

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 265 and 266

[EPA/OWS-FR-91- ; SWH-FRL-3987-6]

Burning of Hazardous Waste in Boilers and Industrial Furnaces

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: This notice makes several technical amendments to the final rule for boilers and industrial furnaces burning hazardous waste. See 56 FR 7134-7240 (February 21, 1991). These revisions provide clarification and correct unintended consequences of the rule.

EFFECTIVE DATE: August 21, 1991.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at: (800) 424-9346 (toll free) or (703) 920-9810. For more specific aspects of the final rule, contact Shiva Garg, Office of Solid Waste (OS-322W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308-8460.

>>>> Preamble has not been included in this file. <<<<

B. Technical Corrections

On July 17, 1991, EPA published several technical corrections and amendments to the February 21 final rule. See 56 FR 32688. Today's notice corrects several errors published in that notice as well as several additional errors in the February 21 notice.

I. In rule document number 91-15398, beginning on page 32688 in the Federal Register published on Wednesday, July 17, 1991, make the following corrections:

PART 261-[AMENDED]

1. On page 32688, third column, in the technical correction to part 261, remove the first correction. The amendatory language will read as follows (as published at 56 FR 7206):

"2. Section 261.2 is amended by redesignating paragraph (d)(2) as (d)(3) and adding new paragraph (d)(2) to read as follows:"

2. On page 32689, third column, in line 2 of correction number 48, insert "(" between the words "a" and "before".

3. On page 32692, second column, in amendment 2 to part 261, change "§ 261.3(c)(2)(ii)(8)" to § 261.3(c)(2)(ii)(B)".

PART 266-[AMENDED]

§ 266.40 [Corrected]

4. On page 32692, third column, prior to amendment 2 to part 266, change "§ 266.4 [Amended]" to "§ 266.40[Amended]".

PART 270-[AMENDED]

§ 270.73 [Corrected]

5. On page 32692, first column, prior to the 103rd technical correction, change "§ 270.33 [Corrected]" to "§ 270.73 [Corrected]".

6. On page 32786, third column, in section 9.2, first bullet under paragraph "2", change ">0.95" to "<0.95".

7. On page 32786, third column, last sentence, change the sentence to read: "Then, for HCl, convert the chlorine emission rate to HCl by multiplying it by the ratio of the molecular weight of HCl to the molecular weight of Cl (i.e., 36.5/35.5)".

II. In rule document number 91-2667, beginning on page 7134 in the Federal Register published on February 21, 1991, make the following corrections:

1. On page 7210, third column, the numbers 1, 2, and 3 occurring in the last 4 lines should be italicized to denote subsections § 266.102(e)(4)(ii)(C)(1), (2) and (3) respectively.

2. On page 7211, first column, the numbers 1 and 2 of subsections § 266.102(e)(4)(iii)(c) (1) and (2) should be italicized.

3. On page 7213, second column, in § 266.103(a)(5)(i)(D), second line, change "(c)(7)(ii)" to "(c)(5)".

4. On page 7215, first column, in § 266.103(b)(5)(i)(A), add "and recorded" between "monitored" and "on".

List of Subjects in 40 CFR Parts 261, 265, and 266

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Recycling, Reporting and recordkeeping requirements, and Security measures.

Dated: August 16, 1991.

Don R. Clay,

Assistant Administrator for Solid Waste and Emergency Response.

For the reasons set out in the preamble, 40 CFR parts 261, 265, and 266 are amended as follows:

PART 261-IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

I. In part 261:

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

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

2. Section 261.2 is amended by revising paragraph (d)(2) to read as follows:

§ 261.2 Definition of solid waste.

* * * * *

(d) * * *

(2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in subparts C or D of this part, except for brominated material that meets the following criteria:

(i) The material must contain a bromine concentration of at least 45%; and

(ii) The material must contain less than a total of 1% of toxic organic compounds listed in appendix VIII; and

(iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

* * * * *

PART 265-INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

II. In part 265:

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

2. Section 265.112 is amended by revising paragraph (d)(2) to read as follows:

§ 265.112 Closure plan; amendment of plan.

