for adding constituents to the UTS listing to recognize the impact on previous waste determinations.
CMA is concerned that the Agency has proposed to expand the constituents list in the UTS to include the Carbamate constituents not already included on that list. CMA understands the Agency's rationale for doing this but is concerned that the financial burdens such moves impose have not been well defined by the Agency. ln discussions with the Agency about the phase III proposal, Agency representatives have indicated that they recognize a burden is placed on generators when the UTS list is modified and have further indicated they are reluctant to make frequent additions to the list. CMA concurs that frequent additions to the list will be problematic for generators and treaters of wastes. Each time that a new constituent is added, a reassessment of all waste streams subject to UTS is required. See Attachment A: CMA Phase Ill Comments, p.55. CMA requests that EPA provide an assessment of economic impact on waste generators for all future changes that are made to the UTS list.

RESPONSE:

The Agency recognizes there are costs involved when it changes the set of Universal Treatment Standards (UTS). For this reason, and to keep from making the Land Disposal Restrictions program overly complicated, EPA makes only those changes it deems necessary.

DCN PH4P099
COMMENTER Ohio EPA
RESPONDER PMC
SUBJECT MISC
SUBJNUM 099
COMMENT

We are unclear as to whether Publicly Owned Treatment Works (POTWs) are considered CWA or CWA equivalent treatment systems receiving decharacterized waste. Many POTWs in larger cities pretreat wastewater before entering the impoundment. However, some small towns which do not pretreat may be significantly affected. POTWs that potentially fall under this rule, if finalized, could carry a heavy financial burden
DHWM has reviewed the study of cast results done by U.S. EPA. No sufficient evidence was available in Ohio that showed the risks justify the proposed control measures. DHWM is concerned that the cost of the control measures will financially harm surface impoundment facilities with no environmental gain.

RESPONSE:

In the August 22, 1995 Phase IV proposal, EPA discussed three options for ensuring that underlying hazardous constituents in decharacterized wastes were not released to the environment via leaks, sludges, and air emissions from surface impoundments in systems regulated by the Clean Water Act or Safe Drinking Water Act (60 FR 43655). Decharacterized wastes are wastes which initially exhibited a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity when generated but are no longer characteristic). On March 16, 1996, the President signed the Land Disposal Program Flexibility Act of 1996, which provides that the wastes in question are no longer prohibited from land disposal once rendered nonhazardous. As a result, on April 8, 1996, EPA withdrew its treatment standards for these wastes (61 FR 15660). Today's Phase IV final rule will not promulgate provisions for managing leaks, sludges, and air emissions from surface impoundments (EPA proposed options on August 22, 1995 (60 FR 43655-43677)). Furthermore, the treatment standards for TC metal wastes in today's rule do not apply to TC metal wastes if the characteristic is removed and the wastes are subsequently treated in a unit that is regulated by the Clean Water Act or, for underground injection wells, the Safe Drinking Water Act.

However, the Land Disposal Flexibility Act does mandate EPA to undertake a 5-year study to determine any potential risks posed by cross-media transfer of hazardous constituents from these surface impoundments. The findings of this study, begun by the Agency in April, 1996, may result in proposed regulations for these units, if risks are in fact found that would warrant such regulation.

DCN PH4P015
COMMENTER BP Oil
RESPONDER SS
SUBJECT MISC
SUBJNUM 015
COMMENT

BP Oil supports the comments being submitted by the American Petroleum Institute(API) and incorporates those comments by reference into these comments.

RESPONSE:
The Agency notes the commenter's support for the comments submitted by the American Petroleum Institute (API).

DCN PH4P018
COMMENTER Mobil Oil
RESPONDER SS
SUBJECT MISC
SUBJNUM 018
COMMENT

Mobil wishes to formally support and hereby incorporate the comments of the American Petroleum Institute.

RESPONSE:
The Agency notes the commenter's support for the comments submitted by the American Petroleum Institute (API).

DCN PH4P028
COMMENTER Texas Utilities Services
RESPONDER SS
SUBJECT MISC
SUBJNUM 028
COMMENT

Texas Utilities is also a member of the Utility Solid Waste Activities Group (USWAG), and support comments submitted by them under separate cover.

RESPONSE:
The Agency notes the commenter's support for the comments submitted by the Utility Solid Waste Activities Group (USWAG).

