

**ENVIRONMENTAL PROTECTION  
AGENCY**

**40 CFR Part 61**

[FRL 3753-7]

**NESHAPS for Radionuclides  
Reconsideration; Phosphogypsum**

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

**ACTION:** Notice of limited  
reconsideration of final rule and  
determination of compliance waiver.

**SUMMARY:** Today's action announces the limited reconsideration by EPA of the portion of 40 CFR part 61, subpart R, National Emission Standards for Hazardous Air Pollutants, Radon Emissions from Phosphogypsum Stacks (54 FR 51654 December 15, 1989) that requires disposal of phosphogypsum in stacks or mines, thereby precluding alternative uses of the material. In light of this reconsideration and other factors described herein, EPA is also granting a limited compliance waiver that permits the continued agricultural use of phosphogypsum through the current growing season. EPA is establishing a 60-day comment period to receive information relating to the limited reconsideration. In this issue of the Federal Register, EPA is also noticing several proposed alternatives that address the subject matter of this limited reconsideration. (See the proposed rule printed elsewhere in this issue). A public hearing on these issues will be held.

**DATES:** *Effective date:* March 15, 1990.

The public hearing will be held on May 3 and 4, 1990. Written requests to present comments at the hearing must be submitted by April 25, 1990.

**ADDRESSES:** The hearing will be held at the Inform Conference Center located at 205 Williams Street in Atlanta, GA.

Comments and requests to speak at the hearing should be submitted (in triplicate if possible) to the Central Docket (A-130), Environmental Protection Agency, Attention: Docket No. A-79-11, Washington, DC 20460. The docket may be inspected between the hours of 8 a.m. and 3 p.m. on weekdays. A reasonable fee may be charged for document copying.

**FOR FURTHER INFORMATION CONTACT:** Craig Conklin, Environmental Standards Branch, Criteria and Standards Division (ANR-460), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460, (202) 475-0810.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On October 31, 1989, EPA promulgated (54 FR 51653 December 15, 1989), pursuant to its authority under section 112 of the Clean Air Act (the "Act"), 42 U.S.C. 7412, National Emission Standards for Hazardous Air Pollutants ("NESHAPs") controlling radionuclide emissions to the outdoor air from the following source categories: DOE Facilities, Licensees of the Nuclear Regulatory Commission and Non-DOE Federal Facilities, Uranium Fuel Cycle Facilities, Elemental Phosphorus Plants, Phosphogypsum Stacks, Underground Uranium Mines and the operation and disposal of Uranium Mill Tailings Piles. This action was undertaken pursuant to a voluntary remand and a schedule issued by the U.S. Court of Appeals for the D.C. Circuit in light of its earlier ruling in *NRDC, Inc. v. EPA*, 824 F.2d 1146 (D.C. Cir. 1987) (the "*Vinyl Chloride*" decision) which articulated requirements for standard-setting under section 112 of the Act.

The *Vinyl Chloride* decision set forth a decisionmaking framework for NESHAPs by which the Administrator exercises his judgment under section 112 in two steps: first, determine a "safe" or "acceptable" level of risk considering only health-related factors, and second, set a standard that provides an "ample margin of safety," in which costs, feasibility, and other relevant factors in addition to health may be considered but which is at least as stringent as the "safe" level. After proposing and receiving comments on several options by which to define "safe", the Administrator selected an approach, first announced in the final NESHAPs for certain benzene source categories (54 FR 38044 September 14, 1989) which created a presumption of acceptability for a risk level of approximately one in ten thousand to the maximum exposed individual, and a goal to protect the greatest number of persons possible to a lifetime risk level no higher than approximately one in one million. After evaluating existing emissions against this benchmark, other risk information is then considered and a final decision is made about what risk is acceptable. The Agency then considers other information in addition to the health-related factors and establishes the final NESHAP at the level which protects public health with an ample margin of safety.

**B. The NESHAP for Radon Emissions  
From Phosphogypsum Stacks or Mines**

Phosphogypsum is waste or any other form of byproduct that results from wet

acid phosphorus production. Because phosphate ore contains a relatively high concentration of uranium and radium, phosphogypsum also contains these elements. Phosphogypsum, once created, is most typically disposed of in large (multi-acre) stacks or in the mines from which the phosphate ore was originally extracted.