* * * * *

(d) * * *

(2) The date when he "expects to begin closure" must be either:

(i) Within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes, or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the Regional Administrator may approve an extension to this one-year limit; or

(ii) For units meeting the requirements of § 265.113(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of nonhazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional nonhazardous wastes, no later than one year after the date on which the unit received the most recent volume of nonhazardous wastes. If the owner or operator can demonstrate to the Regional Administrator that the hazardous waste management unit has the capacity to receive additional nonhazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the Regional Administrator may approve an extension to this one-year limit.

* * * * *

3. Section 265.113 is amended by revising the first sentence of the introductory text of paragraphs (a) and (b) to read as follows:

§ 265.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of nonhazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. * * *

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of nonhazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. * * *

* * * * *

PART 266-STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

III. In part 266:

1. The authority citation for part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6934).

2. Section 266.100 is amended by revising the first sentence of paragraph (a), the introductory text of paragraph (c)(1), paragraphs (c)(1)(ii), (c)(2) (i) and (ii), and by adding paragraphs (c)(3) and (f) to read as follows:

§ 266.100 Applicability.

(a) The regulations of this subpart apply to hazardous waste burned or processed in a boiler or industrial furnace (as defined in § 260.10 of this chapter) irrespective of the purpose of burning or processing, except as provided by paragraphs (b), (c), (d), and (f) of this section. * * *

(c) * * *

(1) To be exempt from §§ 266.102 through 266.111, an owner or operator of a metal recovery furnace must comply with the following requirements, except that an owner or operator of a lead or a nickel-chromium recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must comply with the requirements of paragraph (c)(3) of this section:

(i) * * *

(ii) Sample and analyze the hazardous waste and other feedstocks as necessary to comply with the requirements of this paragraph under procedures specified by Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846, incorporated by reference in § 260.11 of this chapter or alternative methods that meet or exceed the SW-846 method performance capabilities. If SW-846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method; and

* * * * *

(2) * * *

(i) The hazardous waste has a total concentration of organic compounds listed in part 261, appendix VIII, of this chapter exceeding 500 ppm by weight, as-fired, and so is considered to be burned for destruction. The concentration of organic compounds in a waste as-generated may be reduced to the 500 ppm limit by bona fide treatment that removes or destroys organic constituents. Blending for dilution to meet the 500 ppm limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by paragraph (c)(1)(iii) of this section; or

(ii) The hazardous waste has a heating value of 5,000 Btu/lb or more, as-fired, and so is considered to be burned as fuel. The heating value of a waste as-generated may be reduced to below the 5,000 Btu/lb limit by bona fide treatment that removes or destroys organic constituents. Blending for dilution to meet the 5,000 Btu/lb limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by paragraph (c)(1)(iii) of this section.

(3) To be exempt from §§ 266.102 through 266.111, an owner or operator of a lead or nickel-chromium recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must provide a one-time written notice to the Director identifying each hazardous waste burned and specifying whether the owner or operator claims an exemption for each waste under this paragraph or paragraph (c)(1) of this section. The owner or operator must comply with the requirements of paragraph (c)(1) of this section for those wastes claimed to be exempt under that paragraph and must comply with the requirements below for those wastes claimed to be exempt under this paragraph.