DCN PH4P033
COMMENTER CMA Carbon Disulfide Panel
RESPONDER SS
SUBJECT MISC
SUBJNUM 033
COMMENT

The Panel endorses and supports the comments on generic policy and technical issues separately submitted by CMA.

RESPONSE:

The Agency notes the commenter's support for the comments submitted by the CMA.

DCN PH4P037
COMMENTER Natural Gas Pipeline Comp
RESPONDER SS
SUBJECT MISC
SUBJNUM 037
COMMENT

The effective date of the land disposal restrictions for metals is November 20, 1995. This is unreasonable and must be extended to allow for future planing and treatment of wastes which are currently in the disposal process. At least a year should be provided to phase in these land disposal restrictions and treatability requirements.

RESPONSE:
The date cited by the commenter, November 20, 1995, was the final date of the public comment period published in the Phase IV proposed rule on August 22, 1995. The Agency has not yet finalized new land disposal restrictions for metal wastes. The Phase IV Second Supplemental proposal, published concurrently with this final rule, proposes revised treatment standards for metal wastes.

DCN PH4P042
COMMENTER Monsanto
RESPONDER SS
SUBJECT MISC
SUBJNUM 042
COMMENT

Monsanto Company has provided substantial support to the effort by the Chemical Manufacturers Association (CMA) to review and comment on this rule. These comments are being submitted separately by CMA. However, they are referenced here in their entirety and submitted by reference as the comments also of Monsanto Company. For that reason, our comments here will be brief.

RESPONSE:
The Agency notes the commenter's support for the comments submitted by the CMA.

DCN PH4P061
COMMENTER BP Chemical
RESPONDER SS
SUBJECT MISC
SUBJNUM 061
COMMENT

BP Chemicals has also participated in the development of the comments submitted by Chemical Manufacturers Association (CMA) and hereby incorporates by reference those comments in their entirety.

RESPONSE:

The Agency notes the commenter's support for the comments submitted by the CMA.

DCN PH4P078
COMMENTER Battery Council International
RESPONDER SS
SUBJECT MISC
SUBJNUM 078
COMMENT

C. EPA Lawfully May Consider Economic and Policy Factors a Setting LDR Treatment standards

The legislative history of RCRA Section 3004(m) indicates that Congress intended the Agency to take into consideration all of the foregoing factors, including economic impact, when developing treatment standards. For example, during consideration of S. 757 (later incorporated into H.R. 2867, the Hazardous and Solid Waste Amendments of 1984), Sen. Chafee offered a floor amendment to Section 3004(b)(7), which subsequently, became Section 3004(m). The amendment(Amendment No. 3409) was intended to clarify the authority of the Administrator in establishing treatment standards applicable to land disposal practices. In explaining his amendment, Sen. Chafee stated that "{t}he requisite levels of methods of treatment established by the Agency should be the best that has been demonstrated to be achievable. This does not require a BAT-type process as under the Clean Air or Clean Water Acts which contemplates technology-forcing standards. The intent here is to require utilization of available technology in lieu of continued and disposal without prior treatment. it is not intended that every waste receive repetitive or ultimate levels of methods or treatment, nor must all inorganic constituents be reclaimed." 40

The significance of these directives is apparent when they are contrasted to the policies embodied in, for example, the Clean Air and Clean Water Acts. Those statutes expressly require development of standards based on best available technology (BAT) without consideration of economic factors. 41/ Here, Congress said such restrictions should not apply. It thus authorized the Agency to develop demonstrated technologies that were both technologically and economically achievable, and consistent with other policies.

This conclusion is fully consistent with the Hazardous Waste Treatment Council decision. There, the D.C. Circuit specifically recognized that EPA's development of treatment standards under Section 3004(m) "lies within the informed discretion of the Agency as long as the result is that short-term and long-term threats to human health and the environment are minimized. 42 That discretion necessarily extends to evaluation of economic impacts and

> balancing of other policy concerns.43 EPA itself recognizes that "[t]he plain language of the statute [Section 3004(m)] does not compel the Agency to set treatment standards based exclusively on the capabilities of existing technology."44

RESPONSE: The Agency takes into consideration economic factors as much as possible in setting land disposal restrictions. However, it is the Agency's view that courts have required that treatment standards be based on what technology can achieve, to ensure that short-term and long-term threats posed by the waste are minimized. See Phase II LDR rule, 59 FR 47982, September 19, 1994. In any case, the Agency believes the commenter's concerns arise from the proposed imposition of treatment standards for decharacterized wastes, an issue which is made moot for the time being by the Land Disposal Flexibility Act.

