Dated: January 14, 1999.

Felicia Marcus,

Regional Administrator, Region 9.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(230)(i)(D)(*1*) and (255)(i)(A)(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(230) * * *

(i) * * *

(D) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4352, amended on October 19, 1995.

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(255) * * *

(i) * * *

(A) * * *

(*4*) Rule 413, amended May 1, 1997.

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[FR Doc. 99–3143 Filed 2–10–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–6232–3]

RIN 2050–AE61

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Exemption for Leachate from Non-Hazardous Waste Landfills; Final Rule.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today EPA is temporarily deferring from the definition of hazardous waste landfill leachate and landfill gas condensate derived from previously disposed wastes that now meet the listing descriptions of one or more of the recently added petroleum refinery wastes (waste codes K169, K170, K171, and K172, promulgated August 6, 1998, 63 FR 42110). Pending further study of this issue, this deferral is provided to landfill leachate and gas condensate that is subject to regulation under the Clean Water Act (CWA). EPA is also stipulating that as one condition of this deferral, this leachate may not ordinarily be managed in surface impoundments or otherwise placed on the land after February 13, 2001.

EFFECTIVE DATE: This rule is effective February 5, 1999.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–1999–PR3F–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the Supplementary Information section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323. For more detailed information on specific aspects of this rulemaking, contact Ross Elliott, Office of Solid Waste 5304W, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 703 308–8748, elliott.ross@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

The index and the following supporting materials are available on the Internet: Response to Comment Document. Follow these instructions to access the information electronically: *www.epa.gov/epaoswer/hazwaste/id/petroleum/* FTP: ftp.epa.gov, Login: anonymous, Password: your Internet address, Files are located in /pub/epaoswer.

In addition, the document entitled *Development Document for Proposed Effluent Limitations Guidelines and Standards for the Landfills Point Source Category*, EPA–821–R–97–022, January 1998, placed in the docket for this notice, can be obtained through the internet at *www.epa.gov/OST/guide/2lndfls/techdev.html.*

The contents of the preamble to this final rule are listed in the following outline:

I. Affected Entities

Entities potentially affected by this action are those landfills, both commercial and government-owned, that historically received one or more of the newly-listed petroleum refinery wastes (K169–K172) and that generate landfill leachate or landfill gas condensate.

II. Legal Authority and Background

These regulations are being promulgated under the authority of sections 2002(a) and 3001(a), (b) and (e)(2), 3004(g) and (m) of the Solid Waste Disposal Act (commonly referred to as RCRA), as amended, 42 U.S.C. 6912(a), and 6921(b) and (e)(2).

As described in the August 6, 1998 NODA, very late in the process of promulgating four new hazardous waste listings, the Agency was alerted to the concern that any new listings for petroleum wastes may have potentially significant impacts on the management of leachate collected from certain non-hazardous waste landfills. Specifically, one company that owns and operates non-hazardous waste landfills expressed concern that because some of their facilities have historically received and disposed of some or all of the waste streams listed in the final rulemaking published August 6, 1998 (i.e., K169, K170, K171, and K172), the leachate that is collected and managed from these landfills would be classified by these same waste codes after the effective date of the new petroleum waste listings. 63 FR 42190. However, if Subtitle C regulation were to apply to leachate generated from such landfills, leachate now trucked to POTWs would likely no longer be managed by POTWs, since POTW owner/operators (understandably) would not wish their facilities to become subject to RCRA Subtitle C regulation. This company argued that this could lead to vastly

increased treatment and disposal costs without necessarily any environmental benefit.

Why Would This Leachate be Regulated as Hazardous Waste?

As discussed in the NODA, leachate that is derived from the treatment, storage, or disposal of listed hazardous wastes is classified as a hazardous waste by virtue of the ''derived-from'' rule in 40 CFR 261.3(c)(2). The Agency has been very clear in the past on the applicability of hazardous waste listings to wastes disposed of prior to the effective date of a listing, even if the landfill ceases disposal of the waste when the waste becomes hazardous. 53 FR 31147 (August 17, 1988). EPA also has a well-established interpretation that listings likewise apply to leachate derived from the disposal of listed hazardous wastes, including leachate derived from wastes disposed before a listing effective date which meet the listing description. *Id.* EPA's interpretations were upheld by the Court of Appeals for the District of Columbia Circuit in *Chemical Waste Management, Inc.* v. *EPA*, 869 F.2d 1526, 1536–37 (D.C. Cir. 1989). (These points are restated here to provide context. EPA is not reconsidering or in any other way reopening these principles for comment or review.)

Of course, as set out in detail in the August 17, 1988 notice, this does not mean that landfills holding wastes which are now listed as hazardous become subject to Subtitle C regulation. However, previously disposed wastes now meeting the listing description, including residues such as leachate which are derived from such wastes and are actively managed, do become subject to Subtitle C regulation. 53 FR 31149. In many cases, indeed most circumstances, no significant regulatory consequences under RCRA result from leachate management. Active management of hazardous leachate would often be exempt from Subtitle C regulation because the usual pattern of management is discharge either to POTWs via the sewer system (where leachate mixes with domestic sewage) or to navigable waters, where in both instances the leachate is excluded from RCRA jurisdiction.[1] In addition, management of leachate in wastewater treatment tanks prior to discharge under the CWA is exempt from RCRA regulation (40 CFR 264.1(g)(6)). However, some management practices, such as leachate being transported off site to a POTW in a truck, would not be exempt from Subtitle C regulation as described in more detail elsewhere in today's document.

[1] See RCRA Section 1004(27) and 40 CFR 261.4(a)(1) (domestic sewage exclusion); see also RCRA Section 1004(27) and 40 CFR 261.4(a)(2) (industrial point source exclusion).

III. Summary of NODA and Proposed Temporary Deferral

EPA requested comment in the NODA on whether it would be appropriate to defer temporarily the application of the new petroleum waste codes to such leachate in order to avoid disruption of ongoing leachate management activities while the Agency decides how to integrate the two regulatory schemes (RCRA and CWA), consistent with RCRA section 1006(b)(1) (which requires EPA to integrate regulations under RCRA with those of the other statutes implemented by EPA, and to avoid duplication, to the maximum extent possible consistent with the goals and policies of RCRA and the other statutes). 63 FR 42192. EPA specifically requested comment on exempting leachate that would only be defined as hazardous waste because it was derived from the disposal of one or more of the newly-listed petroleum refining wastes (K169–K172), where these wastes were disposed of prior to, and not after, the effective date of the listing. EPA also solicited comment on the exemption being conditioned on the leachate being subject to regulation under the CWA. Finally, EPA asked whether or not the exempt leachate should be allowed to be managed in non-subtitle C surface impoundments, a practice which presently occurs at some landfill facilities.

How is Leachate Currently Being Evaluated Under Clean Water Act Regulations?

As noted in the August 6, 1998 **Federal Register**, EPA's Office of Water recently proposed national effluent limitations guidelines and pretreatment standards for wastewater discharges—most notably, leachate—from certain types of landfills, including those that would be covered by this notice. 63 FR 6426 (February 6, 1998). In support of this proposal, EPA conducted a study of the volume and chemical composition of wastewaters generated by both Subtitle C (hazardous waste) and Subtitle D (non-hazardous waste) landfills, including treatment technologies and management practices currently in use. EPA proposed effluent limitations (for nine pollutants in the Non-Hazardous Subcategory) for direct dischargers. 63 FR 6463. Most pertinently for today's notice, EPA did not propose pretreatment standards for Subtitle D landfill wastewaters sent to POTWs because the Agency's information indicated that such standards were not required due to several factors, including (1) raw leachate data were below published biological inhibition levels, and (2) other information indicated a lack of ''pass-through'' of toxics (including lack of showing of adverse impact on POTW sludge quality). 63 FR 6444. For example, the EPA initially determined, among other things, that the majority of pollutants typically found in raw, non-hazardous landfill leachate were at relatively low concentrations that can be adequately treated by a POTW.

EPA's concern is that what appears to be a proper and reasonable means of managing leachate would be undermined if the leachate becomes a hazardous waste. This is because some POTWs would become subject to RCRA permitting requirements if they accepted the leachate, and would surely cease to accept it, even though (if the CWA proposal is correct) POTWs can treat the leachate effectively without even the necessity of pretreatment. Landfills no longer able to send leachate to POTWs would be forced to develop some sort of alternative arrangement—any of which, it appears to EPA, would result in undesirable ''duplication'' and disruption which section 1006 (b) seeks to prevent. EPA's resolution of this problem is set out in the following section.

IV. Today's Action

A. Temporary Deferral of the Listing for Leachate

After consideration of information and comments received in response to the NODA, the Agency is today temporarily deferring from the hazardous waste regulations leachate derived from landfills that have historically received petroleum refining wastes (i.e., wastes that meet the listing description of one or more of the newly-listed K wastes), provided the leachate is subject to regulation under the Clean Water Act requirements, and is not managed in surface impoundments after February 13, 2001. This deferral will remain in place while EPA continues to examine the specific aspects of how this leachate is currently managed, whether subtitle C regulation is appropriate or inappropriate, and (in particular) how the eventual Clean Water Act effluent limitation guidelines and standards for landfill wastewaters will bear on these questions.

Today's deferral does not exempt leachate from being hazardous waste if the leachate exhibits any of the hazardous waste characteristics or is

derived from any waste codes other than the four petroleum refinery wastes described in the deferral, and any residues from treating exempt leachate would need to be evaluated against the hazardous waste characteristics.

EPA is deferring the listing's applicability to the leachate to avoid the problems alluded to above. Specifically, EPA believes that current indirect dischargers would have to create some type of unnecessarily duplicative way of managing the leachate if it becomes a listed hazardous waste. The most likely alternatives are a sewer hookup with the POTW or construction of an on-site wastewater treatment system. It appears that any alternative would be unnecessarily duplicative (putting aside for the moment the issue of management in surface impoundments), assuming the rationale of the proposed CWA rule holds, because POTWs can already fully treat the leachate without need for treatment by any other entity. Indeed, this same concern is expressed in the Clean Water Act, which states that pretreatment standards are only to be established for pollutants which interfere with, pass through or otherwise are incompatible with treatment by the POTW. CWA section 307(b)(1). Put another way, EPA is concerned about forcing pretreatment of leachate even though pretreatment is neither required by the CWA nor needed. EPA is also concerned about other potential disruption of existing, reasonable methods of leachate management. The Agency believes that the issue of whether disruptions can be minimized through integration of CWA and RCRA rules will be more amenable to resolution once the CWA rulemaking in completed.

EPA is therefore acting to prevent this potential needless duplication and disruption by deferring the applicability of the listing to leachate which is subject to regulation under the CWA, which in this case includes not only direct discharges under NPDES and indirect discharges to POTWs through a sewer system, but also transfers to POTWs by truck, rail, or dedicated pipeline (a chief concern motivating today's rule). Therefore, today's regulatory text specifically mentions transfers of leachate to POTWs by truck, rail, or dedicated pipeline as a means to satisfy the condition of managing leachate subject to regulation under the CWA. Since this deferral is directly tied to the on-going CWA rulemaking for landfill wastewaters, the deferral will last at least until that rulemaking is completed.

However, the Clean Water Act rules, because they apply to leachate when it is discharged, do not on their own assure safe management upstream of that point. These rules on their own, therefore, do not address the prime RCRA concern: assuring safety of wastes when they are land disposed, particularly when disposed in surface impoundments. Such disposal is a key RCRA concern. See RCRA section 1002 (b)(7) (''certain classes of land disposal facilities are not capable of assuring long-term containment of certain hazardous wastes, and to avoid substantial risk to human health and the environment, reliance on land disposal should be minimized or eliminated and land disposal, particularly landfill and surface impoundment, should be the least favored method for managing hazardous wastes''); see also, *American Mining Congress* v. *EPA*, 907 F. 2d 1179, 1187 (D.C. Cir. 1990) (statutory antipathy to management in surface impoundments). It is also clear that section 1006(b) cannot be invoked to ''wholly circumvent'' critical statutory provisions. *Chemical Waste Management* v. *EPA*, 976 F. 2d 2, 25 (D.C. Cir. 1992). The fact that the leachate may not warrant pretreatment before discharge of course does not mean that the leachate can be safely discharged into groundwater via leaking impoundments. On August 6, 1998 EPA listed four petroleum refining process wastes as hazardous (63 FR 42110). Under the derived-from rule, EPA presumes that the leachate derived from these listed wastes may pose risks, particularly when managed in land-based units such as surface impoundments. In light of this, EPA believes the approach that best integrates RCRA and the CWA during EPA's examination of a long-term accommodation, is to condition the deferral on replacing existing surface impoundment storage with storage in tanks (or operate with fully regulated subtitle C impoundments). The EPA intends to continue studying the broader issue of the risks that may be posed by managing wastewaters in surface impoundments, and is conducting a surface impoundment study that will characterize these types of risks. The scope of this study will include surface impoundments in use at various types of facilities, including certain landfills that manage industrial and municipal solid waste.

EPA received support for this position from commenters. One commenter representing a national environmental organization strongly favored this result. Some MSWLF owner/operators also stated that they would replace their surface impoundments with leachate storage tanks, provided sufficient time is allowed to retrofit.

EPA agrees that surface impoundments cannot be replaced immediately. The statute, in fact, contemplates a four year period to replace or retrofit impoundments. See RCRA section 3005(j)(1). EPA believes further, however, that a period shorter than four years is appropriate here. Based on the information received during the comment period, it appears that the use of surface impoundments at MSWLFs to manage this leachate is not widespread (e.g., approximately 8 impoundments were identified out of 52 ''affected'' landfills)[2]. Given the reported volumes of leachate generated from MSWLFs that were identified in comments as affected by the new petroleum refinery waste listings, the projected size of these impoundments also is relatively small. One commenter representing a large number of affected landfills in fact stated that 24 months was adequate time to allow for the construction and operation of tanks to replace the impoundments at those MSWLFs that are affected by the petroleum refinery waste listings and are presently using impoundments to manage some or all of their leachate. EPA therefore believes that two years is a reasonable time for impoundment replacement and accordingly is providing in today's rule that the temporary deferral applies to leachate derived exclusively from the newly-listed petroleum wastes, and that the deferral is conditioned on managing the leachate in tanks or other non-land disposal units. This condition takes effect in two years. During the two year period, the temporary deferral applies to the leachate even if managed in impoundments. Impoundments which stop receiving the leachate (or any other hazardous waste) after two years are inactive units which are not subject to subtitle C requirements. See generally 55 FR 39409 (Sept. 27, 1990) (disposal units holding hazardous wastes on date of listing or identification of that waste as hazardous are not subject to subtitle C requirements so long as additional hazardous wastes are not added to the unit and the hazardous wastes in the unit are not actively managed). Should the impoundments receive hazardous waste (including leachate which otherwise would be subject to this temporary deferral) after the two year date, the impoundment unit would

[2] Comments PR3A–00002, 00007, L0001, L0002, L0003; also, Notes from Meeting Between EPA and Representatives of Landfill Industry, Memo to Docket F–98-PR3A-FFFFF from Ross Elliott, January 16, 1999.

become a regulated unit subject to all subtitle C requirements. The EPA feels that this approach minimizes the immediate disruption that would occur should these impoundments suddenly be forced to close, while providing an environmentally beneficial result in the expeditious conversion of these impoundments to tanks.

V. Response to Comments

EPA was specific in stating in the NODA that the scope of this proceeding is the narrow classification and management of leachate generated from landfills that disposed of one or more of the newly-listed petroleum wastes prior to the effective date, where the leachates are not defined as hazardous for any other reason, and are (in particular) being managed pursuant to Clean Water Act requirements. The EPA received comments primarily on this issue, and is responding to those comments in this preamble. EPA is not addressing comments raising regulatory and policy issues not directly related to the temporary deferral. EPA is retaining those comments as part of the record of this action.

A. Need for Temporary Deferral

Nearly all commenters agreed that a deferral for landfill leachate, that would otherwise be classified as listed hazardous waste due to the new petroleum refinery listings, was necessary to avoid disrupting current leachate management practices while allowing the EPA to evaluate the issue more carefully.

One commenter, however, found the Agency's record in support of the NODA to be lacking sufficient information to determine whether a deferral is necessary. This comment seemed to state that there should be more available information before EPA makes a risk-based determination regarding whether to regulate these leachates. Today's action is a narrower determination, however, and rests on bases fully set out in the NODA. EPA is issuing the temporary deferral to avoid the potential duplication and disruption which could be created when integrating the requirements imposed on leachate management by the petroleum listing rule, and the pending Clean Water Act regulation. EPA needs to take action now since affected persons would face a shutdown of current leachate management systems (in particular, by POTWs receiving trucked leachate) and be forced immediately to construct alternative leachate treatment facilities which could well prove to be unnecessary. There will be opportunities to revisit the temporary deferral, most logically at the conclusion of the Clean Water Act rulemaking.

B. What Are the Implications of the Temporary Deferral for Related Management Practices Preceding Discharge Pursuant to CWA Limitations and Standards?

1. Landfill Gas Condensate

One commenter asked whether landfill gas condensate would be regulated as a derived-from hazardous waste, should the landfill owner/operator determine that the landfill disposed of any of the petroleum refinery wastes prior to, but not after, the effective date. Landfill gas condensate is the liquid (primarily water) from moisture within the landfill gas being recovered, which is generated as a result of gas recovery processes at the municipal solid waste landfill (see 40 CFR 258.28(c)(2)) (see item B.4. below). The commenter stated that landfill gas condensate is often co-managed with leachate, by either treatment and discharge under the Clean Water Act, or by recirculation (discussed in more detail later). Based on the limited data currently available, it appears that this condensate is substantially identical (in terms of identity and concentration of hazardous constituents) to the leachate. In fact, EPA's proposed rule on effluent guidelines and pretreatment standards for landfills includes condensate along with leachate in the group of ''landfill wastewaters'' subject to that rulemaking. 63 FR 6429. Therefore, the Agency is including landfill gas condensate along with landfill leachate in the scope of today's deferral.

2. Leachate Collected and Recirculated Within the Landfill

Two commenters also questioned how a temporary deferral would affect leachate (and condensate) which is recirculated within the landfill, a relatively common practice (see 56 FR 51055 (October 9, 1991)). Under existing interpretations, movement of waste within a land disposal unit is not itself land disposal. See, e.g., 55 FR 8758–8760 (March 8, 1990); 55 FR 30843 (July 27, 1990). Consequently, such activity would not result in subtitle C regulation of the unit so long as the leachate was merely recirculated in the unit. 55 FR 8760; 55 FR 30843. This would be the result whether or not EPA adopted the temporary deferral in today's rule.[3]

3. Wastes Derived From the Leachate

Two commenters asked about the status of solids generated from on-site wastewater treatment (e.g., filter cake). They stated that this is particularly important because these solids are put back into the landfill from which the leachate was collected for treatment. Because today's deferral applies at the point of generation of the leachate, which would be prior to any wastewater treatment the leachate might undergo as part of compliance with the CWA (including on-site wastewater treatment), these solids would be derived from treating a non-listed waste. Therefore, assuming the conditions of the deferral promulgated today for leachate apply (and therefore the leachate is temporarily not a listed waste), solids from treating this leachate would only be hazardous wastes if they are listed independently (which they are not under existing rules), or exhibit a characteristic of hazardous waste. EPA considered whether there should be a concern about the fate of the hazardous constituents that might be contained in the solids, particularly if the source of the constituents was from the previously disposed refinery wastes. EPA believes this concern is reduced, however, because the hazardous constituents of concern that caused most of these newly-listed petroleum wastes to be listed (benzene and arsenic) are covered by the Toxicity Characteristic (TC). Further, an estimate of the volume of sludges generated from treating leachate (using leachate volumes submitted to EPA in comments, and assuming a 0.1% solids content and a 50% recovery efficiency) is about 100 metric tons per year, much lower than the volume of the newly-listed refinery wastes used in the risk assessment in support of the listings (70,300 metric tons per year in 1992).

4. Landfill Gas Management

Landfills can generate gas, which is derived not from the leachate but from the disposed solid wastes. It is highly desirable to control these gaseous emissions both for safety reasons (to avoid potential fires and explosions) and to prevent air pollution (especially from methane, a significant greenhouse gas). Municipal landfills do typically monitor and control the emission of explosive gases (methane in particular). See 40 CFR 258.23. Clean Air Act regulations further require municipal landfills above a given design capacity (2.5 million megagrams and 2.5 million cubic meters) to capture and control

[3] EPA thus disagrees with the implication of the comment that a section 1006 rationale would not apply to such recirculation, since the comment's premise is that recirculation of collected leachate within the landfill automatically makes the landfill a regulated unit if the leachate is a hazardous waste.

non-methane organic compounds (NMOCs) if greater than 50 megagrams of NMOCs per year are emitted. See 40 CFR part 60, subparts Cc and WWW (implementing section 111 of the Clean Air Act). EPA does not regard any of these salutary landfill gas management techniques as constituting active management of the landfilled waste which could result in subtitle C regulation of the landfill. See generally 54 FR 36597 (Sept. 1, 1989; 55 FR 39409 (Sept. 27, 1990). The concept does not include management of releases from otherwise inactive units. Indeed, a different reading would create an incentive not to control such releases. EPA consequently does not view the August 6, 1998 listing rule as triggering subtitle C regulation of landfill gas control operations at landfills which previously received the listed wastes. (It should also be noted that the burning of landfill gas for energy recovery, even if the gas is hazardous waste, is exempt from Subtitle C regulation. 56 FR 7203, February 21, 1991.)

C. Conditions of Temporary Deferral

As described earlier in this document, EPA requested comment on several conditions of the temporary deferral. The question of whether the proposed deferral should apply to impoundments managing the leachate generated comments on both sides of the issue. Some commenters felt that well-designed surface impoundments located at municipal solid waste landfills provided adequate protection to groundwater. As discussed earlier, EPA generally disagrees and has conditioned the temporary deferral on cessation of use of surface impoundments within two years. There is one type of impoundment, however, that could continue to receive the leachate without losing the benefit of the temporary deferral. A commenter stated that one of their landfill facilities historically received some of the newly-listed petroleum refinery wastes, and that facility maintains a surface impoundment with the capacity to store 30 days worth of leachate accumulation in the event of an emergency shutdown of the treatment plant located on site. The commenter stated that this impoundment has not been used in over two years, is constructed with two synthetic liners, and has a floating roof. The commenter explained that requiring this impoundment to be replaced with tanks would be an unnecessary expense with little environmental benefit. The Agency agrees with this commenter that it may not make sense to replace an impoundment that is not in use, or that is used infrequently in emergency situations, while this temporary deferral is in effect. This is because the critical risk normally posed by impoundments, creation of a pressure head that forces downward dispersion of leachate and other liquid in the impoundment (see Chemical Manufacturers Ass'n v. EPA, 919 F. 2d 158, 166–67, (D.C. Cir. 1990)) would be less present for this type of emergency impoundment since by definition it is only used in emergency situations, and therefore will not contain liquid most of the time. It seems better policy not to require replacement of this type of impoundment pending more analysis of the leachate. Therefore, the EPA is adding a provision to the temporary deferral to allow the use of surface impoundments for the non-routine, emergency storage of leachate exempted under today's final rule, provided the exempt leachate is removed from the impoundments and either returned to the tank-based wastewater treatment system, or otherwise discharged under the CWA, as soon as practicable after the emergency ends.

D. Determining Whether a Landfill Previously Received the Newly Listed Wastes

One commenter requested that EPA clarify what specific records or other information are required to determine whether a landfill historically received and disposed of one or more of the newly-listed petroleum wastes. Specifically, the commenter cited a situation where several petroleum refineries are located within a landfill's service area, and whether they must presume that the landfill accepted the refinery wastes that the Agency later listed as hazardous. Determining whether a landfill accepted a particular listed waste is a case-by-case factual determination. Ordinarily, however, the presence of a petroleum refinery in the general service area of the landfill, without more information, would not require a determination that the listed wastes were disposed at the facility. See 53 FR 51444 (Dec. 21, 1988); 55 FR 8758 (Mar. 9, 1990); also 61 FR 18805 (April 29, 1996), 63 FR 28619 (May 26, 1998).

VI. Administrative Assessments

A. Executive Order 12866

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to OMB review and the other provisions of the Executive Order. A significant regulatory action is defined by Executive Order 12866 as one 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, or 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 rights and obligations or 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 Executive Order 12866.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because of policy issues arising out of legal mandates. The leachate management option elected by the Agency does not, since its expected annual cost is so low (see Economic Analysis for explanation), affect the Executive Order 12866 determination that would otherwise be made. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

1. Economic Analysis

Background

Common disposal practices for the four petroleum refining wastes are off-site disposal in industrial and municipal solid waste landfills. Design criteria require the installation of leachate collection systems at new landfills (or lateral expansions of existing landfills). Subsequently, leachate derived from the four petroleum wastes has traditionally been collected and recirculated, treated, or discharged under the Clean Water Act. As described in more detail in the August 6, 1998 NODA, as well as in today's rule, the listing for the four petroleum refinery wastes on August 6, 1998 (63 FR 42110), results in leachate that is actively managed from these landfills to be hazardous under the derived-from rule. Also, when the leachate from these four wastes mixes with leachate from other wastes disposed in these landfills, the entire leachate quantity is considered hazardous under the mixture rule. By changing the regulatory status of this leachate to be covered under Subtitle C of RCRA, these landfills may bear an increase in management costs. EPA estimates that between 58 to 125 landfills may be affected. The range

reflects the difference between known recipients of the wastes (based on information received in comments), and information about other landfills that possibly received the wastes, from the economic analysis in support of the petroleum waste listing rulemaking.

Regulatory Options

The following two regulatory actions have been evaluated:

1. Temporary Deferral (including Surface Impoundments Converted to Tanks within 2 Years): Upon signature the leachate is exempt from being regulated as hazardous under RCRA Subtitle C if it is appropriately managed under the Clean Water Act (e.g., NPDES discharge, POTW disposal via pipeline, and trucking to an off-site POTW). After two years, surface impoundments will no longer be allowed to manage exempt leachate. If the leachate is managed in a surface impoundment after two years the impoundment will be subject to regulation under Subtitle C. This regulatory option assumes that landfill operators will avoid Subtitle C regulation by building tank systems to replace their impoundments before the two-year deadline. However, after two years impoundments can still be used for emergency storage of exempt leachate and it will continue to remain exempt from Subtitle C regulation.

2. Standard Listing: Treat the Leachate as Hazardous Waste and Subject to Subtitle C Regulation under the Derived-From and Mixture Rules. Existing exemptions apply under the Standard Listing regulatory option including the wastewater treatment unit exemption (on-site tanks and associated piping are not Subject to Subtitle C permits and standards if they meet the definition of wastewater treatment unit, discussed in detail in the August 6, 1998 NODA). In addition, leachate collection sumps are considered to be an integral part of the leachate collection system at Subtitle C landfills and do not need to meet Subpart J standards for tanks. Leachate collected and recirculated back into the landfill the Agency considers not to be ''actively managed'' and therefore does not trigger listing regulations. Indirect discharge of leachate through the sewer to non-POTWs, and transfer of leachate to a POTW by truck, rail, or dedicated pipe, are both practices under which the leachate would not be excluded from the definition of solid waste; transfer of non-exempt leachate off-site for treatment is a practice that would preclude the wastewater treatment unit exemption at the landfill site; and management of leachate in surface impoundments is a management practice that is not exempt.

Cost Methodology

The basic cost methodology involved the following steps:

1. Estimate number of facilities involved. The uncertainty in this is the primary reason for the costs range given below.

2. Estimate current or baseline costs. These include costs based on data provided in comments submitted by industry, and reflect costs prior to the date on which the petroleum listings become effective (February 8, 1999).

3. Determine procedures for the management of the wastes under proposed regulatory option(s). Many steps are involved in this waste management train.

4. Determine leachate quantities involved.

5. Determine costs to manage leachate under the proposed option(s).

6. Determine the incremental cost associated with each option.

Compliance Cost Estimates

Table 1 below presents estimated incremental costs for the two options noted. The very marked difference between the costs of the two options is attributable largely to the costs associated with trucking hazardous leachate to commercial wastewater treatment facilities instead of POTWs, costs which are not relevant under the Temporary Deferral option. The difference between ''known'' and ''worst case'' costs is attributable to the uncertainty in landfill count as noted above. The following summarizes Table 1:

Incremental compliance costs for the known (58 landfills) and estimated worst case (125 landfills) population of affected landfills that received these four waste streams are estimated to range from $62 to $219 million under the Standard Listing regulatory option. This range is due to the two different populations of affected landfills used (i.e., known and worst case), and also reflects a 10-year period of leachate generation and a 20-year amortization period. However, the upper bound of this cost range may be considerably lower as the result of possible savings gained through contract negotiations for repeat customers who provide consistent revenue streams to shipping companies through their regularly scheduled shipments of leachate. The Cost Impact Analysis background document prepared in support of today's rule contains additional incremental cost estimates under the Standard Listing option, using differing periods of leachate generation and cost amortization.

Incremental costs are estimated to be between $130,000 and $280,000 annually for the Clean Water Act Exemption with Two-year Impoundment Replacement Deferral regulatory option, with only 8 to 17 of the affected landfills expected to currently operate a surface impoundment.

TABLE 1.—COMPLIANCE COSTS ESTIMATED FOR LANDFILLS THAT RECEIVED PETROLEUM (K169—K172) WASTES

	Trucked to POTW	Truck to POTW/Recirculate	Recirculate only	POTW hardpipe	NPDES	Evaporation pond	No leachate or condensate	Total
STANDARD LISTING REGULATORY OPTION								
Incremental Average Annual Compliance Cost per Landfill. ($million/landfill)	$2.64–$4.34	$2.16–$3.54	0	0	$0.01	$0.01	0	
Known Total	$47–$78	$15–$25	0	0	$0.05	$0.01	0	$62–$103
($ million/year)	(18 LF; 0 SI)	(7 LF; 1 SI)	(11 LF; 2 SI)	(12 LF; 0 SI)	(5 LF; 4 SI)	(1 LF; 1 SI)	(4 LF; 0 SI)	(58 LF; 8 SI)
Worst Case	$103–$169	$30–$50	0	0	$0.11	$0.02	0	$133–$219
($ million/year)	(39 LF; 0 SI)	(14 LF; 2 SI)	(23 LF; 4 SI)	(27 LF; 0 SI)	(11 LF; 9 SI)	(2 LF; 2 SI)	(9 LF; 0 SI)	(125 LF; 17 SI)
TEMPORARY DEFERRAL REGULATORY OPTION (Surface Impoundments Converted to Tank Systems w/in 2 Years)[1]								
Incremental Average Annual Compliance Cost per Landfill. ($million/landfill)	0	$0.006	$0.002	0	$0.012	$0.009	0	
Known Total	0	$0.042	$0.022	0	$0.060	$0.009	0	$0.13
($ million/year)	(18 LF; 0 SI)	(7 LF; 1 SI)	(11 LF; 2 SI)	(12 LF; 0 SI)	(5 LF; 4 SI)	(1 LF; 1 SI)	(4 LF; 0 SI)	(58 LF; 8 SI)

TABLE 1.—COMPLIANCE COSTS ESTIMATED FOR LANDFILLS THAT RECEIVED PETROLEUM (K169—K172) WASTES—Continued

	Trucked to POTW	Truck to POTW/Recirculate	Recirculate only	POTW hardpipe	NPDES	Evaporation pond	No leachate or condensate	Total
Worst Case ($ million/year)	0 (39 LF; 0 SI)	$0.084 (14 LF; 2 SI)	$0.046 (23 LF; 4 SI)	0 (27 LF; 0 SI)	$0.132 (11 LF; 9 SI)	$0.018 (2 LF; 2 SI)	0 (9 LF; 0 SI)	$0.28 (125 LF; 17 SI)

[1] This regulatory option assumes that surface impoundments will be closed and replaced with newly constructed tank systems w/in 2 years. It assumes that an exemption from Subtitle C regulation is granted up until the point the leachate enters any impoundment.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) 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 (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider impacts on ''small entities'' throughout the regulatory process. Section 603 of the RFA calls for an initial screening analysis to be performed to determine whether small entities will be adversely affected by the regulation. Larger, regional landfills are more likely to have managed industrial waste along with municipal waste (and therefore be potentially affected by this rule), and are typically entities of larger business organizations. However, the costs for the selected management option are very low, even for those small and municipally-owned landfills that have determined they are affected by today's deferral (the average annual cost of the selected management option is approximately $15,000/year per facility for those facilities managing leachate in surface impoundments). Therefore, EPA concludes that there will be no significant impact on small entities from the regulatory action selected.

C. Unfunded Mandates Reform Act

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

The Agency's analysis of compliance with the Unfunded Mandates Reform Act (UMRA) of 1995 found that the proposed action imposes no enforceable duty on any State, local or tribal governments or the private sector; thus today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

D. Paperwork Reduction Act

This rule does not contain any new information collection requirements subject to OMB review under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Facilities will have to comply with the existing Subtitle C recordkeeping and reporting requirements for the newly listed waste streams.

To the extent that this rule imposes any information collection requirements under existing RCRA regulations promulgated in previous rulemakings, those requirements have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control numbers 2050–0009 (ICR no. 1573, Part B Permit Application, Permit Modifications, and Special Permits); 2050–0120 (ICR 1571, General Facility Hazardous Waste Standards); 2050–0028 (ICR 261, Notification of Hazardous Waste Activity); 2050–0034 (ICR 262, RCRA Hazardous Waste Permit Application and Modification, Part A); 2050–0039 (ICR 801, Requirements for Generators, Transporters, and Waste Management Facilities under the Hazardous Waste Manifest System); 2050–0035 (ICR 820, Hazardous Waste Generator Standards); and 2050–0024 (ICR 976, 1997 Hazardous Waste Report.

E. Executive Order 12875: Enhancing the Intergovernmental Partnership

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

F. 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 rule does not significantly or uniquely affect the communities of Indian tribal governments. There is no impact to tribal governments as the result of the leachate management action selected. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

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

''Protection of Children from Environmental Health Risks and Safety Risks'' (62 *FR* 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have 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.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 104–113, section 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involved technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

I. Executive Order 12898: Environmental Justice

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. To address this goal, EPA considered the impacts of this final rule on low-income populations and minority populations and concluded that the leachate management option selected by the Agency for this final rule would have no impact on nearby minority and low income populations.

VII. The 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 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 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective immediately.

VIII. Rationale for Immediate Effective Date

Because this rule eliminates possible regulation, the regulated community does not need 6 months to comply, so that the rule may be made effective immediately pursuant to RCRA section 3010 (b) (1). For the same reason, it is not necessary to delay the rule's effectiveness for 30 days pursuant to 5 U.S.C. 553 (b) (1).

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

Dated: February 5, 1999.

Carol M. Browner,

Administrator.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.4 is amended by adding paragraph (b)(15) to read as follows.

§ 261.4 Exclusions

* * * * *

(b) * * *

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, and K172 if these wastes had been generated after the effective date of the listing (February 8, 1999);

(ii) The solid wastes described in paragraph (b)(15)(i) of this section were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) After February 13, 2001, leachate or gas condensate will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

* * * * *

[FR Doc. 99–3426 Filed 2–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6232–1]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Whittaker Corporation Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Whittaker Corporation Superfund Site in Minnesota from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA and the State of Minnesota, because it has been determined that Responsible Parties have implemented all appropriate response actions required. Moreover, EPA and the State of Minnesota have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: February 11, 1999.

FOR FURTHER INFORMATION CONTACT: Gladys Beard at (312) 886–7253, Associate Remedial Project Manager, Superfund Division, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: Minnesota Pollution Control Agency, 520 Lafayette Rd. North, St. Paul, Minnesota 55155–4194. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The contact for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Whittaker Corporation located in Minneapolis, Minnesota. A Notice of Intent to Delete for this site was published December 14, 1998 (63 FR 68714). The closing date for comments on the Notice of Intent to Delete was January 12, 1999. EPA received no comments and therefore no Responsiveness Summary was prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous Waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 27, 1999.

William E. Muno,

Acting Regional Administrator, Region V.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B [Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Site ''Whittaker Corp., Minneapolis, Minnesota.''

[FR Doc. 99–3142 Filed 2–10–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–144; Amendment 195–65]

[RIN 2137–AC78]

Risk-Based Alternative to Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines Rule; Correction

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published November 4, 1998 (63 FR 59475). This final rule allows operators of older hazardous liquid and carbon dioxide pipelines to elect a risk-based alternative in lieu of the existing hydrostatic pressure test rule. This document makes a minor correction by removing an unrelated sentence that