During the rulemaking that resulted in promulgation on October 31, 1989, of the final 40 CFR part 61, subpart R, NESHAP for radon emissions from phosphogypsum, EPA performed a pile-by-pile risk assessment of radon releases from 56 phosphogypsum stacks located at 41 different facilities. The Final Phosphogypsum NESHAP is the product of application by the Administrator of the two part decision-making process articulated by the D.C. Circuit in the *Vinyl Chloride* decision, as summarized in part A above. Specifically, EPA decided that in order to control the dispersion of phosphogypsum and resultant release of radon gas to ambient air, the phosphogypsum, once created, must be disposed in stacks or mines. The radon emissions from these stacks or mines are limited to a level of 20 pCi/m<sup>2</sup>-s. The portion of the rule mandating disposal reflects the EPA's concern that the radium-bearing phosphogypsum waste, if diffused throughout the country, would present a public health threat from radon gas emissions that would continue for generations given radium's 1630-year half-life, and that it would be impracticable for EPA to implement its regulation of such numerous and diffuse sources.

Because the phosphogypsum NESHAP, 40 CFR part 61, subpart R, was published on December 15, 1989, it became effective for existing facilities on March 15, 1990. Clean Air Act section 112(c)(1)(B)(i), 42 U.S.C. 7412(c)(B)(i). Individual facilities that are unable to achieve compliance at this time may apply to EPA, pursuant to 40 CFR parts 61.10-61.11, for a waiver permitting such facility a period of up to two years after March 15, 1990 to comply. In deciding whether to grant such waiver, EPA considers, among other things, the past practices of the facility, the ability of the facility to comply, the necessity for a waiver, and whether the waiver would present an imminent endangerment to public health. Owners or operators of phosphogypsum that desire a waiver and meet these criteria are invited to apply to the EPA Regional Office in which the phosphogypsum is or will be located. However, for owners or operators of phosphogypsum engaged in the sale and use of phosphogypsum solely for agricultural purposes, for the



current growing season individual waivers are not necessary as EPA is today granting a limited class waiver for that purpose. This class waiver is further discussed in part E below.

### C. Industry Petitions

EPA has received petitions from The Fertilizer Institute ("TFI"), Consolidated Minerals, Inc. ("CMI"), and U.S. Gypsum Co. ("USG") to reconsider the portion of the phosphogypsum NESHAP, 40 CFR part 61, subpart R, which requires disposal into stacks or mines of all phosphogypsum thereby preventing alternative uses of the material. In pertinent part, TFI contends that this provision (1) was adopted without proper notice and comment, (2) is contrary to the national policy favoring recycling and reuse of secondary materials, (3) effectively prevents any amount, no matter how small, from being used in the research and development of beneficial uses of the material, (4) is unnecessary because certain uses of phosphogypsum such as mixing with soil as a calcium replenisher does not cause significant risks, and (5) will cause irreparable harm to thousands of farmers.

CMI adds that this portion of the phosphogypsum NESHAP is arbitrary and capricious because it prevents the use or sale of any of the phosphogypsum produced by their particular industrial process. In particular, because their phosphate ore treatment method allegedly reduces the radium concentration in much of the resultant phosphogypsum such that "safe" levels of radon gas emissions to ambient air are ensured, CMI contends that EPA's prohibition on alternative use is unreasonable.

U.S. Gypsum's petition is consistent with CMI's in that it supports the phosphogypsum NESHAP only insofar as it pertains to *untreated* phosphogypsum; therefore, phosphogypsum that is treated so as to achieve "safe" levels of radium (the material that ultimately results in radon gas emissions to ambient air) should be allowed for agricultural use. USG believes that because there are safer alternative products available in the agricultural gypsum market that are economically viable, and because the technology to treat phosphogypsum is also available and viable, the alternative use of untreated phosphogypsum was properly prohibited by the NESHAP. Therefore, reconsideration is requested as to the ban on use of treated phosphogypsum and, additionally, to allow research and development of phosphogypsum purification technologies.

