

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 262, 264, and 265**

[IL-64-2-5807; FRL-6221-9]

RIN 2060-AG44

**Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; clarification and technical amendment.

**SUMMARY:** Under the authority of the Resource Conservation and Recovery Act (RCRA), as amended, the EPA has promulgated standards (59 FR 62896, December 6, 1994) to reduce organic air emissions from certain hazardous waste management activities to levels that are protective of human health and the environment. (The standards are known colloquially as the "subpart CC" standards due to their inclusion in subpart CC of parts 264 and 265 of the

RCRA subtitle C regulations). These air standards control organic emissions from certain tanks, containers, and surface impoundments (including tanks and containers at generators' facilities) used to manage hazardous waste capable of releasing organic waste constituents at levels which can harm human health and the environment.

Since publication of the final standards on December 6, 1994, the EPA has given public notice and taken comment on several proposed revisions to the final rule, and has made corresponding amendments. In response to public comments and inquiries, today's action makes clarifying amendments to certain regulatory text and reestablishes certain regulatory provisions that were previously contained in the rules and later inadvertently removed.

**DATES:** These amendments are effective January 21, 1999.

**ADDRESSES:** *Docket.* The supporting information used for the subpart CC rulemaking is available for public inspection and copying in the RCRA docket. The RCRA docket numbers pertaining to this rulemaking are F-91-

CESP-FFFFF, F-92-CESA-FFFFF, F-94-CESF-FFFFF, F-94-CE2A-FFFFF, F-95-CE3A-FFFFF, F-96-CE3F-FFFFF, and F-96-CE4A-FFFFF. The RCRA docket is located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia.

Review of docket materials is conducted at the Virginia address; the public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603-9230. The mailing address for the RCRA docket office is RCRA Information Center (5305W), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** For general information about the RCRA Air Rules, or specific rule requirements of RCRA rules, please contact the RCRA Hotline, toll-free at (800) 424-9346.

Contacts for specific information are listed in the "Supplementary Information" section of this preamble.

**SUPPLEMENTARY INFORMATION:**

**Regulated Entities**

The entities potentially affected by this action include:

Category	Examples of regulated entities
Industry .....	Businesses that treat, store, or dispose of hazardous waste and are subject to RCRA subtitle C permitting requirements, or that accumulate hazardous waste on-site in RCRA permit-exempt tanks or containers pursuant to 40 CFR 262.34(a).
Federal Government .....	Federal agencies that treat, store, or dispose of hazardous waste and are subject to RCRA subtitle C permitting requirements, or that accumulate hazardous waste on-site in RCRA permit-exempt tanks or containers pursuant to 40 CFR 262.34(a).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in the amendments to the regulation affected by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 264.1030 and § 265.1030 of the RCRA subpart AA rules, § 264.1050 and § 265.1050 of the RCRA subpart BB rules, and § 264.1080 and § 265.1080 of the RCRA subpart CC air rules.

**Informational Contacts**

If you have questions regarding the applicability of this action to a particular situation, or questions about compliance approaches, permitting, enforcement and rule determinations, please contact the appropriate regional representative in the table below:

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For questions about testing or analytical methods mentioned in this document, please contact Ms. Rima Dishakjian, Emission Measurement Center (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-0443. For information concerning the analyses performed in developing this rule, contact Ms. Michele Aston, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2363, electronic mail address, aston.michele@epa.gov.

### Background

Section 3004(n) of RCRA requires EPA to develop standards to control air emissions from hazardous waste treatment, storage, and disposal facilities (TSDF) as may be necessary to protect human health and the environment. This requirement echoes the general requirement in RCRA section 3004(a) and section 3002(a)(3) to develop standards to control hazardous waste management activities as may be necessary to protect human health and the environment. The Agency has issued a series of regulations to implement the section 3004(n) mandate; these regulations control air emissions from certain process vents and equipment leaks (part 264 and part 265, subparts AA and BB), and emissions from certain tanks, containers, and surface impoundments (the subpart CC standards, which are the primary subject of today's action).

The EPA today is making technical amendments to the final subpart AA and CC standards, and providing interpretations for certain provisions of those rules. Since the publication of the final subpart CC rule (59 FR 69826, December 4, 1994), the EPA has published four **Federal Register** documents that delayed the effective date of that rule, i.e., 60 FR 26828, May 19, 1995; 60 FR 56952, November 13, 1995; 61 FR 28508, June 5, 1996; 61 FR 59931, November 25, 1996). The November 1996 notice established the ultimate effective date of December 6, 1996. The EPA has also issued an indefinite stay of the standards specific to units managing wastes produced by certain organic peroxide manufacturing processes (60 FR 50426, September 29, 1995).

On August 14, 1995, the EPA published a **Federal Register** document entitled, "Proposed rule; data availability" (60 FR 41870) and opened

RCRA docket F-95-CE3A-FFFFF to accept comments on revisions that the EPA was considering for the final subpart CC standards. The EPA accepted public comments on the appropriateness of these revisions through October 13, 1995. Throughout 1996 and 1997, the EPA engaged in repeated discussions with representatives of the groups filing petitions for review challenging the subpart CC standards.

To further inform the affected public of the major clarifications, compliance options, and technical amendments being considered, the EPA conducted a series of seminars during August and September of 1995. At that time, a total of six seminars were held nationally. An updated series of six seminars was held in September through December 1996 and two additional seminars were held March and April of 1997 in conjunction with an industry trade association. (Refer to EPA RCRA Docket No. F-95-CE3A-FFFFF.) During these seminars, additional comments were received on the RCRA air rules for tanks, surface impoundments, and containers.

On February 9, 1996, the EPA published a **Federal Register** document (61 FR 4903), "Final rule; technical amendment," which made clarifying amendments in the regulatory text of the final standards, corrected typographical and grammatical errors, and clarified certain language in the preamble to the final rule to better convey the EPA's original intent.

On November 25, 1996, the EPA published a **Federal Register** document (61 FR 59932), "Final rule" that amended provisions of the final subparts AA, BB, CC rules to better convey the EPA's original intent, to provide additional flexibility to owners and operators who must comply with the rules, and to change the effective date of the requirements contained in the subpart CC rules to be December 6, 1996.

On December 8, 1997, the EPA published a **Federal Register** document (62 FR 64636), "Final rule; clarification and technical amendment" that amended provisions of the final subparts AA, BB, CC rules to clarify the regulatory text of the final standards; interpret those standards; correct typographical, printing, and grammatical errors; and clarify certain language published in the preambles of previous **Federal Register** documents.

Today's action makes technical amendments to the final subpart AA and CC rules in order to further clarify the regulatory text of the final standards; interpret those standards; and correct

typographical, printing, and grammatical errors.

### Outline.

The information presented in this preamble is organized as follows:

- I. Part 262—Standards Applicable to Generators of Hazardous Waste
- II. Subpart AA: Air Emission Standards for Process Vents
- III. Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers
  - A. Applicability
  - B. Waste Determination Procedures
  - C. Standards: Tanks
  - D. Standards: Containers
- IV. Administrative Requirements
  - A. Docket
  - B. Paperwork Reduction Act
  - C. Executive Order 12866
  - D. Regulatory Flexibility
  - E. Unfunded Mandates Reform Act
  - F. Executive Order 13045
  - G. National Technology Transfer and Advancement Act
  - H. Enhancing the Intergovernmental Partnership Under Executive Order 12875
  - I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
  - J. Submission to Congress and the General Accounting Office
  - K. Pollution Prevention Act
  - L. Immediate Effective Date
- V. Legal Authority

### I. Subpart B—General Facility Standards

Today's action replaces the references to the subpart AA, BB, and CC standards in §§ 262.34(a)(1)(i) and 262.34(a)(1)(ii) as standards that must be met as conditions where a generator may accumulate hazardous waste on-site for 90 days or less without a RCRA permit or without having interim status. The references to subparts AA, BB, and CC were removed mistakenly by the November 25, 1996, **Federal Register** notice (61 FR 59950). At the time, it was thought that, since the subparts were also referenced in Subpart I—Use and Management of Containers at § 264.179 and in Subpart J—Tank Systems at § 264.200, the references in § 262.34, Accumulation time, were redundant. It was later determined that the references to subparts AA, BB, and CC are needed for clarity and the permit exemption criteria are being replaced by today's notice.

### II. Subpart AA: Air Emission Standards for Process Vents

The definition of "equipment" contained in subpart AA at § 254.1031 is being revised to include "other connectors" in the list of components that are considered equipment under the subpart BB Air Emission Standards

for Equipment Leaks. The applicability section of the subpart BB rules states that the "subpart applies to equipment that contains or contacts hazardous waste \* \* \*" However, when the subpart BB rules were originally promulgated in June of 1990 (55 FR 25495) the term "other connectors" was inadvertently left out of the equipment definition; this has caused some uncertainty regarding applicability of the rule to other connectors. Nonetheless, it is clear that the EPA intended other connectors to be included in the list of equipment covered by the rule. This is demonstrated by the fact that the term "other connectors" is used throughout § 264.1058 and § 265.1058 of the subpart BB standards whenever the equipment that is covered by this section of the rule is listed. Also, the preamble to the final subpart BB rules in Section V.C (i.e., Applicability and Requirements of Today's Final Standards) clearly states in discussing affected equipment at 55 FR 25465 (June 21, 1990) that "\* \* \* flanges and other connectors must be monitored within 5 days by Reference Method 21 if evidence of a potential leak is found \* \* \*" In addition, the original Clean Air Act equipment leak rules (i.e., subpart VV in 40 CFR 60.481) that served as the technical basis for the RCRA subpart BB equipment leak standards do include the term "other connector" in the definition of equipment subject to the rule. To correct this oversight, the definition of "equipment" contained in subpart AA at § 254.1031 is being revised to include "other connectors" in the list of components that are considered equipment under subpart BB.

The definition for "open-ended valve or line" is being amended to replace the term "process fluid" with the words "hazardous waste." The definition has included the term "process fluid" to characterize an open-ended valve or line since the rule was originally published on June 21, 1990 (55 FR 25495); i.e., "\* \* \* one side of the valve seat in contact with process fluid and one side open to the atmosphere \* \* \*" It was recently brought to the EPA's attention that the definition should use the term "hazardous waste" rather than "process fluid", since the subpart BB rules only apply to equipment (e.g., an open-ended valve or line) that contains or contacts hazardous waste as stated in the applicability sections at § 264.1050(b) and § 265.1050(b). In addition, the RCRA air rules for open-ended valves or lines (at § 264.1056 and § 265.1056) clearly refer to the material or fluid in the valve or line as being hazardous

waste. Therefore, as a part of today's action the definition is being revised to avoid any confusion regarding what constitutes an open-ended line or valve.

Also within subpart AA, a definition is being added for "sampling connection system." This is being done in order to clarify the difference between a "sampling connection" and an "open-ended line" which have significantly different technical requirements under the subpart BB rules. There has been some confusion regarding open-ended lines being considered as sampling connections and the new definition should eliminate any potential for overlap.

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

#### A. Applicability

In today's action, the EPA is amending paragraph (b)(5) of § 264.1080 and § 265.1080 to clarify that waste management units that are used solely for on-site treatment or storage of hazardous waste that is "placed in the unit" as a result of implementing Federally required remedial activities are exempt from the requirements of subpart CC. The language originally used in this paragraph stated that the hazardous waste must be "generated" as a result of implementing Federally required remedial activities. The word "generated" does carry a certain programmatic connotation; therefore, the word "generated" is being replaced because of the potential confusion caused by some of the regulated community taking a strictly regulatory interpretation of the term "generated" (i.e. viewing it as a term of art) rather than a more literal, plain English interpretation as was intended by the EPA in this context. For example, under the RCRA regulations, section 260.10, the term "generate" carries a particular legal context which was not intended to be strictly applied in this paragraph. Therefore, the word "generated" is being replaced to avoid any misinterpretation.

#### B. Waste Determination Procedures

Paragraph (a)(1)(i) of § 264.1083 and § 265.1084 is being amended to add new paragraphs (i) and (ii) that affect the requirements for when an owner or operator must make a determination of the volatile organic (VO) concentration of the waste stream. These new paragraphs effectively reestablish the previously contained requirements for determining VO concentration for hazardous wastes placed in a waste management unit exempted from using

subpart CC air emission controls because the waste has an average VO concentration at the point of waste origination less than the action level of 500 ppmw.

As originally published, the subpart CC rules required that an initial determination of the average VO concentration of the hazardous waste stream be made before the first time any portion of the waste is placed in a waste management unit exempted from subpart CC air emission controls under the action level criteria. (See § 264.1083(a)(1), § 265.1084(a)(1), § 265.1084(a)(2)(i)(A), § 265.1084(a)(2)(ii)(A), § 265.1084(a)(3)(i)(A), and § 265.1084(a)(3)(ii) in 59 FR 62938 through 62939, December 6, 1994.) Thereafter, a determination of the VO concentration was required for each averaging period that a hazardous waste is managed in the unit. (See § 265.1084(a)(5)(ii) in 59 FR 62939, December 6, 1994.) In addition, the owner or operator was required to perform a new determination of the hazardous waste's VO concentration whenever changes to the source generating the waste stream were reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration action level or concentration limits. (See § 265.1084(a)(2)(i)(B), § 265.1084(a)(2)(ii)(B), and § 265.1084(a)(3)(i)(B) in 59 FR 62939, December 6, 1994.)

In November 1996, the EPA expanded and reorganized the waste determination procedures in § 264.1083 and § 265.1084 to allow various test methods other than Method 25D to be used as direct measurement in a waste determination. At this time, the EPA also revised the waste determination procedures such that, for both point of waste origination and point of waste treatment, no distinction was made for batch or continuous processes or for whether the owner or operator is the generator or receives the waste from off-site. In making these changes, the EPA inadvertently removed the requirements, in paragraphs (2) and (3) of § 265.1084(a) and in paragraph § 265.1084(a)(5)(ii), for when a determination of VO concentration is required. Today's amendments reestablish those requirements specifying when an owner or operator must determine the VO concentration of a hazardous waste stream.

Under the restored language in today's amendments, the owner or operator must perform an initial

determination of the average VO concentration of the hazardous waste stream before the first time any portion of the waste is placed in a waste management unit exempted from subpart CC air emission controls under the action level criteria. Following the initial VO concentration determination, a determination of the VO concentration is required for each averaging period that a hazardous waste is managed in the unit. This means that the owner or operator must have a current and up-to-date VO concentration determination on record for each hazardous waste stream managed in a waste management unit exempted from subpart CC air emission controls under the action level criteria. This VO concentration determination must reflect the VO concentration of the waste currently managed in the unit over the time frame covered by the specified averaging period.

In addition, the owner or operator is required to perform a new determination of the hazardous waste's VO concentration whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration action level or concentration limits.

The following example illustrates the requirement that the owner or operator have an initial as well as a current and up-to-date VO concentration determination on record for each hazardous waste stream managed in a waste management unit exempted from subpart CC air emission controls under the action level criteria. Assume that a TSDF owner has a production process that continuously generates a hazardous waste. Just prior to December 6, 1996, the effective date of the rule, the TSDF owner determines by direct measurement using Method 25D that, using a 6-month averaging period, the particular hazardous waste stream had an average VO concentration of 250 ppmw at the point of waste origination. The owner then records that for the 6-month period beginning with December 6, 1996, this particular generated waste stream has an average VO concentration of 250 ppmw; this serves as the initial determination of VO concentration as required under § 265.1084(a)(1)(i) in today's amendments.

Because the example waste stream has a VO concentration less than the action level of 500 ppmw, the owner manages the hazardous waste in a unit that is not equipped with subpart CC air emission controls. Under the requirements being reestablished in today's amendments, by June 6, 1997 (i.e., the end of the first 6-

month averaging period) the owner must perform a new waste VO concentration determination for the next 6-month averaging period that would run from June 6 to December 6, 1997. In this example, the owner now elects to perform the new VO concentration determination using knowledge of the waste rather than using direct measurement as was done previously using Method 25D. The owner however does use the results of the first direct measurement, together with process engineering knowledge and experience (e.g., no change has been made to the raw materials or process technology for the steady-state production operation generating the waste) as the basis for the "knowledge" based VO concentration determination. Therefore, the owner records that for the 6-month averaging from June 6 to December 6, 1997, this particular waste stream has an average VO concentration of 250 ppmw. This waste VO concentration determination meets the requirements in § 265.1084(a)(1)(i) of today's amendments that a VO concentration determination be made for *each* averaging period that a hazardous waste is managed in a unit exempt from air emission controls under the action level criteria.

To continue the example, the owner repeats this same process for the averaging period that runs from December 6, 1997, to June 6, 1998. However, in April 1998, the owner modifies the production process and determines that this modification has the potential to cause the average VO concentration of the hazardous waste generated to increase to a level that is equal to or greater than the 500 ppmw action level. In this situation, under the requirements reestablished by today's action, the owner would be required to perform a new determination of the average VO concentration because of the changes to the source generating the waste. (See § 265.1084(a)(1)(ii) in today's amendments.)

Without today's amendments to the waste determination requirements of subpart CC, there is effectively no requirement (or guidance) provided within the rules as to when an owner or operator must determine the VO concentration of a hazardous waste stream. This was not EPA's intent. We intended that the owner or operator maintain a current VO concentration determination for each averaging period. This is clearly illustrated by the preamble discussion in the December 6, 1994 **Federal Register** notice, which states (at 59 FR 62916): "If an average volatile organic concentration is used, an initial waste determination must be

performed for *each* averaging period." Today's amendments reestablish requirements specifying when an owner or operator must determine the VO concentration of a hazardous waste stream.

In other changes to the waste determination provisions of subpart CC, the EPA is amending the waste sampling provisions of the rule to clarify requirements related to the sampling period. In November 1996, the EPA expanded and reorganized the waste determination procedures in § 264.1083 and § 265.1084; the requirements regarding sampling of the hazardous waste stream for a direct measurement of the VO concentration were also revised and reformatted. In doing so, provisions previously in the rule at § 265.1084(a)(5)(iv)(A) and § 265.1084(b)(4)(iv)(A) (see 59 FR 62939 and 59 FR 62941, December 6, 1994), requiring that all waste samples for a particular waste determination be collected within a 1-hour period and that information on waste quantity and operating conditions relative to the waste samples be prepared and recorded, were inadvertently left out of the rule language. This language is being restored in today's amendments.

On December 8, 1997 (see 62 FR 64664), the EPA amended the language regarding sampling for a waste determination in § 265.1084(a)(3)(ii)(B) and § 265.1084(b)(3)(ii)(B) to clarify the EPA's intent regarding the number of samples required for a waste determination. The amended paragraph stated (as did the published rule language at § 265.1084(a)(5)(iv)(A) and § 265.1084(b)(4)(iv)(A) [see 59 FR 62939, December 6, 1994]), that the average of four or more sample results constitutes a waste determination for the waste stream. This amended paragraph further clarified that one or more waste determinations may be needed to represent the average VO concentration over the complete range of waste compositions and quantities that occur during the entire averaging period (due to normal variations in the operating conditions for the source or process generating the hazardous waste stream). Thus, to determine the average VO concentration of a waste stream generated by a process with large seasonal variations in waste quantity, or fluctuations in ambient temperature, several waste determinations (consisting of four or more samples each) will be required. In making the change in December of 1997, the amendment failed to include the language previously contained at § 265.1084(a)(5)(iv)(A) and § 265.1084(b)(4)(iv)(A) (see 59 FR 62939

and 59 FR 62941, December 6, 1994) that the four samples needed for a waste determination are required to be collected within a 1-hour time period and that certain information relative to the waste samples must be recorded. Today's amendments to § 265.1084(a)(3)(ii) and § 265.1084(b)(3)(ii) add language in paragraph (B) that clearly states that "all samples for a given waste determination shall be collected within a 1-hour period;" and add a new paragraph (D) that reestablishes the requirement that "sufficient information shall be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the source or process generating [or treating] the hazardous waste represented by the samples." The information on waste quantity and operating conditions is needed to properly calculate the mass-weighted average VO concentration over the averaging period and to assess that the averaging period used adequately characterizes the source or process over the time period selected for the averaging period. The type of information and data needed to meet this requirement should be clearly specified in the "site sampling plan" required under paragraph (C) of § 265.1084(a)(3)(ii) and § 265.1084(b)(3)(ii).

Also in the waste determination section of the rule, a portion of sections § 265.1084(a)(3)(iii) and § 265.1084(b)(3)(iii) is amended by today's action in order to clarify that, if the owner or operator elects to adjust the individual test data measured by a method other than Method 25D to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using Method 25D, the adjustment must be made to *all* individual chemical constituents that comprise the average VO concentration. The constituent adjustment cannot be made on a selective constituent basis. Because some of the constituent-specific adjustment factors are greater than 1.0, selective use of the constituent adjustment may not provide an accurate representation of the average VO concentration as measured by Method 25D. The existing rule language at § 265.1084(a)(3)(iii) and § 265.1084(b)(3)(iii) states that "the concentration of each individual chemical constituent measured in the waste" may be corrected by multiplying the measured concentration by the constituent-specific adjustment factor. The same point is made in

§ 265.1084(a)(4)(iii) which specifies the procedure to be used to adjust the data. This paragraph states that "the measured concentration for each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor." The EPA's use of the phrase "each individual chemical constituent contained in the wastes" is intended to convey the meaning that *all* constituents in the waste must be adjusted using the appropriate individual adjustment factor, if the owner or operator elects to adjust the data. The EPA has in no way stated or otherwise implied that constituent-specific concentration test data can be adjusted on a selective constituent basis to characterize the VO concentration.

#### C. Standards: Tanks

Paragraph (h)(3) of the tank standards in § 264.1084 and § 265.1085 is being amended to allow owners or operators that elect to use a pressure tank, to control air emissions under the subpart CC rule, to purge the inert materials from the pressure tank as is required by normal operation (i.e., good engineering practices) for this type of tank system. The rule requires that, whenever hazardous waste is in a pressure tank, the tank must operate as a closed system that does not vent to the atmosphere. With today's changes, the owner or operator is allowed to purge the tank as long as the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the subpart CC rule requirements for closed-vent systems and control devices. A tank operating in this manner is technically meeting the alternative requirements for tanks using Tank Level 2 controls as specified in § 264.1084(d)(3) and § 265.1085(d)(3) which applies tanks vented through a closed-vent system to a control device. Therefore, venting of a pressure tank under controlled conditions complies with the subpart CC standards for Tank Level 2 controls and is allowed under the rules.

#### D. Standards: Containers

Transfer requirements are being added to the Level 3 container standards as a part of today's action. These requirements are essentially the same as those for the (less stringent) Level 2 container standards. These transfer requirements for Level 3 containers were inadvertently left out of the subpart CC requirements when they were published in November 1996, 61 FR 59962. The EPA had intended that the Level 3 container standards incorporate these transfer requirements

and today's amendments rectify that oversight.

## VI Administrative Requirements

### A. Docket

Six RCRA dockets contain information pertaining to today's rulemaking: (1) RCRA docket number F-91-CESP-FFFFF, which contains copies of all BID references and other information related to the development of the rule up through proposal; (2) RCRA docket number F-92-CESA-FFFFF, which contains copies of the supplemental data made available for public comment prior to promulgation; (3) RCRA docket number F-94-CESF-FFFFF, which contains copies of all BID references and other information related to development of the final rule following proposal; (4) RCRA docket number F-94-CE2A-FFFFF, which contains information pertaining to waste stabilization operations performed in tanks; (5) RCRA docket number F-95-CE3A-FFFFF, which contains information about potential final rule revisions made available for public comment; and (6) RCRA docket number F-96-CE4A-FFFFF, which contains a copy of each of the comment letters submitted in regard to the revisions that the EPA was considering for the final subpart CC standards. The public may review all materials in these dockets at the EPA RCRA Docket Office.

The EPA RCRA Docket Office is located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. Hand delivery of items and review of docket materials are made at the Virginia address. The public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603-9230. The mailing address for the RCRA Docket Office is RCRA Information Center (5305W), 401 M Street SW, Washington, DC 20460. The Docket Office is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays.

### B. Paperwork Reduction Act

The information collection requirements of the previously promulgated RCRA air rules were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1593.02) may be obtained from Sandy Farmer, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260-2740.

Today's amendments to the RCRA air rules should have only a minor impact on the information collection burden estimates made previously, and that impact is expected to be a reduction. The changes consist of new definitions, alternative test procedures, clarifications of requirements, and additional compliance options. The changes are not additional requirements, but rather, are reductions in previously published requirements. In a number of instances, the changes simply restore inadvertently deleted provisions, and all information collection requirements in such provisions were previously approved. The overall information-keeping requirements in the rule are being reduced. Consequently, the ICR has not been revised.

#### C. Executive Order 12866

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is "significant" and, therefore, subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to lead to 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 entitlements, grants, user fees, or loan programs, or 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.

The RCRA subpart CC air rules published on December 6, 1994, were considered significant under Executive Order 12866, and EPA accordingly prepared a regulatory impact analysis (RIA). The amendments published today make technical changes to the rule and correct structural problems with the drafting of some sections. This action is not a "significant regulatory action" within the meaning of Executive Order 12866; thus, OMB review of the action is not required.

#### D. Regulatory Flexibility

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by

the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities such as small businesses, small organization and small governments. However, no regulatory flexibility analysis is required if the agency certifies the rule will not have a significant adverse economic impact on a substantial number of small entities. For the reasons discussed in the December 6, 1994 **Federal Register** (59 FR 62923), the subpart CC rules themselves do not have a significant impact on a substantial number of small entities. The present rule only makes technical changes to the subpart AA and CC rules, and does not add new control requirements to the December 1994 rule. The amendments in fact reduce the already-existing requirements. Therefore, I certify that this rule will not have a significant adverse economic impact on a substantial number of small entities and therefore does not require a regulatory flexibility analysis.

#### E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

#### F. Executive Order 13045

Executive Order 13045 applies to any rule that EPA determines (1) economically significant as defined under E.O. 12866, and (2) the environmental health or safety risk

addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

These final amendments are not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because they are not economically significant regulatory actions as defined by E.O. 12866.

#### G. National Technology Transfer and Advancement Act

Under § 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) which are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards. Today's action does not put forth any technical standards as part of the clarifying amendments. Therefore, consideration of voluntary consensus standards was not required.

#### H. Enhancing the Intergovernmental Partnership Under Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition,

Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's action does not create a mandate on State, local or tribal governments. The amendments to the rule do not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

#### *I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's amendments to the final rule do not significantly or uniquely affect the communities of Indian tribal governments. The amendments to the rule do not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

#### *J. Submission to Congress and the General Accounting Office*

The Congressional Review Act, 5 U.S.C. 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 to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. § 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of January 21, 1999. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. § 804(2).

#### *K. Pollution Prevention Act*

The Pollution Prevention Act of 1990 states that pollution should be prevented or reduced at the source whenever feasible. As originally published, the final subpart AA, BB, and CC emission standards for units managing hazardous wastes contain an applicability threshold or action level formatted in terms of either a total or volatile organic concentration of the hazardous waste that must be exceeded in order for a particular standard to apply. By formulating the standard in this way, flexibility is allowed for facility owners or operators to initiate process modifications or incorporate treatment technologies that will accomplish the same environmental results at lower costs; this encourages pollution prevention alternatives that reduce the organic content of the hazardous waste generated. Today's amendments to the RCRA air rules in no way affect the pollution prevention alternatives and measures previously incorporated into the final rules.

#### *L. Immediate Effective Date*

The EPA has determined to issue this rule without first proposing it and to make today's action effective immediately. The EPA believes that the corrections being made in today's action are either interpretations of existing regulations which do not require prior notice and opportunity for comment, or are technical corrections of obvious errors in the published rules (for example, corrections to regulations inconsistent with or not carrying out statements in the preamble or

Background Information Document, or restoration of provisions which were deleted inadvertently). Comment on such changes is unnecessary, within the meaning of 5 USC 553(b)(3)(B). For the same reason, there is good cause for the rules to be made effective immediately, within the meaning of 5 U.S.C. 553(d)(3).

#### **VII. Legal Authority**

These regulations are amended under the authority of sections 2002, 3001-3007, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by RCRA, as amended (42 U.S.C. 6921-6927, 6930, and 6974).

#### **List of Subjects**

##### *40 CFR part 262*

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

##### *40 CFR Parts 264 and 265*

Environmental protection, Air pollution control, Container, Control device, Hazardous waste, Inspection, Monitoring, Reporting and recordkeeping requirements, Surface impoundment, Tank, TSDF, Waste determination.

Dated: January 8, 1999.

#### **Robert Perciasepe,**

*Assistant Administrator for Air and Radiation.*

For the reasons set out in the preamble, title 40, chapter I, parts 262, 264, and 265 of the Code of Federal Regulations are amended as follows:

#### **PART 262—STANDARD APPLICABLE TO GENERATORS OF HAZARDOUS WASTE**

1. The authority citation for part 262 continues to read as follows:

**Authority:** 42 U.S.C. 6906, 6912, 6299, 6925, 6937, and 6938, unless otherwise noted.

2. Section 262.34 is amended by revising paragraphs (a)(1)(i) and (a)(1)(ii) to read as follows:

##### **§ 262.34 Accumulation time.**

(a) \* \* \*

(1) \* \* \*

(i) In containers and the generator complies with the applicable requirements of subparts I, AA, BB, and CC of 40 CFR part 265; and/or

(ii) In tanks and the generator complies with the applicable requirements of subparts J, AA, BB, and CC of 40 CFR part 265 except §§ 265.197(c) and 265.200; and/or

\* \* \* \* \*

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

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

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

**Subpart AA—Air Emission Standards for Process Vents**

4. Section 264.1031 is amended by revising the definitions of "Equipment" and "Open-ended valve or line" and adding a new definition for the term "Sampling connection system" in alphabetical order to read as follows:

**§ 264.1031 Definitions.**

\* \* \* \* \*

*Equipment* means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange or other connector, and any control devices or systems required by this subpart.

\* \* \* \* \*

*Open-ended valve or line* means any valve, except pressure relief valves, having one side of the valve seat in contact with hazardous waste and one side open to the atmosphere, either directly or through open piping.

\* \* \* \* \*

*Sampling connection system* means an assembly of equipment within a process or waste management unit used during periods of representative operation to take samples of the process or waste fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

\* \* \* \* \*

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

5. Section 264.1080 is amended by revising paragraph (b)(5) to read as follows:

**§ 264.1080 Applicability.**

\* \* \* \* \*

(b) \* \* \*  
 (5) A waste management unit that is used solely for on-site treatment or storage of hazardous waste that is placed in the unit as a result of implementing remedial activities required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA authorities; or similar Federal or State authorities.

\* \* \* \* \*

6. Section 264.1083 is amended by adding new paragraphs (a)(1)(i), (a)(1)(ii), (b)(1)(i), and (b)(1)(ii) to read as follows:

**§ 264.1083 Waste determination procedures.**

(a) \* \* \*

(1) \* \* \*

(i) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the hazardous waste stream is placed in a waste management unit exempted under the provisions of § 264.1082(c)(1) of this subpart from using air emission controls, and thereafter an initial determination of the average VO concentration of the waste stream shall be made for each averaging period that a hazardous waste is managed in the unit; and

(ii) Perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration limits specified in § 264.1082 of this subpart.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the treated waste stream is placed in the exempt waste management unit, and thereafter update the information used for the waste determination at least once every 12 months following the date of the initial waste determination; and

(ii) Perform a new waste determination whenever changes to the process generating or treating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level such that the applicable treatment conditions specified in § 264.1082 (c)(2) of this subpart are not achieved.

\* \* \* \* \*

7. Section 264.1084 is amended by revising paragraph (h)(3) to read as follows:

**§ 264.1084 Standards: Tanks.**

\* \* \* \* \*

(h) \* \* \*

(3) Whenever a hazardous waste is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either or the following conditions as specified in paragraph (h)(3)(i) or (h)(3)(ii) of this section.

(i) At those times when opening of a safety device, as defined in § 265.1081 of this subpart, is required to avoid an unsafe condition.

(ii) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of § 264.1087 of this subpart.

\* \* \* \* \*

8. Section 264.1086 is amended by adding new paragraph (e)(6) to read as follows:

**§ 264.1086 Standards: Containers.**

\* \* \* \* \*

(e) \* \* \*

(6) Transfer of hazardous waste in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

\* \* \* \* \*

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

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

**Authority:** 42 U.S.C. 6905, 6906, 6912(a), 6924, 6925, 6912, 6922, 6923, 6935, 6936, and 6937.

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

10. Section 265.1080 is amended by revising paragraph (b)(5) to read as follows:

**§ 265.1080 Applicability.**

\* \* \* \* \*



(b) \* \* \*

(5) A waste management unit that is used solely for on-site treatment or storage of hazardous waste that is placed in the unit as a result of implementing remedial activities required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA authorities; or similar Federal or State authorities.

\* \* \* \* \*

11. Section 265.1084 is amended by adding new paragraphs (a)(1)(i), (a)(1)(ii), (a)(3)(ii)(D), (b)(1)(i), (b)(1)(ii) and (b)(3)(ii)(D) and by revising paragraphs (a)(3)(ii)(B), (a)(3)(iii) introductory text, (b)(3)(ii)(B), and (b)(3)(iii) introductory text, to read as follows:

**§ 265.1084 Waste determination procedures.**

(a) \* \* \*

(1) \* \* \*

(i) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the hazardous waste stream is placed in a waste management unit exempted under the provisions of § 265.1083(c)(1) of this subpart from using air emission controls, and thereafter an initial determination of the average VO concentration of the waste stream shall be made for each averaging period that a hazardous waste is managed in the unit; and

(ii) Perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the VO concentration limit specified in § 265.1083(c)(1) of this subpart.

\* \* \* \* \*

(3) \* \* \*

(ii) \* \* \*

(B) A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous waste determination. All of the samples for a given waste determination shall be collected within a one-hour period. The average of the four or more sample results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous waste stream. Examples of such normal variations are seasonal variations in

waste quantity or fluctuations in ambient temperature.

\* \* \* \* \*

(D) Sufficient information, as specified in the "site sampling plan" required under paragraph (a)(3)(ii)(C) of this section, shall be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the source or process generating the hazardous waste represented by the samples.

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with one or more of the methods listed in paragraphs (a)(3)(iii)(A) through (a)(3)(iii)(I) of this section, including appropriate quality assurance and quality control (QA/QC) checks and use of target compounds for calibration. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as  $1.8 \times 10^{-6}$  atmospheres/gram-mole/ $m^3$ ] at 25 degrees Celsius. Each of the analytical methods listed in paragraphs (a)(3)(iii)(B) through (a)(3)(iii)(G) of this section has an associated list of approved chemical compounds, for which EPA considers the method appropriate for measurement. If an owner or operator uses EPA Method 624, 625, 1624, or 1625 in 40 CFR part 136, appendix A to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5 must be followed. If an owner or operator uses EPA Method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, (incorporated by reference—refer to § 260.11(a) of this chapter) to analyze one or more compounds that are not on that method's published list, the procedures in paragraph (a)(3)(iii)(H) of this section must be followed. At the owner or operator's discretion, the owner or operator may adjust test data measured by a method other than Method 25D to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific

adjustment factor ( $f_{m25D}$ ). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 degrees Celsius contained in the waste. Constituent-specific adjustment factors ( $f_{m25D}$ ) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the treated waste stream is placed in a waste management unit exempted under the provisions of § 265.1083(c)(2), § 265.1083(c)(3), or § 265.1083(c)(4) of this subpart from using air emission controls, and thereafter update the information used for the waste determination at least once every 12 months following the date of the initial waste determination; and

(ii) Perform a new waste determination whenever changes to the process generating or treating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level such that the applicable treatment conditions specified in § 265.1083(c)(2), § 265.1083(c)(3), or § 265.1083(c)(4) of this subpart are not achieved.

\* \* \* \* \*

(3) \* \* \*

(ii) \* \* \*

(B) A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous waste determination. All of the samples for a given waste determination shall be collected within a one-hour period. The average of the four or more sample results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the process generating or treating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

\* \* \* \* \*

(D) Sufficient information, as specified in the "site sampling plan" required under paragraph (C) of (b)(3)(ii) this section, § 265.1084(b)(3)(ii), shall be

prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the process treating the hazardous waste represented by the samples.

\* \* \* \* \*

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with one or more of the methods listed in paragraphs (b)(3)(iii)(A) through (b)(3)(iii)(I) of this section, including appropriate quality assurance and quality control (QA/QC) checks and use of target compounds for calibration. When the owner or operator is making a waste determination for a treated hazardous waste that is to be compared to an average VO concentration at the point of waste origination or the point of waste entry to the treatment system to determine if the conditions of § 264.1082(c)(2)(i) through (c)(2)(vi) or § 265.1083(c)(2)(i) through (c)(2)(vi) are met, then the waste samples shall be prepared and analyzed using the same method or methods as were used in making the initial waste determinations at the point of waste origination or at the point of entry to the treatment system. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as  $1.8 \times 10^{-6}$  atmospheres/gram-mole/m<sup>3</sup>] at 25 degrees Celsius. Each of the analytical methods listed in paragraphs (b)(3)(iii)(B) through (b)(3)(iii)(G) of this section has an associated list of approved chemical compounds, for which EPA considers the method appropriate for measurement. If an owner or operator uses EPA Method 624, 625, 1624, or 1625 in 40 CFR part

136, appendix A to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5 must be followed. If an owner or operator uses EPA Method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, (incorporated by reference—refer to § 260.11(a) of this chapter) to analyze one or more compounds that are not on that method's published list, the procedures in paragraph (b)(3)(iii)(H) of this section must be followed. At the owner or operator's discretion, the owner or operator may adjust test data measured by a method other than Method 25D to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor ( $f_{m25D}$ ). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant equal to or greater than 0.1 Y/X at 25 degrees Celsius contained in the waste. Constituent-specific adjustment factors ( $f_{m25D}$ ) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

\* \* \* \* \*

12. Section 265.1085 is amended by replacing paragraph (h)(3) revising to read as follows:

**§ 265.1085 Standards: Tanks.**

\* \* \* \* \*

(h) \* \* \*

(3) Whenever a hazardous waste is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either or the

following conditions as specified in paragraph (h)(3)(i) or (h)(3)(ii) of this section.

(i) At those times when opening of a safety device, as defined in § 265.1081 of this subpart, is required to avoid an unsafe condition.

(ii) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of § 265.1088 of this subpart.

\* \* \* \* \*

13. Section 265.1087 is amended by adding new paragraph (e)(6) to read as follows:

**§ 265.1087 Standards: Containers.**

\* \* \* \* \*

(e) \* \* \*

(6) Transfer of hazardous waste in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

\* \* \* \* \*