DCN PH4P086
COMMENTER American Gas Association
RESPONDER SS
SUBJECT MISC
SUBJNUM 086
COMMENT

The effective date of the land disposal restrictions for metals is November 20, 1995. This is unreasonable and must be extended to allow for future planning and treatment of wastes that are currently in the disposal process. At least a year should be provided to phase in these land disposal restrictions and treatability requirements.

RESPONSE:

The date cited by the commenter, November 20, 1995, was the final date of the public comment period published in the Phase IV proposed rule on August 22, 1995. The Agency has not yet finalized new land disposal restrictions for metal wastes. The Phase IV Second Supplemental proposal, published concurrently with this final rule, proposes revised treatment standards for metal wastes.

DCN PH4P092
COMMENTER Union Carbide Corp.
RESPONDER SS
SUBJECT MISC
SUBJNUM 092
COMMENT

III. AUCC supports the proposed simplification for lab packs.

RESPONSE:
The Agency appreciates the commenter's stated support for the proposed simplification of the LDR requirements for lab packs.

DCN PH4P101
COMMENTER Oregon DEQ
RESPONDER SS
SUBJECT MISC
SUBJNUM 101
COMMENT

The Oregon Department of Environmental Quality agrees with the November 20, 1995 comments submitted to the Environmental Protection Agency by the Hazardous Waste Policy & Evaluation Task Force of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO).

RESPONSE:
The Agency notes the commenter's support for comments submitted by the Hazardous Waste Policy & Evaluation Task Force of ASTSWMO.

DCN PH4P106
COMMENTER Pharmaceutical Research Manuf Assn
RESPONDER SS
SUBJECT MISC
SUBJNUM 106
COMMENT

PhRMA generally supports the comments submitted by the Chemical Manufacturers Association ("CMA") on the proposed Phase IV Land Disposal Restrictions.

RESPONSE:
The Agency notes the commenter's support for comments submitted by CMA.

DCN PH4P110
COMMENTER AFS
RESPONDER SS
SUBJECT MISC
SUBJNUM 110
COMMENT

During the week of November 13, 1995, in preparation for filing comments on the U.S. Environmental Protection Agency's ("EPA's" or the Agency's") proposed Land Disposal restrictions Phase IV Rule ("LDR Phase IV"), we attempted on numerous occasions to obtain access to the rulemaking docket. Because of the government shutdown and/or the Agency's decision to relocate the docket, we were unsuccessful in our attempts to obtain an appointment to inspect the docket for information germane to our comments. See attached declaration of Peter G. McHugh.

Accordingly, we request an extension of seven days to the comment period in which to prepare and submit comments on behalf of the American Foundrymen's Society ("AFS"). Based upon a November 20, 1995 telephone conversation with Ms. Susan G. Slotnick. Workgroup Chair for LDR Phase IV, we understand the comment period has been extended to 4:00 p.m. on November 27, 1995. We intend to submit comments on behalf of AFS by that date. We expect these comments to be treated as if they were received on or before November 20, 1995.

Also, after careful review of the rule and as thorough a review of the record as possible (given the limited and inadequate access to the record), AFS believes the LDR Phase IV rulemaking record is incomplete. The defects in the record make it impossible for AFS to adequately comment on the proposed rule in the time granted by the Agency for public comment. Therefore, AFS reserves the right to supplement its comments in order to complete and correct the record.

RESPONSE:

The Agency apologizes for the unavoidable inconveniences presented by the government shutdown during the final days of the public comment period for the proposed rule. The Agency did extent the comment period until November 27, 1995. The commenter's comments were received within this timeframe. The Agency reviewed all comments submitted in response to the proposed rule during the Agency's deliberations for the development of the final rule.

