ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 266 and 271

[FRL–4792–7]

Burning of Hazardous Waste in Boilers and Industrial Furnaces

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: On February 21, 1991, EPA promulgated regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA) that would expand controls on hazardous waste combustion to regulate the burning of hazardous waste in boilers and industrial furnaces (BIFs). Among other things, the regulations provide two tests for determining whether residues derived from Bevill devices (e.g., cement kilns, light-weight aggregate kilns, primary smelters, coal-fired boilers) co-processing hazardous waste and raw materials are exempt from hazardous waste control: if levels of the toxic constituents in the waste-derived residue are not significantly higher than in normal residue; or if levels of the toxic constituents in the waste-derived residue do not exceed specified health-based levels. EPA is today announcing an interim final rule on the health-based limits for nonmetals that are used to determine whether Bevill residues are exempt from the definition of hazardous waste under test number 2, provided that other limits are met on an interim basis (in order to prevent a situation where nonmetal constituents in these residues go unmonitored). The effect of this rule is to replace the current limits needed to qualify for the Bevill exemption (under test number 2) with the land disposal restriction limits for underlying constituents in nonwastewaters pending further administrative action to establish health-based levels.

EFFECTIVE DATE: October 15, 1993.

ADDRESSES: The official record for this document is identified as Docket Number F–93–BBAS-FFFFF, and is located in the RCRA Information Center located at: EPA/RCRA Information Center, room M2616, 401 M Street SW., Washington, DC 20460.

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FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at: (800) 424–9346 (toll free) or (703) 920–9810.

For technical information concerning this notice, contact Shiva Garg, Office of Solid Waste (OS–322W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308–8459.

SUPPLEMENTARY INFORMATION: The contents of today's notice are listed in the following outline:

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I. Overview of Agency Action

On January 22, 1993, the Cement Kiln Recycling Coalition (CKRC) submitted a petition to EPA to modify § 266.112 of the Boiler and Industrial Furnace (BIF) Rule to amend the health-based limits for nonmetal constituents in waste-derived residues that must be met in order to qualify for the Bevill exemption (under the test in § 266.112(b)(2)). The Agency agrees that the nonmetal limits established in appendix VII, part 266, are extremely conservative to the point that they replicate an unrealistic scenario. The values, moreover, were based on unintended, mistaken assumptions on EPA's part. Therefore, the Agency is today staying those limits provided that owners and operators of such Bevill devices comply with land disposal restriction standards for the hazardous constituents that are reasonably expected to be present in these residues. The Agency believes that these technology-based land disposal restriction limits identify residues that have the "low toxicity" attribute that is one of the key bases for the temporary exemption of Bevill residues from the definition of hazardous waste. 56 FR 7197 (Feb. 21, 1991); *Environmental Defense Fund* v. *EPA*, 852 F.2d 1316, 1329 (D.C. Cir. 1988), *cert. denied*, 489 U.S. 1011 (1989). Thus, the limits serve as interim regulatory levels. Nonetheless, EPA views these land disposal restriction limits as a temporary measure pending future rulemaking to consider whether more appropriate health-based limits should be established.

This stay does not affect the application of procedural requirements of § 266.112(b)(2), except that the following provisions of paragraph (b)(2)(i) are also stayed: (1) The default limit of 0.002 micrograms per kilogram; and (2) the procedure for handling nondetect values. Under the conditioned stay, a default value does not apply given that EPA has established detectable limits for virtually every hazardous constituent for which analytical methods are readily available. Further, detection limits under the stay will be handled as they are for compliance with the land disposal restrictions. As provided by § 268.43(c)(3), the Agency considers that the limit for an organic constituent has been met if the facility used a combustion process to treat the waste, and has been unable to detect the constituent despite using its best efforts as defined by applicable Agency guidance or standards. Until such guidance or standards are developed, the facility may demonstrate best efforts by achieving detection limits for the constituent that do not exceed the limit by an order of magnitude.

EPA is making this stay immediately effective. The Agency is taking this action after making a good-faith effort to provide advance notice and opportunity for comment on the conditioned stay. The Agency provided notice and requested comment from the approximately 80 commenters on the Bevill provision of the BIF rule during the previous rulemaking process.[1] EPA received comments from 16 respondents representing regulated BIFs and associated organizations, and from the incineration industry (e.g., the National Waste Management Association and the Hazardous Waste Treatment Council). These comments are addressed in this document.