### D. Notice of Limited Reconsideration

In accordance with section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. 7607(d)(7)(B), EPA is granting limited reconsideration of the portion of the phosphogypsum NESHAP, 40 CFR part 61, subpart R, which requires disposal of phosphogypsum in stacks or mines. Although the Agency has concluded that several of the issues raised by the petitioners merit reconsideration, EPA does not agree with all of the arguments or assertions raised. For example, EPA believes that its proposal, published at 54 FR 9612, *et seq.* (March 7, 1989), which included explicit regulatory language requiring that phosphogypsum be disposed in stacks or mines (implicitly prohibiting alternative uses), provided adequate public notice for the final rule. Indeed, comments from both industry and environmental groups on this very issue were submitted to EPA in response to that proposal. Nevertheless, reconsideration will afford an additional opportunity for public comment.

EPA is granting limited reconsideration in order to receive more information on the following: (1) the specific types of proposed alternative uses of phosphogypsum; (2) the current or anticipated feasibility of those alternative uses; (3) the research and development of processes which remove radium from phosphogypsum; (4) the health risks associated with either research and development or alternative uses; (5) the availability, cost, and effectiveness of substitutes for phosphogypsum; and (6) the proper definition of "phosphogypsum" in terms of its origin and its radium content. No comments that exceed the scope of these subjects will be considered by EPA.

### E. Limited Class Waiver for Agricultural Use

Pursuant to the Agency's authority under Clean Air Act section 112(c)(1)(B)(ii), 42 U.S.C. 7412(c)(1)(B)(ii), and 40 CFR parts 61.10-61.11, a limited waiver from compliance with the work practice portion of the phosphogypsum NESHAP, 40 CFR part 61, subpart R, is hereby granted for those owners or operators engaged in the distribution or use of phosphogypsum for agricultural purposes for the duration of the current growing season. This limited waiver is based upon the finding of the Administrator that such activity presents no imminent endangerment to public health, that the immediate prohibition of such use would cause great injury to many small farmers who rely upon phosphogypsum, and that it

would be burdensome and impracticable to issue limited waivers to each affected owner or operator, and it is made in light of the scope of the simultaneously granted limited reconsideration of the phosphogypsum NESHAP. This limited waiver further recognizes that the requirement to dispose of phosphogypsum in stacks or mines does not require emissions control equipment but instead requires conversion to alternative means of soil conditioning. The limited waiver is necessary to allow time for arranging the purchase and implementation of new materials and practices.

The durational limitation to this growing season recognizes that the timing for application of phosphogypsum varies from farm to farm, crop to crop, and thus allows phosphogypsum application to fields through this growing season, even if already commenced, but in no case after October 1, 1990. The limited waiver bars enforcement against such use and distribution for this period, but in the event that phosphogypsum is sold or otherwise distributed but not used for this growing season, it must be disposed into stacks or mines unless further relief from the provisions of the rule has been provided by EPA.

### F. Miscellaneous

EPA has determined that this action does not constitute a major rule within the meaning of Executive Order 12291 since it is not likely to result in (1) a nationwide annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a Regulatory Impact Analysis is not being prepared for this action.

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA written response to those comments are available for public inspection at Docket A-79-11.

Issued: March 22, 1990.

William K. Reilly,  
Administrator.

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# ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 61

[FRL 3746-2]

## NESHAPS for Radionuclides Reconsideration

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

**ACTION:** Notice of proposed rule.

**SUMMARY:** Today's action announces the limited reconsideration by EPA of the portion of 40 CFR part 61, subpart R, National Emission Standards for Hazardous Air Pollutants, Radon Emissions from Phosphogypsum Stacks (54 FR 51654 December 15, 1989) that requires disposal of phosphogypsum in stacks or mines, thereby precluding alternative uses of the material. In light of this reconsideration and other factors described herein, in a document published in the Rules section of this issue, EPA is also granting a limited compliance waiver that permits the continued agricultural use of phosphogypsum through the current growing season. Today's action further notices proposed rulemaking by which EPA is proposing to maintain or modify the rule to, alternatively or in combination, (1) make no change to 40 CFR part 61, subpart R, as promulgated on October 31, 1989, (2) establish a threshold concentration level of radium which would further define the term "phosphogypsum", (3) allow, with prior EPA approval, the use of discrete quantities of phosphogypsum for researching and developing processes to remove radium from phosphogypsum to the extent such use is at least as protective of public health as is disposal of phosphogypsum in mines or stacks, or (4) allow, with prior EPA approval, other alternative use of phosphogypsum to the extent such use is at least as protective of public health as is disposal of phosphogypsum in mines or stacks. EPA is establishing a 60-day comment period to receive information relating to the limited reconsideration and the proposed alternatives. A public hearing on these will be held as stated below.