DCN PH4P111
COMMENTER SSINA
RESPONDER SS
SUBJECT MISC
SUBJNUM 111
COMMENT

During the week of November 13, 1995, in preparation for filing comments on the U.S. Environmental Protection Agency's ("EPA's" or "the Agency's") proposed Land Disposal restrictions Phase IV Rule ("LDR Phase IV"), we attempted on numerous occasions to obtain access to the rulemaking docket. Because of the government shutdown and/or the Agency’s decision to relocate the docket, we were unsuccessful in our attempts to obtain an appointment to inspect the docket for information germane to our comments. See attached declaration of Peter G. McHugh.
Accordingly, we request an extension of seven days to the comment period in which to prepare and submit comments on behalf of the Specialty Steel Industry of North America ("SSINA").Based on a November 20, 1995 telephone conversation with Ms. Susan G. Slotnick, Workgroup Chair for LDR Phase IV, we understand the comment period has been extended to 4:00 p.m. on November 27, 1995. We intend to submit comments on behalf of SSINA by that date. We expect these comments to be treated as if they were received on or before November 20, 1995.

Also, after careful review of the rule and as thorough a review of the record as possible (given the limited and inadequate access to the record), SSINA believes the LDR Phase IV rulemaking record is incomplete. The defects in the record make it impossible for SSINA to adequately comment on the proposed rule in the time granted by the Agency for public comment. Therefore, SSINA reserves the right to supplement its comments in order to complete and correct the record.

RESPONSE:
The Agency apologizes for the unavoidable inconveniences presented by the government shutdown during the final days of the public comment period for the proposed rule. The Agency did extent the comment period until November 27, 1995. The commenter's comments were received within this timeframe. The Agency reviewed all comments submitted in response to the proposed rule during the Agency's deliberations for the development of the final rule.

DCN PH4P112
COMMENTER SMA
RESPONDER SS
SUBJECT MISC
SUBJNUM 112
COMMENT During the week of November 13, 1995, in preparation for filing comments on the U.S. Environmental Protection Agency's ("EPA's" or "the Agency's") proposed Land Disposal Restrictions Phase IV Rule ("LDR Phase IV"), we attempted on numerous occasions to obtain access to the rulemaking docket. Because of the government shutdown and/or the Agency's decision to relocate the docket, we were unsuccessful in our attempts to obtain an appointment to inspect the docket for information germane to our comments. See attached declaration of Peter G. McHugh. Accordingly, we request an extension of seven days to the comment period in which to prepare and submit comments on behalf of the Steel Manufacturers Association ("SMA"). Based on a November 20, 1995 telephone conversation with Ms. Susan G. Slotnick, Workgroup Chair for LDR Phase IV, we understand the comment period has been extended to 4:00 p.m. on November 27, 1995. We intend to submit comments on behalf of SMA by that date. We expect these comments to be treated as if they were received on or before November 20, 1995. Also, after careful review of the rule and as thorough a review of the record as possible (given the limited and inadequate access to the record), SMA believes the LDR Phase IV rulemaking record is incomplete. The defects in the record make it impossible for SMA to adequately comment on the proposed rule in the time granted by the Agency for public comment. Therefore, SMA reserves the right to supplement its comments in order to complete and correct the record.

RESPONSE:

The Agency apologizes for the unavoidable inconveniences presented by the government shutdown during the final days of the public comment period for the proposed rule. The Agency did extent the comment period until November 27, 1995. The commenter's comments were received within this timeframe. The Agency reviewed all comments submitted in response to the proposed rule during the Agency's deliberations for the development of the final rule.

DCN PH4P113
COMMENTER Chemical Manufacturers Association
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 Agency is aware that unintentional non-de minimis spills and emergency releases occur, however it does not have the statutory flexibility to exempt non-deminimis releases from the LDR requirements. However, this situation would seem to be less of a concern since the Land Disposal Program Flexibility Act of 1996. The legislation exempted characteristic wastes that have been deactivated from LDR requirements if they are managed in wastewater treatment systems regulated under the Clean Water Act (268.1(a)(4)).