II. Background

Under § 266.112 of the BIF rule, EPA codified procedures for owners and operators of Bevill devices (e.g., cement kilns, light-weight aggregate kilns, coal-fired boilers, and primary smelters) to determine whether their residues retain the Bevill exemption when the facilities co-fire or co-process hazardous wastes along with fossil fuels or normal raw materials. See 56 FR 7196–7200

[1] Letter from Matthew Straus, Director, Waste Management Division, EPA, to Commenters on Proposed Bevill Provisions of the BIF Rule, dated March 24, 1993.

(February 21, 1991). Those procedures implement the principle that, if burning hazardous waste does not affect the character of the residue (i.e., the residue would be essentially the same whether or not hazardous wastes were burned or co-processed), the waste-derived residue retains the Bevill exemption. The procedures require facilities that claim the Bevill exemption when burning listed hazardous waste to conduct sampling and analysis of their residues to document that either: (1) Levels of toxic constituents in waste-derived residue are not significantly higher than in normal (i.e., when not burning hazardous waste) residues; or (2) levels of toxic constituents in waste-derived residue do not exceed health-based levels specified in the rule. If the residue passes either test, the Bevill exemption is retained.

The rule requires sampling and analysis as often as necessary to characterize the residue, provided that the compositing period does not exceed 24 hours. For example, if a facility analyzes its residue less frequently than daily, the sample analyzed cannot represent residue that has been generated during a period exceeding 24 hours.

The constituents that must be analyzed for are: (1) Appendix VIII, part 261, hazardous constituents that could reasonably be expected to be in the hazardous waste burned; and (2) compounds that the Agency has determined are common products of incomplete combustion (i.e., they may be formed during combustion of the waste) and has listed in appendix VIII, part 266.

III. Inaccuracy of the Existing Limits

The health-based limits (HBLs) for nonmetals established in appendix VII, part 266, are based on the total concentration of the nonmetal in the residue, not an extract concentration. This is because combustion processes should destroy nonmetal compounds, and limits on the total concentration of the compound in the residue would better ensure effective destruction. The health-based limits on the total concentration of toxic compounds address exposure via ingestion of the residue.

To establish the HBLs for nonmetals, the Agency converted drinking water limits (i.e., maximum concentration limits (MCLs), and limits based on reference doses (RfDs) for noncarcinogens and unit risk values for carcinogens assuming the exposed individual drank two liters of water per day for a lifetime) to total concentrations simply by mathematically converting the milligram per liter drinking water limits to milligram per kilogram units. In the rush to promulgate the BIF rules under a stringent court-ordered deadline, the Agency failed to note that this approach continues to assume that the hypothetical exposed individual is ingesting two liters (two kilograms) per day of the media—that is, two kilograms or 4.4 pounds of residue. Clearly, this was not the Agency's intent. In previous risk assessments, the Agency has often assumed that an individual ingests 0.2 grams of soil per day. If a residue ingestion rate of 0.2 grams per day was assumed, then the appendix VII, part 266, nonmetal limits may be orders of magnitude too stringent.

What is certain is that the existing regulatory values are mistaken. The Agency thus believes that the nonmetal health-based limits must be corrected immediately.

CKRC also petitioned to alter the HBL value for thallium, likewise arguing that the regulatory value is inappropriately low (stringent) due to improper conversion of values and initial misclassification of thallium as a nonmetal. EPA is not acting on this part of the petition. Since the rule was promulgated, EPA has new health information on thallium that indicates that the RfD for this hazardous constituent is significantly lower than originally determined. Based on these new data, the Agency's Office of Drinking Water (after notice and comment rulemaking) has lowered the maximum concentration limit (MCL) for thallium to 0.002 mg/l. See 57 FR 31776 (July 17, 1992). Based on this new information, if anything, the existing regulatory value is not stringent enough, given that the Bevill limits were based on applying a 100 fold dilution factor to the MCLs. See 56 FR 7199. The Agency thus is not staying that value, and may issue guidance to permit writers regarding the possible use of omnibus permit authority to include thallium values in the § 266.112 demonstration that reflect the most recent health information.

IV. Basis for Using Land Disposal Restriction Standards as Interim Limits

This section discusses the basis for selecting the land disposal restriction (LDR) limits for the underlying hazardous constituents in nonwastewaters as interim limits as well as the rationale for not selecting an alternative approach based on drinking water limits times a dilution and attenuation factor (DAF). (It should be noted that the LDR limits established in today's stay are based on total concentrations in the residue; the alternative of establishing limits based on drinking water limits times a DAF would apply to the Toxicity Characteristic Leachate Procedure (TCLP) extract.)

A. LDR Limits

The Agency has established land disposal treatment standards for the underlying hazardous constituents in FO39 (multisource leachate) that are essentially a compilation of all earlier treatment standards and include virtually every RCRA hazardous constituent that can be routinely analyzed by gas chromatography/mass spectrometry (GC/MS).[2] The Agency believes that these limits are achievable for most RCRA hazardous wastes. See generally 58 FR 29867 (May 24, 1993) for an explanation of why EPA believes these treatment standards are achievable for most hazardous wastes.

The Agency believes that it is reasonable to exempt Bevill residues at these LDR levels on an interim basis (pending rulemaking to establish more appropriate limits) because: (1) Technology-based treatment limits should identify residues that have the "low toxicity" property that is one of the bases for the temporary exclusion of Bevill residues from the definition of hazardous waste; (2) they are promulgated limits and so have been scrutinized and subject to public comment in previous rulemakings...most notably the Third Third rule (55 FR 22619–625 (June 1, 1990)), the August 18, 1992, rule applying these standards to a wider group of prohibited wastes (57 FR 37203–206), and the May 24, 1993, interim final rule applying the standard to certain ignitable and corrosive hazardous wastes;[3] (3) the limits have been established for virtually every hazardous constituent that can be routinely analyzed by GC/MS; and (4) they should be readily achievable.

The majority of commenters to the March 24, 1993, letter agreed that these LDR limits were acceptable as interim limits pending rulemaking to establish more appropriate limits. Several commenters, however, expressed concern that exempting Bevill residues

[2] Commenters expressed concern that the list of appendix VIII, part 261, constituents is more comprehensive than the list of FO39 compounds. As a practical matter, this is a moot point because there are no analytical procedures for many of the compounds on appendix VIII, and others cannot be analyzed using readily available equipment (i.e., GC/MS).

[3] Entitled, "Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Standards Were Vacated; Interim Final Rule."

at LDR levels may not be protective given that the LDR levels are technology-based, not health-based. Commenters also noted that the LDRs apply to waste that may remain subject to subtitle C management, rather than wastes excluded from Subtitle C regulation. We share commenters' concerns but note the LDR levels are interim limits (pending rulemaking to establish health-based levels), and we believe that they are sufficiently protective. The LDRs should ensure that nonmetals are largely destroyed because they are based on concentration levels achieved by applying best demonstrated available treatment technology. No commenter maintained that wastes containing these levels of organics would not satisfy the low hazard Bevill test with respect to nonmetal constituents. Moreover, in most cases, these LDR standards for nonmetals are based on the level of detection in combustion residues. Even if the health-based level for a compound were to be lower than the LDR, it may not have practical significance if the LDR is the limit of detection in the residue matrix.

Other commenters suggested that there is no emergency situation and that the Agency should develop appropriate health-based limits through rulemaking. Some commenters noted that, if the existing limits could not be met, facilities still had the option of documenting that the levels of toxic constituents in waste-derived residue were no higher than in normal (i.e., generated without burning hazardous waste) residue under § 266.112(b)(1). EPA believes that these limits are not reasonable (i.e., are so conservative that they replicate an unrealistic scenario), and that the option provided by paragraph (b)(1) in any case may not be practicable. In particular, we have learned since promulgation of the rule that it is often difficult to establish and re-establish concentration levels in normal residue as raw materials or operating conditions change that can affect the levels of hazardous constituents in the residue. This is because devices such as cement kilns must be operated for extensive periods of time (e.g., hours or days) to reach steady-state conditions with respect to levels of appendix VIII, part 261, compounds in the residue. Thus, the approach of comparing waste-derived residue to normal residue may be problematic.

Finally, we note that, by establishing LDR exemption levels for Bevill residue, the Agency is not suggesting that: (1) the technology-based treatment standards are equivalent to, or appropriate to use as, health-based limits; or (2) Bevill excluded residues should necessarily be subject to the LDR rules. These issues, as well as others, will be addressed in a follow-up rulemaking.[4]

B. Consideration of Using TC Limits

Several commenters suggested that the Agency establish limits using the same approach used for metals. Under that approach, the limits would apply to a TCLP extract and would be established at 100 times the health-based levels (e.g., maximum concentration limits (MCLs), and limits based on reference doses (RfDs) and unit risk values (for carcinogens) assuming the exposed individual drank two liters of extract per day for a lifetime) to consider dilution and attenuation.

While the Agency's ultimate policy preference is to establish risk-based regulatory levels, the difficulties involved in this task are formidable and controversial. For example, in this case, limits on extract concentrations of organics would not address the potential risk posed by ingestion of the residue itself (e.g., via fugitive dust). Although the extract limits may provide an adequate level of protection, the Agency has not addressed this potential exposure pathway at this time.

We note that, under HWIR, the Agency will define hazardous constituent concentration levels below which a waste is no longer considered "hazardous." Discussions concerning these levels are taking place in the context of the recently chartered Federal Advisory Committee on the Hazardous Waste Identification Rule (HWIR). The Committee chose to initially discuss how to provide greater flexibility for the remediation of contamination at hazardous waste sites. It has also begun discussions by focusing on concentrations below which waste mixtures and treatment residuals would no longer be subject to the hazardous waste regulations ("exit" criteria), while also discussing whether there is a regulatory approach to relatively quickly bring under regulation clearly hazardous waste not now controlled by the hazardous waste regulations (an "entry" rule). To help address the uncertainties of assessing multiple exposure pathways, the Agency also has initiated research to examine exposure of humans and the environment to hazardous constituents through a large number and variety of pathways.

[4] This latter issue is already the subject of rulemaking, See 56 FR 55166 (Oct. 24, 1991), and EPA will decide the question exclusively in that rulemaking.

C. Which Hazardous Constituents Are Affected

The Bevill comparison test is to be performed for any hazardous constituent (i.e., a constituent listed in appendix VIII of part 261) that may reasonably be expected to be a constituent in the hazardous waste being co-burned or co-processed in the Bevill unit, plus the list (found in appendix VIII of part 266) of all products of incomplete combustion that could also be found in the residues. See § 266.112(b)(1) and 56 FR 7199. These requirements remain unchanged by today's stay.

V. Implementation of the Revised Limits

The stay is conditioned on compliance with the interim LDR exemption values. Noncompliance with those values would mean that the owner or operator of the Bevill device is no longer meeting the conditions of the administrative stay and therefore must comply with the comparison test in § 266.112(b)(1), in order to qualify for the exclusion in § 266.112. If the owner or operator meets neither the conditions of the stay nor the comparison test, then the residue would be subject to regulation as a hazardous waste.

In addition, the stay does not affect the application of the procedural requirements in § 266.112(b)(2),[5] except as noted below.

A. Default Value is Stayed

Under the stay, the default value of *0.002 micrograms per kilogram* established by § 266.112(b)(2) does not apply given that FO39 limits have been established for virtually every prohibited hazardous constituent for which analytical methods are readily available. In addition, that default value would not be appropriate because it was established as the lower 95th percentile of the (inappropriate) health-based limits.

B. Procedures for Handling Nondetects

The procedures for determining compliance when a constituent is not detected in the residue will be the same as those used for compliance with the FO39 nonmetal limits under the land disposal restrictions program. As provided by § 268.43(c)(3), the Agency

[5] In particular, the sampling and analysis requirements of § 266.112(b)(2)(iii) remain in effect. That paragraph requires sampling and analysis as often as necessary to determine whether residue generated during each 24-hour period exceeds the health-based limits. Further, compositing of samples is allowed, provided that the samples comprising the composite are taken from residue generated during a given 24-hour period.

considers that the limit for a constituent has been met if the facility has been unable to detect the constituent despite using its best efforts as defined by applicable Agency guidance or standards. Until such guidance or standards are finalized (and no such guidance presently exists), the facility may demonstrate such efforts by achieving detection limits for the constituent that do not exceed an order of magnitude above the interim limit. See revised § 266.112(b)(2)(i).

We note that the Agency developed this policy for the FO39 nonmetal treatment standards because the standards were developed based on residual levels in incinerator ash, and incinerator ash matrices can be difficult to analyze. Under today's stay, however, the Agency is using these standards as interim limits for Bevill residues. (Incinerator ash is not a Bevill residue.) Although some Bevill residues may present a matrix as difficult to analyze (i.e., to achieve low detection limits) as incinerator ash (e.g., bottom ash from a coal-fired boiler burning hazardous waste fuel), the Agency believes that the vast majority of the residues eligible for the Bevill exclusion—cement kiln dust and bag house dust from light-weight aggregate kilns—will be easier to analyze than incinerator ash. As evidence, data from 23 samples on the concentration of 43 organic compounds in cement kiln dust from three facilities indicate that detection limits are well below the FO39 limits.[6] Thus, the Agency expects that cement facilities making a good-faith effort to achieve detection limits at or below the FO39 levels will be able to do so.

Further, the Agency believes that particulate matter collected from light-weight aggregate kilns represents an analytical matrix similar to cement kiln dust. Thus, light-weight aggregate facilities making a good-faith effort to achieve detection limits at or below the FO39 level should also be able to do so.

C. Analytical Methods

Several commenters expressed concerns about the availability of analytical methods to document compliance with the FO39 interim limits. One commenter asserts that the incineration-based FO39 nonwastewater standards are set below the levels of detection normally achievable in incinerator ash. As evidence, the commenter cites the results of a series of incineration tests the commenter performed in 1989 and 1990 and submitted to the Agency as comments on earlier land disposal restrictions rulemakings.[7] EPA does not believe that the commenter's data demonstrates that the FO39 standards are below the level at which a competent analytical lab can quantify these compounds. In the Third Third Final Rule, EPA revised the FO39 nonwastewater standards between proposal and promulgation to accommodate the commenter's concerns. See the Response to Comments Background Document for the Third Third Final Rule. Moreover, we note that, as discussed above, incinerator ash is not a Bevill residue and that the majority of Bevill residues should pose a easier matrix to analyze than incinerator ash. Finally, if a particular Bevill residue matrix is difficult to analyze, we note that a facility is deemed to be in compliance for a constituent if the detection limit for the constituent is not more than an order of magnitude higher than the FO39 level.

Several commenters stated that SW-846 methods are not readily available for 47 of the FO39 compounds and noted that a laboratory provided a list of 47 compounds on the FO39 list "for which they do not test." EPA believes that each FO39 compound is a target analyte for at least one SW-846 method. In fact, EPA deliberately excluded from consideration in developing the FO39 list compounds on appendix VIII, part 261, without SW-846 methods. Moreover, EPA is aware that many commercial laboratories advertise that they analyze the entire "RCRA list" of compounds.

D. Immediate Effective Date

EPA is issuing this administrative stay pursuant to 5 U.S.C. 705, authorizing Agencies to stay administrative action pending judicial review when "justice so requires." See also Rule 18 of the Federal Rules of Appellate Procedure authorizing issuance of administrative stays pending review. (The issue of appropriate limits for nonmetals in co-processing residues from Bevill devices is at issue in the litigation over the BIF rule.) EPA believes that issuance of a stay for nonmetal constituents here is needed because the existing regulatory values are not reasonable. As explained above, they are based on an improper conversion of values resulting in a situation that mirrors massive ingestion of wastes in a manner that could not possibly occur. These values should thus be changed immediately.

At the same time, the Agency believes it necessary to establish a replacement for the stayed exemption levels for Bevill residues. Having no interim limits for nonmetals would lead to unacceptable situations where persons co-processing hazardous wastes and Bevill materials could not establish whether their residues were significantly affected. Hence, they would automatically lose their Bevill status (assuming the statistical test cannot be satisfied), or, equally unacceptably, the residues from co-processing would retain Bevill status without having to determine whether the co-processing added significant levels of organic hazardous constituents to the residues (and thus creating the possibility of unregulated management of high volume, high hazard wastes, at odds with all the commands of subtitle C). To the extent good cause (pursuant to 5 U.S.C. 553(b)) is needed to justify the Agency's immediately effective adoption of interim nonmetal values, the existence of these two unacceptable alternatives establishes good cause, in EPA's view. EPA has also explained why use of interim values borrowed from LDR treatment standards is the most reasonable present course it can determine.

Several commenters also questioned whether the stay could be made retroactive to the original date of promulgation of the BIF rule. Rules with retroactive applicability are normally highly disfavored as a legal matter, see *Chemical Waste Management* v. *EPA*, 869 F.2d 1526, 1536 (D.C. Cir. 1989), and EPA is therefore not promulgating a retroactive rule here.

VI. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3006, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. EPA could not issue permits for any facilities in the State which the

[6] Correspondence from David Gossman, President, Gossman Consulting, Inc., to Bob Holloway, EPA, dated January 15, 1993.

[7] We note that the commenter's reference to Practical Quantitation Limits (PQL's) obscures the issue because the concept of PQL's has been replaced by Method Detection Limits, defined in the current First Update to SW-846, Chapter One.

State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits for those new requirements, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to achieve or retain final authorization, the HSWA applies in authorized States in the interim.

Today's stay affects regulatory provisions promulgated pursuant to section 3004(q) of RCRA, a provision added by HSWA. (In particular, that provision implements the ambiguous language in section 3004(q)(1) that "(n)othing in this subsection shall be construed to impair the provisions of section 6921(b)(3) of this title" [the Bevill amendment].) Therefore, the Agency is adding today's provisions to Table 1 in § 271.1(j) which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect simultaneously in all States, regardless of their authorization status. States that are already authorized to implement the BIF rule are also encouraged to undertake an administrative action (e.g., a stay or interim rule) consistent with the administrative stay announced today by EPA.

B. Effect on State Authorizations

With the exception of those States which have received authorization for the BIF rule, EPA will implement the BIF provisions of today's stay in all States. EPA's implementation of today's stay will continue until States modify their programs to adopt the provisions and the modification is approved by EPA. 40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modifications to EPA for approval. Although today's stay replaces inappropriate limits with higher interim limits, and States may implement more stringent controls than EPA, we nonetheless strongly recommend that States adopt today's provisions. Because more stringent State program requirements are allowed under RCRA section 3009, EPA will not withhold authorization from a State that submits rules that contain the levels in the 2/21/91 rule. However, EPA recommends that the States modify their programs to adopt today's provisions, and that they do so on the same schedule that would be recommended for new regulations. Thus, we recommend that States modify their programs to adopt today's provisions by July 1, 1996, if a statutory change is not needed, or July 1, 1997, if a statutory change is needed. Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the provisions of today's stay to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law.

In implementing today's rule, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

VII. Paperwork Reduction Act

The information collection requirements of § 266.112 of the BIF rule have been approved by the Office of Management and Budget (OMB) under OMB Control number 2050–0073. This stay does not affect the information collection requirements of that section.

List of Subjects in 40 CFR Parts 266 and 271

Administrative practices and procedures, Hazardous waste, Intergovernmental relations, Recycling, Reporting and recordkeeping requirements.

Dated: October 15, 1993.

Carol M. Browner,

Administrator.

I. In part 266:

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

1. The authority citation for part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6934).

2. Section 266.112 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 266.112 Regulation of residues.

* * * * *

(b) * * *

(2) * * *

(i) *Nonmetal constituents.* The concentration of each nonmetal toxic constituent of concern (specified in paragraph (b)(1) of this section) in the waste-derived residue must not exceed the health-based level specified in appendix VII of this part, or the level of detection (using analytical procedures prescribed in SW–846), whichever is higher. If a health-based limit for a constituent of concern is not listed in appendix VII of this part, then a limit of 0.002 micrograms per kilogram or the level of detection (using analytical procedures prescribed in SW–846), whichever is higher, shall be used. The levels specified in appendix VII of this part (and the default level of 0.002 micrograms per kilogram or the level of detection for constituents as identified in Note 1 of appendix VII of this chapter) are administratively stayed under the condition, for those constituents specified in paragraph (b)(1) of this section, that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in § 268.43 of this chapter for FO39 nonwastewaters. In complying with those alternative levels, if an owner or operator is unable to detect a constituent despite documenting use of best good-faith efforts as defined by applicable Agency guidance or standards, the owner or operator is deemed to be in compliance for that constituent. Until new guidance or standards are developed, the owner or operator may demonstrate such good-faith efforts by achieving a detection limit for the constituent that does not exceed an order of magnitude above the level provided by § 268.43 for FO39 nonwastewaters. The stay will remain in effect until further administrative action is taken and notice is published in the

Federal Register and the Code of Federal Regulations; and

* * * * *

3. Appendix VII of part 266 is amended by designating the existing note at the end of the appendix as note 1 and adding a note 2 to read as follows:

Appendix VII [Amended]

* * * * *

Note 2: The levels specified in this appendix and the default level of 0.002 micrograms per kilogram or the level of detection for constituents as identified in Note 1 of this appendix are administratively stayed under the condition, for those constituents specified in § 266.112(b)(1), that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in § 268.43 of this chapter for FO39 nonwastewaters. See § 266.112(b)(2)(i).

II. In part 271:

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

2. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register** to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
•	•	•	•
November 9, 1993.	Burning of hazardous waste in boilers and industrial furnaces.	[insert FR page numbers].	October 15, 1993.

[FR Doc. 93-26041 Filed 11-8-93; 8:45 am]

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