**DATES:** Comments must be received by June 11, 1990.

The hearing will be held on May 3 and 4, 1990 at 9 a.m.

Written requests to present comments at the hearing must be received by April 25, 1990.

**ADDRESSES:** Comments and requests to present testimony at the hearing should be submitted (in triplicate if possible) to Central Docket (A-130), Environmental

Protection Agency, Attention: Docket No. A-79-11, Washington DC 20460. The docket may be inspected between the hours of 8 a.m. and 3 p.m. on weekdays. A reasonable fee may be charged for document copying.

The hearing will be held at the Inform Conference Center, 205 Williams St., Atlanta, Ga.

**FOR FURTHER INFORMATION CONTACT:** Craig Conklin, Environmental Standards Branch, Criteria and Standards Division (ANR-460), Office of Radiation Programs, Environmental Protection Agency, Washington DC 20460, (202) 475-9610.

### SUPPLEMENTARY INFORMATION:

#### A. Background

On October 31, 1989, EPA promulgated (54 FR 51653 December 15, 1989), pursuant to its authority under section 112 of the Clean Air Act (the "Act"), 42 U.S.C. 7412, National Emission Standards for Hazardous Air Pollutants ("NESHAPs") controlling radionuclide emissions to the outdoor air from the following source categories: DOE Facilities, Licensees of the Nuclear Regulatory Commission and Non-DOE Federal Facilities, Uranium Fuel Cycle Facilities, Elemental Phosphorus Plants, Phosphogypsum Stacks, Underground Uranium Mines and the operation and disposal of Uranium Mill Tailings Piles. This action was undertaken pursuant to a voluntary remand and a schedule issued by the U.S. Court of Appeals for the D.C. Circuit in light of its earlier ruling in *NRDC, Inc. v. EPA*, 824 F.2d 1146 (D.C. Cir. 1987) (the "*Vinyl Chloride*" decision) which articulated requirements for standard-setting under section 112 of the Act.

The *Vinyl Chloride* decision set forth a decision-making framework for NESHAPs by which the Administrator exercises his judgment under section 112 in two steps: first, determine a "safe" or "acceptable" level of risk considering only health-related factors, and second, set a standard that provides an "ample margin of safety," in which costs, feasibility, and other relevant factors in addition to health may be considered but which is at least as stringent as the "safe" level. After proposing and receiving comments on several options by which to define "safe", the Administrator selected an approach, first announced in the final NESHAPs for certain benzene source categories (54 FR 38044 September 14, 1989) which created a presumption of acceptability for a risk level of approximately one in ten thousand to the maximum exposed individual, and a goal to protect the greatest number of persons possible to a

lifetime risk level no higher than approximately one in one million. After evaluating existing emissions against this benchmark, other risk information is then considered and a final decision is made about what risk is acceptable. The Agency then considers other information in addition to the health-related factors and establishes the final NESHAP at the level which protects public health with an ample margin of safety.

#### B. THE NESHAP for Radon Emissions from Phosphogypsum Stacks or Mines

Phosphogypsum is waste or any other form of byproduct that results from wet acid phosphorus production. Because phosphate ore contains a relatively high concentration of uranium and radium, phosphogypsum also contains these elements. Phosphogypsum, once created, is most typically disposed of in large (multi-acre) stacks or in the mines from which the phosphate ore was originally extracted.

During the rulemaking that resulted in promulgation on October 31, 1989, of the final 40 CFR part 61, subpart R, NESHAP for radon emissions from phosphogypsum, EPA performed a pile-by-pile risk assessment of radon releases from 58 phosphogypsum stacks located at 41 different facilities. The Final Phosphogypsum NESHAP is the product of application by the Administrator of the two part decision-making process articulated by the D.C. Circuit in the *Vinyl Chloride* decision, as summarized in part A above. Specifically, EPA decided that in order to control the dispersion of phosphogypsum and resultant release of radon gas to ambient air, the phosphogypsum, once created, must be disposed in stacks or mines. The radon emissions from these stacks or mines are limited to a level of 20 pCi/m<sup>2</sup>-s. The portion of the rule mandating disposal reflects the EPA's concern that the radium-bearing phosphogypsum waste, if diffused throughout the country, would present a public health threat from radon gas emissions that would continue for generations given radium's 1630-year half-life, and that it would be impracticable for EPA to implement its regulations of such numerous and diffuse sources.

Because the phosphogypsum NESHAP, 40 CFR part 61, subpart R, was published on December 15, 1989, it becomes effective for existing facilities on March 15, 1990. Clean Air Act section 112(c)(1)(B)(i), 42 U.S.C. 7412(c)(1)(B)(i). Individual facilities that are unable to achieve compliance by that date may apply to EPA, pursuant to 40 CFR parts



61.10-61.11, for a waiver permitting such facility a period of up to two years after March 15, 1990 to comply. In deciding whether to grant such waiver, EPA considers, among other things, the past practices of the facility, the ability of the facility to comply, the necessity for a waiver, and whether the waiver would present an imminent endangerment to public health. Owners or operators of phosphogypsum that desire a waiver and meet these criteria are invited to apply to the EPA Regional Office in which the phosphogypsum is or will be located. However, for owners or operators of phosphogypsum engaged in the sale and use of phosphogypsum solely for agricultural purposes, for the current growing season individual waivers are not necessary as EPA is today granting a limited class waiver for that purpose in a document published in the Rules section of this issue. This class waiver is further discussed in part E below.

#### C. Industry Petitions

EPA has received petitions from The Fertilizer Institute ("TFI"), Consolidated Minerals, Inc. ("CMI"), and U.S. Gypsum Co. ("USG") to reconsider the portion of the phosphogypsum NESHAP, 40 CFR part 61, subpart R, which requires disposal into stacks or mines of all phosphogypsum thereby preventing alternative uses of the material. In pertinent part, TFI contends that this provision (1) was adopted without proper notice and comment, (2) is contrary to the national policy favoring recycling and reuse of secondary materials, (3) effectively prevents any amount, no matter how small, from being used in the research and development of beneficial uses of the material, (4) is unnecessary because certain uses of phosphogypsum such as mixing with soil as a calcium replenisher does not cause significant risks, and (5) will cause irreparable harm to thousands of farmers.

CMI adds that this portion of the phosphogypsum NESHAP is arbitrary and capricious because it prevents the use or sale of any of the phosphogypsum produced by their particular industrial process. In particular, because their phosphate ore treatment method allegedly reduces the radium concentration in much of the resultant phosphogypsum such that "safe" levels of radon gas emissions to ambient air are ensured, CMI contends that EPA's prohibition on alternative use is unreasonable.

U.S. Gypsum's petition is consistent with CMI's in that it supports the phosphogypsum NESHAP only insofar as it pertains to *untreated*

phosphogypsum; therefore, phosphogypsum that is treated so as to achieve "safe" levels of radium (the material that ultimately results in radon gas emissions to ambient air) should be allowed for agricultural use. USG believes that because there are safer alternative products available in the agricultural gypsum market that are economically viable, and because the technology to treat phosphogypsum is also available and viable, the alternative use of untreated phosphogypsum was properly prohibited by the NESHAP. Therefore, reconsideration is requested as to the ban on use of treated phosphogypsum and, additionally, to allow research and development of phosphogypsum purification technologies.

#### D. Notice of Limited Reconsideration and Proposed Alternative Revisions

In accordance with section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. 7607(d)(7)(B), EPA is granting limited reconsideration of the portion of the phosphogypsum NESHAP, 40 CFR part 61, subpart R, which requires disposal of phosphogypsum in stacks or mines, and is simultaneously proposing several alternatives to the existing rule. Although the Agency has concluded that several of the issues raised by the petitioners merit reconsideration, EPA does not agree with all of the arguments or assertions raised. For example, EPA believes that its proposal, published at 54 FR 9612, *et seq.* (March 7, 1989), which included explicit regulatory language requiring that phosphogypsum be disposed in stacks or mines (implicitly prohibiting alternative uses), provided adequate public notice for the final rule. Indeed, comments from both industry and environmental groups on this very issue were submitted to EPA in response to that proposal. Nevertheless, reconsideration and proposal will afford an additional opportunity for public comment.

EPA is granting limited reconsideration in order to receive more information on the following: (1) The specific types of proposed alternative use of phosphogypsum; (2) the current or anticipated feasibility of those alternative uses; (3) the research and development of processes which remove radium from phosphogypsum; (4) the health risks associated with either research and development or alternative uses; (5) the availability, cost, and effectiveness of substitutes for phosphogypsum, and (6) the proper definition of "phosphogypsum" in terms of its origin and its radium content. No comments that exceed the scope of

these subjects will be considered by EPA.

In accordance with the above subjects being reconsidered, EPA is simultaneously proposing four options to maintain or amend the phosphogypsum NESHAP, 40 CFR part 61, subpart R. Information being provided pursuant to reconsideration should, therefore, include the commenter's preferred option or combination of options.

#### Option A

EPA proposes making no change to the phosphogypsum NESHAP, 40 CFR part 61, subpart R, as promulgated on October 31, 1989 at 54 FR 51653 (December 15, 1989).

#### Option B

EPA proposes to amend the definition of "phosphogypsum" to add a requisite threshold concentration level in terms of picocuries of radium per gram of phosphogypsum. EPA is considering for this threshold level a range of values up to 10 picocuries of radium per gram. EPA is also proposing to amend the present definition of phosphogypsum from the "waste which results from the process of wet acid phosphorus fertilizer production" to "the waste or other form of byproduct which results from the process of wet acid phosphorus production." This change simply clarifies EPA's original intent that all phosphogypsum be regulated by this NESHAP regardless of the endproduct's ultimate use.

#### Option C

EPA proposes allowing the use of phosphogypsum for the limited purpose of researching and developing processes that remove radium from phosphogypsum. Under this option, an owner or operator desiring to make such use must first receive permission from EPA. Permission will be granted only upon a finding by the Administrator that the proposed project is at least as protective of public health, in the short and long term, as would be disposal into a stack or mine, and upon such other factors as the Administrator in his discretion deems appropriate. EPA requests comment as to the type and amount of information that should be required under this option.

#### Option D

EPA proposes allowing any alternative use of phosphogypsum for which the owner or operator has first received permission from EPA. Permission is to be granted by the Administrator upon finding that the proposed use is at least as protective of

public health, in the short and long term, as would be disposal into a stack or mine, and upon such other factors as the Administrator in his discretion deems appropriate. EPA requests comment as to the type and amount of information that should be required under this option. EPA is aware from prior comments and the reconsideration petitions that extensive agricultural use of phosphogypsum has historically occurred. Therefore, any comments on the agricultural use of phosphogypsum should address this option and, to the extent available, provide information on any resulting increase in the concentration of radium found in agricultural products, the amount of radon which is emitted from the fields at different levels of accumulation, the gamma radiation dose due to radium-226, and the radon levels in homes which may be or already have been built on or adjacent to land treated with phosphogypsum.

#### E. Limited Class Waiver for Agricultural Use

Pursuant to the Agency's authority under Clean Air Act section 112(c)(1)(B)(ii), 42 U.S.C. 7412(c)(1)(B)(ii), and 40 CFR parts 61.10-61.11, a limited waiver from compliance with the work practice portion of the phosphogypsum NESHAP, 40 CFR part 61, subpart R, has been granted for those owners or operators engaged in the distribution or use of phosphogypsum for agricultural purposes for the duration of the current growing season (see the document published in the Rules section of this issue). This limited waiver is based upon the finding of the Administrator that such activity presents no imminent endangerment to public health, that the immediate prohibition of such use would cause great injury to many small farmers who rely upon phosphogypsum, and that it would be burdensome and impracticable to issue limited waivers to each affected owner or operator, and it is made in light of the scope of the simultaneously granted limited reconsideration and proposed changes to the phosphogypsum NESHAP. This limited waiver further recognizes that the requirement to dispose of phosphogypsum in stacks or mines does not require emissions control equipment but instead requires conversion to alternative means of soil conditioning. The limited waiver is necessary to allow time for arranging the purchase and implementation of new materials and practices.

The durational limitation to this growing season recognizes that the timing for application of phosphogypsum varies from farm to farm, crop to crop,

and thus allows phosphogypsum application to fields through this growing season, even if already commenced, but in no case after October 1, 1990. The limited waiver bars enforcement against such use and distribution for this period, but in the event that phosphogypsum is sold or otherwise distributed but not used for this growing season, it must be disposed into stacks or mines unless further relief from the provisions of the rule has been provided by EPA.

#### F. Miscellaneous

EPA has determined that this action does not constitute a major rule within the meaning of Executive Order 12291 since it is not likely to result in (1) a nationwide annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a Regulatory Impact Analysis is not being prepared for this action.

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published. The "initial regulatory flexibility analysis" describes the effect of the proposed rule on small business entities. However, section 604(b) of the Regulatory Flexibility Act provides that section 603 "shall not apply to any proposed \* \* \* rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA believes that the proposed changes, if promulgated, would actually ease the regulatory burdens associated with provisions of the existing final rule. Therefore, this rule will have no adverse effect on small businesses. For the preceding reasons, I certify that this rule will not have significant economic impact on a substantial number of small entities.

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA written response to those

comments are available for public inspection at Docket A-79-11.

Dated: March 22, 1990.

William K. Reilly,  
Administrator.

#### PART 61—[AMENDED]

It is proposed to amend part 61 of chapter I of title 40 of the Code of Federal Regulations as follows:

#### Subpart R—National Emission Standards for Radon Emissions From Phosphogypsum Stacks

##### § 61.200 Designation of facilities

*Option A* [make no change in existing language]

The provisions of this subpart apply to the owners and operators of the phosphogypsum that is produced as a result of phosphorus fertilizer production and all that is contained in existing phosphogypsum stacks.

##### *Option B*

The provisions of this subpart apply to the owners and operators of phosphogypsum that is produced as a result of wet acid phosphorus production and all that is contained in existing phosphogypsum stacks or mines.

##### § 61.201 Definitions.

*Option A* [no change in existing language]

(b) *Phosphogypsum stacks or stacks* are piles of waste from phosphorus fertilizer production containing phosphogypsum. Stacks shall also include phosphate mines that are used for the disposal of phosphogypsum.

##### *Option B*

(b) *Phosphogypsum* is the waste or other form of byproduct which results from the process of wet acid phosphorus production and which contains greater than [up to 10] pCi/g radium.

(c) *Phosphogypsum stacks or stacks* are piles of waste or other form of byproduct which results from wet acid phosphorus production containing phosphogypsum. Stacks shall also include phosphate mines that are used for the disposal of phosphogypsum

##### § 61.202 Standard.

*Option A* [make no change in existing language]

All phosphogypsum shall be disposed of in stacks or in phosphate mines which shall not emit more than 20 pCi/m<sup>2</sup>-s of radon-222 into the air.

##### *Option B*

All phosphogypsum shall be disposed of in stacks or in phosphate mines which shall not emit more than 20 pCi/m<sup>2</sup>-s of radon-222 into the air.



*Option C*

§ 61.202(a). Make no change except as to changing § 61.202 into § 61.202(a).

§ 61.202(b). Notwithstanding paragraph (a) to this subsection, the Administrator may grant prior approval of research and development of processes to remove radium from phosphogypsum. Such approval shall be granted upon the Administrator's finding that the owner or operator has demonstrated that the proposed process

is at least as protective of public health, in the short and long term, as is disposal into stacks or mines, and upon such other factors as the Administrator in his discretion deems appropriate.

*Option D*

§ 61.202(a). Make no change except as to changing § 61.202 into § 61.202(a)

§ 61.202(b). Notwithstanding paragraph (a) to this subsection, the Administrator may grant prior approval for alternative commercial or other use

of phosphogypsum. Such approval shall be granted upon the Administrator's finding that the owner or operator has demonstrated that the proposed use is at least as protective of public health, in the short and long term, as is disposal into stacks or mines, and upon such other factors as the Administrator in his discretion deems appropriate.

[FR Dec. 90-7218 Filed 4-9-90; 8:45 am]

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