DCN PH4A044
COMMENTER Battery Council International
RESPONDER SS
SUBJECT MISC
SUBJNUM 044
COMMENT II. BC SUPPORTS THE AGENCY 'S EFFORTS TO ADDRESS RCRA DEFINITION OF SOLID WASTE ISSUES, AND URGES THE AGENCY TO ACT ON BC 's TRANSPORTATION MANIFEST PETITION BC supports the Agency 's effort to address issues related to the RCRA definition of solid waste in this rulemaking independently of the forthcoming proposed RCRA redefinition of solid waste rule, We believe BC's petition regarding revisions to the RCRA regulations for recyclable materials should be responded to in a similar manner (that is, before the comprehensive rulemaking). In August 1994, BC petitioned the Agency to modify the RCRA hazardous waste transportation regulations (40 C.F.R. Parts 262 and 263) to allow recyclable hazardous wastes identified in 40 C.F.R. Part 266 Appendix XI to be transported in commerce under a new recyclable materials tracking document. See attached petition. Under our proposed approach, the materials could be shipped without a hazardous waste manifest, would not be subject to EPA 's transportation requirements and would not have to be shipped by a hazardous waste transporter. The new tracking document we proposed, however, would require disclosure of the same information as required by a hazardous waste manifest and thus,, no data collection or tracking capabilities would be lost. Moreover, all substantive transportation requirements in EPA's rules would still apply. The source of the requirements, however, would be the Department of Transportation 's (DOT 's) Hazardous Material Regulations, not EPA 's regulations, The petitions proposal would implement recommendations adopted by EPA 's Definition of Solid Waste Task Force, Moreover, in November 1994 , we received a response from the Agency, stating that BC 's petition will receive "full consideration as the Agency evaluates the range of possible changes in how recyclable materials are regulated." 3 Then, in March 1995 , in response to President Clinton 's reinventing government initiative, EPA issued a report stating its intent to revise the RCRA manifest system along the lines of the BC petition. However, no action yet has been taken Given the fact that EPA has begun a comprehensive effort to determine the appropriate RCRA regulatory f framework f or certain recyclable materials, as

reflected in this rulemaking and other past rulemakings. 4/ BCI believes that the Agency should address our petition in the immediate future, It involves a far less contentious issue than other def inition of solid waste issues. Furthermore, the proposed modification would remove burdens on recycling without jeopardizing the integrity of the solid waste program, which is the prime purpose of EPA 's redefinition of solid waste effort.

Dear Ms. Browner: This is a petition for a modification of the Environmental Protection Agency's ("EPA") hazardous waste transportation regulations. 1 The petition requests limited changes that would allow certain recyclable materials to be shipped in commerce using a new recyclable materials tracking document and not the Uniform Hazardous Waste Manifest, This change would advance recycling, eliminate unnecessary costs and fully protect public health, safety and the environment. The proposed modification also is fully consistent with recommendations adopted by EPA Is Definition of Solid Waste Task Force after numerous meetings and months of study on ways to remove burdens on recycling without jeopardizing the integrity of the solid waste program, Specifically, the Battery Council International ("BCI") seeks a modification of EPA 's transportation rules (40 C.F.R. Parts 262 and 263) to allow recyclable hazardous wastes identified in 40 C.F.R. Part 266 Appendix XI ("Appendix XI wastes") to be transported in commerce under a new recyclable materials tracking document. In addition, because the materials could be shipped without a hazardous waste manifest, they would not be subject to EPA 's transportation requirements and would not have to be shipped by a hazardous waste transporter. See 40 C.F.R. S º263.lO Nevertheless, the new tracking document BCI is proposing would require disclosure of the same information as required by a hazardous waste manifest and thus, no data collection or tracking capabilities would be lost. Moreover, all substantive transportation requirements in EPA 's rules would still apply. The source of the requirements, however, would be the Department of Transportation 's Hazardous Material Regulations ("DOT's HMR"), 49 C.F.R. Parts 170 to 179, not EPA 's regulations, From an environmental standpoint, recycling undoubtedly is the best way to manage the Appendix XI wastes. Yet, because the existing hazardous waste transportation requirements have become unjustifiably expensive, the present system, requiring the use of hazardous waste manifests and hazardous waste transporters,