(i) The hazardous wastes listed in appendices XI and XII, part 266, and baghouse bags used to capture metallic dusts emitted by steel manufacturing are exempt from the requirements of paragraph (c)(1) of this section, provided that:

(A) A waste listed in appendix XI must contain recoverable levels of lead, a waste listed in appendix XII must contain recoverable levels of nickel or chromium, and baghouse bags used to capture metallic dusts emitted by steel manufacturing must contain recoverable levels of metal; and

(B) The waste does not exhibit the Toxicity Characteristic of § 261.24 of this chapter for an organic constituent; and

(C) The waste is not a hazardous waste listed in subpart D of part 261 of this chapter because it is listed for an organic constituent as identified in appendix VII of part 261 of this chapter; and

(D) The owner or operator certifies in the one-time notice that hazardous waste is burned under the provisions of paragraph (c)(3) of this section and that sampling and analysis will be conducted or other information will be obtained as necessary to ensure continued compliance with these requirements. Sampling and analysis shall be conducted according to paragraph (c)(1)(ii) of this section and records to document compliance with paragraph (c)(3) of this section shall be kept for at least three years.

(ii) The Director may decide on a case-by-case basis that the toxic organic constituents in a material listed in appendix XI or XII of this part that contains a total concentration of more than 500 ppm toxic organic compounds listed in appendix VIII, part 261 of this chapter, may pose a hazard to human health and the environment when burned in a metal recovery furnace exempt from the requirements of this subpart. In that situation, after adequate notice and opportunity for comment, the metal recovery furnace will become subject to the requirements of this subpart when burning that material. In making the hazard determination, the Director will consider the following factors:

(A) The concentration and toxicity of organic constituents in the material; and

(B) The level of destruction of toxic organic constituents provided by the furnace; and

(C) Whether the acceptable ambient levels established in appendices IV or V of this part may be exceeded for any toxic organic compound that may be emitted based on dispersion modeling to predict the maximum annual average off-site ground level concentration.

* * * * *

(f) Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces) that process hazardous waste for recovery of economically significant amounts of the precious metals gold, silver, platinum, palladium, iridium, osmium, rhodium, or ruthenium, or any combination of these are conditionally exempt from regulation under this subpart, except for § 266.112. To be exempt from §§ 266.101 through 261.111, an owner or operator must:

(1) Provide a one-time written notice to the Director indicating the following:

(i) The owner or operator claims exemption under this paragraph;

(ii) The hazardous waste is burned for legitimate recovery of precious metal; and

(iii) The owner or operator will comply with the sampling and analysis and recordkeeping requirements of this paragraph; and

(2) Sample and analyze the hazardous waste as necessary to document that the waste is burned for recovery of economically significant amounts of precious metal using procedures specified by Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846, incorporated by reference in § 260.11 of this chapter or alternative methods that meet or exceed the SW-846 method performance capabilities. If SW-846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method; and

(3) Maintain at the facility for at least three years records to document that all hazardous wastes burned are burned for recovery of economically significant amounts of precious metal.

3. Section 266.102 is amended by revising the first two sentences of paragraph (b)(1) and revising paragraph (e)(10) to read as follows:

§ 266.102 Permit standards for burners.

* * * * *

(b) Hazardous waste analysis. (1) The owner or operator must provide an analysis of the hazardous waste that quantifies the concentration of any constituent identified in appendix VIII of part 261 of this chapter that may reasonably be expected to be in the waste. Such constituents must be identified and quantified if present, at levels detectable by analytical procedures prescribed by Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (incorporated by reference, see § 260.11 of this chapter). Alternative methods that meet or exceed the method performance capabilities of SW-846 methods may be used. If SW-846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method. * * *

* * * * *

(e) * * *

(10) Recordkeeping. The owner or operator must keep in the operating record of the facility all information and data required by this section until closure of the facility.

* * * * *

4. Section 266.103 is amended by revising paragraphs (a)(3), (a)(5) introductory text, (a)(5)(ii)(A), (a)(5)(ii)(B), (a)(6), (b)(6)(viii), (c)(1), (c)(3), (e), and (k) to read as follows:

§ 266.103 Interim status standards for burners.

