

should rest with the contractor rather than VA because the contractor would have control over the actions of individuals involved in the research. Also, VA has clarified the exclusion to state that the exclusion covers contracts with individuals as well as non-VA institutions. The exclusion was intended to cover all contract research conducted by non-VA employees whether the contract was with an individual or an institution.

The law directs VA to conduct a program of medical research in connection with caring for veterans. 38 U.S.C. 7303. VA includes nonveterans in VA research projects if there are not enough suitable veteran-patients and cares for them in VA hospitals as part of the research. 38 CFR 17.45 (1996). This final rule further implements § 7303 to specify when and how VA gives free medical treatment to research subjects if their participation in the research adversely affects their health.

Congress gives money to VA in appropriation accounts and restricts how VA may use the money in these accounts. VA pays for medical care and research out of different appropriation accounts. The law requires that, if VA medical care funds pay for the care of research subjects who are not otherwise eligible for VA care, VA research appropriation must reimburse VA medical care appropriation. 38 CFR 17.101(g).

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule concerns individuals. It does not make changes applicable to small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603–604.

There is no Catalogue of Federal Domestic Assistance Program Number.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: February 26, 1998.

Togo D. West, Jr.,
Acting Secretary.

For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. Section 17.85 and an undesignated center heading are added to read as follows:

Research-Related Injuries

§ 17.85 Treatment of research-related injuries to human subjects.

(a) VA medical facilities shall provide necessary medical treatment to a research subject injured as a result of participation in a research project approved by a VA Research and Development Committee and conducted under the supervision of one or more VA employees. This section does not apply to:

(1) Treatment for injuries due to noncompliance by a subject with study procedures, or

(2) Research conducted for VA under a contract with an individual or a non-VA institution.

Note to § 17.85(a)(1) and (a)(2): Veterans who are injured as a result of participation in such research may be eligible for care from VA under other provisions of this part.

(b) Except in the following situations, care for VA research subjects under this section shall be provided in VA medical facilities.

(1) If VA medical facilities are not capable of furnishing economical care or are not capable of furnishing the care or services required, VA medical facility directors shall contract for the needed care.

(2) If inpatient care must be provided to a non-veteran under this section, VA medical facility directors may contract for such care.

(3) If a research subject needs treatment in a medical emergency for a condition covered by this section, VA medical facility directors shall provide reasonable reimbursement for the emergency treatment in a non-VA facility.

(c) For purposes of this section, “VA employee” means any person appointed by VA as an officer or employee and acting within the scope of his or her appointment (VA appoints officers and employees under title 5 and title 38 of the United States Code).

(Authority: 38 U.S.C. 501, 7303)

[FR Doc. 98-5840 Filed 3-5-98; 8:45 am]
BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[FRL-5973-3]

Project XL Site-specific Rulemaking for OSi Specialties, Inc., Sistersville, WV

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is implementing a project under the Project XL program for the OSi Specialties, Inc. plant, a wholly owned subsidiary of Witco Corporation, located near Sistersville, West Virginia (the “Sistersville Plant”). The terms of the XL project are defined in a Final Project Agreement (“FPA”) which was made available for public review and comment. See 62 FR 34748, June 27, 1997. Following a review of the public comments, the FPA was signed by delegates from the EPA, the West Virginia Division of Environmental Protection (“WVDEP”) and Witco Corporation on October 17, 1997. The EPA is today publishing a direct final rule, applicable only to the Sistersville Plant, to facilitate implementation of the XL project.

Today’s action is a site-specific regulatory deferral from the Resource Conservation and Recovery Act (RCRA) organic air emission standards, commonly known as RCRA Subpart CC. The applicability of this site-specific deferral is limited to two existing hazardous waste surface impoundments, and is conditioned on the Sistersville Plant’s compliance with air emission and waste management requirements that have been developed under this XL project. The air emission and waste management requirements are set forth in today’s rulemaking. Today’s action is intended to provide site-specific regulatory changes to implement this XL project. The agency expects this XL project to result in superior environmental performance at the Sistersville Plant, while deferring significant capital expenditures, and thus providing cost savings for the Sistersville Plant.

DATES: This direct final rule is effective on April 1, 1998, unless relevant adverse comments are received by March 27, 1998. If such comments are received, EPA will publish timely notice

in the **Federal Register** withdrawing this rule.

Comments: Public comments on this rulemaking will be accepted until April 1, 1998.

Public Hearing: A public hearing will be held, if requested, to provide interested persons an opportunity for verbal presentation of data, views, or arguments concerning this site-specific rule to implement the Sistersville Plant's XL project. If anyone contacts the EPA requesting to speak at a public hearing by March 16, 1998, a public hearing will be held on March 20, 1998.

ADDRESSES:

Request to Speak at Hearing: Persons wishing to make a verbal presentation must contact Mr. Tad Radzinski at U.S. EPA Region 3. Mr. Tad Radzinski may be contacted at the following: U.S. Environmental Protection Agency, Region 3 (3WC11), 841 Chestnut Street, Philadelphia, PA, 19107-4431, (215) 566-2394.

Comments: Written comments should be mailed to the RCRA Information Center Docket Clerk (5305W), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Please send an original and two copies of all comments, and refer to Docket Number F-98-MCCP-FFFFF.

Docket: A docket containing supporting information used in developing this direct final rule is available for public inspection and copying at the EPA's docket office located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603-9230. Refer to RCRA docket number F-98-MCCP-FFFFF.

A duplicate copy of the docket is available for inspection and copying at U.S. EPA, Region 3, 841 Chestnut Street, Philadelphia, PA, 19107-4431, during normal business hours. Persons wishing to view the duplicate docket at the Philadelphia location are encouraged to contact Mr. Tad Radzinski in advance, by telephoning (215) 566-2394.

FOR FURTHER INFORMATION CONTACT: Mr. Tad Radzinski, U.S. Environmental Protection Agency, Region 3 (3WC11), Waste Chemical Management Division, 841 Chestnut Street, Philadelphia, PA, 19107-4431, (215) 566-2394.

SUPPLEMENTARY INFORMATION: In the proposed rules section of today's **Federal Register**, EPA is proposing and soliciting comments on this rulemaking. In the event that no relevant adverse comments are received by the close of the public comment period, this action will become effective on April 1, 1998.

This rule will become effective without further notice unless the Agency receives relevant adverse comment within 21 days of today's action. Should the Agency receive such comments, it will publish a notice document withdrawing this direct final rule. The EPA would then publish responses to such comments in a subsequent final rule, based on the related action in the proposed rules section of today's **Federal Register**. No additional opportunity for public comment will be provided. Unless this direct final rule is withdrawn, no further rulemakings will be published for this action.

Outline

The information presented in this preamble is organized as follows:

- I. Authority
- II. Background
 - A. Overview of Project XL
 - B. Overview of the OSi Sistersville Plant XL Project
 - 1. Introduction
 - 2. OSi Sistersville Plant XL Project Description and Environmental Benefits
 - 3. Economic Benefits
 - 4. Stakeholder Involvement
 - 5. Regulatory Implementation Approach
 - 6. Project Duration and Completion
- III. Regulatory Requirements and Performance Standards
 - A. Copper Control Requirements
 - B. Methanol Recovery Operation
 - C. Waste Minimization & Pollution Prevention Study
- IV. Additional Information
 - A. Public Hearing
 - B. Executive Order 12866
 - C. Regulatory Flexibility
 - D. Paperwork Reduction Act
 - E. Unfunded Mandates Reform Act
 - F. April 1, 1998 Effective Date

I. Authority

This regulation is being published under the authority of sections 1006, 2002, 3001-3007, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6905, 6912, 6921-6927, 6930, and 6974).

II. Background

A. Overview of Project XL

This site-specific regulation will implement a project developed under Project XL, an EPA initiative to allow regulated entities to achieve better environmental results at less cost. Project XL—"eXcellence and Leadership"—was announced on March 16, 1995, as a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their

own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to the Agency's ability to test new regulatory strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. The Agency intends to evaluate the results of this and other Project XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance. To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria: superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting risk burden. They must have full support of affected Federal, state and tribal agencies to be selected.

For more information about the XL criteria, readers should refer to the two descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997), and the December 1, 1995 "Principles for Development of Project XL Final Project Agreements" document. For further discussion as to how the Sistersville Plant XL project addresses the XL criteria, readers should refer to the notice of availability for this XL project (62 FR 34748, June 27, 1997) and the related documents that were noticed by that **Federal Register** action. Each of these documents is available from the docket for this action (see ADDRESSES section of today's preamble).

The XL program is intended to allow the EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow the EPA to proceed more quickly than would be possible when undertaking changes on a

nationwide basis. As part of this experimentation, the EPA may try out approaches or legal interpretations that depart from or are even inconsistent with longstanding Agency practice, so long as those interpretations are within the broad range of discretion enjoyed by the Agency in interpreting statutes that it implements. The EPA may also modify rules, on a site-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal the EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful in the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, the Agency expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative interpretation again, either generally or for other specific facilities.

The EPA believes that adopting alternative policy approaches and interpretations, on a limited, site-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing re-evaluation of environmental programs, is reflected in a variety of statutory provisions, such as section 8001 of RCRA.

B. Overview of the OSi Sistersville Plant XL Project

1. Introduction

The EPA is today publishing a temporary deferral of RCRA Subpart CC applicable to the Sistersville Plant, to implement key provisions of this Project XL initiative. Today's site-specific temporary deferral supports a Project XL FPA that has been developed by the OSi

Sistersville Plant XL stakeholder group. This group consisted of representatives from the Sistersville Plant, EPA, WVDEP, and the community around the Sistersville Plant. Environmental organizations were encouraged to participate in the stakeholder process; in response, a representative from the Natural Resources Defense Council (NRDC) participated in and provided valuable input to the development of this XL Project and the FPA.

The FPA is available for review in the docket for today's action and also is available on the world wide web at <http://www.epa.gov/ProjectXL>. A **Federal Register** document was published June 27, 1997 at 62 FR 34748 to notify the public of the details of this XL project and to solicit comments on the specific provisions of the FPA, which embodies the Agency's intent to implement this project. The FPA addresses the eight Project XL criteria, and the expectation of the Agency that this XL project will meet those criteria. Those criteria are: (1) Environmental performance superior to what would be achieved through compliance with current and reasonably anticipated future regulations; (2) cost savings or economic opportunity, and/or decreased paperwork burden; (3) stakeholder support; (4) test of innovative strategies for achieving environmental results; (5) approaches that could be evaluated for future broader application; (6) technical and administrative feasibility; (7) mechanisms for monitoring, reporting, and evaluation; and (8) consistency with Executive Order 12898 on Environmental Justice (avoidance of shifting of risk burden). The FPA specifically addresses the manner in which the project is expected to produce, measure, monitor, report, and demonstrate superior environmental benefits.

2. OSi Sistersville Plant XL Project Description and Environmental Benefits

The Sistersville Plant is a specialty chemical manufacturer of silicone products and is located near Sistersville, West Virginia along the east side of the Ohio River. The Sistersville plant produces a family of man-made organo-silicone chemicals which are used in industry and homes throughout the world. The organo-silicones have applications in electronic equipment; aircraft, missile, and space technology; appliance, automotive and metal working production; textile, paper, plastics, and glass fabrication; rubber products; paint, polish, and cosmetics; food processing and preparation; building and highway construction and

maintenance; and chemical reactions and processes.

For this XL Project, the Sistersville Plant will install an incinerator and route the process vents from its polyether methyl capper ("capper") unit to that incinerator for control of organic air emissions. The Sistersville Plant expects to begin implementing these organic air emission controls by April of 1998. There are no currently-applicable regulations that require the Sistersville Plant to install this incinerator or to control the organic emissions from the capper unit. The EPA anticipates that these controls will be required for the Sistersville Plant under the National Emission Standard for Hazardous Air Pollutants for the source category Miscellaneous Organic Chemical Production and Processes ('MON'), scheduled to be published under the authority of Section 112 of the Clean Air Act ('CAA'). The MON is currently scheduled to be published as a final rulemaking in November of 2000, with air emission controls expected to be required approximately three years later. Under this XL project, the Sistersville Plant will install and operate organic air emission controls on the capper unit approximately five years earlier than EPA expects the controls to be required by the MON. Based on current production levels, the Sistersville Plant estimates these incinerator vent controls will reduce the facility's organic air emissions by about 309,000 pounds per year.

The Sistersville Plant will also recover and reuse an estimated 500,000 pounds per year of methanol that would otherwise be disposed of through the on-site wastewater treatment system, and will reduce approximately 50,000 pounds per year of organic air emissions from the wastewater treatment system. These modifications will reduce sludge generation from the wastewater system, that would otherwise be disposed of in an onsite landfill, by an estimated 815,000 pounds per year. In addition, the Sistersville Plant has committed to conduct a waste minimization/pollution prevention ('WMPP') study which is expected to result in additional reductions in waste generation at the facility. These initiatives are described further in section III of today's preamble. Absent today's action, there are no existing or anticipated applicable regulations that would require the Sistersville Plant to perform the environmentally beneficial measures of the methanol recovery and WMPP initiatives.

As an incentive for the Sistersville Plant to install the incinerator vent controls, recover and re-use the

methanol, and to conduct the WMPP study, the EPA considers it appropriate to temporarily defer other regulatory requirements applicable to the Sistersville Plant. Specifically, EPA is today publishing a temporary, conditional deferral from the RCRA Subpart CC organic air emission control requirements applicable to the facility's two hazardous waste surface impoundments. The deferral is from the RCRA Subpart CC surface impoundment standards codified at 40 CFR 264.1085 and 40 CFR 265.1086, as well as associated requirements that are referenced in or by 40 CFR 264.1085 and 265.1086 that would otherwise apply to the two hazardous waste surface impoundments. The provisions of 40 CFR 264.1085 and 265.1086 would have required the Sistersville Plant to install organic vapor suppressing covers on the two existing hazardous waste surface impoundments. The deferred provisions referenced in or by 40 CFR 264.1085 and 265.1086 are the compliance assurance requirements that directly relate to the air emission control requirements for surface impoundments codified at 40 CFR 264.1085 and 265.1086. Since EPA is today temporarily deferring the requirements for the Sistersville Plant to comply with the RCRA Subpart CC air emission control requirements applicable to its two hazardous waste surface impoundments, EPA is also temporarily deferring those requirements directly related to air emission controls on surface impoundments; specifically, the inspection and monitoring requirements codified at 40 CFR 264.1088 and 265.1089, the recordkeeping requirements codified at 40 CFR 264.1089 and 265.1090, and the reporting requirements codified at 40 CFR 264.1090, as each relate to the two hazardous waste surface impoundments at the Sistersville Plant.

The Sistersville Plant estimates that, if implemented, installation and operation of the required RCRA Subpart CC air emission controls on the two surface impoundments would result in a total organic emission reduction of 45,000 pounds per year. In lieu of installing surface impoundment covers to comply with RCRA Subpart CC (either in absence of this XL project, or when this project concludes), the Sistersville Plant plans to close the two hazardous waste impoundments, and install two wastewater treatment tanks to serve in their place. The replacement wastewater treatment tanks would most likely be exempt from RCRA requirements, under 40 CFR 264.1(g)(6) and 40 CFR

265.1(c)(10); thus, the RCRA Subpart CC standards would not be applicable to those tanks. There are no currently-applicable regulations that would require air emission controls on such tanks; however, the Agency anticipates that the MON will be applicable to such tanks, and may require that they be equipped with organic emission controls. Therefore, it is reasonable to assume that in absence of this XL Project, the organic air emissions attributed to the Sistersville Plant's two hazardous waste surface impoundments would be transferred to two RCRA-exempt wastewater treatment tanks, and would not be controlled for approximately five years.

3. Economic Benefits

The Sistersville Plant estimates that the costs it will incur as a result of the RCRA Subpart CC standards being applicable to its two hazardous waste surface impoundments would be \$2,500,000. Of that total, \$2,000,000 would be for construction of wastewater treatment tanks to replace the surface impoundments, and \$500,000 would be for performance of RCRA closure requirements for the two existing hazardous waste impoundments. In contrast to these compliance options, the Sistersville Plant estimates that the cost to install the incinerator and the process vent controls on the copper unit, to implement the methanol recovery operation, and to conduct the WMPP initiatives will be \$700,000.

