(3) headache
(4) muscle pain
(5) joint pain
(6) neurologic signs or symptoms
(7) neuropsychological signs or symptoms
(8) signs or symptoms involving the respiratory system (upper or lower)
(9) sleep disturbances
(10) gastrointestinal signs or symptoms
(11) cardiovascular signs or symptoms
(12) abnormal weight loss
(13) menstrual disorders.

(c) Compensation shall not be paid under this section:

(1) if there is affirmative evidence that an undiagnosed illness was not incurred during active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War; or

(2) if there is affirmative evidence that an undiagnosed illness was caused by a supervening condition or event that occurred between the veteran's most recent departure from active duty in the Southwest Asia theater of operations during the Persian Gulf War and the onset of the illness; or

(3) if there is affirmative evidence that the illness is the result of the veteran's own willful misconduct or the abuse of alcohol or drugs.

(d) For purposes of this section:

(1) the term ''Persian Gulf veteran'' means a veteran who served on active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War.

(2) the Southwest Asia theater of operations includes Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations.

(Authority: Title I, Pub. L. 103–446; 38 U.S.C. 501(a))

3. Section 3.500 is amended by adding paragraph (y) to read as follows:

§ 3.500 General.

* * * * *

(y) *Compensation for certain disabilities due to undiagnosed illnesses (§§ 3.105; 3.317).* Last day of the month in which the 60-day period following notice to the payee of the final rating action expires. This applies to both reduced evaluations and severance of service connection. (Authority: Pub. L. 103–446; 38 U.S.C. 501(a))

[FR Doc. 95–2764 Filed 2–1–95; 9:07 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 270

[FRL–5149–1]

Determination of Point at Which RCRA Subtitle C Jurisdiction Begins for Municipal Waste Combustion Ash at Waste-to-Energy Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of statutory interpretation.

SUMMARY: On May 2, 1994, the Supreme Court issued its decision in *City of Chicago* v. *Environmental Defense Fund, Inc.* 114 S.Ct. 1588 (1994). In so doing, the Court held that, although municipal waste-to-energy (WTE) facilities that burn household wastes alone, or in combination with nonhazardous wastes from industrial and commercial sources, are exempt from regulation as a hazardous waste treatment, storage, or disposal facility under Subtitle C of the Resource Conservation and Recovery Act (RCRA), the ash that they generate is not exempt. The Court, however, did not specify the point at which the ash generated by the WTE facility becomes subject to Subtitle C of RCRA. EPA is responding to numerous requests for resolution of this issue by announcing today that it interprets § 3001(i) of RCRA to first subject the ash generated by a WTE facility to RCRA Subtitle C when it exits the combustion building following the combustion and air pollution control processes.

EFFECTIVE DATE: February 3, 1995.

ADDRESSES: Docket Clerk, OSW (OS–305), Docket No. *95–XA2N–FFFFF,* U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460. The public docket is located in M2616 at EPA Headquarters and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (202) 260–9327. Copies cost $0.15/page. Charges under $25.00 are waived.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, (800) 424–9346, TDD (800) 553–7672 (hearing impaired); in the Washington, DC metropolitan area the number is (703) 920–9810, TDD (703) 486–3323.

For more detailed information on specific aspects of this Notice, contact Andrew L. Teplitzky (703–308–7275) or Allen J. Geswein (703–308–7261), Office of Solid Waste (5306W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

This action interpreting RCRA Section 3001(i) and the hazardous waste regulations in 40 CFR Parts 260–271 is being taken under the authority of sections 2002 and 3001 of the Solid Waste Disposal Act of 1970 as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912 and 6921).

II. Background

A. Nature of Ash From Waste-to-Energy Facilities

Combustion of municipal solid waste, particularly through WTE facilities, can be an important component of a local government's waste management practices. As of 1993, approximately 207 million tons of municipal solid waste were generated annually in the U.S., 16 percent of which (33 million tons) was combusted. There are approximately 150 municipal waste combustors in the U.S., 80 percent of which are WTE facilities. The remaining 20 percent incinerate waste without recovering energy.