(a) * * *

(3) Prohibition on burning dioxin-listed wastes. The following hazardous waste listed for dioxin and hazardous waste derived from any of these wastes may not be burned in a boiler or industrial furnace operating under interim status: F020, F021, F022, F023, F026, and F027. * * *

(5) Special requirements for furnaces. The following controls apply during interim status to industrial furnaces (e.g., kilns, cupolas) that feed hazardous waste for a purpose other than solely as an ingredient (see paragraph (a)(5)(ii) of this section) at any location other than the hot end where products are normally discharged or where fuels are normally fired:

* * * * *

(ii) * * *

(A) The hazardous waste has a total concentration of nonmetal compounds listed in part 261, appendix VIII, of this chapter exceeding 500 ppm by weight, as-fired, and so is considered to be burned for destruction. The concentration of nonmetal compounds in a waste as-generated may be reduced to the 500 ppm limit by bona fide treatment that removes or destroys nonmetal constituents. Blending for dilution to meet the 500 ppm limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the facility record; or

(B) The hazardous waste has a heating value of 5,000 Btu/lb or more, as-fired, and so is considered to be burned as fuel. The heating value of a waste as-generated may be reduced to below the 5,000 Btu/lb limit by bona fide treatment that removes or destroys organic constituents. Blending to augment the heating value to meet the 5,000 Btu/lb limit is prohibited and documentation that the waste has not been impermissibly blended must be retained in the facility record.

(6) Restrictions on burning hazardous waste that is not a fuel. Prior to certification of compliance under paragraph (c) of this section, owners and operators shall not feed hazardous waste that has a heating value less than 5,000 Btu/lb, as-generated, (except that the heating value of a waste as-generated may be increased to above the 5,000 Btu/lb limit by bona fide treatment; however, blending to augment the heating value to meet the 5,000 Btu/lb limit is prohibited and records must be kept to document that impermissible blending has not occurred) in a boiler or industrial furnace, except that:

(i) Hazardous waste may be burned solely as an ingredient; or

(ii) Hazardous waste may be burned for purposes of compliance testing (or testing prior to compliance testing) for a total period of time not to exceed 720 hours; or

(iii) Such waste may be burned if the Director has documentation to show that, prior to August 21, 1991:

(A) The boiler or industrial furnace is operating under the interim status standards for incinerators provided by subpart O of part 265 of this chapter, or the interim status standards for thermal treatment units provided by subpart P of part 265 of this chapter; and

(B) The boiler or industrial furnace met the interim status eligibility requirements under § 270.70 of this chapter for subpart O or subpart P of part 265 of this chapter; and

(C) Hazardous waste with a heating value less than 5,000 Btu/lb was burned prior to that date; or

(iv) Such waste may be burned in a halogen acid furnace if the waste was burned as an excluded ingredient under § 261.2(e) of this chapter prior to February 21, 1991 and documentation is kept on file supporting this claim.

* * * * *

(b) * * *

(6) * * *

(viii) Locations where the record for the facility can be viewed and copied by interested parties. These records and locations shall at a minimum include:

(A) The administrative record kept by the Agency office where the supporting documentation was submitted or another location designated by the Director; and

(B) The BIF correspondence file kept at the facility site where the device is located. The correspondence file must include all correspondence between the facility and the Director, state and local regulatory officials, including copies of all certifications and notifications, such as the precompliance certification, precompliance public notice, notice of compliance testing, compliance test report, compliance certification, time extension requests and approvals or denials, enforcement notifications of violations, and copies of EPA and State site visit reports submitted to the owner or operator.

* * * * *

(c) * * *

(1) Limits on operating conditions. The owner or operator shall establish limits on the following parameters based on operations during the compliance test (under procedures prescribed in paragraph (c)(4)(iv) of this section) and include these limits with the certification of compliance. The boiler or industrial furnace must be operated in accordance with these operating limits and the applicable emissions standards of §§ 266.104 (b) through (e), 266.105, 266.106, 266.107, and 266.103(a)(5)(i)(D) at all times when there is hazardous waste in the unit.

* * * * *

(3) Compliance testing.-(i) General. Compliance testing must be conducted under conditions for which the owner or operator has submitted a certification of precompliance under paragraph (b) of this section and under conditions established in the notification of compliance testing required by paragraph (c)(2) of this section. The owner or operator may seek approval on a case-by-case basis to use compliance test data from one unit in lieu of testing a similar on-site unit. To support the request, the owner or operator must provide a comparison of the hazardous waste burned and other feedstreams, and the design, operation, and maintenance of both the tested unit and the similar unit. The Director shall provide a written approval to use compliance test data in lieu of testing a similar unit if he finds that the hazardous wastes, the devices, and the operating conditions are sufficiently similar, and the data from the other compliance test is adequate to meet the requirements of § 266.103(c).

* * * * *

(e) Noncompliance with certification schedule. If the owner or operator does not comply with the interim status compliance schedule provided by paragraphs (b), (c), and (d) of this section, hazardous waste burning must terminate on the date that the deadline is missed, closure activities must begin under paragraph (l) of this section, and hazardous waste burning may not resume except under an operating permit issued under § 270.66 of this chapter. For purposes of compliance with the closure provisions of paragraph (l) of this section and §§ 265.112(d)(2) and 265.113 of this chapter the boiler or industrial furnace has received "the known final volume of hazardous waste" on the date that the deadline is missed.

* * * * *

(k) Recordkeeping. The owner or operator must keep in the operating record of the facility all information and data required by this section until closure of the boiler or industrial furnace unit.

* * * * *

5. Section 266.108 is amended by revising paragraph (a)(2) to read as follows:

§ 266.108 Small quantity on-site burner exemption.

(a) * * *

(1) * * *

(2) The maximum hazardous waste firing rate does not exceed at any time 1 percent of the total fuel requirements for the device (hazardous waste plus other fuel) on a total heat input or mass input basis, whichever results in the lower mass feed rate of hazardous waste.

* * * * *

6. Section 266.109 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 266.109 Low risk waste exemption.

(a) * * *

(1) * * *

(i) A minimum of 50 percent of fuel fired to the device shall be fossil fuel, fuels derived from fossil fuel, tall oil, or, if approved by the Director on a case-by-case basis, other nonhazardous fuel with combustion characteristics comparable to fossil fuel. Such fuels are termed "primary fuel" for purposes of this section. (Tall oil is a fuel derived from vegetable and rosin fatty acids.) The 50 percent primary fuel firing rate shall be determined on a total heat or mass input basis, whichever results in the greater mass feed rate of primary fuel fired;

* * * * *

7. Section 266.110 is amended by revising paragraph (a) to read as follows:

§ 266.110 Waiver of DRE trial burn for boilers.

* * * * *

(a) A minimum of 50 percent of fuel fired to the device shall be fossil fuel, fuels derived from fossil fuel, tall oil, or, if approved by the Director on a case-by-case basis, other nonhazardous fuel with combustion characteristics comparable to fossil fuel. Such fuels are termed "primary fuel" for purposes of this section. (Tall oil is a fuel derived from vegetable and rosin fatty acids.) The 50 percent primary fuel firing rate shall be determined on a total heat or mass input basis, whichever results in the greater mass feed rate of primary fuel fired;

* * * * *

8. Section 266.111 is amended by revising paragraph (d)(2) to read as follows:

§ 266.111 Standards for direct transfer.

* * * * *

(d) * * *

(2) The use and management requirements of subpart I, part 265 of this chapter, except for §§ 265.170 and 265.174, and except that in lieu of the special requirements of § 265.176 for ignitable or reactive waste, the owner or operator may comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjacent property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's (NFPA) "Flammable and Combustible Liquids Code," (1977 or 1981), (incorporated by reference, see § 260.11). The owner or operator must obtain and keep on file at the facility a written certification by the local Fire Marshall that the installation meets the subject NFPA codes; and

* * * * *

9. Section 266.112 is amended by revising paragraphs (a)(1), (b)(1)(i), (b)(1)(ii), and (c) introductory text, and adding paragraph (b)(2)(iii) to read as follows:

§ 266.112 Regulation of residues.

* * * * *

(a) * * *

(1) Boilers. Boilers must burn at least 50% coal on a total heat input or mass input basis, whichever results in the greater mass feed rate of coal;

* * * * *

(b) * * *

(1) * * *

(i) Normal residue. Concentrations of toxic constituents of concern in normal residue shall be determined based on analyses of a minimum of 10 samples representing a minimum of 10 days of operation. Composite samples may be used to develop a sample for analysis provided that the compositing period does not exceed 24 hours. The upper tolerance limit (at 95% confidence with a 95% proportion of the sample distribution) of the concentration in the normal residue shall be considered the statistically-derived concentration in the normal residue. If changes in raw materials or fuels reduce the statistically-derived concentrations of the toxic constituents of concern in the normal residue, the statistically-derived concentrations must be revised or statistically-derived concentrations of toxic constituents in normal residue must be established for a new mode of operation with the new raw material or fuel. To determine the upper tolerance limit in the normal residue, the owner or operator shall use statistical procedures prescribed in "Statistical Methodology for Beville Residue Determinations" in appendix IX of this part.

(ii) Waste-derived residue. Waste-derived residue shall be sampled and analyzed as often as necessary to determine whether the residue generated during each 24-hour period has concentrations of toxic constituents that are higher than the concentrations established for the normal residue under paragraph (b)(1)(i) of this section. If so, hazardous waste burning has significantly affected the residue and the residue shall not be excluded from the definition of a hazardous waste. Concentrations of toxic constituents of concern in the waste-derived residue shall be determined based on analysis of one or more samples obtained over a 24-hour period. Multiple samples may be analyzed, and multiple samples may be taken to form a composite sample for analysis provided that the sampling period does not exceed 24 hours. If more than one sample is analyzed to characterize waste-derived residues generated over a 24-hour period, the concentration of each toxic constituent shall be the arithmetic mean of the concentrations in the samples. No results may be disregarded; or

(2) * * *

(iii) Sampling and analysis. Waste-derived residue shall be sampled and analyzed as often as necessary to determine whether the residue generated during each 24-hour period has concentrations of toxic constituents that are higher than the health-based levels. Concentrations of toxic constituents of concern in the waste-derived residue shall be determined based on analysis of one or more samples obtained over a 24-hour period. Multiple samples may be analyzed, and multiple samples may be taken to form a composite sample for analysis provided that the sampling period does not exceed 24 hours. If more than one sample is analyzed to characterize waste-derived residues generated over a 24-hour period, the concentration of each toxic constituent shall be the arithmetic mean of the concentrations in the samples. No results may be disregarded; and

(c) Records sufficient to document compliance with the provisions of this section shall be retained until closure of the boiler or industrial furnace unit. At a minimum, the following shall be recorded.

* * * * *

10. Appendix IX to Part 266-Methods Manual for Compliance with the BIF Regulations is amended by revising Section 7.0 to read as follows:

Section 7.0

Statistical Methodology for Bevill Residue Determinations

This section describes the statistical comparison of waste-derived residue to normal residue for use in determining eligibility for the Bevill exemption under 40 CFR 266.112.

7.1 Comparison of Waste-Derived Residue to Normal Residue

To be eligible for the Bevill exclusion from the definition of hazardous waste under 40 CFR 266.112(b)(1), waste-derived residue must not contain Appendix VIII, Part 261, constituents that could reasonably be attributable to the hazardous waste (toxic constituents) at concentrations significantly higher than in residue generated without burning or processing hazardous waste (normal residue). Concentrations of toxic constituents in normal residue are determined based on analysis of a minimum of 10 samples representing a minimum of 10 days of operation. The statistically-derived concentrations in normal residue are determined as the upper tolerance limit (95% confidence with a 95% proportion of the sample distribution) of the normal residue concentrations. The upper tolerance limit is to be determined as described in Section 7.2 below. If changes in raw materials or fuels could lower the statistically-derived concentrations of toxic constituents of concern, the statistically-derived baseline must be re-established for any such mode of operation with the new raw material or fuel.

Concentrations of toxic constituents in waste-derived residue are determined based on the analysis of one or more samples collected over a compositing period of not more than 24 hours. Multiple samples of the waste-derived residue may be analyzed or subsamples may be composited for analysis, provided that the sampling period does not exceed 24 hours. If more than one sample is analyzed to characterize the waste-derived residue generated over a 24-hour period, the arithmetic mean of the concentrations must be used as the waste-derived concentration for each constituent.

The concentration of a toxic constituent in the waste-derived residue is not considered to be significantly higher than in the normal residue (i.e., the residue passes the Bevill test for that constituent) if the concentration in the waste-derived residue does not exceed the statistically-derived concentration.

7.2 Calculation of the Upper Tolerance Limit

The 95% confidence with 95% proportion of the sample distribution (upper tolerance limit) is calculated for a set of values assuming that the values are normally distributed. The upper tolerance limit is a one-sided calculation and is an appropriate statistical test for cases in which a single value (the waste-derived residue concentration) is compared to the distribution of a range of values (the minimum of 10 measurements of normal residue concentrations). The upper tolerance limit value is determined as follows:

$$UTL = \bar{X} + (K)(S)$$

where \bar{X} = mean of the normal residue concentrations, $\bar{X} = \sum X_i/n$,

K = coefficient for sample size n , 95% confidence and 95% proportion,

S = standard deviation of the normal residue concentrations,

$S = (\sum (X_i - \bar{X})^2 / (n - 1))^{0.5}$, and

n = sample size.

The values of K at the 95% confidence and 95% proportion, and sample size n are given in Table 7.0-1.

For example, a normal residue test results in 10 samples with the following analytical results for toxic constituent A:

Sample No.	Concentration of constituent A (ppm)
1	10
2	10
3	15
4	10
5	7
6	12
7	10
8	16
9	15
10	10

The mean and the standard deviation of these measurements, calculated using the above equations, are 11.5 and 2.9, respectively. Assuming that the values are normally distributed, the upper tolerance limit (UTL) is given by:

$$UTL = 11.5 + (2.911)(2.9) = 19.9 \text{ ppm}$$

This, if the concentration of constituent A in the waste-derived residue is below 19.9 ppm, then the waste-derived residue is eligible for the Bevill exclusion for constituent A.

7.3 Normal Distribution Assumption

As noted in Section 7.2 above, this statistical approach (use of the upper tolerance limit) for calculation of the concentration in normal residue is based on the assumption that the concentration data are distributed normally. The Agency is aware that concentration data of this type may not always be distributed normally, particularly when concentrations are near the detection limits. There are a number of procedures that can be used to test the distribution of a data set. For example, the Shapiro-Wilk test, examination of a histogram or plot of the data on normal probability paper, and examination of the coefficient of skewness are methods that may be applicable, depending on the nature of the data (References 1 and 2).

If the concentration data are not adequately represented by a normal distribution, the data may be transformed to attain a near normal distribution. The Agency has found that concentration data, especially when near detection levels, often exhibit a lognormal distribution. The assumption of a lognormal distribution has been used in various programs at EPA, such as in the Office of Solid Waste Land Disposal Restrictions program for determination of BDAT treatment standards. The transformed data may be tested for normality using the procedures identified above. If the transformed data are better represented by a normal distribution than the untransformed data, the transformed data should be used in determining the upper tolerance limit using the procedures in Section 7.2 above.

In all cases where the owner or operator wishes to use other than an assumption of normally distributed data or believes that use of an alternate statistical approach is appropriate to the specific data set, he/she must provide supporting rationale in the operating record that demonstrates that the data treatment is based upon sound statistical practice.

7.4 Nondetect Values

The Agency is developing guidance regarding the treatment of nondetect values (data where the concentration of the constituent being measured is below the lowest concentration for which the analytical method is valid) in carrying out the statistical determination described above. Until the guidance information is available, facilities may present their own approach to the handling of nondetect data points, but must provide supporting rationale in the operating record for consideration by the Director.

Table 7.0-1.-K Values for 95% Confidence and 95% Proportion

Sample size (n)	K
10	2.911
11	2.815
12	2.736
13	2.670
14	2.614
15	2.566
16	2.523
17	2.486
18	2.458
19	2.423
20	2.396
21	2.371
22	2.350
23	2.329
24	2.303
25	2.292

7.5 References

1. Shapiro, S.S. and Wilk, M.B. (1965), "An Analysis of Variance Test for Normality (complete samples)," *Biometrika*, 52,591-611.

2. Bhattacharyya, G.K. and R.A. Johnson (1977), *Statistical Concepts and Methods*, John Wiley and Sons, New York.

* * * * *

11. Appendix XI to Part 266 is added to read as follows:

Appendix XI.-Lead-Bearing Materials That May be Processed in Exempt Lead Smelters

A. Exempt Lead-Bearing Materials When Generated or Originally Produced By Lead-Associated Industries¹

¹Lead-associated industries are lead smelters, lead- acid battery manufacturing, and lead chemical manufacturing (e.g., manufacturing of lead oxide or other lead compounds).

Acid dump/fill solids

Sump mud

Materials from laboratory analyses

Acid filters

Baghouse bags

Clothing (e.g., coveralls, aprons, shoes, hats, gloves)

Sweepings

Air filter bags and cartridges

Respiratory cartridge filters

Shop abrasives

Stacking boards

Waste shipping containers (e.g., cartons, bags, drums, cardboard)

Paper hand towels

Wiping rags and sponges

Contaminated pallets

Water treatment sludges, filter cakes, residues, and solids

Emission control dusts, sludges, filter cakes, residues, and solids from lead-associated industries (e.g., K069 and D008 wastes)

Spent grids, posts, and separators

Spent batteries

Lead oxide and lead oxide residues

Lead plates and groups

Spent battery cases, covers, and vents

Pasting belts

Water filter media

Cheesecloth from pasting rollers

Pasting additive bags

Asphalt paving materials

B. Exempt Lead-Bearing Materials When Generated or Originally Produced By Any Industry

Charging jumpers and clips

Platen abrasive

Fluff from lead wire and cable casings

Lead-based pigments and compounding pigment dust

12. Appendix XII to Part 266 is added to read as follows:

Appendix XII.-Nickel or Chromium-Bearing Materials that may be Processed in Exempt Nickel-Chromium Recovery Furnaces

A. Exempt Nickel or Chromium-Bearing Materials when Generated by Manufacturers or Users of Nickel, Chromium, or Iron

Baghouse bags

Raney nickel catalyst

Floor sweepings

Air filters

Electroplating bath filters

Wastewater filter media

Wood pallets

Disposable clothing (coveralls, aprons, hats, and gloves)

Laboratory samples and spent chemicals

Shipping containers and plastic liners from containers or vehicles used to transport nickel or chromium-containing wastes

Respirator cartridge filters

Paper hand towels

B. Exempt Nickel or Chromium-Bearing Materials when Generated by Any Industry

Electroplating wastewater treatment sludges (F006)

Nickel and/or chromium-containing solutions

Nickel, chromium, and iron catalysts

Nickel-cadmium and nickel-iron batteries

Filter cake from wet scrubber system water treatment plants
in the specialty steel industry¹
¹If a hazardous waste under an authorized State program.

Filter cake from nickel-chromium alloy pickling operations¹

[FR Doc. 91-20401 Filed 8-26-91; 8:45 am]

BILLING CODE 6560-50-M