The Sistersville Plant considers it economically beneficial to spend the resources to install a thermal incinerator and process vent controls five years before those controls are likely to be required by federal regulation, and to implement a methanol recovery operation and implement a WMPP study, in exchange for deferring for five years the cost of \$2,500,000 that they estimate would be required to implement their planned approach to the RCRA Subpart CC surface impoundment requirements.

4. Stakeholder Involvement

Stakeholder involvement during the Project development stage was cultivated in several ways. The methods included communicating through the media (newspaper and radio announcements), directly contacting interested parties, and offering an educational program on the regulatory programs impacted by the XL project. Stakeholders have been kept informed on the project status via mailing lists, newspaper articles, public meetings and the establishment of a public file at the

Sistersville Public Library and EPA Region 3 offices.

A local environmental group, the Ohio Valley Environmental Coalition, was contacted but stated that they did not have time to participate actively in the development of the XL project. However, a representative from NRDC, a national environmental interest group, has participated in conference call meetings with the Project XL team and provided comments during the development of the FPA. This representative continues to be notified of all XL project meetings and activities. There are few residences located near the facility, and, therefore, few local stakeholders other than employees of the facility have expressed interest in actively participating in the development of the project. However, the Sistersville Plant has provided stakeholders with regular Project development updates by circulating meeting and conference call minutes. In June of 1997, an announcement of the availability of the draft FPA was published in local newspapers and the **Federal Register**, and the draft FPA was widely distributed for public comment. In addition, during the public comment period the Sistersville Plant hosted a general public meeting to present the draft FPA. In response to a request from the Environmental Defense Fund, EPA extended the public comment period on the proposed FPA by 30 days. EPA received four very positive comments during the public comment period for the draft FPA. After the comment period had closed, a comment letter was received from a citizen who was concerned about the installation of what he believed was a toxic waste incinerator. EPA has responded to this citizen's concern by providing further explanation of the project and the environmental benefits that will result from the installation and operation of the vent incinerator as well as other aspects of the project. Copies of all the comment letters, as well as EPA's response to the concerned citizen's letter, are located in the rulemaking Docket (see the **ADDRESSES** section of today's preamble).

As this XL project continues to be implemented, the stakeholder involvement program will shift its focus to ensure that: (1) Stakeholders are apprised of the status of project construction and operation, and (2) stakeholders have access to information sufficient to judge the success of this Project XL initiative. Anticipated stakeholder involvement during the term of the project will likely include other general public meetings to present periodic status reports, availability of

data and other information generated, and appointment of an OSi Sistersville Plant Project XL contact at the facility to serve as a resource for the community. In addition to the EPA and WVDEP reporting requirements of today's rulemaking, the FPA includes provisions whereby the Sistersville Plant will make copies of semiannual and annual project reports available to all interested parties. A public file on this XL project has been maintained at the local Sistersville library throughout project development, and will continue to be updated as the project is implemented.

A detailed description of this program and the stakeholder support for this project is included in the Final Project Agreement, which is available through the docket or through EPA's Project XL site on the Internet (see ADDRESSES section of this preamble).

5. Regulatory Implementation Approach

Today's action would provide the Sistersville Plant with a temporary, conditional deferral from the applicability of certain existing RCRA Subpart CC regulatory requirements. This action would allow the Sistersville Plant to continue to operate the two hazardous waste surface impoundments without installing the organic air emission controls that are required for those types of units under the RCRA Subpart CC Federal regulations. Today's site-specific deferral from RCRA Subpart CC surface impoundment requirements is conditioned upon the Sistersville Plant's continuous compliance with the environmentally beneficial initiatives that were developed for this XL project. Those initiatives are described in Section III.A of today's preamble, and further detailed in the FPA.

The state of West Virginia is not yet authorized under the Hazardous and Solid Waste Amendments (HSWA) to implement the RCRA Subpart CC air regulations. However, West Virginia regulations, codified in 45 Code of State Regulations 25 ("WV 45 CSR 25"), contain the same technical requirements as the Federal regulations of RCRA Subpart CC. The Sistersville Plant is subject to the West Virginia State Regulations, which would include requirements that the two hazardous waste surface impoundments be operated with organic air emission controls. Thus, to implement this XL project, the WVDEP and the Sistersville Plant have negotiated and executed a consent order under the authority of W.Va. Code § 22-4-5. A copy of that consent order is available in the docket for today's rulemaking. The consent

order defers application of the organic air emission requirements of WV 45 CSR 25, which would otherwise be applicable to the hazardous waste surface impoundments at the Sistersville Plant. The state consent order will implement the deferral from WV 45 CSR 25 for the same effective period that today's rulemaking will implement a temporary, conditional deferral from Federal RCRA Subpart CC requirements. Essentially, the consent order implements this XL project at the State level, while today's rulemaking implements the project at the Federal level.

West Virginia is expected to adopt today's rulemaking during their 1999 State Legislative Session. After that adoption, WVDEP will directly implement the Code of State Regulations ("CSR") that contain the temporary, conditional deferral of today's rulemaking. As with today's rulemaking, the state consent order's temporary deferral from WV 45 CSR 25 surface impoundment requirements is conditioned upon the Sistersville Plant's continuous compliance with the environmentally beneficial requirements developed under this XL project. Similarly, when today's Federal rulemaking is adopted into the West Virginia CSR, as described above, the Sistersville Plant will be required to comply with those environmental requirements in order to maintain the temporary deferral from surface impoundment requirements of WV 45 CSR 25. The state adoption of today's rulemaking will result in a slight change in the way this XL project is implemented at the state level, but it will not result in any changes to the environmentally beneficial requirements to which the Sistersville Plant is subject, or to the nature of the Sistersville Plant's deferral from hazardous waste surface impoundment air emission control requirements.

It is the intent of the EPA and the WVDEP to incorporate the provisions of today's rulemaking and the WV state consent order into the Sistersville Plant's permits, as appropriate. This would be accomplished in the normal course of reissuance of the RCRA part B permit, and in any other permits when issued in their normal course. Although today's rulemaking action temporarily defers the applicability of RCRA Subpart CC air emission control requirements to the two hazardous waste surface impoundments, today's action does not affect the Sistersville Plant's RCRA permitting requirements under 40 CFR 270.27. Those permitting requirements are applicable to air emission control equipment operated in

accordance with RCRA Subpart CC. Today's action temporarily defers the applicability of those air emission control requirements to the Sistersville Plant surface impoundments; but if there is a time that the Sistersville Plant installs air emission controls on those hazardous waste surface impoundments, the applicable information would be required to be reflected in the Plant's RCRA part B permit.

The only Federal regulation that today's temporary, conditional deferral affects is the RCRA Subpart CC organic air emission standards. Furthermore, the only aspect of those standards that today's rulemaking affects is the applicability of the organic air emission standards to the two hazardous waste surface impoundments at the Sistersville Plant. Similarly, the only State regulatory requirements that are affected by the state consent order are WV 45 CSR 25 requirements applicable to organic air emission controls for the two hazardous waste surface impoundments at the Sistersville Plant. The EPA emphasizes that today's rulemaking action, and the state consent order that parallels today's action, do not affect the provisions or applicability of any other existing or future regulations; furthermore, the applicability of today's rulemaking and the parallel state consent order are limited in scope to the Sistersville Plant.

6. Project Duration and Completion

As with all XL projects testing alternative environmental protection strategies, the term of the Sistersville Plant XL project is one of limited duration. Section 264.1080(f)(3) of today's rule provides that the temporary deferral of the RCRA Subpart CC air emission requirements for the surface impoundments at the Sistersville Plant will expire on the "MON Compliance Date." Today's rule defines the "MON Compliance Date" as three years after the effective date of the MON. As described in Section II.B.2 of this preamble, air emission controls for the MON source category are scheduled to become final in late 2000, and air emission controls for MON sources are to be required three years after that date. Accordingly, this XL project will not continue after that time, and the Sistersville Plant will thereafter be subject to those requirements deferred by today's rule, if applicable. However, the Sistersville Plant may propose to EPA a new Project XL to take effect after that time.

Today's rule provides for an orderly transition from the requirements of this XL project to those requirements which

will apply to the facility after the project ends. Pursuant to 40 CFR 264.1080(f)(3)(ii) and 264.1080(g)(1)(ii) of today's rulemaking, the Sistersville Plant is required to submit to EPA an implementation schedule specifying how the Sistersville Plant will come into compliance with the requirements that are deferred by today's rule. The implementation schedule must be submitted to EPA eighteen months prior to the MON Compliance Date, and must meet the requirements of 40 CFR 264.1080(g)(1)(ii) of today's rule. In no event will the implementation schedule extend beyond the MON Compliance Date. The implementation schedule submitted by the Sistersville Plant must contain interim calendar, or "milestone," dates for the purchase and installation of equipment, performance testing, and other measures as may be necessary for the Sistersville Plant to come into compliance with the deferred requirements.

Today's rule provides that the Sistersville Plant has the option within the above-described transitional period to *either* install equipment and take such other steps as may be necessary to comply with the deferred requirements (i.e., to bring the surface impoundments into compliance with 40 CFR 264.1085), *or* to install equipment and undertake such modifications as may be necessary so as to preclude the application of the deferred requirements (i.e., such that 40 CFR 264.1085 is no longer applicable). Regardless of which approach the Sistersville Plant selects, those changes must be fully completed and implemented by the MON Compliance Date in order to provide uninterrupted environmental benefits, and a seamless transition for the Sistersville Plant to move from its XL project requirements to its otherwise applicable requirements.

Because Project XL is a voluntary and experimental program, today's rule contains provisions that allow the project to conclude prior to the MON Compliance Date, in the event that it is desirable or necessary to do so. For example, an early conclusion (or revocation "for cause" as set forth in 40 CFR 264.1080(f)(3)(iv) of today's rule) would be warranted if the project's environmental benefits do not meet the Project XL requirement for the achievement of "superior" environmental results, or if the capper unit is removed from service at the facility and no environmental benefits are realized from the air emission controls installed on the capper under this XL project. In addition, new laws or regulations may become applicable to the Sistersville Plant during the project

term which might render the project impractical, or might contain regulatory requirements that supersede the "superior" environmental benefits that the Sistersville Plant is achieving under this project. Finally, upon reviewing a proposed transfer of ownership under 40 CFR 264.1080(f)(7) of today's rule, the Agency might determine that a future owner or operator of the facility does not adequately implement this XL project. Similarly, the Sistersville Plant may also request that the temporary deferral be revoked prior to the MON Compliance Date if this experimental project does not provide sufficient benefits for the company to justify continued participation. If an early conclusion to the project is determined to be appropriate, 40 CFR 264.1085(f)(3)(iv) of today's rule provides a mechanism for EPA to legally conclude the project prior to the MON Compliance Date, which would trigger the eighteen-month transitional period described earlier in this preamble discussion.

While both EPA and the Sistersville Plant have broad discretion and latitude to initiate an early conclusion of the project, both expect to exercise their good faith and judgment in determining whether exercising this option is appropriate. In this respect, and as provided in the FPA, EPA expects that it would not be necessary to exercise its discretion under this provision to conclude this project for "minor" noncompliance by the Sistersville Plant. However, as with any failure to comply with EPA regulations, the Agency retains its full authority to bring a formal or informal enforcement action (if necessary) to bring the Sistersville Plant back into compliance. Though the Agency has the option of concluding this project for noncompliance, EPA expects that this would be appropriate in response to material noncompliance by the Sistersville Plant (e.g., substantial or repeated violations, failure to disclose material facts during the FPA development, etc.).

Finally, in the event that the XL project concludes (for whatever reason) prior to the MON Compliance Date, the Sistersville Plant must submit and comply with an implementation schedule (as described earlier in this preamble section) setting forth how the Sistersville Plant will come into compliance within the eighteen-month transitional period. The schedule shall reflect the Sistersville Plant's intent to use its best efforts to come into compliance as quickly as practicable within the eighteen-month transitional period; in no event will the implementation schedule extend

beyond the MON Compliance Date. There is an important exception to the provision for an eighteen-month transitional period: if project conclusion occurs less than eighteen months prior to the MON Compliance Date, the Sistersville Plant still must come into compliance with all applicable requirements no later than the MON Compliance Date. In other words, concluding the project during the eighteen-month transitional period prior to the MON Compliance Date does not operate to extend the temporary conditional deferral beyond the MON Compliance Date.

III. Regulatory Requirements and Performance Standards

A. Capper Unit Control Requirements

Under this XL project, the Sistersville Plant will reduce air emissions and waste that would otherwise be generated by its capper unit. The organic air emission reduction will be accomplished by installing a vent system to collect the organic emissions from the capper unit process vents, and routing the organic vent stream to a thermal incinerator. The thermal vent incinerator will be required to reduce the organics in the vent stream 98% by weight. Upon installation of the thermal incinerator, the Sistersville Plant will conduct an initial performance test for the thermal incinerator, to determine an operating temperature that they consider appropriate to achieve the required 98% organic reduction. At that time, the Sistersville Plant will also conduct an initial inspection of the vent system to ensure there are no leaks, so that all organics collected in the vent system are routed to the thermal incinerator for treatment. Throughout the duration of this project, the Sistersville Plant will continue to monitor the thermal incinerator operating temperature, as an indication that the thermal vent incinerator is achieving the 98% organic reduction from the process vent stream. The EPA considers it appropriate to assume that operating the thermal vent incinerator at or above the temperature determined in the initial performance test will provide an adequate level of assurance that the incinerator is achieving an organic destruction efficiency of 98% by weight. However, since the achievement of the environmental benefits from this XL project is very dependent on the effectiveness of this thermal vent incinerator, the EPA may, at some time during the project term, consider it appropriate to request that the Sistersville Plant verify that the incinerator operating temperature is

achieving the required 98% reduction in organics.

B. Methanol Recovery

In addition to the organic air emission controls that the Sistersville Plant shall operate, this XL project will also result in a reduction of methanol discharged from the copper unit to the facility's wastewater treatment system. To accomplish this, the Sistersville Plant will operate a methanol recovery system that will collect the methanol that would otherwise be sent to the facility's on-site wastewater treatment system. The Sistersville Plant will attempt to recycle and re-use the collected methanol on-site, in lieu of virgin methanol. If the Sistersville Plant does not consider such re-use to be an economically feasible endeavor, it will attempt to sell the collected methanol to other facilities, for use in place of virgin methanol or for recovery. Only if these first two approaches are not viable, would the Sistersville Plant dispose of the collected methanol by routing it for thermal recovery, treatment, or bio-treatment. For the expected term of this XL project, the Sistersville Plant shall ensure that no more than five percent of the collected methanol is subject to bio-treatment; however, if the project is revoked prior to the MON Compliance Date, the Sistersville Plant is not subject to that five percent limit.

C. Waste Minimization/Pollution Prevention Study

An additional environmental benefit of this XL project is that the Sistersville Plant will conduct a WMPP study to explore new initiatives that could be employed at the facility. The Sistersville Plant shall conduct the WMPP study to identify and implement source reduction opportunities (as defined in EPA's Hazardous Waste Minimization National Plan, November 1994 (EPA 530/R-94/045) ("National Plan")). The purposes of source reduction opportunities are to: (1) Reduce the amount of any hazardous substance, pollutant, or contaminant entering a waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and (2) reduce the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants. For those waste streams that the Sistersville Plant concludes cannot be reduced at the source, the WMPP initiative will identify sound recycling opportunities (as defined in the National Plan), and evaluate the feasibility of implementing such recycling opportunities at the

Sistersville Plant. One focus of the WMPP initiative shall be the reduction of specific constituents listed in 40 CFR 264.1080(f)(8) of today's rulemaking, to the extent that such constituents are found in waste streams at the Sistersville Plant.

IV. Additional Information

A. Public Hearing

A public hearing will be held, if requested, to provide opportunity for interested persons to make verbal presentations regarding this regulation in accordance with 42 U.S.C. § 7004(b)(1); 40 CFR part 25. Persons wishing to make a verbal presentation on the site specific rule to implement the OSi Sistersville Plant XL project should contact Mr. Tad Radzinski of the Region 3 EPA office, at the address given in the **ADDRESSES** section of this document. Any member of the public may file a written statement before the hearing, or after the hearing, to be received by EPA no later than March 27, 1998. Written statements should be sent to EPA at the addresses given in the **ADDRESSES** section of this document. If a public hearing is held, a verbatim transcript of the hearing, and written statements provided at the hearing will be available for inspection and copying during normal business hours at the EPA addresses for docket inspection given in the **ADDRESSES** section of this preamble.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this final rule would be significantly less than \$100 million and would not meet any of the other criteria specified in the Executive Order, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be sixty days. However, in consideration of the very limited scope of today's site-specific rulemaking, and the previous opportunity for public comment (which included the details of today's rulemaking) that EPA provided with the proposed FPA (see 62 FR 34748, June 27, 1997), the EPA considers twenty-one days to be sufficient in providing a meaningful public comment period for today's action.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule will not have a significant impact on a substantial number of small entities because it only affects one facility, the OSi Sistersville Plant in Sistersville, West Virginia. The Sistersville Plant is not a small entity. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

The Congressional Review Act, 5 U.S.C. Section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. Section 804, however, exempts from Section 801 the following types of rules: rules of particular applicability; rules relating to Agency management or personnel; and rules of Agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-Agency parties. 5 U.S.C. Section 804(3). EPA is not required to submit a rule report regarding today's action under Section

801 because this is a rule of particular applicability.