Approximately 25 percent (dry weight) of the waste that is combusted remains as ash, amounting to around eight million tons of municipal waste combustor (MWC) ash generated annually. While the ash may be collected at a number of locations within a WTE facility, it typically is characterized as either ''bottom ash'' or ''fly ash.'' Bottom ash collects at the bottom of the combustion unit and comprises approximately 75–80% of the total ash by weight. Fly ash collects in the air pollution control devices that ''clean'' the gases produced during the combustion of the waste and comprises

around 20–25% of the total by weight. The fly ash from a WTE facility's different air pollution control devices typically is consolidated and then combined with the bottom ash via enclosed conveyors at the bottom of the MWC where it is cooled and conveyed to a storage area. EPA estimates that nearly 80% of WTE facilities routinely combine their ash.

The regulation of WTE ash has been the subject of controversy and debate ever since the inception of the hazardous waste management program under Subtitle C of RCRA. EPA's notice of June 7, 1994 (59 Fed. Reg. 29372) provides a discussion of the regulatory history of ash from WTE facilities. The following section summarizes that discussion.

B. Regulatory History of Waste-to-Energy Ash

In 1980, EPA promulgated a rule exempting household wastes from all RCRA requirements for hazardous wastes (40 CFR 261.4(b)(1)). EPA interpreted this exemption to extend to the residuals from the treatment of household wastes, including ash from the combustion of household wastes. The exemption, however, did not address ash from the combustion of household wastes combined with nonhazardous commercial and industrial wastes.

In 1984, Congress added to RCRA a new Section 3001(i). This provision addressed WTE facilities burning exempt household hazardous wastes and nonhazardous commercial and industrial wastes to produce energy. In July 1985, EPA promulgated a rule that codified this provision. In the preamble accompanying this rule, EPA announced that it interpreted the statute to exempt the combustion of waste, but not the management of ash, from Subtitle C (50 Fed. Reg. 28702, 28725–26 (July 15, 1985)). Since 1985, the Agency's interpretation of § 3001(i) of RCRA has been a subject of much debate.

In September 1992, EPA Administrator William Reilly signed a memorandum announcing that the Agency interpreted Section 3001(i) to exempt from all Subtitle C requirements ash from WTE facilities burning household wastes and nonhazardous wastes. On May 2, 1994, the Supreme Court issued an opinion interpreting Section 3001(i) of RCRA, 42 U.S.C. 6921(i). *City of Chicago* v. *EDF*, 114 S.Ct. 1588 (1994). The Court held that this provision does not exempt ash generated at WTE facilities burning household wastes and nonhazardous commercial wastes from the hazardous waste requirements of Subtitle C of RCRA.

As a result of this decision, persons generating ash from WTE facilities must determine whether the ash is hazardous. Studies show that ash sometimes is a hazardous waste under RCRA because it exhibits EPA's toxicity characteristic (TC). Generally, this determination is made by either testing using the Toxicity Characteristic Leaching Procedure (TCLP) (see 40 CFR § 261.24) or by using knowledge of the combustion process to determine whether the ash would exhibit the TC. Typically, ash that ''fails'' the TC leaches lead or cadmium above levels of concern. Existing studies also show that fly ash contains the highest concentrations of inorganic chemical constituents. It is more likely to exhibit the TC than either bottom ash or combinations of bottom ash and fly ash. Ash that is determined to be a hazardous waste must be handled in compliance with EPA regulations for hazardous waste management. Ash that is determined not to be a hazardous waste may be disposed in a non-hazardous waste facility.

C. Initial Agency Reaction to the Supreme Court Decision

While the Supreme Court decision ended nearly a decade of controversy over the general regulatory status of ash, it also raised some new legal and policy issues. To provide some immediate interim guidance, the Agency issued several documents shortly after the Supreme Court decision.

First, on May 24, 1994, the Agency released for immediate use a draft guidance manual for ''Sampling and Analysis of Municipal Refuse Incinerator Ash.'' The purpose of the manual was to assist owners and operators of MWCs in designing a plan for testing ash to determine whether it is hazardous. On June 23, 1994, EPA formally requested public comment on the draft guidance (59 Fed. Reg. 32427). The comment period ended on September 21, 1994. The Agency intends to issue a final guidance manual in the Spring of 1995.

Second, on May 27, 1994, EPA issued a memorandum outlining an implementation strategy to assist affected parties in achieving compliance with the Court's decision. The strategy identified the Agency's priorities for pursuing enforcement actions concerning the management of MWC ash. The Agency intends to issue a revised implementation strategy shortly.

Third, on June 7, 1994, the Agency published a notice addressing two issues of statutory and regulatory interpretation related to the management of WTE ash that is hazardous (59 Fed. Reg. 29372). First, the notice extended the deadline within which owners/operators of facilities that treat, store, or dispose of hazardous ash must file a hazardous waste permit application. This action gave owners and operators of facilities that manage hazardous ash six months to apply for ''interim status'' under the RCRA hazardous waste regulatory program. Without interim status, the facility would be out of compliance with RCRA's permit requirements and face potentially significant civil and criminal penalties.

The second issue discussed in this notice was the Agency's interpretation that ash from WTE facilities be classified as a ''newly identified waste'' for the purposes of the RCRA land disposal restrictions (LDRs), meaning that the current land disposal restrictions do not apply. When the restrictions apply, hazardous ash will have to meet specified treatment standards prior to land disposal. EPA currently takes the position that if a waste exhibits a hazardous waste characteristic at its point of generation, it must meet LDR standards even if it ceases to exhibit the characteristic prior to land disposal.

III. The Point of Subtitle C Jurisdiction

A. EPA's Interpretation

1. Legal Analysis

Neither the Supreme Court's decision on ash nor any of EPA's previous policy statements on ash address the point at which the ash generated by a WTE facility becomes subject to Subtitle C of RCRA—in other words, at which point or points in the facility the owner/operator must determine whether the ash exhibits the toxicity characteristic of a hazardous waste (and, in the future, the point at which LDR restrictions will begin to apply).

Section 3001(i) provides that ''[a] resource recovery facility recovering energy from the mass burning of municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous waste * * *.'' if certain conditions regarding waste receipt are met. In the *City of Chicago* case, the Supreme Court issued a narrowly focused opinion addressing the issue of whether this language created an exemption for ash generated by resource recovery facilities. Noting that the provision fails to mention ash and fails to include ''generation'' in the list of exempted activities, the Court found that no exemption for ash was intended. 114 S.

Ct. at 1591–92. In fact, the Court found the statute to be so free from ambiguity on this issue that there was no need to consult legislative history and no occasion to defer, under the principles of *Chevron, U.S.A.* v. *NRDC*, 467 U.S. 837 (1984), to the interpretation preferred by the Agency. *Id.* at 1594.

The Court, however, failed to reach the issue of the precise point at which regulation of ash must begin, and section 3001(i) does not expressly address the issue. For the reasons set out below, EPA believes it is reasonable to interpret Section 3001(i) to first impose hazardous waste regulation at the point that the ash leaves the ''resource recovery facility,'' defined as the combustion building (including connected air pollution equipment). Consequently, the point at which an ash hazardous waste determination should be made (and, in the future, at which the LDRs will begin to apply) is the point at which ash exits the combustion building following the combustion and air pollution control processes.

Section 3001(i) does not define the term ''resource recovery facility.'' EPA believes that it is reasonable to conclude that Congress intended to refer to the building that houses the combustion device. This is the common sense reading of the term, and it strikes a better balance between the objectives of section 3001(i) and the rest of Subtitle C than either of the alternative readings described below. Further, EPA believes that it is reasonable to conclude that Congress intended to exempt all handling of any hazardous waste within the building, including the handling of hazardous ash. Subjecting ash within the building to hazardous waste regulation could, for example, require operators to collect samples of ash for waste determination purposes. It also could affect the number of hazardous ash waste streams that would become subject to LDR treatment standards. ''Collection'' and ''treatment'' are among the activities included in the definition of ''management'' in section 1004(7) of RCRA. Section 3001(i) expressly exempts treatment, storage, disposal and management of hazardous waste at resource recovery facilities. *See City of Chicago*, 114 S. Ct. at 1592.

This interpretation is not only a reasonable reading of the statutory language, it also serves Congress' intent to ''encourage commercially viable resource recovery facilities and to *remove impediments to their operation*.'' (Emphasis added.) S. Rep. 98–284, 98th Cong., 2d Sess. at 61. Regulating ash only at the point it exits the combustion building removes some potentially significant impediments. If the statute allowed regulation of ash inside the building, the facility owner/operator might need to sample and analyze ash at multiple points. This approach could require owners and operators to deal with major logistical problems associated with shutting down individual boilers and retrofitting/reconfiguring the combustor to accommodate installation of multiple handling and storage systems to separately convey the ash streams to different load out areas and ash conditioning systems. Some facilities may not currently have the space to accommodate the additional equipment required and could be forced to either close or temporarily shut down until additional space could be procured. Retrofitting a facility in this manner could be costly. Some state and industry representatives, in fact, have projected costs in excess of several million dollars per facility. Hence, this interpretation could conflict with Congressional intent by serving as an ''impediment'' to resource recovery facilities. S. Rep. 98–284 at 61. In addition, the cost of sampling and analysis alone probably would at least double considering collection and analysis of at least two different ash streams—bottom ash and fly ash—instead of a single combined ash stream. (Although owners and operators may legally use knowledge in lieu of testing, due to the variable nature of ash, virtually all owners and operators conduct TCLP testing.) These costs would contribute to the total burden imposed on the WTE facility.

Finally, in selecting an interpretation of section 3001(i), EPA also must consider Subtitle C's general goal of protecting human health and the environment from the threats posed by hazardous waste. As explained in greater detail in section C below, EPA does not believe that this interpretation would have any significant impact on the level of environmental protection for ash.

EPA also believes that today's interpretation is consistent with the Supreme Court's 1994 decision construing RCRA § 3001(i). In *City of Chicago* v. *EDF*, 114 S. Ct. 1588 (1994), the Court held that Congress intended to exempt ''resource recovery facilities,'' but did not define the term. *See, e.g.*, 114 S. Ct. at 1591–92. While the Court clearly stated that the statute did not exempt facility owners from regulation as hazardous waste generators, *id.* at 1592, determining that ash is not subject to regulation until it exits the combustion building does not exempt the facility owner from regulation as a generator. Rather, it defines the point at which the owner must begin to perform the generator's duties. Further, today's interpretation does not create the type of total exemption for ash that the Supreme Court rejected in *City of Chicago*. Operators of MWC facilities still must comply with the generator's duty to make a hazardous waste determination. Any ash that exhibits a characteristic when exiting the combustion building must be managed in compliance with all applicable Subtitle C requirements. EPA's interpretation merely clarifies the location at which the determination for waste characterization purposes must occur (and the point at which future LDRs requirements will begin to apply).

2. Illustrative Examples

Today's interpretation is perhaps best explained through the use of specific examples. For instance, many WTE facilities automatically convey, via enclosed conveyor, the fly ash collected at its various locations (including any air pollution control devices such as the acid gas scrubbers, baghouse filters, and electrostatic precipitators that may exist outside the combustion building) to a quench tank within the combustion building where it is combined with the bottom ash. The combined ash is then conveyed to a separate, detached storage building or to trucks for direct transport to an off-site disposal facility. The point at which RCRA hazardous waste jurisdiction would begin for these facilities would be the point where the ash exits the combustion building. Under this interpretation, the owner/operator could combine fly ash and bottom ash within the combustion building before making any hazardous waste determination. Any type of device could be used within the building for ash management activities such as collection, mixing, and conditioning.

EPA includes in its interpretation of ''resource recovery facility'' those air pollution control devices that are integral components of the combustion process. Ash from air pollution control devices that is reconveyed back to the combustion building in enclosed ducts has, in EPA's view, not left the ''resource recovery facility'' exempted under § 3001(i). Moreover, the ducts and air pollution control devices contain the ash so it does not come into contact with the environment.

A few WTE facilities may exist where the combustion device is not housed within a building. In these instances, the combustion device (including air pollution control equipment and proximate areas for handling ash) may constructively constitute a combustion building, within the meaning discussed above. Thus, if fly ash and bottom ash

were handled in enclosed systems that operate in the same manner as they would if a building existed and the fly ash and bottom ash were mixed in an enclosed unit proximate to the combustion device, that management activity would be considered to take place within a combustion building as described above. In this circumstance, the point at which hazardous waste jurisdiction would begin would be the point where the combined ash exits the last enclosed ash management unit that is located proximate to the combustion device.

By contrast, where a WTE facility collects bottom ash within the combustion building and collects the fly ash outside the combustion building in, for example, roll-off containers, two distinct exit points from the combustion building exist: (1) the point where the bottom ash ultimately leaves the combustion building and (2) the point where the fly ash leaves the air pollution control devices (located outside the combustion building). The WTE facility operator would thus sample and make a hazardous waste determination at each location. Should the operator determine that either the bottom ash or fly ash as is hazardous, management of that ash would have to be conducted pursuant to RCRA Subtitle C.

B. Other Interpretations Considered

Since the Supreme Court decision, the Agency has received numerous letters from states, local governments, industry, environmental groups, and others suggesting various approaches to determining the point at which the ash initially becomes subject to RCRA Subtitle C jurisdiction. For example, a number of comments received in response to the Agency's draft sampling and analysis guidance notice of May 24, 1994, addressed this issue. Some members of the public urged EPA to adopt the interpretation described above. Other members, however, suggested two additional options for interpreting § 3001(i) to establish the point at which ash becomes subject to Subtitle C regulation.

1. Facility Property Boundary

Some members of the public argued that the hazardous waste exclusion under RCRA § 3001(i) applies to all ash management operations within the property boundary of the WTE facility. This interpretation potentially would allow all ash generated at a WTE facility to be managed on-site, without testing, as a non-hazardous waste. It could allow a WTE facility to dispose of ash that would have otherwise failed the TCLP within the facility property boundary in a landfill that does not meet the requirements of RCRA Subtitle C.

EPA is rejecting the option of designating the point of Subtitle C jurisdiction at the property boundary. The most natural reading of the term ''resource recovery facility'' is the combustion device itself. Nothing in the text of the statute or the legislative history refers to land holdings or suggests that Congress was familiar with them and the types of waste management conducted on them. Rather, the discussion focuses on the combustion process. EPA believes that an exemption for the entire property would conflict with the general goals of Subtitle C because it would provide too many opportunities for potential mismanagement of ash at the WTE facility without the proper environmental controls. Such a broad reading of RCRA could allow potential mismanagement of ash that tested hazardous within the land boundaries of the facility in units (e.g., waste piles, landfills) that were not appropriately regulated under Subtitle C of RCRA. EPA believes that this option would not strike the balance that Congress intended between section 3001(i)'s goal of promoting resource recovery facilities and the general environmental protection goals of the rest of RCRA Subtitle C.

2. Inside the Combustion Building

Other members of the public argued that the exemption in section 3001(i) ends at the instant that ash is generated. In particular, they objected to any temporary exemption for ash that would allow facility owners to combine fly ash and bottom ash before making hazardous waste determinations. Since combined ash tends to ''pass'' the TC, postponing regulation until combination has occurred could allow the ash to escape Subtitle C management. These commentors argued that such a ''de facto'' exemption for WTE ash would be inconsistent with the spirit of the Supreme Court's decision in *City of Chicago.*

EPA has decided not to read the statute to require regulation of ash within the combustion building. This interpretation would permit regulation of the management of hazardous ash within the ''resource recovery facility,'' in apparent contradiction with the text of section 3001(i). Further, requiring sampling, testing, and management of ash from multiple locations could, as described below, be unnecessarily expensive and burdensome in relation to the environmental benefits received. Thus, this interpretation could conflict with Congress' goal of ''promoting resource recovery facilities.'' S. Rep. 98–284, 98th Cong. at 61.

Many of the people advocating this interpretation maintained that this interpretation would require bottom ash and fly ash to be sampled separately, before a facility owner combines them. Ash, however, may collect in as many as 20 separate locations within an average WTE facility. This interpretation, if applied literally to the first locations where ash becomes identifiable, could lead to a policy requiring that a waste determination be made at each of these locations. Such a policy would only increase the impediments to viable resource recovery facilities.

C. Additional Policy Considerations

EPA believes that today's interpretation of § 3001(i) designating the point of Subtitle C jurisdiction at the exit of the combustion building provides an approach that local governments will find practical and implementable, yet environmentally protective. In accordance with today's interpretation, ash that is combined (and conditioned, for example, with lime and/or phosphoric acid) at the end of the combustion process and within the combustion building, and exhibits no hazardous waste characteristics (i.e., it passes the TCLP) when it exits that building, may be sent to a nonhazardous waste facility for disposal.

In comparison, if the Agency had selected the option requiring hazardous waste determinations inside the combustion building, the fly ash and bottom ash that would have been tested separately at locations inside the combustion building and found to exhibit the toxicity characteristic would not be handled much differently. The WTE facility operator could treat (using similar conditioning techniques that are performed inside the combustion building under today's interpretation) the fly ash and bottom ash in on-site tanks, containers, or containment buildings under the provisions of § 262.34. Such treatment does not require a federal hazardous waste (Subtitle C) permit so long as the ash is not retained for more than 90 days. Once the ash ceased to exhibit hazardous waste toxicity characteristics, it too would be combined and sent for disposal in a nonhazardous waste facility. Similarly, once the LDR treatment standards for WTE ash hazardous constituents are promulgated, the ash would be treated (perhaps using some of the same conditioning techniques used today) to meet those standards at which point the ash could

then be sent for disposal in a nonhazardous waste facility.

EPA also believes that current regulations promulgated under RCRA Subtitle D provide protection for the disposal of ash as a nonhazardous waste. In 1991, the Agency promulgated new criteria for municipal solid waste landfills, including landfills and monofills that accept MWC ash (40 CFR Part 258). These criteria impose a comprehensive set of requirements on municipal solid waste landfills (MSWLFs) including requirements for location restrictions, facility design and operation, ground-water monitoring and corrective action, closure and post-closure care, and financial assurance. The Agency has conducted studies on the land disposal of MWC ash from WTE facilities and has found no evidence to suggest that disposal in a Subtitle D landfill will endanger human health and the environment. Copies of these studies are available in the docket for this notice.

For example, EPA has conducted a study on the effects of MWC ash leachate on natural and synthetic lining materials commonly employed in the construction of municipal solid waste landfill liners. That study indicates that carefully selected landfill liner materials can, when exposed to MWC ash leachate, be expected to function as an effective barrier to leachate migration. In addition, EPA is conducting ongoing, *in situ* studies of leachate from monofills receiving ash from a WTE facility. These studies reveal leachate concentrations of relevant metals are below their respective TC limits. The States have indicated that their data also corroborates EPA's findings.

It is important to note that while states may allow varying liner designs for ash monofills or co-disposal facilities, these designs must still meet a performance standard intended to protect ground water resources. In addition, all landfills regulated under RCRA Subtitle D are required to perform ground-water monitoring as a way of detecting a release should one occur. In the event of a release to ground water, the owner/operator of the landfill must perform corrective action to clean up the ground water.

The Agency also does not believe that the process of combining and treating ash within the combustion building will pose risks to human health. The Agency understands that many State environmental programs allow the ash to be combined and conditioned prior to exiting the combustion building for testing. These states have not indicated to the Agency that these current practices are presenting a risk to human health. In fact, the risk of exposure to fugitive ash emissions could be heightened if WTE facilities were required to sample or otherwise manage fly ash separately from bottom ash. This is because fly ash is generally a fine powdery substance that would become readily airborne were it not for such normal practices as combining the fly ash with the bottom ash in a quench tank to impede air emissions. Handling fly ash before it is combined could increase the risk of release to the environment.

Further, EPA recently published proposed regulations under the Clean Air Act for new and existing municipal waste combustors that address ash. These regulations would prohibit visible emissions of fugitive fly ash and/or bottom ash from all ash handling activities at the facility. They also address the ash loading areas and ash transport vehicles (59 FR 48222, September 20, 1994).

Finally, the Agency understands that some groups are concerned about the potential environmental risk posed by the reuse of ash in projects such as road base, building blocks, and sidewalks. These groups have expressed a desire that the Agency either ban ash reuse or place stringent controls on reuse. While reuse of ash currently is not common in the U.S. (the Agency believes that significantly less than ten percent of the ash generated in the U.S. is reused), the Agency does not believe that today's interpretation will stimulate increased interest in ash reuse. It is important to note that, if the WTE facility were required to test bottom ash and fly ash separately and found that either ash failed the TC determination, that facility could treat the ash on-site to either below TC limits or in accordance with the land disposal restrictions (when they are set). After this treatment, ash would no longer be classified as a hazardous waste and could be used without further hazardous waste regulation (e.g., in construction projects). EPA does not currently anticipate that future LDR treatment will differ significantly from some of the ash conditioning techniques currently used at WTE facilities. It also is important to note that many states have programs addressing the management of ash from WTE facilities. Currently, over one-half of the states address the reuse of ash.

Should information come to EPA's attention suggesting that WTE ash is being managed or disposed of in a manner that is not protective of human health and the environment under Subtitle D, the Agency will consider additional actions, including issuing management guidelines and, if appropriate, promulgating additional regulations to address those situations. In addition, at individual sites, if the disposal of ash presents an imminent and substantial endangerment to human health and the environment, EPA may require responsible persons to undertake appropriate action under § 7003(a) of RCRA.

IV. Conclusion

In conclusion, today's interpretation of RCRA § 3001(i) designates the point of Subtitle C jurisdiction for WTE ash at the exit of the combustion building following the combustion and air pollution control processes. The Agency believes that this reading is a reasonable interpretation of the statute that serves the stated goals of § 3001(i).

EPA emphasizes that today's decision on the appropriate location to make the hazardous waste determination for MWC ash is unique based on its interpretation of RCRA § 3001(i). EPA's analysis and conclusions are not relevant to facilities that do not fall within the scope of RCRA § 3001(i).

EPA considers this action to be an interpretative rule exempt from the requirement for prior notice and opportunity to comment under section 553(b)(3)(A) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A). The notice merely informs the public of EPA's view of the definition of ''facility'' in section 3001(i) as derived from the text of the statute, legislative history, and EPA's view of Congressional intent.

Dated: January 27, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–2627 Filed 2–2–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Communities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken