

not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

**VII. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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 this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 25, 2011.

**Steven Bradbury**,  
*Director, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.652 is added to read as follows:

**§ 180.652 Ethiprole; tolerances for residues.**

(a) *General.* Tolerances (without U.S. registrations) are established for residues of the insecticide ethiprole, including its metabolites and degradate, in or on the following commodities listed in the table. Compliance with the tolerance levels specified in the table is to be determined by measuring only ethiprole [5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(ethyl)sulfinyl]-1H-pyrazole-3-carbonitrile], in or on the following commodities:

Commodity	Parts per million
Rice, grain <sup>1</sup> .....	1.7
Tea, dried <sup>1</sup> .....	30

<sup>1</sup> There are no U.S. registrations for rice and tea.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2011-8024 Filed 4-5-11; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 268**

[EPA-HQ-RCRA-2010-0851; FRL-9290-6]

**Land Disposal Restrictions: Nevada and California; Site Specific Treatment Variances for Hazardous Selenium Bearing Waste**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final actions to both issue a site-specific treatment variance to U.S. Ecology Nevada (USEN) in Beatty, Nevada and to withdraw an existing site-specific treatment variance issued to Chemical Waste Management, Inc. (CWM) in Kettleman Hills, California. These actions pertain to the treatment of a hazardous waste generated by the Owens-Brockway Glass Container Company in Vernon, California that is unable to meet the concentration-based treatment standard for selenium established under the Land Disposal Restrictions program. The site-specific treatment variance issued to USEN provides an alternative treatment standard of 59 mg/L for selenium as measured by the Toxicity Characteristic Leaching Procedure. EPA has determined that the treatment performed by USEN provides the best demonstrated treatment available for this waste by reducing the potential amount of selenium released to the environment, while minimizing the total volume of hazardous waste land disposed.

**DATES:** This direct final rule will be effective June 6, 2011 without further notice, unless EPA receives adverse written comment by May 6, 2011. If EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-RCRA-2010-0851, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* [rcra-docket@epa.gov](mailto:rcra-docket@epa.gov) and [miller.jesse@epa.gov](mailto:miller.jesse@epa.gov). Attention Docket ID No. EPA-HQ-RCRA-2010-0851.
- *Fax:* 202-566-9744. Attention Docket ID No. EPA-HQ-RCRA-2010-0851.
- *Mail:* RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200

Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. EPA-HQ-RCRA-2010-0851. Please include a total of 2 copies.

- **Hand Delivery:** Please deliver 2 copies to EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-RCRA-2010-0851. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at

the HQ-Docket Center, Docket ID No. EPA-HQ-RCRA-2010-0851, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the RCRA Docket is (202) 566-0270. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** For more information on this rulemaking, contact Jesse Miller, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery (MC 5304 P), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone (703) 308-1180; fax (703) 308-0522; or [miller.jesse@epa.gov](mailto:miller.jesse@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Why is EPA using a direct final rule?

EPA is publishing this rule as a direct final rule because we view this action as a noncontroversial action and anticipate no adverse comment. Based on the information and data submitted by the petitioner for this site-specific treatment variance and the oversight being provided by the regulatory authorities in the states of Nevada and California, we do not believe that there will be adverse comments on this action. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as a proposed rule should EPA receive adverse comments. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

If we do not receive adverse comment, the rule will take effect on June 6, 2011. Section 3010(b) of RCRA states that rules implementing subtitle C of RCRA normally take effect six months after promulgation, but that EPA may provide for a shorter effective date for rules with which the regulated community does not need six months to come into compliance. This is such a rule, as the Owens-Brockway Glass Container Company should be able to transport the waste to USEN for treatment and

disposal in a much shorter period of time.

##### B. Does this action apply to me?

This action applies only to U.S. Ecology Nevada located in Beatty, Nevada and to Chemical Waste Management, Inc. located in Kettleman Hills, California.

#### C. Table of Contents

- I. Background
  - A. Basis for Land Disposal Restrictions Treatment Variances
  - B. Basis of the Current Selenium Treatment Standard
  - C. Site-Specific Treatment Variance for Selenium-Bearing Waste
- II. Basis for This Determination
- III. Development of This Variance
  - A. U.S. Ecology Nevada Petition
  - B. What Type and How Much Waste Will be Subject to This Variance?
  - C. Description of the Waste Treatment Process
- IV. EPA's Reasons for Granting This Site-Specific Treatment Variance to USEN and Withdrawing the Site-Specific Treatment Variance from CWM at 40 CFR 268.44
- V. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review.
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act of 1995
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
  - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
  - K. Congressional Review Act

#### I. Background

##### A. Basis for Land Disposal Restrictions Treatment Variances

Under sections 3004(d) through (g) of the Resource Conservation and Recovery Act (RCRA), the land disposal of hazardous wastes is prohibited unless such wastes are able to meet the treatment standards established by EPA. Under section 3004(m) of RCRA, EPA is required to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." EPA

interprets this language to authorize treatment standards based on the performance of the best demonstrated available technology (BDAT). This interpretation was upheld by the DC Circuit in *Hazardous Waste Treatment Council v. EPA*, 886 F. 2d 355 (D.C. Cir. 1989).

The Agency recognizes however, that there may be wastes that cannot be treated to the levels specified in the regulations (see 40 CFR 268.40) because an individual waste matrix or concentration can be substantially more difficult to treat than those wastes evaluated in establishing the treatment standard (51 FR 40576, November 7, 1986). For such wastes, EPA has a process by which a generator or treater may seek a treatment variance (see 40 CFR 268.44). If granted, the terms of the variance establish an alternative treatment standard for the particular waste at issue.

#### *B. Basis of the Current Selenium Treatment Standard*

Treatment of selenium poses special difficulties. In particular, it can be technically challenging to treat wastes containing selenium and other metals e.g., cadmium, lead and/or chromium because of their different chemical properties and solubility curves (62 FR 26041, May 12, 1997).

The current treatment standard for a waste exhibiting the toxicity characteristic for selenium (RCRA Hazardous Waste D010) is based upon the performance of stabilization on low concentration selenium wastes. When the Agency developed the treatment standard for selenium, EPA believed that wastes containing high concentrations of selenium were rarely generated and land disposed (59 FR 47980, September 19, 1994). The Agency also stated that it believed that, for most wastes containing high concentrations of selenium, recovery of the selenium would be feasible using recovery technologies currently employed by copper smelters and copper refining operations (Id.). The Agency further stated in 1994, that it did not have any performance data for selenium recovery, but available information indicated that some recovery of elemental selenium out of certain types of scrap material and other wastes was practiced in the United States.<sup>1</sup>

<sup>1</sup> Because selenium is a non-renewable resource, and because the wastes in question contain high selenium concentrations, EPA's preference would be to recover the selenium in an environmentally sound manner. However, based on information contained in the *Mineral Commodity Summaries 2010* published by the U.S. Department of the

In 1994, the Agency used performance data from the stabilization of a mineral processing waste that was characteristically hazardous (RCRA Hazardous Waste D010) to set the national treatment standard for selenium. At that time, we determined that this was the most difficult to treat selenium waste. This untreated waste contained up to 700 ppm total selenium and 3.74 mg/L selenium as measured by the Toxicity Characteristic Leaching Procedure (TCLP). The resulting post-treatment levels of selenium in the TCLP leachate were between 0.154 mg/L and 1.80 mg/L, which (after considering the range of treatment process variability) led to EPA establishing a national treatment standard of 5.7 mg/L for D010 selenium nonwastewaters.<sup>2</sup> This D010 mineral processing waste also contained other toxic metals (i.e., arsenic, cadmium, and lead) above the characteristic levels. The treatment technology used to establish the selenium levels also resulted in meeting the Land Disposal Restrictions (LDR) treatment standards for these non-selenium metals. The waste to reagent ratios varied from 1:1.3 to 1:2.7 (62 FR 26041).

Thus, in the Phase IV final rule, the Agency determined that a treatment standard of 5.7 mg/L, as measured by the TCLP, continued to be appropriate for D010 nonwastewaters (63 FR 28556, May 26, 1998). The Agency also changed the universal treatment standard (UTS) for selenium nonwastewaters from 0.16 mg/L to 5.7 mg/L TCLP.

#### *C. Site-Specific Treatment Variance for Selenium-Bearing Waste*

On May 26, 1999 (64 FR 28387), EPA granted Chemical Waste Management, Inc. (CWM) in Kettleman Hills, California a site-specific treatment variance from the LDR treatment standards for hazardous selenium-bearing waste generated by the Owens-Brockway Glass Container Company (Owens-Brockway) at their Vernon,

Interior, U.S. Geological Survey, the amount of domestic production of secondary selenium is estimated to be very small because most of the materials eligible for possible secondary smelting (e.g., scrap xerographic and electronic materials) were exported for recovery of the contained selenium.

<sup>2</sup> The calculation of the LDR treatment standard was based on a specific method, sometimes called "C 99" which has been used in other LDR rulemakings. This methodology seeks to account for process variability (including variability that may be attributed to sampling and analytical processes). See 63 FR 28556, May 26, 1998 and the document, *Final—Best Demonstrated Available Technology (BDAT) Background Document for Quality Assurance/Quality Control Procedures and Methodology*, USEPA. October 23, 1991.

California manufacturing facility. Under 40 CFR 268.44(o), CWM was allowed to treat the waste to an alternative treatment standard for selenium of 51 mg/L TCLP with a waste to reagent ratio of 1 to 2.7. Total selenium concentrations in the electrostatic precipitator (ESP) dust generated at the Owens-Brockway facility range from 2,400 mg/kg to 5,700 mg/kg. The untreated waste has a leachable selenium concentration ranging from 228 mg/L to 440 mg/L TCLP. In addition, the untreated waste has a leachable arsenic concentration ranging from 3.3 mg/L to 8.6 mg/L TCLP, a leachable cadmium concentration ranging from 3.9 mg/L to 11.0 mg/L TCLP, and a leachable lead concentration ranging from <0.10 mg/L to 16.3 mg/L TCLP. (For a more detailed discussion of EPA's basis for granting the site-specific treatment variance to CWM, see 64 FR 28387, May 26, 1999.)

#### **II. Basis for This Determination**

Under 40 CFR 268.44, facilities can apply for a site-specific treatment variance in cases where a waste that is generated under conditions specific to only one site cannot be treated to the specified LDR treatment standards. In such cases, the generator(s) or the treatment facility may apply to the Administrator, or to EPA's designated representative, (in this case the Assistant Administrator for Solid Waste and Emergency Response) for a site-specific variance from a treatment standard. The applicant for a site-specific variance must demonstrate that, because the physical or chemical properties of the waste differ significantly from the waste analyzed in developing the treatment standard, the waste cannot be treated to the specified levels or by the specified methods. There are other grounds for obtaining variances, but this is the only provision relevant to this action.

#### **III. Development of This Variance**

##### *A. U.S. Ecology Nevada Petition*

On September 16, 2008, U.S. Ecology Nevada (USEN) submitted a petition requesting a site-specific treatment variance from the LDR treatment standards for hazardous selenium-bearing waste generated by Owens-Brockway at their Vernon, California manufacturing facility. USEN requested an alternative treatment standard of 59 mg/L as measured by the TCLP for the selenium contained in the waste. This alternative treatment standard was achieved with a waste to reagent ratio of 1 to 0.45, using 20% ferrous sulfate,

15% quick lime and 10% sodium sulfide flakes.<sup>3</sup>

*B. What type and how much waste will be subject to this variance?*

Owens-Brockway operates a glass manufacturing facility that ESP dust. The ESP dust is generated by the glass furnace air emissions control system and is hazardous due to its high concentrations of leachable arsenic, cadmium, lead, and selenium. The corresponding EPA hazardous waste codes are D004, D006, D008, and D010, respectively. The waste generated by Owens-Brockway does not meet the LDR treatment standards and requires treatment prior to land disposal. As discussed previously, the physical properties and the chemical composition of the ESP dust generated by Owens-Brockway are considerably different from the waste used to establish the current LDR treatment standard for selenium. The Agency set the national treatment standard for nonwastewaters using performance data from the stabilization of a characteristically hazardous mineral processing waste, which the Agency determined at the time to be the most difficult to treat selenium waste.<sup>4</sup>

According to the petition submitted by USEN, the quantity of ESP dust shipped off-site for management as a hazardous waste ranges from 50 to 100 tons per year.<sup>5</sup> The ESP dust, as generated, contains fine particle matter resulting from the combustion of natural gas and particulate matter generated by the dry scrubber used to control SO<sub>x</sub> emissions. The material is normally returned to the process as a substitute raw material; however, there are

<sup>3</sup> The selenium concentrations used to calculate the alternative treatment standard were (in mg/L TCLP) 49.34, 51.39, 49.39, 43.91, and 54.34. The most effective treatment recipe was determined using a 50 gram sample of waste where reagents were listed as a percent of waste sample weight. For example, 20% ferrous sulfate, 15% quick lime, and 10% sodium sulfide flakes would measure out as 10 grams of ferrous sulfate, 7.5 grams of quick lime, and 5 grams of sodium sulfide flakes for a total of 22.5 grams of total reagent. The waste to reagent ratio was then calculated by dividing 22.5 by 50 to get a waste to reagent ratios of 1:0.45.

<sup>4</sup> The untreated waste had a total selenium concentration of up to 700 ppm selenium, with a leachable selenium concentration of 3.74 mg/L TCLP. The post treatment levels of selenium were between 0.154 mg/L and 1.80 mg/L TCLP, which led the Agency to establish the treatment standard of 5.7 mg/L TCLP for nonwastewaters. See 63 FR 28556, May 26, 1998.

<sup>5</sup> According to information obtained from USEPA's RCRA Biennial Report, in 2005, approximately 108 tons of hazardous waste identified as D010 was shipped from Owens-Brockway's Vernon facility to the CWM facility in Kettleman Hills, California, while in 2007, almost 61 tons of D010 waste was shipped to CWM in Kettleman Hills, California.

circumstances when it cannot be used again due to the high levels of hazardous contaminants, its physical state or excess quantity. In these situations, the ESP dust is managed as a RCRA hazardous waste.

*C. Description of the Waste Treatment Process*

USEN will stabilize the Owens-Brockway ESP dust using a combination of reagents and techniques. These reagents include ferrous sulfate (FeSO<sub>4</sub>), quick lime (CaO), and sodium sulfide (Na<sub>2</sub>S). USEN typically uses a combination of hydroxide and sulfide precipitation to treat high concentration wastes. Most often, an alkaline reagent (quick lime) is used to raise the solution pH to lower the solubility of the metal constituents and start the precipitation process.

As noted previously, (see 64 FR 28387, May 26, 1999), EPA concluded that it is difficult, if not impossible, to optimize the treatment for selenium when other metals are being treated, because the selenium solubility curve differs from that of most other metals. Thus, successfully stabilizing other metals generally means that treatment for selenium cannot be optimized. As further pointed out in the petition submitted by USEN, selenium's minimum solubility is in the range of 6.5 to 7.5, while other characteristic metals have a minimum solubility in the pH range of 8 to 12. In simple terms, if you maximize the stabilization treatment recipe to treat arsenic, cadmium, and lead, the selenium becomes soluble and will not meet the treatment standard (i.e., fail the TCLP). If you maximize the recipe to treat selenium, the other metals will not meet the treatment standard.

USEN has been unsuccessful in developing a treatment recipe that can achieve all the LDR treatment standards applicable to this waste (e.g., arsenic, chromium, lead, and selenium). USEN tested and submitted performance data on 135 treatment recipes on five different ESP dust samples using a combination of reagents and concentrations of reagents. USEN was unable to achieve the LDR treatment standard of 5.7 mg/L selenium using any of the 135 treatment recipes. The average post treatment selenium TCLP value achieved was 47 mg/L TCLP, which is approximately a 90% reduction in soluble selenium. The treatment to an average of 47 mg/L TCLP was the result of a recipe with a waste to reagent ratio of 1:0.45. With a variability factor applied to the average TCLP selenium value, the final

treatment standard would be 59 mg/L TCLP.<sup>6</sup>

With the data and information provided to the Agency as part of their site-specific treatment variance petition, EPA was able to perform an analysis which shows that the USEN treatment process would generate a lower volume of waste material, post treatment, coupled with a lower potential for selenium being released to the environment. Mass balance calculations performed by the Agency indicated that the treatment conducted by USEN has the potential to release between 3.88 to 7.76 kilograms (8.54 to 17.1 pounds) of selenium per year to the environment. This range is a result of Owens-Brockway generating between 50 and 100 tons of waste annually. (As we discuss in the next section, CWM, even with a lower alternative treatment standard, has the potential to release greater amounts of selenium per year to the environment. This is due to the higher waste to reagent ratio used to stabilize the waste material.<sup>7</sup>) As such, the Agency has determined that USEN has optimized its stabilization recipe by reducing the amount of selenium potentially released to the environment and minimizing the amount of reagent that must be used to achieve this result.

**IV. EPA's Reasons for Granting This Site-Specific Treatment Variance to USEN and Withdrawing the Site-Specific Variance From CWM at 40 CFR 268.44**

EPA has reviewed USEN's petition for a site-specific treatment variance from the LDR treatment standards for hazardous selenium-bearing waste generated by Owens-Brockway and is granting a variance from the selenium treatment standard from 5.7 mg/L TCLP to an alternative treatment standard of 59 mg/L TCLP, with the condition that USEN does not exceed a waste to reagent ratio of 1:0.45. Concurrently, EPA is withdrawing the site-specific variance granted to CWM that established an alternative treatment standard of 51 mg/L TCLP for this same waste (69 FR 6567, February 11, 2004).

<sup>6</sup> The calculation of the LDR treatment standard was based on a specific method, sometimes called "C 99" which has been used in other LDR rulemakings. This methodology seeks to account for process variability (including variability that may be attributed to sampling and analytical processes). See 63 FR 28556, May 26, 1998 and the document, *Final—Best Demonstrated Available Technology (BDAT) Background Document for Quality Assurance/Quality Control Procedures and Methodology*, USEPA. October 23, 1991.

<sup>7</sup> With the majority of the treatment recipes tested, USEN was able to meet the LDRs for all the other RCRA metals, including any underlying hazardous constituents.

EPA has determined that USEN, despite having a higher selenium treatment standard based on selenium concentration, does, in fact, have the potential to release less selenium in a land disposal environment by utilizing a much more environmentally favorable waste to reagent ratio. As such, the Agency believes that the treatment performed by USEN is the best treatment available for this waste. CWM uses a waste to reagent ratio of 1:2.7, while USEN uses a waste to reagent ratio of 1:0.45. Consequently, the Agency has determined that a treatment standard of 59 mg/L TCLP for this selenium-bearing waste is more protective of human health and the environment, due to the fact that it generates a lower volume of waste material, with a much lower leaching potential. In particular, the treatment process employed by CWM has the potential to release between 8.56 to 17.11 kilograms (18.8 to 37.69 pounds) of selenium per year to the environment, whereas USEN has the potential to release 3.88 to 7.76 kilograms (8.54 to 17.1 pounds) of selenium per year to the environment. Furthermore, utilizing the waste to reagent ratio of 1:2.7 would dispose of between 185 and 370 tons of waste to land disposal per year, whereas utilizing the waste to reagent ratio of 1:0.45 would dispose of only 72.5 to 145 tons of waste to land disposal per year.

Based on the foregoing, the Agency is granting USEN's petition for a site-specific treatment variance for the ESP dust generated at the Owens-Brockway glass manufacturing plant in Vernon, California. We are also withdrawing the portion of CWM's site-specific treatment variance that pertains to its management of the Owens-Brockway waste, i.e., 51 mg/L TCLP for selenium-bearing D010 waste.

Technology-based treatment standards, whether adopted by generally applicable rule or through a variance to the generally applicable rule, serve as the measure of when threats posed by land disposal of the hazardous waste are "minimized," as required by RCRA section 3004(m). See 55 FR 6640 (February 26, 1990). Thus, EPA has typically limited the standards adopted by a variance to a single standard. See 70 FR 44505 (August 3, 2005). We are continuing this practice here by rescinding the current variance granted to CWM (69 FR 6567, February 11, 2004). The Agency has determined that the existing treatment standard is less stringent than the standard we would

now be granting, both with respect to potential concentrations of selenium released to the environment and also the waste to reagent ratios. Under these circumstances, EPA believes that threats posed by land disposal are minimized by use of the treatment process utilized by USEN.

Please note that the waste already disposed of pursuant to the standard established in the original treatment variance granted to CWM would be lawfully disposed, and would not have to be retreated if the standard in the variance were altered or lapsed. This variance results in amending 40 CFR 268.44(o) to allow hazardous selenium-bearing waste generated by Owens-Brockway in Vernon, California, with the RCRA hazardous waste identification code of D010, to be treated to an alternate treatment standard of 59 mg/L TCLP by USEN with the condition that the waste to reagent ratio not exceed 1:0.45.

## V. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

### B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action does two things: (1) Grants a site-specific treatment variance to USEN for the treatment of hazardous selenium-bearing waste under RCRA's LDR program; and (2) withdraws an existing site-specific treatment variance to CWM. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR 268.42 and .44 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050-0085. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

This site-specific treatment variance does not create any new requirements. Rather, it establishes an alternative treatment standard for a specific waste that applies to only one facility, USEN located in Beatty, Nevada and withdraws an existing site-specific treatment variance for the same waste at CWM located in Kettleman Hills, California. Therefore, we hereby certify that this rule will not add any new regulatory requirements to small entities. This rule, therefore, does not require a regulatory flexibility analysis.

### D. Unfunded Mandates Reform Act of 1995

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. This action imposes no enforceable duty on any State, local or tribal governments or the private sector. This action would not impose any new duties on the State's hazardous waste program. EPA has determined, therefore, that this rule would not contain regulatory requirements that might significantly or uniquely affect small governments in that the authority for this action exists with the Federal government. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

### E. Executive Order 13132: Federalism

This action does not have federalism implications. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action does two things: (1) Grants a site-specific treatment variance applicable to one facility, and (2) withdraws a site-specific treatment variance for that same waste at another facility. Thus, Executive Order 13132 would not apply to this action.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action would not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action is a site-specific treatment variance that applies to only one facility, while withdrawing a site-specific treatment variance for that same waste at another facility. Neither facilities are tribal facilities or located on tribal lands. Thus, Executive Order 13175 would not apply to this action.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it would not establish an environmental standard intended to mitigate health or safety risks.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it would not be a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise

impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of protection provided to human health and the environment because of a reduced level of selenium being landfilled than currently occurs. The treatment variance applies to a specific hazardous selenium-bearing waste that will be treated in an existing, permitted RCRA facility, ensuring protection to human health and the environment. Therefore, the rule will not result in any disproportionately negative impacts on minority or low-income communities relative to affluent or non-minority communities.

*K. Congressional Review Act*

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. EPA will submit a report containing this rule, when finalized 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**. A Major rule cannot take effect until June 6, 2011. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 268**

Environmental Protection, Hazardous Waste, Variances.

Dated: March 31, 2011.

**Mathy Stanislaus,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

**PART 268—LAND DISPOSAL RESTRICTIONS**

■ 1. The authority citation for part 268 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, and 6924.

■ 2. In § 268.44, the table in paragraph (o) is amended by revising the entry for “Owens Brockway Glass Container Company, Vernon, CA” and revising footnote 7 to read as follows:

**§ 268.44 Variance from a treatment standard.**

\* \* \* \* \*

(o) \* \* \*

TABLE—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40

Facility name <sup>1</sup> and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
* Owens Brockway Glass Container Company, Vernon, CA <sup>6,7</sup> .	* D010	* Standards under § 268.40.	* Selenium .....	* NA .....	* NA ....	* 59 mg/L TCLP.	* NA

<sup>1</sup> A facility may certify compliance with these treatment standards according to provisions in 40 CFR 268.7.

<sup>6</sup> Alternative D010 selenium standard only applies to electrostatic precipitator dust generated during glass manufacturing operations.

<sup>7</sup> D010 waste generated by this facility must be treated and disposed by U.S. Ecology Nevada at their RCRA permitted facility in Beatty, Nevada. The treatment variance is conditioned on the waste to reagent ratio not exceeding 1 to 0.45.

**Note:** NA means Not Applicable.

[FR Doc. 2011-8179 Filed 4-5-11; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

[EPA-R06-RCRA-2010-0307; FRL-9291-1]

**Oklahoma: Final Authorization of State Hazardous Waste Management Program Revision**

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

**ACTION:** Immediate final rule.

**SUMMARY:** Oklahoma has applied to the EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. The EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Oklahoma's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

**DATES:** This final authorization will become effective on June 6, 2011 unless the EPA receives adverse written comment by May 6, 2011. If the EPA

receives such comment, it will publish a timely withdrawal of this immediate final rule in the Federal Register and inform the public that this authorization will not take effect.

**ADDRESSES:** Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. *E-mail:* [patterson.alima@epa.gov](mailto:patterson.alima@epa.gov).
3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.
4. *Hand Delivery or Courier:* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

**Instructions:** Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov), or e-mail. The Federal [regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

You can view and copy Oklahoma's application and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following locations: Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101-1677, (405) 702-7180 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, phone number (214) 665-8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

**FOR FURTHER INFORMATION CONTACT:** Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, (214) 665-8533, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and E-mail address [patterson.alima@epa.gov](mailto:patterson.alima@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Why are revisions to state programs necessary?**

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of