is an impediment to recycling. Indeed, the costs of transporting Appendix XI recyclable wastes to the recycling facility under the existing system often exceeds the net value created from recycling the materials, Where this is the case, the current system creates economic disincentives for handling the Appendix XI materials and is unjustifiable in light of the fact that an alternative, less burdensome but equally protective transportation scheme is available. Accordingly, BCI requests that the EPA amend sections of the hazardous waste management regulations, 40 C.F.R. Parts 260 to 299 , so that (a) recyclable hazardous wastes identified in 40 C.F.R. Part 266, Appendix XI, may be transported in interstate and intrastate commerce for recycling accompanied by a tracking document other than the Uniform Hazardous Waste Manifest (40 C.F.R. Part 262, Subpart B) and (b) these same wastes can be carried by an authorized hazardous materials transporter other than a transporter meeting all of the requirements of 40 C.F.R. Part 263 and any related requirements imposed by various states.2/ BACKGROUND BCI is a not-for-profit trade association representing commercial entities involved in the manufacture, distribution, sale and recycling of lead-acid batteries ("lead batteries") . BCI's members include manufacturers and distributors of lead batteries and the secondary smelters that reclaim or recycle lead batteries once they are spent. BCI 's membership represents more than 99 percent of the nation 's domestic lead battery manufacturing capacity and more than 84 percent of the nation's lead battery recycling or secondary smelting capacity, BCI strongly supports lead battery recycling. BCI actively promotes the enactment of mandatory recycling laws, sponsors campaigns to encourage recycling and, through its members, is directly involved in the recycling of lead batteries. In part as a result of BCI ls efforts, thirty-seven states have adopted comprehensive lead battery recycling laws and five additional states have adopted disposal bans that have the practical effect of forcing recycling. Due to these measures, the U.S. battery lead recycling rate has been at or above 94 percent for the last three years. In addition to batteries, BCI 's members also collect and recycle other lead bearing materials. For example, virtually all of the by-products generated in the course of producing a battery (e,g. , baghouse dust, waste water treatment sludge, plant scrap, dross, f loor sweepings and others) have recoverable lead values and are collected and sent to secondary lead smelters for recycling. All of the recyclable

materials coming to, or produced at, a secondary lead smelter are recycled, including first-run slags, baghouse dust, treatment sludge and plastic casings. Recyclable materials handled by BCI 's members are identified in 40 C.F.R. Part 266 Appendix XI. This appendix lists those recyclable wastes that are so similar in character to primary materials that they are considered feedstock, not wastes, when reclaimed. See 40 C.F.R. Part 266, Subpart H. Appendix XI materials are generated by manufacturers, assemblers and other entities in the lead processing and affiliated industry. Once generated, the materials either are collected by or sent to secondary smelters for reprocessing. Certain Appendix XI materials also are generated by secondary smelters who send them to other smelters for further reprocessing and recovery of lead. DISCUSSION A . The Issue Some Appendix XI materials are regulated as hazardous wastes when reclaimed, When these materials are transported from one location to another, they must be accompanied by a Uniform Hazardous Waste Manifest and the generator and transporter must comply with the relevant portions of 40 C.F.R. Parts 262 and 263. These regulations require that shipments meet the applicable packaging, labeling, marking and placarding standards in DOT's HMR, Transporters also must comply with all applicable requirements in the HMR, must have a valid EPA identification number, and must respond to any discharge or release occurring during transportation. See 40 C.F.R. ºº 262.30 to 262.33. Notably, with the exception of the transporter 's obligation to have an EPA identification number, the packaging, labeling,, marking, placarding and other transportation related requirements imposed under EPA's rules (Parts 262 and 263) are identical to those required for common carriers of hazardous materials under the HMR. That is, the requirements that presently apply to shipments of Appendix XI materials would still apply by virtue of the HMR even if EPA's Parts 262 and 263 rules did not exist. See 49 C.F.R. º 172.101 While there is no difference in the substantive requirements involved in handling Appendix XI materials under EPA ts Parts 262 and 263 rules or the DOT 's HMR, the costs Associated with shipping under the two schemes are significantly different. RCRA hazardous waste must be transported by a licensed hazardous waste hauler. The cost of shipping a RCRA manifested hazardous waste in a hazardous waste hauler is much higher than the cost of shipping essentially the same material in a common carrier licensed to carry hazardous materials. In an informal survey

conducted by one BCI member, the costs of shipping RCRA manifested hazardous wastes were more than double the cost of shipping DOT hazardous materials even though in all instances the materials being transported were fundamentally the same. The cost differential between shipping under RCRAls rules and the HMR is attributable primarily to additional requirements imposed by various states on transporters of materials requiring a RCRA hazardous waste manif est, These extra state requirements include such things as special training or equipment, higher limits for liability insurance, local taxes or fees and additional reporting requirements. See, e.g., Pennsylvania Code, Title 25, º 263.23 (imposing a hazardous waste transportation fee on transportation of manifested wastes paid into the State Hazardous Sites Cleanup Fund) ; Alabama Hazardous Waste Management Regulation, º 335-l4-4-04 (requiring applicants for transporter permits to submit a performance bond guaranteeing compliance with,, among other things,, the regulations, permits, orders and corrective action measures); Arkansas Hazardous Waste Management Code, ºº 16 , 11(r) (charging $2 .00 per manifest issued); Maryland Hazardous Waste Rules º 26.13.04 (requiring hauler certificates, performance bonds, special training for drivers and instructors of drivers, annual registration fees on cabs, containers and trucks, vehicle inspections); New York Waste Transport Permits Regulations º 364,5 (requiring $5,000,000 in liability insurance for vehicles carrying 10 ,000 pounds or more of wastes requiring manifest; federal requirements are $1,000,000 in liability insurance). States impose additional requirements either because they perceive a need for tighter restrictions on hazardous waste transporters than on common carriers or, as is evident from some of the state schemes, because they see this area as a potential source of additional revenues, The motive in some cases may be both. Regardless of the reason, BCI is confident that no state has focused on the adverse impact these added transportation rules have on legitimate recycling. Moreover, neither the DOT nor EPA have concluded that the vast array of additional requirements imposed by states are necessary to protect the public health, safety or the environment. To the contrary, EPA 's Definition of Solid Waste Task Force found that the high costs arising from the added state requirements adversely affect the waste management system. The added cost eliminates competition between carriers as fewer carriers are willing to compete in the hazardous waste transportation market with the

added requirements and associated increased burdens and cost of doing business. Further, the fact that requirements vary from state-to-state adds to the complexity and cost. And, as noted above, the higher costs of transportation create a disincentive to recycling where the recyclable materials have a low recovery value relative to the high cost of transporting the material to the recycling facility. Because it is impracticable to seek changes on a stateby-state basis, BCI requests a federal response. B. The Solution Transporting Appendix XI hazardous wastes destined for recycling under EPA 's rules costs twice as much as shipping the same materials under the HMR , The substantive requirements of EPAI's rules and the HMR are virtually identical,, and no added protection to health, safety or the environment is gained by the additional costs. Yet, the added cost of EPA 's rules affects the efficiency of the hazardous waste management system by reducing competition and impeding a preferred method of managing certain recyclable wastes, EPA could eliminate these disincentives to recycling by adopting a rule applicable to Appendix XI materials that would allow those materials to be shipped in commerce with a "Recyclable Materials Tracking Document" and not a hazardous waste manifest. The Recyclable Materials Tracking Document would require the same information as a hazardous waste manifest with the exception of certain information that is relevant only to shipments under Parts 262 and 263,, e,g.,, a transporter's U ,S. EPA ID Number,, waste minimization certification and land disposal restriction notification . 3/ Like the manifest,, the tracking document would follow the shipment to its destination and the receiving entity would be required to acknowledge receipt, noting any discrepancies. Because Appendix XI materials would not be required to be transported with a manifest, transporters of these materials would not have to comply with 40 C.F.R. Part 263. See 40 CFR S 263,10, Nevertheless, as noted above, all of the requirements that would have applied (e.g., labeling, placarding) will still apply pursuant to the HMR. Finally, under BCI 's proposal, a state or EPA 's ability to track shipments and the substantive shipping requirements will not change. What will change, however, is that the state requirements applicable to shipments requiring a Uniform Hazardous Waste Manifest will not apply to Appendix XI materials unless the states, after notice and open debate, determine such requirements are needed for this limited class of recyclable materials. BCI appreciates your attention to this matter and

stands ready to provide whatever additional information you may need in conducting your evaluation of this request. 1/ This petition is submitted in accordance with Section 4 (e) of the Administrative Procedure Act, 5 U.S,C, S553(e) , 2/ Not all of the wastes listed in Appendix XI are hazardous wastes when being reclaimed. The transportation of nonhazardous wastes, while not subject to the requirements of the Solid Waste Disposal Act ("RCRAII) set forth in 40 C.F.R, Parts 262 and 263, may be subject to similar state transportation requirements, i.e., california ts transportation rules. Accordingly, this petition is intended to cover all Appendix XI wastes whether or not they are RCRA hazardous wastes subject to the manifesting and transportation related requirements in 40 C.F.R. Parts 262 and 263 , 3/ The waste minimization certification would not be applicable to materials shipped under a Recyclable Materials Tracking Document because it would be understood that these materials were to be recycled and the generator thus was engaged in waste minimization. For the same reasons, a land disposal restriction notification would be unnecessary.

RESPONSE

The commenter's request for approval of a previously submitted petition is beyond the scope of the today's final rulemaking.