D. Paperwork Reduction Act

This action applies only to one company, and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule is applicable only to the OSi Sistersville Plant, located near Sistersville, West Virginia. The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect

small governments. EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. April 1, 1998 Effective Date

The Agency finds that good cause exists under section 3010(b)(3) of RCRA (42 U.S.C. 6903(b)(3)) to publish this site-specific regulation as a direct final rule with an effective date less than six months from date of promulgation. Today's direct final rule affects only one facility, and is limited in its scope to a temporary conditional deferral of a relatively narrow set of RCRA regulations. As such, it is designed to provide greater flexibility only to the OSi Specialties, Inc. Sistersville Plant, and does not impose additional regulatory requirements on other regulated entities.

In addition, the local community to be affected by this XL project, as well as other interested stakeholders, have been involved during the development of this pilot project. In addition to regular consultations and information exchanges, there also was opportunity for the public to comment on the features represented by this XL project. A **Federal Register** publication announced the availability of the proposed FPA for this XL project, and provided a 30 day public comment period. See 62 FR 34748, June 27, 1997. Today's direct final rule does not represent a significant departure from the terms and conditions contained in that FPA.

List of Subjects

40 CFR Part 264

Environmental protection, Air pollution control, Control device, Hazardous waste, Monitoring, Reporting and recordkeeping requirements, Surface impoundment, Treatment storage and disposal facility, Waste determination.

40 CFR Part 265

Environmental protection, Air pollution control, Control device, Hazardous waste, Monitoring, Reporting and recordkeeping requirements, Surface impoundment, Treatment storage and disposal facility, Waste determination.

Dated: February 26, 1998.

Carol M. Browner,
Administrator.

For the reasons set forth in the preamble, parts 264 and 265 of chapter I of title 40 of the Code of Federal Regulations are amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

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

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

2. Section 264.1080 is amended by adding paragraphs (f) and (g) to read as follows:

§ 264.1080 Applicability.

* * * * *

(f) This paragraph (f) applies only to the facility commonly referred to as the OSi Specialties Plant, located on State Route 2, Sistersville, West Virginia ("Sistersville Plant").

(1)(i) Provided that the Sistersville Plant is in compliance with the requirements of paragraph (f)(2) of this section, the requirements referenced in paragraphs (f)(1)(iii) and (f)(1)(iv) of this section are temporarily deferred, as specified in paragraph (f)(3) of this section, with respect to the two hazardous waste surface impoundments at the Sistersville Plant. Beginning on the date that paragraph (f)(1)(ii) of this section is first implemented, the temporary deferral described in this paragraph shall no longer be effective.

(ii)(A) In the event that a notice of revocation is issued pursuant to paragraph (f)(3)(iv) of this section, the requirements referenced in paragraphs (f)(1)(iii) and (f)(1)(iv) of this section are temporarily deferred, with respect to the two hazardous waste surface impoundments, provided that the Sistersville Plant is in compliance with the requirements of paragraphs (f)(2)(ii), (f)(2)(iii), (f)(2)(iv), (f)(2)(v), (f)(2)(vi) and (g) of this section, except as provided under paragraph (f)(1)(ii)(B) of this section. The temporary deferral described in the previous sentence shall be effective beginning on the date the Sistersville Plant receives written notification of revocation, and continuing for a maximum period of 18 months from that date, provided that the Sistersville Plant is in compliance with

the requirements of paragraphs (f)(2)(ii), (f)(2)(iii), (f)(2)(iv), (f)(2)(v), (f)(2)(vi) and (g) of this section at all times during that 18-month period. In no event shall the temporary deferral continue to be effective after the MON Compliance Date as defined in paragraph (f)(6) of this section.

(B) In the event that a notification of revocation is issued pursuant to paragraph (f)(3)(iv) of this section as a result of the permanent removal of the copper unit from methyl capped polyether production service, the requirements referenced in paragraphs (f)(1)(iii) and (f)(1)(iv) of this section are temporarily deferred, with respect to the two hazardous waste surface impoundments, provided that the Sistersville Plant is in compliance with the requirements of paragraphs (f)(2)(vi), and (g) of this section. The temporary deferral described in the previous sentence shall be effective beginning on the date the Sistersville Plant receives written notification of revocation, and continuing for a maximum period of 18 months from that date, provided that the Sistersville Plant is in compliance with the requirements of paragraphs (f)(2)(vi) and (g) of this section at all times during that 18-month period. In no event shall the temporary deferral continue to be effective after the MON Compliance Date.

(iii) The standards in § 264.1085 of this part, and all requirements referenced in or by § 264.1085 that otherwise would apply to the two hazardous waste surface impoundments, including the closed-vent system and control device requirements of § 264.1087 of this part.

(iv) The reporting requirements of § 264.1090 of this part that are applicable to surface impoundments and/or to closed-vent systems and control devices associated with a surface impoundment.

(2) Notwithstanding the effective period and revocation provisions in paragraph (f)(3) of this section, the temporary deferral provided in paragraph (f)(1)(i) of this section is effective only if the Sistersville Plant meets the requirements of paragraph (f)(2) of this section.

(i) The Sistersville Plant shall install an air pollution control device on the polyether methyl copper unit ("copper unit"), implement a methanol recovery operation, and implement a waste minimization/pollution prevention ("WMPP") project. The installation and implementation of these requirements shall be conducted according to the schedule described in paragraphs (f)(2)(i) and (f)(2)(vi) of this section.

(A) The Sistersville Plant shall complete the initial start-up of a thermal incinerator on the copper unit's process vents from the first stage vacuum pump, from the flash pot and surge tank, and from the water stripper, no later than April 1, 1998.

(B) The Sistersville Plant shall provide to the EPA and the West Virginia Department of Environmental Protection, written notification of the actual date of initial start-up of the thermal incinerator, and commencement of the methanol recovery operation. The Sistersville Plant shall submit this written notification as soon as practicable, but in no event later than 15 days after such events.

(ii) The Sistersville Plant shall install and operate the copper unit process vent thermal incinerator according to the requirements of paragraphs (f)(2)(ii)(A) through (f)(2)(ii)(D) of this section.

(A) Copper unit process vent thermal incinerator.

(1) Except as provided under paragraph (f)(2)(ii)(D) of this section, the Sistersville Plant shall operate the process vent thermal incinerator such that the incinerator reduces the total organic compounds ("TOC") from the process vent streams identified in paragraph (f)(2)(i)(A) of this section, by 98 weight-percent, or to a concentration of 20 parts per million by volume, on a dry basis, corrected to 3 percent oxygen, whichever is less stringent.

(i) Prior to conducting the initial performance test required under paragraph (f)(2)(ii)(B) of this section, the Sistersville Plant shall operate the thermal incinerator at or above a minimum temperature of 1600 Fahrenheit.

(ii) After the initial performance test required under paragraph (f)(2)(ii)(B) of this section, the Sistersville Plant shall operate the thermal incinerator at or above the minimum temperature established during that initial performance test.

(iii) The Sistersville Plant shall operate the process vent thermal incinerator at all times that the copper unit is being operated to manufacture product.

(2) The Sistersville Plant shall install, calibrate, and maintain all air pollution control and monitoring equipment described in paragraphs (f)(2)(i)(A) and (f)(2)(ii)(B)(3) of this section, according to the manufacturer's specifications, or other written procedures that provide adequate assurance that the equipment can reasonably be expected to control and monitor accurately, and in a manner consistent with good

engineering practices during all periods when emissions are routed to the unit.

(B) The Sistersville Plant shall comply with the requirements of paragraphs (f)(2)(ii)(B)(1) through (f)(2)(ii)(B)(3) of this section for performance testing and monitoring of the copper unit process vent thermal incinerator.

(1) Within sixty (60) days after thermal incinerator initial start-up, the Sistersville Plant shall conduct a performance test to determine the minimum temperature at which compliance with the emission reduction requirement specified in paragraph (f)(4) of this section is achieved. This determination shall be made by measuring TOC minus methane and ethane, according to the procedures specified in paragraph (f)(2)(ii)(B) of this section.

(2) The Sistersville Plant shall conduct the initial performance test in accordance with the standards set forth in paragraph (f)(4) of this section.

(3) Upon initial start-up, the Sistersville Plant shall install, calibrate, maintain and operate, according to manufacturer's specifications and in a manner consistent with good engineering practices, the monitoring equipment described in paragraphs (f)(2)(ii)(B)(3)(i) through (f)(2)(ii)(B)(3)(iii) of this section.

(i) A temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall be installed in the firebox or in the duct work immediately downstream of the firebox in a position before any substantial heat exchange is encountered.

(ii) A flow indicator that provides a record of vent stream flow to the incinerator at least once every fifteen minutes. The flow indicator shall be installed in the vent stream from the process vent at a point closest to the inlet of the incinerator.

(iii) If the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a bypass flow indicator or a seal or locking device as specified in this paragraph. For the purpose of complying with this paragraph, low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring-loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices. If a bypass flow indicator is used to comply with this paragraph, the bypass flow indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to

the atmosphere at a point upstream of the control device inlet. If a seal or locking device (e.g., car-seal or lock-and-key configuration) is used to comply with this paragraph, the device shall be placed on the mechanism by which the bypass device position is controlled (e.g., valve handle, damper levels) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. The Sistersville Plant shall visually inspect the seal or locking device at least once every month to verify that the bypass mechanism is maintained in the closed position.

(C) The Sistersville Plant shall keep on-site an up-to-date, readily accessible record of the information described in paragraphs (f)(2)(ii)(C)(I) through (f)(2)(ii)(C)(4) of this section.

(1) Data measured during the initial performance test regarding the firebox temperature of the incinerator and the percent reduction of TOC achieved by the incinerator, and/or such other information required in addition to or in lieu of that information by the WVDEP in its approval of equivalent test methods and procedures.

(2) Continuous records of the equipment operating procedures specified to be monitored under paragraph (f)(2)(ii)(B)(3) of this section, as well as records of periods of operation during which the firebox temperature falls below the minimum temperature established under paragraph (f)(2)(ii)(A)(1) of this section.

(3) Records of all periods during which the vent stream has no flow rate to the extent that the copper unit is being operated during such period.

(4) Records of all periods during which there is flow through a bypass device.

(D) The Sistersville Plant shall comply with the start-up, shutdown, maintenance and malfunction requirements contained in paragraphs (f)(2)(ii)(D)(1) through (f)(2)(ii)(D)(6) of this section, with respect to the copper unit process vent incinerator.

(1) The Sistersville Plant shall develop and implement a Start-up, Shutdown and Malfunction Plan as required by the provisions set forth in paragraph (f)(2)(ii)(D) of this section. The plan shall describe, in detail, procedures for operating and maintaining the thermal incinerator during periods of start-up, shutdown and malfunction, and a program of corrective action for malfunctions of the thermal incinerator.

(2) The plan shall include a detailed description of the actions the Sistersville Plant will take to perform

the functions described in paragraphs (f)(2)(ii)(D)(2)(i) through (f)(2)(ii)(D)(2)(iii) of this section.

(i) Ensure that the thermal incinerator is operated in a manner consistent with good air pollution control practices.

(ii) Ensure that the Sistersville Plant is prepared to correct malfunctions as soon as practicable after their occurrence in order to minimize excess emissions.

(iii) Reduce the reporting requirements associated with periods of start-up, shutdown and malfunction.

(3) During periods of start-up, shutdown and malfunction, the Sistersville Plant shall maintain the process unit and the associated thermal incinerator in accordance with the procedures set forth in the plan.

(4) The plan shall contain record keeping requirements relating to periods of start-up, shutdown or malfunction, actions taken during such periods in conformance with the plan, and any failures to act in conformance with the plan during such periods.

(5) During periods of maintenance or malfunction of the thermal incinerator, the Sistersville Plant may continue to operate the copper unit, provided that operation of the copper unit without the thermal incinerator shall be limited to no more than 240 hours each calendar year.

(6) For the purposes of paragraph (f)(2)(iii)(D) of this section, the Sistersville Plant may use its operating procedures manual, or a plan developed for other reasons, provided that plan meets the requirements of paragraph (f)(2)(iii)(D) of this section for the start-up, shutdown and malfunction plan.

(iii) The Sistersville Plant shall operate the closed-vent system in accordance with the requirements of paragraphs (f)(2)(ii)(A) through (f)(2)(ii)(D) of this section.

(A) Closed-vent system.

(1) At all times when the process vent thermal incinerator is operating, the Sistersville Plant shall route the vent streams identified in paragraph (f)(2)(i) of this section from the copper unit to the thermal incinerator through a closed-vent system.

(2) The closed-vent system will be designed for and operated with no detectable emissions, as defined in paragraph (f)(6) of this section.

(B) The Sistersville Plant will comply with the performance standards set forth in paragraph (f)(2)(iii)(A)(1) of this section on and after the date on which the initial performance test referenced in paragraph (f)(2)(ii)(B) of this section is completed, but no later than sixty (60) days after the initial start-up date.

(C) The Sistersville Plant shall comply with the monitoring requirements of paragraphs (f)(2)(iii)(C)(1) through (f)(2)(iii)(C)(3) of this section, with respect to the closed-vent system.

(1) At the time of the performance test described in paragraph (f)(2)(ii)(B) of this section, the Sistersville Plant shall inspect the closed-vent system as specified in paragraph (f)(5) of this section.

(2) At the time of the performance test described in paragraph (f)(2)(ii)(B) of this section, and annually thereafter, the Sistersville Plant shall inspect the closed-vent system for visible, audible, or olfactory indications of leaks.

(3) If at any time a defect or leak is detected in the closed-vent system, the Sistersville Plant shall repair the defect or leak in accordance with the requirements of paragraphs (f)(2)(iii)(C)(3)(i) and (f)(2)(iii)(C)(3)(ii) of this section.

(i) The Sistersville Plant shall make first efforts at repair of the defect no later than five (5) calendar days after detection, and repair shall be completed as soon as possible but no later than forty-five (45) calendar days after detection.

(ii) The Sistersville Plant shall maintain a record of the defect repair in accordance with the requirements specified in paragraph (f)(2)(iii)(D) of this section.

(D) The Sistersville Plant shall keep on-site up-to-date, readily accessible records of the inspections and repairs required to be performed by paragraph (f)(2)(iii) of this section.

(iv) The Sistersville Plant shall operate the methanol recovery operation in accordance with paragraphs (f)(2)(iv)(A) through (f)(2)(iv)(C) of this section.

(A) The Sistersville Plant shall operate the condenser associated with the methanol recovery operation at all times during which the copper unit is being operated to manufacture product.

(B) The Sistersville Plant shall comply with the monitoring requirements described in paragraphs (f)(2)(B)(1) through (f)(2)(B)(3) of this section, with respect to the methanol recovery operation.

(1) The Sistersville Plant shall perform measurements necessary to determine the information described in paragraphs (f)(2)(iv)(B)(1)(i) and (f)(2)(iv)(B)(1)(ii) of this section to demonstrate the percentage recovery by weight of the methanol contained in the influent gas stream to the condenser.

(i) Information as is necessary to calculate the annual amount of methanol generated by operating the copper unit.

(ii) The annual amount of methanol recovered by the condenser associated with the methanol recovery operation.

(2) The Sistersville Plant shall install, calibrate, maintain and operate according to manufacturer specifications, a temperature monitoring device with a continuous recorder for the condenser associated with the methanol recovery operation, as an indicator that the condenser is operating.

(3) The Sistersville Plant shall record the dates and times during which the capper unit and the condenser are operating.

(C) The Sistersville Plant shall keep on-site up-to-date, readily-accessible records of the parameters specified to be monitored under paragraph (f)(2)(iv)(B) of this section.

(v) The Sistersville Plant shall comply with the requirements of paragraphs (f)(2)(v)(A) through (f)(2)(v)(C) of this section for the disposition of methanol collected by the methanol recovery operation.

(A) On an annual basis, the Sistersville Plant shall ensure that a minimum of 95% by weight of the methanol collected by the methanol recovery operation (also referred to as the "collected methanol") is utilized for reuse, recovery, or thermal recovery/treatment. The Sistersville Plant may use the methanol on-site, or may transfer or sell the methanol for reuse, recovery, or thermal recovery/treatment at other facilities.

(1) Reuse. To the extent reuse of all of the collected methanol destined for reuse, recovery, or thermal recovery is not economically feasible, the Sistersville Plant shall ensure the residual portion is sent for recovery, as defined in paragraph (f)(6) of this section, except as provided in paragraph (f)(2)(v)(A)(2) of this section.

(2) Recovery. To the extent that reuse or recovery of all the collected methanol destined for reuse, recovery, or thermal recovery is not economically feasible, the Sistersville Plant shall ensure that the residual portion is sent for thermal recovery/treatment, as defined in paragraph (f)(6) of this section.

(3) The Sistersville Plant shall ensure that, on an annual basis, no more than 5% of the methanol collected by the methanol recovery operation is subject to bio-treatment.

(4) In the event the Sistersville Plant receives written notification of revocation pursuant to paragraph (f)(3)(iv) of this section, the percent limitations set forth under paragraph (f)(2)(v)(A) of this section shall no longer be applicable, beginning on the

date of receipt of written notification of revocation.

(B) The Sistersville Plant shall perform such measurements as are necessary to determine the pounds of collected methanol directed to reuse, recovery, thermal recovery/treatment and bio-treatment, respectively, on a monthly basis.

(C) The Sistersville Plant shall keep on-site up-to-date, readily accessible records of the amounts of collected methanol directed to reuse, recovery, thermal recovery/treatment and bio-treatment necessary for the measurements required under paragraph (f)(2)(iv)(B) of this section.

(vi) The Sistersville Plant shall perform a WMPP project in accordance with the requirements and schedules set forth in paragraphs (f)(2)(vi)(A) through (f)(2)(vi)(C) of this section.

(A) In performing the WMPP Project, the Sistersville Plant shall use a Study Team and an Advisory Committee as described in paragraphs (f)(2)(vi)(A)(1) through (f)(2)(vi)(A)(6) of this section.

(I) At a minimum, the multi-functional Study Team shall consist of Sistersville Plant personnel from appropriate plant departments (including both management and employees) and an independent contractor. The Sistersville Plant shall select a contractor that has experience and training in WMPP in the chemical manufacturing industry.

(2) The Sistersville Plant shall direct the Study Team such that the team performs the functions described in paragraphs (f)(2)(vi)(A)(2)(i) through (f)(2)(vi)(A)(2)(v) of this section.

(i) Review Sistersville Plant operations and waste streams.

(ii) Review prior WMPP efforts at the Sistersville Plant.

(iii) Develop criteria for the selection of waste streams to be evaluated for the WMPP Project.

(iv) Identify and prioritize the waste streams to be evaluated during the study phase of the WMPP Project, based on the criteria described in paragraph (f)(2)(vi)(A)(2)(iii) of this section.

(v) Perform the WMPP Study as required by paragraphs (f)(2)(vi)(A)(3) through (f)(2)(vi)(A)(5), paragraph (f)(2)(vi)(B), and paragraph (f)(2)(vi)(C) of this section.

(3)(i) The Sistersville Plant shall establish an Advisory Committee consisting of a representative from EPA, a representative from WVDEP, the Sistersville Plant Manager, the Sistersville Plant Director of Safety, Health and Environmental Affairs, and a stakeholder representative(s).

(ii) The Sistersville Plant shall select the stakeholder representative(s) by

mutual agreement of EPA, WVDEP and the Sistersville Plant no later than 20 days after receiving from EPA and WVDEP the names of their respective committee members.

(4) The Sistersville Plant shall convene a meeting of the Advisory Committee no later than thirty days after selection of the stakeholder representatives, and shall convene meetings periodically thereafter as necessary for the Advisory Committee to perform its assigned functions. The Sistersville Plant shall direct the Advisory Committee to perform the functions described in paragraphs (f)(2)(vi)(A)(4)(i) through (f)(2)(vi)(A)(4)(iii) of this section.

(i) Review and comment upon the Study Team's criteria for selection of waste streams, and the Study Team's identification and prioritization of the waste streams to be evaluated during the WMPP Project.

(ii) Review and comment upon the Study Team progress reports and the draft WMPP Study Report.

(iii) Periodically review the effectiveness of WMPP opportunities implemented as part of the WMPP Project, and, where appropriate, WMPP opportunities previously determined to be infeasible by the Sistersville Plant but which had potential for feasibility in the future.

(5) Beginning on January 15, 1998, and every ninety (90) days thereafter until submission of the final WMPP Study Report required by paragraph (f)(2)(vi)(C) of this section, the Sistersville Plant shall direct the Study Team to submit a progress report to the Advisory Committee detailing its efforts during the prior ninety (90) day period.

(B) The Sistersville Plant shall ensure that the WMPP Study and the WMPP Study Report meet the requirements of paragraphs (f)(2)(vi)(B)(1) through (f)(2)(vi)(B)(3) of this section.

(1) The WMPP Study shall consist of a technical, economic, and regulatory assessment of opportunities for source reduction and for environmentally sound recycling for waste streams identified by the Study Team.

(2) The WMPP Study shall evaluate the source, nature, and volume of the waste streams; describe all the WMPP opportunities identified by the Study Team; provide a feasibility screening to evaluate the technical and economical feasibility of each of the WMPP opportunities; identify any cross-media impacts or any anticipated transfers of risk associated with each feasible WMPP opportunity; and identify the projected economic savings and projected quantitative waste reduction

estimates for each WMPP opportunity identified.

(3) No later than October 19, 1998, the Sistersville Plant shall prepare and submit to the members of the Advisory Committee a draft WMPP Study Report which, at a minimum, includes the results of the WMPP Study, identifies WMPP opportunities the Sistersville Plant determines to be feasible, discusses the basis for excluding other opportunities as not feasible, and makes recommendations as to whether the WMPP Study should be continued. The members of the Advisory Committee shall provide any comments to the Sistersville Plant within thirty (30) days of receiving the WMPP Study Report.

(C) Within thirty (30) days after receipt of comments from the members of the Advisory Committee, the Sistersville Plant shall submit to EPA and WVDEP a final WMPP Study Report which identifies those WMPP opportunities the Sistersville Plant determines to be feasible and includes an implementation schedule for each such WMPP opportunity. The Sistersville Plant shall make reasonable efforts to implement all feasible WMPP opportunities in accordance with the priorities identified in the implementation schedule.

(1) For purposes of this paragraph (f), a WMPP opportunity is feasible if the Sistersville Plant considers it to be technically feasible (taking into account engineering and regulatory factors, product line specifications and customer needs) and economically practical (taking into account the full environmental costs and benefits associated with the WMPP opportunity and the company's internal requirements for approval of capital projects). For purposes of the WMPP Project, the Sistersville Plant should use "An Introduction to Environmental Accounting as a Business Management Tool," (EPA 742/R-95/001) as one tool to identify the full environmental costs and benefits of each WMPP opportunity. This EPA publication is available from EPA by calling 1-800-490-9198.

(2) In implementing each WMPP opportunity, the Sistersville Plant shall, after consulting with the other members of the Advisory Committee, develop appropriate protocols and methods for determining the information required by paragraphs (f)(2)(vi)(2)(i) through (f)(2)(vi)(2)(iii) of this section.

(i) The overall volume of wastes reduced.

(ii) The quantities of each constituent identified in paragraph (f)(8) of this section reduced in the wastes.

(iii) The economic benefits achieved.

(3) No requirements of paragraph (f)(2)(vi) of this section are intended to prevent or restrict the Sistersville Plant from evaluating and implementing any WMPP opportunities at the Sistersville Plant in the normal course of its operations or from implementing, prior to the completion of the WMPP Study, any WMPP opportunities identified by the Study Team.

(vii) The Sistersville Plant shall maintain on-site each record required by paragraph (f)(2) of this section, through the MON Compliance Date.

(viii) The Sistersville Plant shall comply with the reporting requirements of paragraphs (f)(2)(viii)(A) through (f)(2)(viii)(G) of this section.

(A) At least sixty days prior to conducting the initial performance test of the thermal incinerator, the Sistersville Plant shall submit to EPA and WVDEP copies of a notification of performance test, as described in 40 CFR 63.7(b). Following the initial performance test of the thermal incinerator, the Sistersville Plant shall submit to EPA and WVDEP copies of the performance test results that include the information relevant to initial performance tests of thermal incinerators contained in 40 CFR 63.7(g)(1), 40 CFR 63.117(a)(4)(i), and 40 CFR 63.117(a)(4)(ii).

(B) Beginning in 1999, on January 31 of each year, the Sistersville Plant shall submit a semiannual written report to the EPA and WVDEP, with respect to the preceding six month period ending on December 31, which contains the information described in paragraphs (f)(2)(viii)(B)(1) through (f)(2)(viii)(B)(10) of this section.

(1) Instances of operating below the minimum operating temperature established for the thermal incinerator under paragraph (f)(2)(ii)(A)(1) of this section which were not corrected within 24 hours of onset.

(2) Any periods during which the capper unit was being operated to manufacture product while the flow indicator for the vent streams to the thermal incinerator showed no flow.

(3) Any periods during which the capper unit was being operated to manufacture product while the flow indicator for any bypass device on the closed vent system to the thermal incinerator showed flow.

(4) Information required to be reported during that six month period under the preconstruction permit issued under the state permitting program approved under subpart XX of 40 CFR Part 52—Approval and Promulgation of Implementation Plans for West Virginia.

(5) Any periods during which the capper unit was being operated to

manufacture product while the condenser associated with the methanol recovery operation was not in operation.

(6) The amount (in pounds and by month) of methanol collected by the methanol recovery operation during the six month period.

(7) The amount (in pounds and by month) of collected methanol utilized for reuse, recovery, thermal recovery/treatment, or bio-treatment, respectively, during the six month period.

(8) The calculated amount (in pounds and by month) of methanol generated by operating the capper unit.

(9) The status of the WMPP Project, including the status of developing the WMPP Study Report.

(10) Beginning in the year after the Sistersville Plant submits the final WMPP Study Report required by paragraph (f)(2)(vi)(C) of this section, and continuing in each subsequent Semiannual Report required by paragraph (f)(2)(viii)(B) of this section, the Sistersville Plant shall report on the progress of the implementation of feasible WMPP opportunities identified in the WMPP Study Report. The Semiannual Report required by paragraph (f)(2)(viii)(B) of this section shall identify any cross-media impacts or impacts to worker safety or community health issues that have occurred as a result of implementation of the feasible WMPP opportunities.

(C) Beginning in 1999, on July 31 of each year, the Sistersville Plant shall provide an Annual Project Report to the EPA and WVDEP Project XL contacts containing the information required by paragraphs (f)(2)(viii)(C)(1) through (f)(2)(viii)(C)(8) of this section.

(1) The categories of information required to be submitted under paragraphs (f)(2)(viii)(B)(1) through (f)(2)(viii)(B)(8) of this section, for the preceding 12 month period ending on June 30.

(2) An updated Emissions Analysis for January through December of the preceding calendar year. The Sistersville Plant shall submit the updated Emissions Analysis in a form substantially equivalent to the previous Emissions Analysis prepared by the Sistersville Plant to support Project XL. The Emissions Analysis shall include a comparison of the volatile organic emissions associated with the capper unit process vents and the wastewater treatment system (using the EPA Water 8 model or other model agreed to by the Sistersville Plant, EPA and WVDEP) under Project XL with the expected emissions from those sources absent Project XL during that period.

(3) A discussion of the Sistersville Plant's performance in meeting the requirements of this paragraph (f), specifically identifying any areas in which the Sistersville Plant either exceeded or failed to achieve any such standard.

(4) A description of any unanticipated problems in implementing the XL Project and any steps taken to resolve them.

(5) A WMPP Implementation Report that contains the information contained in paragraphs (f)(2)(viii)(C)(5)(i) through (viii)(C)(5)(vi) of this section.

(i) A summary of the WMPP opportunities selected for implementation.

(ii) A description of the WMPP opportunities initiated and/or completed.

(iii) Reductions in volume of waste generated and amounts of each constituent reduced in wastes including any constituents identified in paragraph (f)(8) of this section.

(iv) An economic benefits analysis.

(v) A summary of the results of the Advisory Committee's review of implemented WMPP opportunities.

(vi) A reevaluation of WMPP opportunities previously determined to be infeasible by the Sistersville Plant but which had potential for future feasibility.

(6) An assessment of the nature of, and the successes or problems associated with, the Sistersville Plant's interaction with the federal and state agencies under the Project.

(7) An update on stakeholder involvement efforts.

(8) An evaluation of the Project as implemented against the Project XL Criteria and the baseline scenario.

(D) The Sistersville Plant shall submit to the EPA and WVDEP Project XL contacts a written Final Project Report covering the period during which the temporary deferral was effective, as described in paragraph (f)(3) of this section.

(1) The Final Project Report shall contain the information required to be submitted for the Semiannual Report required under paragraph (f)(2)(viii)(B) of this section, and the Annual Project Report required under paragraph (f)(2)(viii)(C) of this section.

(2) The Sistersville Plant shall submit the Final Project Report to EPA and WVDEP no later than 180 days after the temporary deferral of paragraph (f)(1) of this section is revoked, or 180 days after the MON Compliance Date, whichever occurs first.

(E)(1) The Sistersville Plant shall retain on-site a complete copy of each of the report documents to be submitted

to EPA and WVDEP in accordance with requirements under paragraph (f)(2) of this section. The Sistersville Plant shall retain this record until 180 days after the MON Compliance Date. The Sistersville Plant shall provide to stakeholders and interested parties a written notice of availability (to be mailed to all persons on the Project mailing list and to be provided to at least one local newspaper of general circulation) of each such document, and provide a copy of each document to any such person upon request, subject to the provisions of 40 CFR Part 2.

(2) Any reports or other information submitted to EPA or WVDEP may be released to the public pursuant to the Federal Freedom of Information Act (42 U.S.C. 552 *et seq.*), subject to the provisions of 40 CFR Part 2.

(F) The Sistersville Plant shall make all supporting monitoring results and records required under paragraph (f)(2) of this section available to EPA and WVDEP within a reasonable amount of time after receipt of a written request from those Agencies, subject to the provisions of 40 CFR Part 2.

(G) Each report submitted by the Sistersville Plant under the requirements of paragraph (f)(2) of this section shall be certified by a Responsible Corporate Officer, as defined in 40 CFR 270.11(a)(1).

(H) For each report submitted in accordance with paragraph (f)(2) of this section, the Sistersville Plant shall send one copy each to the addresses in paragraphs (f)(2)(viii)(H)(I) through (H)(3) of this section.

(1) U.S. EPA Region 3, 841 Chestnut Street, Philadelphia, PA 19107, Attention Tad Radzinski, Mail Code 3WC11.

(2) U.S. EPA, 401 M Street SW, Washington, DC 20460, Attention L. Nancy Birnbaum, Mail Code 2129.

(3) West Virginia Division of Environmental Protection, Office of Air Quality, 1558 Washington Street East, Charleston, WV 25311-2599, Attention John H. Johnston.

(3) Effective period and revocation of temporary deferral.

(i) The temporary deferral contained in this paragraph (f) is effective from April 1, 1998, and shall remain effective until the MON Compliance Date. The temporary deferral contained in this paragraph (f) may be revoked prior to the MON Compliance Date, as described in paragraph (f)(3)(iv) of this section.

(ii) On the MON Compliance Date, the temporary deferral contained in this paragraph (f) will no longer be effective.

(iii) The Sistersville Plant shall come into compliance with those requirements deferred by this paragraph

(f) no later than the MON Compliance Date. No later than 18 months prior to the MON Compliance Date, the Sistersville Plant shall submit to EPA an implementation schedule that meets the requirements of paragraph (g)(1)(iii) of this section.

(iv) The temporary deferral contained in this paragraph (f) may be revoked for cause, as determined by EPA, prior to the MON Compliance Date. The Sistersville Plant may request EPA to revoke the temporary deferral contained in this paragraph (f) at any time. The revocation shall be effective on the date that the Sistersville Plant receives written notification of revocation from EPA.

(v) Nothing in this section shall affect the provisions of the MON, as applicable to the Sistersville Plant.

(vi) Nothing in paragraph (f) or (g) of this section shall affect any regulatory requirements not referenced in paragraph (f)(1)(iii) or (f)(1)(iv) of this section, as applicable to the Sistersville Plant.

(4) The Sistersville Plant shall conduct the initial performance test required by paragraph (f)(2)(ii)(B) of this section using the procedures in paragraph (f)(4) of this section. The organic concentration and percent reduction shall be measured as TOC minus methane and ethane, according to the procedures specified in paragraph (f)(4) of this section.

(i) Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites.

(A) To determine compliance with the 98 percent reduction of TOC requirement of paragraph (f)(2)(ii)(A)(1) of this section, sampling sites shall be located at the inlet of the control device after the final product recovery device, and at the outlet of the control device.

(B) To determine compliance with the 20 parts per million by volume TOC limit in paragraph (f)(2)(ii)(A)(1) of this section, the sampling site shall be located at the outlet of the control device.

(ii) The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate.

(iii) To determine compliance with the 20 parts per million by volume TOC limit in paragraph (f)(2)(ii)(A)(1) of this section, the Sistersville Plant shall use Method 18 of 40 CFR part 60, appendix A to measure TOC minus methane and ethane. Alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, may be used. The following procedures shall be used to calculate

parts per million by volume concentration, corrected to 3 percent oxygen:

(A) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15 minute intervals during the run.

(B) The concentration of TOC minus methane and ethane (C_{TOC}) shall be calculated as the sum of the concentrations of the individual components, and shall be computed for each run using the following equation:

$$C_{TOC} = \sum_{i=1}^x \frac{\left(\sum_{j=1}^n C_{ji} \right)}{x}$$

where:

C_{TOC} = Concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.

C_{ji} = Concentration of sample components j of sample i , dry basis, parts per million by volume.

n = Number of components in the sample.

x = Number of samples in the sample run.

(C) The concentration of TOC shall be corrected to 3 percent oxygen if a combustion device is the control device.

(1) The emission rate correction factor or excess air, integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A shall be used to determine the oxygen concentration (%O_{2d}). The samples shall be taken during the same time that the TOC (minus methane or ethane) samples are taken.

(2) The concentration corrected to 3 percent oxygen (C_c) shall be computed using the following equation:

$$C_c = C_m \left(\frac{17.9}{20.9 - \%O_{2d}} \right)$$

where:

C_c = Concentration of TOC corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m = Concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.

%O_{2d} = Concentration of oxygen, dry basis, percent by volume.

(iv) To determine compliance with the 98 percent reduction requirement of paragraph (f)(2)(ii)(A)(1) of this section, the Sistersville Plant shall use Method 18 of 40 CFR part 60, appendix A; alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A may be

used. The following procedures shall be used to calculate percent reduction efficiency:

(A) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time such as 15 minute intervals during the run.

(B) The mass rate of TOC minus methane and ethane (E_i , E_o) shall be computed. All organic compounds (minus methane and ethane) measured by Method 18 of 40 CFR part 60, Appendix A are summed using the following equations:

$$E_i = K_2 \left(\sum_{j=1}^n C_{ij} M_{ij} \right) Q_i$$

$$E_o = K_2 \left(\sum_{j=1}^n C_{oj} M_{oj} \right) Q_o$$

where:

C_{ij} , C_{oj} = Concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.

E_i , E_o = Mass rate of TOC (minus methane and ethane) at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

M_{ij} , M_{oj} = Molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole.

Q_i , Q_o = Flow rate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.

K_2 = Constant, 2.494×10^{-6} (parts per million)⁻¹ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20 °C.

(C) The percent reduction in TOC (minus methane and ethane) shall be calculated as follows:

$$R = \frac{E_i - E_o}{E_i} (100)$$

where:

R = Control efficiency of control device, percent.

E_i = Mass rate of TOC (minus methane and ethane) at the inlet to the control device as calculated under paragraph (f)(4)(iv)(B) of this section, kilograms TOC per hour.

E_o = Mass rate of TOC (minus methane and ethane) at the outlet of the control device, as calculated under paragraph (f)(4)(iv)(B) of this section, kilograms TOC per hour.

(5) At the time of the initial performance test of the process vent thermal incinerator required under (f)(2)(ii)(B) of this section, the

Sistersville Plant shall inspect each closed vent system according to the procedures specified in paragraphs (f)(5)(i) through (f)(5)(vi) of this section.

(i) The initial inspections shall be conducted in accordance with Method 21 of 40 CFR part 60, appendix A.

(ii) Except as provided in paragraph (f)(5)(ii)(B) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 of 40 CFR part 60, appendix A shall be for the average composition of the process fluid not each individual volatile organic compound in the stream. For process streams that contain nitrogen, air, or other inerts which are not organic hazardous air pollutants or volatile organic compounds, the average stream response factor shall be calculated on an inert-free basis.

(B) If no instrument is available at the plant site that will meet the performance criteria specified in paragraph (f)(5)(ii)(A) of this section, the instrument readings may be adjusted by multiplying by the average response factor of the process fluid, calculated on an inert-free basis as described in paragraph (f)(5)(ii)(A) of this section.

(iii) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(iv) Calibration gases shall be as follows:

(A) Zero air (less than 10 parts per million hydrocarbon in air); and

(B) Mixtures of methane in air at a concentration less than 10,000 parts per million. A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (f)(5)(ii)(A) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in air.

(v) The Sistersville Plant may elect to adjust or not adjust instrument readings for background. If the Sistersville Plant elects to not adjust readings for background, all such instrument readings shall be compared directly to the applicable leak definition to determine whether there is a leak. If the Sistersville Plant elects to adjust instrument readings for background, the Sistersville Plant shall measure background concentration using the procedures in 40 CFR 63.180 (b) and (c). The Sistersville Plant shall subtract background reading from the maximum

concentration indicated by the instrument.

(vi) The arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared with 500 parts per million for determining compliance.

(6) Definitions of terms as used in paragraphs 264.1080 (f) and 264.1080 (g) of this part.

(i) Closed vent system is defined as a system that is not open to the atmosphere and that is composed of piping, connections and, if necessary, flow-inducing devices that transport gas or vapor from the copper unit process vent to the thermal incinerator.

(ii) No detectable emissions means an instrument reading of less than 500 parts per million by volume above background as determined by Method 21 in 40 CFR part 60.

(iii) Reuse includes the substitution of collected methanol (without reclamation subsequent to its collection) for virgin methanol as an ingredient (including uses as an intermediate) or as an effective substitute for a commercial product.

(iv) Recovery includes the substitution of collected methanol for virgin methanol as an ingredient (including uses as an intermediate) or as an effective substitute for a commercial product following reclamation of the methanol subsequent to its collection.

(v) Thermal recovery/treatment includes the use of collected methanol in fuels blending or as a feed to any combustion device to the extent permitted by federal and state law.

(vi) Bio-treatment includes the treatment of the collected methanol through introduction into a biological treatment system, including the treatment of the collected methanol as a waste stream in an on-site or off-site wastewater treatment system.

Introduction of the collected methanol to the on-site wastewater treatment system will be limited to points downstream of the surface impoundments, and will be consistent with the requirements of federal and state law.

(vii) Start-up shall have the meaning set forth at 40 CFR 63.2.

(viii) Flow indicator means a device which indicates whether gas flow is present in the vent stream, and, if required by the permit for the thermal incinerator, which measures the gas flow in that stream.

(ix) Continuous Recorder means a data recording device that records an instantaneous data value at least once every fifteen minutes.

(x) MON means the National Emission Standards for Hazardous Air Pollutants

for the source category Miscellaneous Organic Chemical Production and Processes ("MON"), promulgated under the authority of Section 112 of the Clean Air Act.

(xi) MON Compliance Date means the date 3 years after the effective date of the National Emission Standards for Hazardous Air Pollutants for the source category Miscellaneous Organic Chemical Production and Processes ("MON").

(7) OSi Specialties, Incorporated, a subsidiary of Witco Corporation ("OSi"), may seek to transfer its rights and obligations under this paragraph (f) to a future owner of the Sistersville Plant in accordance with the requirements of paragraphs (f)(7)(i) through (f)(7)(iii) of this section.

(i) OSi will provide to EPA a written notice of any proposed transfer at least forty-five days prior to the effective date of any such transfer. The written notice will identify the proposed transferee.

(ii) The proposed transferee will provide to EPA a written request to assume the rights and obligations under this paragraph (f) at least forty-five days prior to the effective date of any such transfer. The written request will describe the transferee's financial and technical capability to assume the obligations under this paragraph (f), and will include a statement of the transferee's intention to fully comply with the terms of this paragraph (f) and to sign the Final Project Agreement for this XL Project as an additional party.

(iii) Within thirty days of receipt of both the written notice and written request described in paragraphs (f)(7)(i) and (f)(7)(ii) of this section, EPA will determine, based on all relevant information, whether to approve a transfer of rights and obligations under this paragraph (f) from OSi to a different owner.

(8) The constituents to be identified by the Sistersville Plant pursuant to paragraphs (f)(2)(vi)(C)(2)(ii) and (f)(2)(viii)(C)(5)(iii) of this section are: 1 Naphthalenamine; 1,2,4 Trichlorobenzene; 1,1 Dichloroethylene; 1,1,1 Trichloroethane; 1,1,1,2 Tetrachloroethane; 1,1,2 Trichloro; 1,2,2 Trifluoroethane; 1,1,2 Trichloroethane; 1,1,2,2 Tetrachloroethane; 1,2 Dichlorobenzene; 1,2 Dichloroethane; 1,2 Dichloropropane; 1,2 Dichloropropanone; 1,2 Trans-dichloroethene; 1,2 Trans-Dichloroethene; 1,2,4,5 Tetrachlorobenzene; 1,3 Dichlorobenzene; 1,4 Dichloro 2 butene; 1,4 Dioxane; 2 Chlorophenol; 2 Cyclohexyl 4,6 dinitrophenol; 2 Methyl Pyridine; 2 Nitropropane; 2,4-Dinitrotoluene; Acetone; Acetonitrile;

Acrylonitrile; Allyl Alcohol; Aniline; Antimony; Arsenic; Barium; Benzene; Benzotrichloride; Benzyl Chloride; Beryllium; Bis (2 ethyl Hexyl) Phthalate; Butyl Alcohol, n; Butyl Benzyl Phthalate; Cadmium; Carbon Disulfide; Carbon Tetrachloride; Chlorobenzene; Chloroform; Chloromethane; Chromium; Chrysene; Copper; Creosol; Creosol, m-; Creosol, o; Creosol, p; Cyanide; Cyclohexanone; Di-n-octyl phthalate; Dichlorodifluoromethane; Diethyl Phthalate; Dihydrosafrole; Dimethylamine; Ethyl Acetate; Ethyl benzene; Ethyl Ether; Ethylene Glycol Ethyl Ether; Ethylene Oxide; Formaldehyde; Isobutyl Alcohol; Lead; Mercury; Methanol; Methoxychlor; Methyl Chloride; Methyl Chloroformate; Methyl Ethyl Ketone; Methyl Ethyl Ketone Peroxide; Methyl Isobutyl Ketone; Methyl Methacrylate; Methylene Bromide; Methylene Chloride; Naphthalene; Nickel; Nitrobenzene; Nitroglycerine; p-Toluidine; Phenol; Phthalic Anhydride; Polychlorinated Biphenyls; Propargyl Alcohol; Pyridine; Safrole; Selenium; Silver; Styrene; Tetrachloroethylene; Tetrahydrofuran; Thallium; Toluene; Toluene 2,4 Diisocyanate; Trichloroethylene; Trichlorofluoromethane; Vanadium; Vinyl Chloride; Warfarin; Xylene; Zinc.

(g) This paragraph (g) applies only to the facility commonly referred to as the OSi Specialties Plant, located on State Route 2, Sistersville, West Virginia ("Sistersville Plant").

(1) No later than 18 months from the date the Sistersville Plant receives written notification of revocation of the temporary deferral for the Sistersville Plant under paragraph (f) of this section, the Sistersville Plant shall, in accordance with the implementation schedule submitted to EPA under paragraph (g)(1)(ii) of this section, either come into compliance with all requirements of this subpart which had been deferred by paragraph (f)(1)(i) of this section, or complete a facility or process modification such that the requirements of § 264.1085 of this subpart are no longer applicable to the two hazardous waste surface impoundments. In any event, the Sistersville Plant must complete the requirements of the previous sentence no later than the MON Compliance Date; if the Sistersville Plant receives written notification of revocation of the temporary deferral after the date 18 months prior to the MON Compliance Date, the date by which the Sistersville Plant must complete the requirements of the previous sentence will be the MON Compliance Date, which would be less

than 18 months from the date of notification of revocation.

(ii) Within 30 days from the date the Sistersville Plant receives written notification of revocation under paragraph (f)(3)(iv) of this section, the Sistersville Plant shall enter and maintain in the facility operating record an implementation schedule. The implementation schedule shall demonstrate that within 18 months from the date the Sistersville Plant receives written notification of revocation under paragraph (f)(3)(iv) of this section (but no later than the MON Compliance Date), the Sistersville Plant shall either come into compliance with the regulatory requirements that had been deferred by paragraph (f)(1)(i) of this section, or complete a facility or process modification such that the requirements of § 264.1085 of this subpart are no longer applicable to the two hazardous waste surface impoundments. Within 30 days from the date the Sistersville Plant receives written notification of revocation under paragraph (f)(3)(iv) of this section, the Sistersville Plant shall submit a copy of the implementation schedule to the EPA and WVDEP Project XL contacts identified in paragraph (f)(2)(viii)(H) of this section. The implementation schedule shall reflect the Sistersville Plant's effort to come into compliance as soon as practicable (but no later than 18 months after the date the Sistersville Plant receives written notification of revocation, or the MON Compliance Date, whichever is sooner) with all regulatory requirements that had been deferred under paragraph (f)(1)(i) of this section, or to complete a facility or process modification as soon as practicable (but no later than 18 months after the date the Sistersville Plant receives written notification of revocation, or the MON Compliance Date, whichever is sooner) such that the requirements of § 264.1085 of this subpart are no longer applicable to the two hazardous waste surface impoundments.

(iii) The implementation schedule shall include the information described in either paragraph (g)(1)(iii)(A) or (B) of this section.

(A) Specific calendar dates for: award of contracts or issuance of purchase orders for the control equipment required by those regulatory requirements that had been deferred by paragraph (f)(1)(i) of this section; initiation of on-site installation of such control equipment; completion of the control equipment installation; performance of any testing to demonstrate that the installed control equipment meets the applicable standards of this subpart; initiation of

operation of the control equipment; and compliance with all regulatory requirements that had been deferred by paragraph (f)(1)(i) of this subpart.

(B) Specific calendar dates for the purchase, installation, performance testing and initiation of operation of equipment to accomplish a facility or process modification such that the requirements of § 264.1085 of this subpart are no longer applicable to the two hazardous waste surface impoundments.

(2) Nothing in paragraph (f) or (g) of this section shall affect any regulatory requirements not referenced in paragraph (f)(2)(i) or (ii) of this section, as applicable to the Sistersville Plant.

(3) In the event that a notification of revocation is issued pursuant to paragraph (f)(3)(iv) of this section, the requirements referenced in paragraphs (f)(1)(iii) and (f)(1)(iv) of this section are temporarily deferred, with respect to the two hazardous waste surface impoundments, provided that the Sistersville Plant is in compliance with the requirements of paragraphs (f)(2)(ii), (f)(2)(iii), (f)(2)(iv), (f)(2)(v), (f)(2)(vi) and (g) of this section, except as provided under paragraph (g)(4) of this section. The temporary deferral of the previous sentence shall be effective beginning on the date the Sistersville Plant receives written notification of revocation, and subject to paragraph (g)(5) of this section, shall continue to be effective for a maximum period of 18 months from that date, provided that the Sistersville Plant is in compliance with the requirements of paragraphs (f)(2)(ii), (f)(2)(iii), (f)(2)(iv), (f)(2)(v), (f)(2)(vi) and (g) of this section at all times during that 18-month period.

(4) In the event that a notification of revocation is issued pursuant to paragraph (f)(3)(iv) of this section as a result of the permanent removal of the capper unit from methyl capped polyether production service, the requirements referenced in paragraphs (f)(1)(iii) and (f)(1)(iv) of this section are temporarily deferred, with respect to the two hazardous waste surface impoundments, provided that the Sistersville Plant is in compliance with the requirements of paragraphs (f)(2)(vi), and (g) of this section. The temporary deferral of the previous sentence shall be effective beginning on the date the Sistersville Plant receives written notification of revocation, and subject to paragraph (g)(5) of this section, shall continue to be effective for a maximum period of 18 months from that date, provided that the Sistersville Plant is in compliance with the requirements of paragraphs (f)(2)(vi) and (g) of this

section at all times during that 18-month period.

(5) In no event shall the temporary deferral provided under paragraph (g)(3) or (g)(4) of this section be effective after the MON Compliance Date.

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

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

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

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

4. Section 265.1080 is amended by adding paragraphs (f) and (g) to read as follows:

§ 265.1080 Applicability.

* * * * *

(f) This paragraph (f) applies only to the facility commonly referred to as the OSi Specialties Plant, located on State Route 2, Sistersville, West Virginia ('Sistersville Plant').

(1)(i) Provided that the Sistersville Plant is in compliance with the requirements of paragraph (f)(2) of this section, the requirements referenced in paragraph (f)(1)(iii) of this section are temporarily deferred, as specified in paragraph (f)(3) of this section, with respect to the two hazardous waste surface impoundments at the Sistersville Plant. Beginning on the date that paragraph (f)(1)(ii) of this section is first implemented, the temporary deferral of this paragraph shall no longer be effective.

(ii)(A) In the event that a notice of revocation is issued pursuant to paragraph (f)(3)(iv) of this section, the requirements referenced in paragraph (f)(1)(iii) of this section are temporarily deferred, with respect to the two hazardous waste surface impoundments, provided that the Sistersville Plant is in compliance with the requirements of paragraphs (f)(2)(ii), (f)(2)(iii), (f)(2)(iv), (f)(2)(v), (f)(2)(vi) and (g) of this section, except as provided under paragraph (f)(1)(ii)(B) of this section. The temporary deferral of the previous sentence shall be effective beginning on the date the Sistersville Plant receives written notification of revocation, and continuing for a maximum period of 18 months from that date, provided that the Sistersville Plant is in compliance with the requirements of paragraphs (f)(2)(ii), (f)(2)(iii), (f)(2)(iv), (f)(2)(v), (f)(2)(vi) and

(g) of this section at all times during that 18-month period. In no event shall the temporary deferral continue to be effective after the MON Compliance Date as defined in paragraph (f)(6) of this section.

(B) In the event that a notification of revocation is issued pursuant to paragraph (f)(3)(iv) of this section as a result of the permanent removal of the copper unit from methyl capped polyether production service, the requirements referenced in paragraph (f)(1)(iii) of this section are temporarily deferred, with respect to the two hazardous waste surface impoundments, provided that the Sistersville Plant is in compliance with the requirements of paragraphs (f)(2)(vi), and (g) of this section. The temporary deferral of the previous sentence shall be effective beginning on the date the Sistersville Plant receives written notification of revocation, and continuing for a maximum period of 18 months from that date, provided that the Sistersville Plant is in compliance with the requirements of paragraphs (f)(2)(vi) and (g) of this section at all times during that 18-month period. In no event shall the temporary deferral continue to be effective after the MON Compliance Date.

(iii) The standards in § 265.1086 of this part, and all requirements referenced in or by § 265.1086 that otherwise would apply to the two hazardous waste surface impoundments, including the closed-vent system and control device requirements of § 265.1088 of this part.

(2) Notwithstanding the effective period and revocation provisions in paragraph (f)(3) of this section, the temporary deferral provided in paragraph (f)(1)(i) of this section is effective only if the Sistersville Plant meets the requirements of paragraph (f)(2) of this section.

(i) The Sistersville Plant shall install an air pollution control device on the polyether methyl copper unit ("copper unit"), implement a methanol recovery operation, and implement a waste minimization/pollution prevention ("WMPP") project. The installation and implementation of these requirements shall be conducted according to the schedule described in paragraphs (f)(2)(i) and (f)(2)(vi) of this section.

(A) The Sistersville Plant shall complete the initial start-up of a thermal incinerator on the copper unit's process vents from the first stage vacuum pump, from the flash pot and surge tank, and from the water stripper, no later than April 1, 1998.

(B) The Sistersville Plant shall provide to the EPA and the West

Virginia Department of Environmental Protection, written notification of the actual date of initial start-up of the thermal incinerator, and commencement of the methanol recovery operation. The Sistersville Plant shall submit this written notification as soon as practicable, but in no event later than 15 days after such events.

(ii) The Sistersville Plant shall install and operate the copper unit process vent thermal incinerator according to the requirements of paragraphs (f)(2)(ii)(A) through (f)(2)(ii)(D) of this section.

(A) Copper unit process vent thermal incinerator.

(I) Except as provided under paragraph (f)(2)(ii)(D) of this section, the Sistersville Plant shall operate the process vent thermal incinerator such that the incinerator reduces the total organic compounds ("TOC") from the process vent streams identified in paragraph (f)(2)(i)(A) of this section, by 98 weight-percent, or to a concentration of 20 parts per million by volume, on a dry basis, corrected to 3 percent oxygen, whichever is less stringent.

(ii) Prior to conducting the initial performance test required under paragraph (f)(2)(ii)(B) of this section, the Sistersville Plant shall operate the thermal incinerator at or above a minimum temperature of 1600 Fahrenheit.

(ii) After the initial performance test required under paragraph (f)(2)(ii)(B) of this section, the Sistersville Plant shall operate the thermal incinerator at or above the minimum temperature established during that initial performance test.

(iii) The Sistersville Plant shall operate the process vent thermal incinerator at all times that the copper unit is being operated to manufacture product.

(2) The Sistersville Plant shall install, calibrate, and maintain all air pollution control and monitoring equipment described in paragraphs (f)(2)(i)(A) and (f)(2)(ii)(B)(3) of this section, according to the manufacturer's specifications, or other written procedures that provide adequate assurance that the equipment can reasonably be expected to control and monitor accurately, and in a manner consistent with good engineering practices during all periods when emissions are routed to the unit.

(B) The Sistersville Plant shall comply with the requirements of paragraphs (f)(2)(ii)(B)(1) through (f)(2)(ii)(B)(3) of this section for performance testing and monitoring of the copper unit process vent thermal incinerator.

(I) Within sixty (60) days after thermal incinerator initial start-up, the

Sistersville Plant shall conduct a performance test to determine the minimum temperature at which compliance with the emission reduction requirement specified in paragraph (f)(4) of this section is achieved. This determination shall be made by measuring TOC minus methane and ethane, according to the procedures specified in paragraph (f)(2)(ii)(B) of this section.

(2) The Sistersville Plant shall conduct the initial performance test in accordance with the standards set forth in paragraph (f)(4) of this section.

(3) Upon initial start-up, the Sistersville Plant shall install, calibrate, maintain and operate, according to manufacturer's specifications and in a manner consistent with good engineering practices, the monitoring equipment described in paragraphs (f)(2)(ii)(B)(3)(i) through (f)(2)(ii)(B)(3)(iii) of this section.

(i) A temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall be installed in the firebox or in the duct work immediately downstream of the firebox in a position before any substantial heat exchange is encountered.

(ii) A flow indicator that provides a record of vent stream flow to the incinerator at least once every fifteen minutes. The flow indicator shall be installed in the vent stream from the process vent at a point closest to the inlet of the incinerator.

(iii) If the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a bypass flow indicator or a seal or locking device as specified in this paragraph. For the purpose of complying with this paragraph, low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring-loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices. If a bypass flow indicator is used to comply with this paragraph, the bypass flow indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. If a seal or locking device (e.g. car-seal or lock-and-key configuration) is used to comply with this paragraph, the device shall be placed on the mechanism by which the bypass device position is controlled (e.g., valve handle, damper levels) when the bypass device is in the closed position such that the bypass device

cannot be opened without breaking the seal or removing the lock. The Sistersville Plant shall visually inspect the seal or locking device at least once every month to verify that the bypass mechanism is maintained in the closed position.

(C) The Sistersville Plant shall keep on-site an up-to-date, readily accessible record of the information described in paragraphs (f)(2)(ii)(C)(1) through (f)(2)(ii)(C)(4) of this section.

(1) Data measured during the initial performance test regarding the firebox temperature of the incinerator and the percent reduction of TOC achieved by the incinerator, and/or such other information required in addition to or in lieu of that information by the WVDEP in its approval of equivalent test methods and procedures.

(2) Continuous records of the equipment operating procedures specified to be monitored under paragraph (f)(2)(ii)(B)(3) of this section, as well as records of periods of operation during which the firebox temperature falls below the minimum temperature established under paragraph (f)(2)(ii)(A)(1) of this section.

(3) Records of all periods during which the vent stream has no flow rate to the extent that the copper unit is being operated during such period.

(4) Records of all periods during which there is flow through a bypass device.

(D) The Sistersville Plant shall comply with the start-up, shutdown, maintenance and malfunction requirements contained in paragraphs (f)(2)(ii)(D)(1) through (f)(2)(ii)(D)(6) of this section, with respect to the copper unit process vent incinerator.

(1) The Sistersville Plant shall develop and implement a Start-up, Shutdown and Malfunction Plan as required by the provisions set forth in paragraph (f)(2)(ii)(D) of this section. The plan shall describe, in detail, procedures for operating and maintaining the thermal incinerator during periods of start-up, shutdown and malfunction, and a program of corrective action for malfunctions of the thermal incinerator.

(2) The plan shall include a detailed description of the actions the Sistersville Plant will take to perform the functions described in paragraphs (f)(2)(ii)(D)(2)(i) through (f)(2)(ii)(D)(2)(iii) of this section.

(i) Ensure that the thermal incinerator is operated in a manner consistent with good air pollution control practices.

(ii) Ensure that the Sistersville Plant is prepared to correct malfunctions as soon as practicable after their

occurrence in order to minimize excess emissions.

(iii) Reduce the reporting requirements associated with periods of start-up, shutdown and malfunction.

(3) During periods of start-up, shutdown and malfunction, the Sistersville Plant shall maintain the process unit and the associated thermal incinerator in accordance with the procedures set forth in the plan.

(4) The plan shall contain record keeping requirements relating to periods of start-up, shutdown or malfunction, actions taken during such periods in conformance with the plan, and any failures to act in conformance with the plan during such periods.

(5) During periods of maintenance or malfunction of the thermal incinerator, the Sistersville Plant may continue to operate the copper unit, provided that operation of the copper unit without the thermal incinerator shall be limited to no more than 240 hours each calendar year.

(6) For the purposes of paragraph (f)(2)(iii)(D) of this section, the Sistersville Plant may use its operating procedures manual, or a plan developed for other reasons, provided that plan meets the requirements of paragraph (f)(2)(iii)(D) of this section for the start-up, shutdown and malfunction plan.

(iii) The Sistersville Plant shall operate the closed-vent system in accordance with the requirements of paragraphs (f)(2)(iii)(A) through (f)(2)(iii)(D) of this section.

(A) Closed-vent system.

(1) At all times when the process vent thermal incinerator is operating, the Sistersville Plant shall route the vent streams identified in paragraph (f)(2)(i) of this section from the copper unit to the thermal incinerator through a closed-vent system.

(2) The closed-vent system will be designed for and operated with no detectable emissions, as defined in paragraph (f)(6) of this section.

(B) The Sistersville Plant will comply with the performance standards set forth in paragraph (f)(2)(iii)(A)(1) of this section on and after the date on which the initial performance test referenced in paragraph (f)(2)(ii)(B) of this section is completed, but no later than sixty (60) days after the initial start-up date.

(C) The Sistersville Plant shall comply with the monitoring requirements of paragraphs (f)(2)(iii)(C)(1) through (f)(2)(iii)(C)(3) of this section, with respect to the closed-vent system.

(1) At the time of the performance test described in paragraph (f)(2)(ii)(B) of this section, the Sistersville Plant shall inspect the closed-vent system as

specified in paragraph (f)(5) of this section.

(2) At the time of the performance test described in paragraph (f)(2)(ii)(B) of this section, and annually thereafter, the Sistersville Plant shall inspect the closed-vent system for visible, audible, or olfactory indications of leaks.

(3) If at any time a defect or leak is detected in the closed-vent system, the Sistersville Plant shall repair the defect or leak in accordance with the requirements of paragraphs (f)(2)(iii)(C)(3)(i) and (f)(2)(iii)(C)(3)(ii) of this section.

(i) The Sistersville Plant shall make first efforts at repair of the defect no later than five (5) calendar days after detection, and repair shall be completed as soon as possible but no later than forty-five (45) calendar days after detection.

(ii) The Sistersville Plant shall maintain a record of the defect repair in accordance with the requirements specified in paragraph (f)(2)(iii)(D) of this section.

(D) The Sistersville Plant shall keep on-site up-to-date, readily accessible records of the inspections and repairs required to be performed by paragraph (f)(2)(iii) of this section.

(iv) The Sistersville Plant shall operate the methanol recovery operation in accordance with paragraphs (f)(2)(iv)(A) through (f)(2)(iv)(C) of this section.

(A) The Sistersville Plant shall operate the condenser associated with the methanol recovery operation at all times during which the copper unit is being operated to manufacture product.

(B) The Sistersville Plant shall comply with the monitoring requirements described in paragraphs (f)(2)(B)(1) through (f)(2)(B)(3) of this section, with respect to the methanol recovery operation.

(1) The Sistersville Plant shall perform measurements necessary to determine the information described in paragraphs (f)(2)(iv)(B)(1)(i) and (f)(2)(iv)(B)(1)(ii) of this section to demonstrate the percentage recovery by weight of the methanol contained in the influent gas stream to the condenser.

(i) Information as is necessary to calculate the annual amount of methanol generated by operating the copper unit.

(ii) The annual amount of methanol recovered by the condenser associated with the methanol recovery operation.

(2) The Sistersville Plant shall install, calibrate, maintain and operate according to manufacturer specifications, a temperature monitoring device with a continuous recorder for the condenser associated with the

methanol recovery operation, as an indicator that the condenser is operating.

(3) The Sistersville Plant shall record the dates and times during which the capper unit and the condenser are operating.

(C) The Sistersville Plant shall keep on-site up-to-date, readily-accessible records of the parameters specified to be monitored under paragraph (f)(2)(iv)(B) of this section.

(v) The Sistersville Plant shall comply with the requirements of paragraphs (f)(2)(v)(A) through (f)(2)(v)(C) of this section for the disposition of methanol collected by the methanol recovery operation.

(A) On an annual basis, the Sistersville Plant shall ensure that a minimum of 95% by weight of the methanol collected by the methanol recovery operation (also referred to as the "collected methanol") is utilized for reuse, recovery, or thermal recovery/treatment. The Sistersville Plant may use the methanol on-site, or may transfer or sell the methanol for reuse, recovery, or thermal recovery/treatment at other facilities.

(1) Reuse. To the extent reuse of all of the collected methanol destined for reuse, recovery, or thermal recovery is not economically feasible, the Sistersville Plant shall ensure the residual portion is sent for recovery, as defined in paragraph (f)(6) of this section, except as provided in paragraph (f)(2)(v)(A)(2) of this section.

(2) Recovery. To the extent that reuse or recovery of all the collected methanol destined for reuse, recovery, or thermal recovery is not economically feasible, the Sistersville Plant shall ensure that the residual portion is sent for thermal recovery/treatment, as defined in paragraph (f)(6) of this section.

(3) The Sistersville Plant shall ensure that, on an annual basis, no more than 5% of the methanol collected by the methanol recovery operation is subject to bio-treatment.

(4) In the event the Sistersville Plant receives written notification of revocation pursuant to paragraph (f)(3)(iv) of this section, the percent limitations set forth under paragraph (f)(2)(v)(A) of this section shall no longer be applicable, beginning on the date of receipt of written notification of revocation.

(B) The Sistersville Plant shall perform such measurements as are necessary to determine the pounds of collected methanol directed to reuse, recovery, thermal recovery/treatment and bio-treatment, respectively, on a monthly basis.

(C) The Sistersville Plant shall keep on-site up-to-date, readily accessible records of the amounts of collected methanol directed to reuse, recovery, thermal recovery/treatment and bio-treatment necessary for the measurements required under paragraph (f)(2)(iv)(B) of this section.

(vi) The Sistersville Plant shall perform a WMPP project in accordance with the requirements and schedules set forth in paragraphs (f)(2)(vi)(A) through (f)(2)(vi)(C) of this section.

(A) In performing the WMPP Project, the Sistersville Plant shall use a Study Team and an Advisory Committee as described in paragraphs (f)(2)(vi)(A)(1) through (f)(2)(vi)(A)(6) of this section.

(1) At a minimum, the multi-functional Study Team shall consist of Sistersville Plant personnel from appropriate plant departments (including both management and employees) and an independent contractor. The Sistersville Plant shall select a contractor that has experience and training in WMPP in the chemical manufacturing industry.

(2) The Sistersville Plant shall direct the Study Team such that the team performs the functions described in paragraphs (f)(2)(vi)(A)(2)(i) through (f)(2)(vi)(A)(2)(v) of this section.

(i) Review Sistersville Plant operations and waste streams.

(ii) Review prior WMPP efforts at the Sistersville Plant.

(iii) Develop criteria for the selection of waste streams to be evaluated for the WMPP Project.

(iv) Identify and prioritize the waste streams to be evaluated during the study phase of the WMPP Project, based on the criteria described in paragraph (f)(2)(vi)(A)(2)(iii) of this section.

(v) Perform the WMPP Study as required by paragraphs (f)(2)(vi)(A)(3) through (f)(2)(vi)(A)(5), paragraph (f)(2)(vi)(B), and paragraph (f)(2)(vi)(C) of this section.

(3)(i) The Sistersville Plant shall establish an Advisory Committee consisting of a representative from EPA, a representative from WVDEP, the Sistersville Plant Manager, the Sistersville Plant Director of Safety, Health and Environmental Affairs, and a stakeholder representative(s).

(ii) The Sistersville Plant shall select the stakeholder representative(s) by mutual agreement of EPA, WVDEP and the Sistersville Plant no later than 20 days after receiving from EPA and WVDEP the names of their respective committee members.

(4) The Sistersville Plant shall convene a meeting of the Advisory Committee no later than thirty days after selection of the stakeholder

representatives, and shall convene meetings periodically thereafter as necessary for the Advisory Committee to perform its assigned functions. The Sistersville Plant shall direct the Advisory Committee to perform the functions described in paragraphs (f)(2)(vi)(A)(4)(i) through (f)(2)(vi)(A)(4)(iii) of this section.

(i) Review and comment upon the Study Team's criteria for selection of waste streams, and the Study Team's identification and prioritization of the waste streams to be evaluated during the WMPP Project.

(ii) Review and comment upon the Study Team progress reports and the draft WMPP Study Report.

(iii) Periodically review the effectiveness of WMPP opportunities implemented as part of the WMPP Project, and, where appropriate, WMPP opportunities previously determined to be infeasible by the Sistersville Plant but which had potential for feasibility in the future.

(5) Beginning on January 15, 1998, and every ninety (90) days thereafter until submission of the final WMPP Study Report required by paragraph (f)(2)(vi)(C) of this section, the Sistersville Plant shall direct the Study Team to submit a progress report to the Advisory Committee detailing its efforts during the prior ninety (90) day period.

(B) The Sistersville Plant shall ensure that the WMPP Study and the WMPP Study Report meet the requirements of paragraphs (f)(2)(vi)(B)(1) through (f)(2)(vi)(B)(3) of this section.

(1) The WMPP Study shall consist of a technical, economic, and regulatory assessment of opportunities for source reduction and for environmentally sound recycling for waste streams identified by the Study Team.

(2) The WMPP Study shall evaluate the source, nature, and volume of the waste streams; describe all the WMPP opportunities identified by the Study Team; provide a feasibility screening to evaluate the technical and economical feasibility of each of the WMPP opportunities; identify any cross-media impacts or any anticipated transfers of risk associated with each feasible WMPP opportunity; and identify the projected economic savings and projected quantitative waste reduction estimates for each WMPP opportunity identified.

(3) No later than October 19, 1998, the Sistersville Plant shall prepare and submit to the members of the Advisory Committee a draft WMPP Study Report which, at a minimum, includes the results of the WMPP Study, identifies WMPP opportunities the Sistersville Plant determines to be feasible,

discusses the basis for excluding other opportunities as not feasible, and makes recommendations as to whether the WMPP Study should be continued. The members of the Advisory Committee shall provide any comments to the Sistersville Plant within thirty (30) days of receiving the WMPP Study Report.

(C) Within thirty (30) days after receipt of comments from the members of the Advisory Committee, the Sistersville Plant shall submit to EPA and WVDEP a final WMPP Study Report which identifies those WMPP opportunities the Sistersville Plant determines to be feasible and includes an implementation schedule for each such WMPP opportunity. The Sistersville Plant shall make reasonable efforts to implement all feasible WMPP opportunities in accordance with the priorities identified in the implementation schedule.

(1) For purposes of this paragraph (f), a WMPP opportunity is feasible if the Sistersville Plant considers it to be technically feasible (taking into account engineering and regulatory factors, product line specifications and customer needs) and economically practical (taking into account the full environmental costs and benefits associated with the WMPP opportunity and the company's internal requirements for approval of capital projects). For purposes of the WMPP Project, the Sistersville Plant should use "An Introduction to Environmental Accounting as a Business Management Tool" (EPA 742/R-95/001) as one tool to identify the full environmental costs and benefits of each WMPP opportunity. This EPA publication is available from EPA by calling 1-800-490-9198.

(2) In implementing each WMPP opportunity, the Sistersville Plant shall, after consulting with the other members of the Advisory Committee, develop appropriate protocols and methods for determining the information required by paragraphs (f)(2)(vi)(2)(i) through (f)(2)(vi)(2)(iii) of this section.

(i) The overall volume of wastes reduced.

(ii) The quantities of each constituent identified in paragraph (f)(8) of this section reduced in the wastes.

(iii) The economic benefits achieved.

(3) No requirements of paragraph (f)(2)(vi) of this section are intended to prevent or restrict the Sistersville Plant from evaluating and implementing any WMPP opportunities at the Sistersville Plant in the normal course of its operations or from implementing, prior to the completion of the WMPP Study, any WMPP opportunities identified by the Study Team.

(vii) The Sistersville Plant shall maintain on-site each record required by paragraph (f)(2) of this section, through the MON Compliance Date.

(viii) The Sistersville Plant shall comply with the reporting requirements of paragraphs (f)(2)(viii)(A) through (f)(2)(viii)(G) of this section.

(A) At least sixty days prior to conducting the initial performance test of the thermal incinerator, the Sistersville Plant shall submit to EPA and WVDEP copies of a notification of performance test, as described in 40 CFR 63.7(b). Following the initial performance test of the thermal incinerator, the Sistersville Plant shall submit to EPA and WVDEP copies of the performance test results that include the information relevant to initial performance tests of thermal incinerators contained in 40 CFR 63.7(g)(1), 40 CFR 63.117(a)(4)(i), and 40 CFR 63.117(a)(4)(ii).

(B) Beginning in 1999, on January 31 of each year, the Sistersville Plant shall submit a semiannual written report to the EPA and WVDEP, with respect to the preceding six month period ending on December 31, which contains the information described in paragraphs (f)(2)(viii)(B)(1) through (f)(2)(viii)(B)(10) of this section.

(1) Instances of operating below the minimum operating temperature established for the thermal incinerator under paragraph (f)(2)(ii)(A)(1) of this section which were not corrected within 24 hours of onset.

(2) Any periods during which the capper unit was being operated to manufacture product while the flow indicator for the vent streams to the thermal incinerator showed no flow.

(3) Any periods during which the capper unit was being operated to manufacture product while the flow indicator for any bypass device on the closed vent system to the thermal incinerator showed flow.

(4) Information required to be reported during that six month period under the preconstruction permit issued under the state permitting program approved under subpart XX of 40 CFR Part 52—Approval and Promulgation of Implementation Plans for West Virginia.

(5) Any periods during which the capper unit was being operated to manufacture product while the condenser associated with the methanol recovery operation was not in operation.

(6) The amount (in pounds and by month) of methanol collected by the methanol recovery operation during the six month period.

(7) The amount (in pounds and by month) of collected methanol utilized for reuse, recovery, thermal recovery/

treatment, or bio-treatment, respectively, during the six month period.

(8) The calculated amount (in pounds and by month) of methanol generated by operating the capper unit.

(9) The status of the WMPP Project, including the status of developing the WMPP Study Report.

(10) Beginning in the year after the Sistersville Plant submits the final WMPP Study Report required by paragraph (f)(2)(vi)(C) of this section, and continuing in each subsequent Semiannual Report required by paragraph (f)(2)(viii)(B) of this section, the Sistersville Plant shall report on the progress of the implementation of feasible WMPP opportunities identified in the WMPP Study Report. The Semiannual Report required by paragraph (f)(2)(viii)(B) of this section shall identify any cross-media impacts or impacts to worker safety or community health issues that have occurred as a result of implementation of the feasible WMPP opportunities.

(C) Beginning in 1999, on July 31 of each year, the Sistersville Plant shall provide an Annual Project Report to the EPA and WVDEP Project XL contacts containing the information required by paragraphs (f)(2)(viii)(C)(1) through (f)(2)(viii)(C)(8) of this section.

(1) The categories of information required to be submitted under paragraphs (f)(2)(viii)(B)(1) through (f)(2)(viii)(B)(8) of this section, for the preceding 12 month period ending on June 30.

(2) An updated Emissions Analysis for January through December of the preceding calendar year. The Sistersville Plant shall submit the updated Emissions Analysis in a form substantially equivalent to the previous Emissions Analysis prepared by the Sistersville Plant to support Project XL. The Emissions Analysis shall include a comparison of the volatile organic emissions associated with the capper unit process vents and the wastewater treatment system (using the EPA Water 8 model or other model agreed to by the Sistersville Plant, EPA and WVDEP) under Project XL with the expected emissions from those sources absent Project XL during that period.

(3) A discussion of the Sistersville Plant's performance in meeting the requirements of this paragraph (f), specifically identifying any areas in which the Sistersville Plant either exceeded or failed to achieve any such standard.

(4) A description of any unanticipated problems in implementing the XL Project and any steps taken to resolve them.

(5) A WMPP Implementation Report that contains the information contained in paragraphs (viii)(C)(5)(i) through (viii)(C)(5)(vi).

(i) a summary of the WMPP opportunities selected for implementation.

(ii) a description of the WMPP opportunities initiated and/or completed.

(iii) reductions in volume of waste generated and amounts of each constituent reduced in wastes including any constituents identified in paragraph (f)(8) of this section.

(iv) an economic benefits analysis.

(v) a summary of the results of the Advisory Committee's review of implemented WMPP opportunities.

(vi) a reevaluation of WMPP opportunities previously determined to be infeasible by the Sistersville Plant but which had potential for future feasibility.

(6) An assessment of the nature of, and the successes or problems associated with, the Sistersville Plant's interaction with the federal and state agencies under the Project.

(7) An update on stakeholder involvement efforts.

(8) An evaluation of the Project as implemented against the Project XL Criteria and the baseline scenario.

(D) The Sistersville Plant shall submit to the EPA and WVDEP Project XL contacts a written Final Project Report covering the period during which the temporary deferral was effective, as described in paragraph (f)(3) of this section.

(1) The Final Project Report shall contain the information required to be submitted for the Semiannual Report required under paragraph (f)(2)(viii)(B) of this section, and the Annual Project Report required under paragraph (f)(2)(viii)(C) of this section.

(2) The Sistersville Plant shall submit the Final Project Report to EPA and WVDEP no later than 180 days after the temporary deferral of paragraph (f)(1) of this section is revoked, or 180 days after the MON Compliance Date, whichever occurs first.

(E)(1) The Sistersville Plant shall retain on-site a complete copy of each of the report documents to be submitted to EPA and WVDEP in accordance with requirements under paragraph (f)(2) of this section. The Sistersville Plant shall retain this record until 180 days after the MON Compliance Date. The Sistersville Plant shall provide to stakeholders and interested parties a written notice of availability (to be mailed to all persons on the Project mailing list and to be provided to at least one local newspaper of general

circulation) of each such document, and provide a copy of each document to any such person upon request, subject to the provisions of 40 CFR Part 2.

(2) Any reports or other information submitted to EPA or WVDEP may be released to the public pursuant to the Federal Freedom of Information Act (42 U.S.C. 552 *et seq.*), subject to the provisions of 40 CFR Part 2.

(F) The Sistersville Plant shall make all supporting monitoring results and records required under paragraph (f)(2) of this section available to EPA and WVDEP within a reasonable amount of time after receipt of a written request from those Agencies, subject to the provisions of 40 CFR Part 2.

(G) Each report submitted by the Sistersville Plant under the requirements of paragraph (f)(2) of this section shall be certified by a Responsible Corporate Officer, as defined in 40 CFR 270.11(a)(1).

(H) For each report submitted in accordance with paragraph (f)(2) of this section, the Sistersville Plant shall send one copy each to the addresses in paragraphs (H)(1) through (H)(3).

(1) U.S. EPA Region 3, 841 Chestnut Street, Philadelphia, PA 19107, Attention Tad Radzinski, Mail Code 3WC11.

(2) U.S. EPA, 401 M Street SW, Washington, DC 20460, Attention L. Nancy Birnbaum, Mail Code 2129.

(3) West Virginia Division of Environmental Protection, Office of Air Quality, 1558 Washington Street East, Charleston, WV 25311-2599, Attention John H. Johnston.

(3) Effective period and revocation of temporary deferral.

(i) The temporary deferral contained in this paragraph (f) is effective from April 1, 1998, and shall remain effective until the MON Compliance Date. The temporary deferral contained in this paragraph (f) may be revoked prior to the MON Compliance Date, as described in paragraph (f)(3)(iv) of this section.

(ii) On the MON Compliance Date, the temporary deferral contained in this paragraph (f) will no longer be effective.

(iii) The Sistersville Plant shall come into compliance with those requirements deferred by this paragraph (f) no later than the MON Compliance Date. No later than 18 months prior to the MON Compliance Date, the Sistersville Plant shall submit to EPA an implementation schedule that meets the requirements of paragraph (g)(1)(iii) of this section.

(iv) The temporary deferral contained in this paragraph (f) may be revoked for cause, as determined by EPA, prior to the MON Compliance Date. The Sistersville Plant may request EPA to

revoke the temporary deferral contained in this paragraph (f) at any time. The revocation shall be effective on the date that the Sistersville Plant receives written notification of revocation from EPA.

(v) Nothing in this section shall affect the provisions of the MON, as applicable to the Sistersville Plant.

(vi) Nothing in paragraph (f) or (g) of this section shall affect any regulatory requirements not referenced in paragraph (f)(1)(iii) of this section, as applicable to the Sistersville Plant.

(4) The Sistersville Plant shall conduct the initial performance test required by paragraph (f)(2)(ii)(B) of this section using the procedures in paragraph (f)(4) of this section. The organic concentration and percent reduction shall be measured as TOC minus methane and ethane, according to the procedures specified in paragraph (f)(4) of this section.

(i) Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites.

(A) To determine compliance with the 98 percent reduction of TOC requirement of paragraph (f)(2)(ii)(A)(1) of this section, sampling sites shall be located at the inlet of the control device after the final product recovery device, and at the outlet of the control device.

(B) To determine compliance with the 20 parts per million by volume TOC limit in paragraph (f)(2)(ii)(A)(1) of this section, the sampling site shall be located at the outlet of the control device.

(ii) The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate.

(iii) To determine compliance with the 20 parts per million by volume TOC limit in paragraph (f)(2)(ii)(A)(1) of this section, the Sistersville Plant shall use Method 18 of 40 CFR part 60, appendix A to measure TOC minus methane and ethane. Alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, may be used. The following procedures shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen:

(A) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15 minute intervals during the run.

(B) The concentration of TOC minus methane and ethane (C_{TOC}) shall be

calculated as the sum of the concentrations of the individual components, and shall be computed for each run using the following equation:

$$C_{TOC} = \sum_{i=1}^x \frac{\left(\sum_{j=1}^n C_{ji} \right)}{x}$$

where:

C_{TOC} = Concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.

C_{ji} = Concentration of sample components j of sample i , dry basis, parts per million by volume.

n = Number of components in the sample.

x = Number of samples in the sample run.

(C) The concentration of TOC shall be corrected to 3 percent oxygen if a combustion device is the control device.

(1) The emission rate correction factor or excess air, integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A shall be used to determine the oxygen concentration ($\%O_{2d}$). The samples shall be taken during the same time that the TOC (minus methane or ethane) samples are taken.

(2) The concentration corrected to 3 percent oxygen (C_c) shall be computed using the following equation:

$$C_c = C_m \left(\frac{17.9}{20.9 - \%O_{2d}} \right)$$

where:

C_c = Concentration of TOC corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m = Concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.

$\%O_{2d}$ = Concentration of oxygen, dry basis, percent by volume.

(iv) To determine compliance with the 98 percent reduction requirement of paragraph (f)(2)(ii)(A)(1) of this section, the Sistersville Plant shall use Method 18 of 40 CFR part 60, appendix A; alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A may be used. The following procedures shall be used to calculate percent reduction efficiency:

(A) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time such as 15 minute intervals during the run.

(B) The mass rate of TOC minus methane and ethane (E_i, E_o) shall be

computed. All organic compounds (minus methane and ethane) measured by Method 18 of 40 CFR part 60, Appendix A are summed using the following equations:

$$E_i = K_2 \left(\sum_{j=1}^n C_{ij} M_{ij} \right) Q_i$$

$$E_o = K_2 \left(\sum_{j=1}^n C_{oj} M_{oj} \right) Q_o$$

where:

C_{ij}, C_{oj} = Concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.

E_i, E_o = Mass rate of TOC (minus methane and ethane) at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

M_{ij}, M_{oj} = Molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole.

Q_i, Q_o = Flow rate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.

K_2 = Constant, 2.494×10^{-6} (parts per million) $^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20 °C.

(C) The percent reduction in TOC (minus methane and ethane) shall be calculated as follows:

$$R = \frac{E_i - E_o}{E_i} (100)$$

where:

R = Control efficiency of control device, percent.

E_i = Mass rate of TOC (minus methane and ethane) at the inlet to the control device as calculated under paragraph (f)(4)(iv)(B) of this section, kilograms TOC per hour.

E_o = Mass rate of TOC (minus methane and ethane) at the outlet of the control device, as calculated under paragraph (f)(4)(iv)(B) of this section, kilograms TOC per hour.

(5) At the time of the initial performance test of the process vent thermal incinerator required under paragraph (f)(2)(ii)(B) of this section, the Sistersville Plant shall inspect each closed vent system according to the procedures specified in paragraphs (f)(5)(i) through (f)(5)(vi) of this section.

(i) The initial inspections shall be conducted in accordance with Method 21 of 40 CFR part 60, appendix A.

(ii)(A) Except as provided in paragraph (f)(5)(ii)(B) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in

section 3.1.2(a) of Method 21 of 40 CFR part 60, appendix A shall be for the average composition of the process fluid not each individual volatile organic compound in the stream. For process streams that contain nitrogen, air, or other inert which are not organic hazardous air pollutants or volatile organic compounds, the average stream response factor shall be calculated on an inert-free basis.

(B) If no instrument is available at the plant site that will meet the performance criteria specified in paragraph (f)(5)(ii)(A) of this section, the instrument readings may be adjusted by multiplying by the average response factor of the process fluid, calculated on an inert-free basis as described in paragraph (f)(5)(ii)(A) of this section.

(iii) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(iv) Calibration gases shall be as follows:

(A) Zero air (less than 10 parts per million hydrocarbon in air); and

(B) Mixtures of methane in air at a concentration less than 10,000 parts per million. A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (f)(5)(ii)(A) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in air.

(v) The Sistersville Plant may elect to adjust or not adjust instrument readings for background. If the Sistersville Plant elects to not adjust readings for background, all such instrument readings shall be compared directly to the applicable leak definition to determine whether there is a leak. If the Sistersville Plant elects to adjust instrument readings for background, the Sistersville Plant shall measure background concentration using the procedures in 40 CFR 63.180(b) and (c). The Sistersville Plant shall subtract background reading from the maximum concentration indicated by the instrument.

(vi) The arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared with 500 parts per million for determining compliance.

(6) Definitions of terms as used in paragraphs (f) and (g) of this section.

(i) Closed vent system is defined as a system that is not open to the atmosphere and that is composed of piping, connections and, if necessary, flow-inducing devices that transport gas

or vapor from the copper unit process vent to the thermal incinerator.

(ii) No detectable emissions means an instrument reading of less than 500 parts per million by volume above background as determined by Method 21 in 40 CFR part 60.

(iii) Reuse includes the substitution of collected methanol (without reclamation subsequent to its collection) for virgin methanol as an ingredient (including uses as an intermediate) or as an effective substitute for a commercial product.

(iv) Recovery includes the substitution of collected methanol for virgin methanol as an ingredient (including uses as an intermediate) or as an effective substitute for a commercial product following reclamation of the methanol subsequent to its collection.

(v) Thermal recovery/treatment includes the use of collected methanol in fuels blending or as a feed to any combustion device to the extent permitted by federal and state law.

(vi) Bio-treatment includes the treatment of the collected methanol through introduction into a biological treatment system, including the treatment of the collected methanol as a waste stream in an on-site or off-site wastewater treatment system.

Introduction of the collected methanol to the on-site wastewater treatment system will be limited to points downstream of the surface impoundments, and will be consistent with the requirements of federal and state law.

(vii) Start-up shall have the meaning set forth at 40 CFR 63.2.

(viii) Flow indicator means a device which indicates whether gas flow is present in the vent stream, and, if required by the permit for the thermal incinerator, which measures the gas flow in that stream.

(ix) Continuous Recorder means a data recording device that records an instantaneous data value at least once every fifteen minutes.

(x) MON means the National Emission Standards for Hazardous Air Pollutants for the source category Miscellaneous Organic Chemical Production and Processes ("MON"), promulgated under the authority of Section 112 of the Clean Air Act.

(xi) MON Compliance Date means the date 3 years after the effective date of the National Emission Standards for Hazardous Air Pollutants for the source category Miscellaneous Organic Chemical Production and Processes ("MON").

(7) OSi Specialties, Incorporated, a subsidiary of Witco Corporation ("OSi"), may seek to transfer its rights

and obligations under this paragraph (f) to a future owner of the Sistersville Plant in accordance with the requirements of paragraphs (f)(7)(i) through (f)(7)(iii) of this section.

(i) OSi will provide to EPA a written notice of any proposed transfer at least forty-five days prior to the effective date of any such transfer. The written notice will identify the proposed transferee.

(ii) The proposed transferee will provide to EPA a written request to assume the rights and obligations under this paragraph (f) at least forty-five days prior to the effective date of any such transfer. The written request will describe the transferee's financial and technical capability to assume the obligations under this paragraph (f), and will include a statement of the transferee's intention to fully comply with the terms of this paragraph (f) and to sign the Final Project Agreement for this XL Project as an additional party.

(iii) Within thirty days of receipt of both the written notice and written request described in paragraphs (f)(7)(i) and (f)(7)(ii) of this section, EPA will determine, based on all relevant information, whether to approve a transfer of rights and obligations under this paragraph (f) from OSi to a different owner.

(8) The constituents to be identified by the Sistersville Plant pursuant to paragraphs (f)(2)(vi)(C)(2)(ii) and (f)(2)(viii)(C)(5)(iii) of this section are: 1 Naphthalenamine; 1,2,4 Trichlorobenzene; 1,1 Dichloroethylene; 1,1,1 Trichloroethane; 1,1,1,2 Tetrachloroethane; 1,1,2 Trichloro 1,2,2 Trifluoroethane; 1,1,2 Trichloroethane; 1,1,2,2 Tetrachloroethane; 1,2 Dichlorobenzene; 1,2 Dichloroethane; 1,2 Dichloropropane; 1,2 Dichloropropane; 1,2 Transdichloroethene; 1,2 Trans-Dichloroethene; 1,2,4,5 Tetrachlorobenzene; 1,3 Dichlorobenzene; 1,4 Dichloro 2 butene; 1,4 Dioxane; 2 Chlorophenol; 2 Cyclohexyl 4,6 dinitrophenol; 2 Methyl Pyridine; 2 Nitropropane; 2,4-Dinitrotoluene; Acetone; Acetonitrile; Acrylonitrile; Allyl Alcohol; Aniline; Antimony; Arsenic; Barium; Benzene; Benzotrichloride; Benzyl Chloride; Beryllium; Bis (2 ethyl Hexyl) Phthalate; Butyl Alcohol, n; Butyl Benzyl Phthalate; Cadmium; Carbon Disulfide; Carbon Tetrachloride; Chlorobenzene; Chloroform; Chloromethane; Chromium; Chrysene; Copper; Creosol; Creosol, m-; Creosol, o; Creosol, p; Cyanide; Cyclohexanone; Di-n-octyl phthalate; Dichlorodifluromethane; Diethyl Phthalate; Dihydrosafrole; Dimethylamine; Ethyl Acetate; Ethyl benzene; Ethyl Ether; Ethylene Glycol

Ethyl Ether; Ethylene Oxide; Formaldehyde; Isobutyl Alcohol; Lead; Mercury; Methanol; Methoxychlor; Methyl Chloride; Methyl Chloroformate; Methyl Ethyl Ketone; Methyl Ethyl Ketone Peroxide; Methyl Isobutyl Ketone; Methyl Methacrylate; Methylene Bromide; Methylene Chloride; Naphthalene; Nickel; Nitrobenzene; Nitroglycerine; p-Toluidine; Phenol; Phthalic Anhydride; Polychlorinated Biphenyls; Propargyl Alcohol; Pyridine; Safrole; Selenium; Silver; Styrene; Tetrachloroethylene; Tetrahydrofuran; Thallium; Toluene; Toluene 2,4 Diisocyanate; Trichloroethylene; Trichlorofluoromethane; Vanadium; Vinyl Chloride; Warfarin; Xylene; Zinc.

(g) This paragraph (g) applies only to the facility commonly referred to as the OSi Specialties Plant, located on State Route 2, Sistersville, West Virginia ("Sistersville Plant").

(1)(i) No later than 18 months from the date the Sistersville Plant receives written notification of revocation of the temporary deferral for the Sistersville Plant under paragraph (f) of this section, the Sistersville Plant shall, in accordance with the implementation schedule submitted to EPA under paragraph (g)(1)(ii) of this section, either come into compliance with all requirements of this subpart which had been deferred by paragraph (f)(1)(i) of this section, or complete a facility or process modification such that the requirements of § 265.1086 of this subpart are no longer applicable to the two hazardous waste surface impoundments. In any event, the Sistersville Plant must complete the requirements of the previous sentence no later than the MON Compliance Date; if the Sistersville Plant receives written notification of revocation of the temporary deferral after the date 18 months prior to the MON Compliance Date, the date by which the Sistersville Plant must complete the requirements of the previous sentence will be the MON Compliance Date, which would be less than 18 months from the date of notification of revocation.

(ii) Within 30 days from the date the Sistersville Plant receives written notification of revocation under paragraph (f)(3)(iv) of this section, the Sistersville Plant shall enter and maintain in the facility operating record an implementation schedule. The implementation schedule shall demonstrate that within 18 months from the date the Sistersville Plant receives written notification of revocation under paragraph (f)(3)(iv) of this section (but no later than the MON Compliance Date), the Sistersville Plant shall either

come into compliance with the regulatory requirements that had been deferred by paragraph (f)(1)(i) of this section, or complete a facility or process modification such that the requirements of § 265.1086 of this subpart are no longer applicable to the two hazardous waste surface impoundments. Within 30 days from the date the Sistersville Plant receives written notification of revocation under paragraph (f)(3)(iv) of this section, the Sistersville Plant shall submit a copy of the implementation schedule to the EPA and WVDEP Project XL contacts identified in paragraph (f)(2)(viii)(H) of this section. The implementation schedule shall reflect the Sistersville Plant's effort to come into compliance as soon as practicable (but no later than 18 months after the date the Sistersville Plant receives written notification of revocation, or the MON Compliance Date, whichever is sooner) with all regulatory requirements that had been deferred under paragraph (f)(1)(i) of this section, or to complete a facility or process modification as soon as practicable (but no later than 18 months after the date the Sistersville Plant receives written notification of revocation, or the MON Compliance Date, whichever is sooner) such that the requirements of § 265.1086 of this subpart are no longer applicable to the two hazardous waste surface impoundments.

(iii) The implementation schedule shall include the information described in either paragraph (g)(1)(iii) (A) or (B) of this section.

(A) Specific calendar dates for: Award of contracts or issuance of purchase orders for the control equipment required by those regulatory requirements that had been deferred by paragraph (f)(1)(i) of this section; initiation of on-site installation of such control equipment; completion of the control equipment installation; performance of any testing to demonstrate that the installed control equipment meets the applicable standards of this subpart; initiation of operation of the control equipment; and compliance with all regulatory requirements that had been deferred by paragraph (f)(1)(i) of this subpart.

(B) Specific calendar dates for the purchase, installation, performance testing and initiation of operation of equipment to accomplish a facility or process modification such that the requirements of § 265.1086 of this subpart are no longer applicable to the two hazardous waste surface impoundments.

(2) Nothing in paragraph (f) or (g) of this section shall affect any regulatory requirements not referenced in

paragraph (f)(2) (i) or (ii) of this section, as applicable to the Sistersville Plant.

(3) In the event that a notification of revocation is issued pursuant to paragraph (f)(3)(iv) of this section, the requirements referenced in paragraph (f)(1)(iii) of this section are temporarily deferred, with respect to the two hazardous waste surface impoundments, provided that the Sistersville Plant is in compliance with the requirements of paragraphs (f)(2)(ii), (f)(2)(iii), (f)(2)(iv), (f)(2)(v), (f)(2)(vi) and (g) of this section, except as provided under paragraph (g)(4) of this section. The temporary deferral of the previous sentence shall be effective beginning on the date the Sistersville Plant receives written notification of revocation, and subject to paragraph (g)(5) of this section, shall continue to be effective for a maximum period of 18 months from that date, provided that the Sistersville Plant is in compliance with the requirements of paragraphs (f)(2)(ii), (f)(2)(iii), (f)(2)(iv), (f)(2)(v), (f)(2)(vi) and (g) of this section at all times during that 18-month period.

(4) In the event that a notification of revocation is issued pursuant to paragraph (f)(3)(iv) of this section as a result of the permanent removal of the copper unit from methyl capped polyether production service, the requirements referenced in paragraph (f)(1)(iii) of this section are temporarily deferred, with respect to the two hazardous waste surface impoundments, provided that the Sistersville Plant is in compliance with the requirements of paragraphs (f)(2)(vi), and (g) of this section. The temporary deferral of the previous sentence shall be effective beginning on the date the Sistersville Plant receives written notification of revocation, and subject to paragraph (g)(5) of this section, shall continue to be effective for a maximum period of 18 months from that date, provided that the Sistersville Plant is in compliance with the requirements of paragraphs (f)(2)(vi) and (g) of this section at all times during that 18-month period.

(5) In no event shall the temporary deferral provided under paragraph (g)(3) or (g)(4) of this section be effective after the MON Compliance Date.

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BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 409, 410, 411, 412, 413, 424, 440, 485, 488, 489 and 498

[BPD-878-CN]

RIN 0938-AH55

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates; Corrections

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period; correction notice.

SUMMARY: In the August 29, 1997, issue of the **Federal Register** (62 FR 45966), we published a final rule with comment period revising the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes resulting from the Balanced Budget Act of 1997, Pub. L. 105-33, and changes arising from our continuing experience with the system. This document corrects errors made in that document.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Edwards, (410) 786-4531.

SUPPLEMENTARY INFORMATION: In the preamble of the August 29, 1997 final rule with comment period, we indicated that if a hospital believed its wage index value was incorrect as a result of an intermediary or HCFA error that the hospital could not have known about before reviewing data made available in mid-August, the hospital had to notify the intermediary and HCFA in writing, no later than September 15, 1997 (see 62 FR 45989). As a result of this process, we have corrected the wage data for 10 hospitals and included the wage data for 2 hospitals that were erroneously omitted. In addition, the Balanced Budget Act of 1997, Public Law 105-33, allowed hospitals meeting specific criteria to be reclassified for fiscal year (FY) 1998 and subsequent years. Because these reclassification decisions were made after publication of the final rule with comment period, the impact on their area wage indexes are reflected below. Accordingly, the wage index values for several areas have changed and are corrected in this document.

The August 29, 1997 final rule with comment period also contained technical and typographic errors. Therefore, we are making the following corrections to the final rule with comment period: