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**NUCLEAR REGULATORY COMMISSION**

**ENVIRONMENTAL PROTECTION AGENCY**

**Joint NRC/EPA Guidance on Testing Requirements for Mixed Radioactive and Hazardous Waste**

**AGENCIES: Environmental Protection Agency and Nuclear Regulatory Commission.**

**ACTION: Publication of Final Joint Guidance on the Testing Requirements for Mixed Waste.**

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**SUMMARY:** The Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) are jointly publishing herein final guidance on the testing requirements for mixed radioactive and hazardous waste (mixed waste). NRC and EPA began development of this guidance in 1987 and a draft was completed in 1989. EPA's adoption of the Toxicity Characteristic Leaching Procedure (TCLP) in 1990 required the agencies to substantially revise the guidance. The agencies issued a draft for public comment on March 26, 1992. A public meeting was held on April 14, 1992, in Washington, D.C., to solicit oral comments on the draft guidance document. The comment period ended on May 26, 1992. NRC and EPA received more than 700 requests for copies of the draft guidance document and NRC received approximately 100 written comments from 20 individuals and groups, including comments resulting from a review of the guidance by the U.S. Department of Energy. NRC and EPA staffs have incorporated the appropriate comments into the final guidance.

The guidance emphasizes the use of process knowledge, whenever possible, to determine if a waste is hazardous as a way to avoid unnecessary exposures to radioactivity. The guidance also provides guidelines for generators wishing to rely on process knowledge as the basis for evaluating their waste.

The guidance offers two strategies for helping to maintain radiation exposures As Low As is Reasonably Achievable (ALARA) if testing is required. These strategies are the use of a sample size of less than 100 grams, as long as the resulting test is sufficiently sensitive to measure the constituents of interest at the regulatory levels prescribed in the TCLP, and the use of surrogate materials, as long as they are chemically identical to the mixed waste and faithfully represent the hazardous constituents in the waste mixture.

The guidance also discusses other allowable sampling and testing procedures, such as representative drum sampling, or sampling from drums containing lower concentrations of radioactive material, as long as the chemical contents are identical to those found in the drums with higher concentrations of radioactive material.

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Dated at Rockville, MD and Washington, DC this 7th day of November, 1997.

For the U.S. Nuclear Regulatory Commission.  
 Carl J. Paperiello,  
 Director, Office of Nuclear Material Safety and Safeguards.

For the U.S. Environmental Protection Agency.  
 Elizabeth Cotsworth,  
 Acting Director, Office of Solid Waste.

**SUPPLEMENTARY INFORMATION:**

**Clarification of RCRA Hazardous Waste Testing Requirements for Low- Level Radioactive Mixed Waste--Final Guidance**

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Acronyms/Abbreviations Used in This Guidance

Acronym/abbreviation	Definition
AEA.....	Atomic Energy Act.
ALARA.....	As Low As Is Reasonably Achievable.
BDAT.....	Best Demonstrated Available Technology.
CFR.....	Code of Federal Regulations.
EP.....	Extraction Procedure (toxicity test).
EPA.....	Environmental Protection Agency.
FR.....	Federal Register.
HSWA.....	Hazardous and Solid Waste Amendments.
LDR.....	Land Disposal Restrictions.
NRC.....	Nuclear Regulatory Commission.
OSWER.....	Office of Solid Waste and Emergency Response.
RCRA.....	Resource Conservation and Recovery Act.
SW-846.....	Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods.
TC.....	Toxicity Characteristic.
TCLP.....	Toxicity Characteristic Leaching Procedure.
TSDF.....	Treatment, Storage or Disposal Facility.
WAP.....	Waste Analysis Plan.

## I. Background

Mixed waste is defined as waste that contains both hazardous waste subject to the requirements of the Resource Conservation and Recovery Act (RCRA) and source, special nuclear, or by-product material subject to the requirements of the Atomic Energy Act (AEA).<sup>1</sup> This guidance addresses testing activities related to mixed low-level waste (LLW), which is a subset of mixed waste.<sup>2</sup> The term "mixed waste," for the purposes of this document, will refer to mixed LLW. Additional information on the testing of hazardous wastes, which could apply to both mixed LLW and other types of mixed waste (e.g., high-level and transuranic mixed waste), is found in Appendix A. The information below is intended for use by Nuclear Regulatory Commission (NRC) licensees that may not be familiar with the hazardous waste characterization and testing requirements that apply to mixed waste. The guidance assumes that the reader is familiar with the NRC's regulations and regulatory framework for the management of radioactive material and focuses on compliance with the Environmental Protection Agency's (EPA's) requirements for the management of hazardous waste. Although it is written for commercial mixed waste generators, the guidance may also be useful for Federal facilities that generate mixed waste.

Users of this guidance should have a good understanding of how mixed waste is defined (see above), and what authority, or authorities, regulate mixed waste testing activities. The hazardous component of mixed waste is regulated by EPA in those States where EPA implements the entire RCRA Subtitle C hazardous waste program (i.e., unauthorized States). Currently, EPA regulates mixed waste in Alaska, Hawaii, Iowa, Puerto Rico, the Virgin Islands, and American Samoa. In most instances mixed waste is regulated by State governments. Thirty-nine States and one territory (Guam) have been delegated authority by EPA to implement the base RCRA hazardous waste program and to regulate mixed waste activities (see 51 FR 24504, July 3, 1986, and Appendix B). These States are referred to as "mixed waste authorized States." Nine additional States are authorized for the RCRA base hazardous waste program but have not been delegated authority by EPA to regulate mixed waste.<sup>3</sup> In these States mixed waste is not regulated by EPA, but may be regulated by States under the authority of State law. It is important that licensees contact the State hazardous waste agencies in authorized States to determine the specific testing, analysis, and other hazardous waste requirements that may apply to mixed waste managed in their State, because their State may have more stringent requirements than the Federal requirements discussed in this guidance.

This guidance describes:

- (1) The current regulatory requirements for determining if a waste is a RCRA hazardous waste;
  - (2) The role of waste knowledge for hazardous waste determinations;
  - (3) The waste analysis information necessary for proper treatment, storage, and disposal of mixed waste;
- and,
- (4) The implications of the RCRA land disposal restrictions (LDRs) on the waste characterization and analysis requirements.

This information should be useful for: (1) radioactive waste generators, who must determine if their waste is a RCRA hazardous waste, and therefore a mixed waste; (2) for those generators storing mixed waste on-site in tanks, containers or containment buildings for longer than 90 days, that consequently become responsible for complying with RCRA and NRC storage requirements; and (3) those facilities that accept mixed waste for off-site treatment, storage, or disposal.

Generators and/or treatment, storage, and disposal facilities (TSDFs) handling wastes under RCRA must characterize their waste for several purposes:

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<sup>1</sup> See 42 U.S.C. Sec. 6903 (41), added by the Federal Facility Compliance Act of 1992 (FFCA).

<sup>2</sup> See revised Guidance on the Definition and Identification of Commercial Low-Level Radioactive and Hazardous Waste and Answers to Anticipated Questions, October 4, 1989.

<sup>3</sup> The RCRA base hazardous waste program is the RCRA program initially made available for final authorization and includes Federal regulations up to July 26, 1982. However, authorized States have revised their programs to keep pace with Federal program changes that have taken place after 1982 in accordance with EPA regulation.

- (1) To determine if their waste is a hazardous waste (40 CFR 262.11);
- (2) To comply with general waste analysis requirements for new or permitted TSDFs, for TSDFs operating under interim status, and for certain generators that treat land disposal prohibited wastes in 40 CFR 264.13, 265.13 and 268.7, respectively. These analysis requirements include:
  - (a) chemical/physical analysis of a representative sample (and/or, in some cases, use waste knowledge (see below); and,
  - (b) preparation of a waste analysis plan.
- (3) To meet the waste analysis requirements that apply to the specific waste management methods in 40 CFR 264.17, 264.314, 264.341, 264.1034(d), and 268.7;
- (4) To ensure, prior to land disposal, that the restricted waste meets the required treatment standard (40 CFR 268.7).<sup>4</sup>

This guidance addresses the need for chemical analysis of mixed wastes to meet these purposes. The guidance also emphasizes ways in which unnecessary testing of mixed waste may be avoided. This is important when handling mixed waste, since each sampling, workup, or analytical event may involve an incremental exposure to radiation. This guidance encourages mixed waste handlers to use waste knowledge, such as process knowledge, where possible, in making RCRA hazardous waste determinations involving mixed waste. It also encourages the elimination of redundant testing by off-site treatment and disposal facilities, where valid generator-supplied, and certified, data are available.

Because mixed waste testing may pose the possibility of increased radiation exposures, this guidance also describes methods by which individuals who analyze mixed waste samples may reduce their occupational radiation exposure and satisfy the intent of the RCRA testing requirements. Testing to determine whether wastes are hazardous under the RCRA toxicity characteristic may pose special concerns which are examined in Section III of this guidance.

All of the activities described in this guidance are subject to the requirements of both the AEA and RCRA. The focus of this guidance is the RCRA requirements. NRC and NRC Agreement State licensees are authorized to receive, possess, use (which includes storing, sampling, testing, and treating), and dispose of AEA-licensed materials. NRC licensees handling mixed waste should ensure that their RCRA hazardous waste testing activities are consistent with NRC, or Agreement State, regulations and license conditions. Flexibility in the RCRA requirements is emphasized so that the As Low As is Reasonably Achievable (ALARA) concept can be incorporated into the mixed waste testing activities.<sup>5</sup> If other AEA requirements, or RCRA requirements are difficult to meet in a specific mixed waste management situation, licensees should seek resolution by requesting license amendments, approval of modifications to their RCRA permits or interim status Part A applications, or resolution under both authorities.

Section 1006(a) of RCRA states "Nothing in this Act shall be construed to apply to (or authorize any State, interstate, or local authority to regulate) any activity or substance which is subject to \* \* \* the Atomic Energy Act of 1954 \* \* \* except to the extent that such application (or regulation) is not inconsistent with the requirements of such Acts." If a resolution cannot be achieved through the flexibility provided by the two regulatory frameworks, then and only then, should licensees seek resolution under Section 1006(a) of RCRA. Licensees should note that, if an inconsistency exists, relief will be limited to that specific RCRA requirement, and that the determination of an inconsistency would not relieve the licensee from all other RCRA requirements. Section 1006(a) and radiological hazard considerations are addressed more fully in Sections III and IV of this guidance. NRC licensees should also include the necessary flexibility in their RCRA permit waste analysis plans to accommodate the sampling and testing required to meet AEA requirements.

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<sup>4</sup> Refer to Appendix A for specific EPA regulations pertaining to (1)-(4).

<sup>5</sup> ALARA, codified in 10 CFR Part 20, refers to the practice of maintaining all radiation exposures, to workers and the general public, as low as is reasonably achievable.

## II. Use of Waste Knowledge for Hazardous Waste Determinations

The use of waste knowledge by a generator and/or a TSDF to characterize mixed waste is recommended throughout this document to eliminate unnecessary or redundant waste testing. EPA interprets "waste knowledge" or "acceptable knowledge" of a waste broadly to include, where appropriate:

- "Process knowledge";
- Records of analyses performed by generator or TSDF prior to the effective date of RCRA regulations; or,
- A combination of the above information, supplemented with chemical analysis.

Process knowledge refers to detailed information on processes that generate wastes subject to characterization, or to detailed information (e.g., waste analysis data or studies) on wastes generated from processes similar to that which generated the original waste. Process knowledge includes, for example, waste analysis data obtained by TSDFs from the specific generators that sent the waste off-site, and waste analysis data obtained by generators or TSDFs from other generators, TSDFs or areas within a facility that test chemically identical wastes.<sup>6</sup>

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Waste knowledge is allowed by RCRA regulations for the following hazardous waste characterization determinations:

- To determine if a waste is characteristically hazardous (40 CFR 262.11(c)(2)) or matches a RCRA listing in 40 CFR Part 261, Subpart D (40 CFR 262.11(a) and (b));
- To comply with the requirement to obtain a detailed chemical/physical analysis of a representative sample of the waste under 40 CFR 264.13(a);
- To determine whether a hazardous waste is restricted from land disposal (40 CFR 268.7(a)); and,
- To determine if a restricted waste the generator is managing can be land disposed without further treatment (see the generator certification in 40 CFR 268.7(a)(3) and information to support the waste knowledge determination in 40 CFR 268.7(a)(6)).

Hazardous waste, including mixed waste, may be characterized by waste knowledge alone, by sampling and laboratory analysis, or a combination of waste knowledge, and sampling and laboratory analysis. The use of waste knowledge alone is appropriate for wastes that have physical properties that are not conducive to taking a laboratory sample or performing laboratory analysis. As such, the use of waste knowledge alone may be the most appropriate method to characterize mixed waste streams where increased radiation exposures are a concern. Mixed waste generators should contact the appropriate EPA regional office to determine whether they possess adequate waste knowledge to characterize their mixed waste.

## III. Determinations by Generators That a Waste Is Hazardous

A solid waste is a RCRA hazardous waste if it meets one of two conditions: (1) the waste is specifically "listed" in 40 CFR Part 261, Subpart D, or; (2) the waste exhibits one of the four "characteristics" identified in 40 CFR Part 261, Subpart C. These characteristics are:

- Ignitability;
- Corrosivity;
- Reactivity; or,
- Toxicity.

### (a) Listed Hazardous Wastes

Generators of waste containing a radioactive and solid waste component must establish whether the solid waste component is a RCRA hazardous waste. Determinations of whether a waste is a listed hazardous waste can be made by comparing information on the waste stream origin with the RCRA listings set forth in 40 CFR

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<sup>6</sup> For a more detailed discussion on process knowledge, see Section 1.5 in "Waste Analysis at Facilities That Generate, Treat, Store, and Dispose of Hazardous Wastes" OSWER 9938.4-03, April 1994.

Part 261, Subpart D. These listings are separated into three major categories or lists, and are identified by EPA hazardous waste numbers. Most hazardous waste numbers are associated with a specific waste description, specific processes that produce wastes, or certain chemical compounds. For example, K103 waste is defined as "process residues from aniline extraction from the production of aniline." A generator who produces such residues should know, without any sampling or analysis, that these wastes are "listed" RCRA hazardous wastes by examining the K103 hazardous waste description in the hazardous waste lists. Other hazardous waste numbers describe wastes generated from generic processes that are common to various industries and activities. These wastes are referred to as hazardous wastes from nonspecific sources. Radioactively contaminated spent solvents are the most likely mixed wastes to be nonspecific source listed wastes. For example, a generator using one of the F002 halogenated solvents (e.g., tetrachloroethylene, trichloroethylene, and chlorobenzene, etc.) to remove paint from a radiologically contaminated surface, can determine that this waste is a listed RCRA hazardous waste by examining the F002 waste definition for the solvent type, and for a solvent mixture/blend, the percent solvent by volume.

In addition to wastes that are specifically listed as hazardous, the "derived from" and "mixture" rules state that any solid waste derived from the treatment, storage, or disposal of a listed RCRA hazardous waste, or any solid waste mixed with a listed RCRA hazardous waste, respectively, is itself a listed RCRA hazardous waste until delisted (see 40 CFR 261.3).<sup>7</sup> (Note that soil and debris can be managed as hazardous wastes if they contain listed hazardous wastes or they exhibit one or more hazardous waste characteristics. See hazardous debris definition in 40 CFR 268.2.)

Exceptions to the "mixture rule" and "derived from" rules exist for certain solid wastes. For example, wastewater discharges subject to Clean Water Act permits, under certain circumstances, are not RCRA hazardous (see 40 CFR 261.3(a)(2)(iv)). Also, hazardous wastes which are listed solely for a characteristic identified in Subpart C of 40 CFR Part 261 (e.g., a F003 spent solvent which is listed only because it is ignitable) are not considered hazardous wastes when they are mixed with a solid waste and the resultant mixture no longer exhibits any characteristic of a hazardous waste (see 40 CFR 261.3(a)(2)(iii)). Likewise, waste pickle liquor sludge "derived from" the lime stabilization of spent pickle liquor (e.g., K062) is not a RCRA listed hazardous waste, if the sludge does not exhibit a hazardous waste characteristic (see discussion below on characteristic hazardous wastes). It should be noted, however, that wastes such as F003 and K062 must meet LDR treatment standards. Outside of the exceptions mentioned here and in the RCRA regulations, a hazardous waste that was generated via the "mixture rule" or the "derived from" rule must be delisted through a specific EPA petition process for the listed waste to be considered only a solid waste, and no longer managed as a listed hazardous waste under the RCRA Subtitle C system.

When applying the mixture rule to hazardous wastes, including mixed wastes, generators should be aware that EPA prohibits the dilution (i.e., mixing) of land disposal restricted waste or treatment residuals as a substitute for adequate treatment (see 40 CFR 268.3). An exception to the prohibition is the dilution of purely corrosive, and in some cases, reactive, or ignitable non-toxic wastes to eliminate the characteristic, or the aggregation of characteristic wastes in (pre)treatment systems regulated under the Clean Water Act (55 FR 22665).

#### (b) Characteristic Hazardous Wastes

Hazardous characteristics are based on the physical/chemical properties of wastes. Thus, physical/chemical testing of waste may be appropriate for determining whether a waste is a characteristic hazardous waste. RCRA regulations, however, do not require testing. Rather, generators must determine whether the waste is a RCRA hazardous waste. Such a determination may be made based on one's knowledge of the materials or chemical processes that were used. EPA's regulations are clear on this point. 40 CFR 262.11(c) states:

<sup>7</sup> The "mixture" and "derived-from" rules were vacated and remanded due to EPA's failure to provide adequate notice and opportunity for comment before their 1980 promulgation, in *Shell Oil v. EPA*, No. 80-1532 (D.C. Cir. Dec. 6, 1991). At the Court's suggestion, EPA reinstated the "mixture" and "derived-from" rules as interim final until the rules are revised through new EPA rulemaking. The "mixture" and "derived from" rules adopted by those States with authorized RCRA programs were not affected by the court case or the subsequent reinstatement by EPA. For further information, see 57 FR 49278, October 30, 1992, and 60 FR 66344, December 21, 1995.

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". . . if the waste is not listed [as hazardous waste] in Subpart D [of 40 CFR Part 261], the generator must then determine whether the waste is identified in Subpart C of 40 CFR Part 261 by either:

- (1) Testing the waste according to the methods set forth in Subpart C of 40 CFR Part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or
- (2) Applying knowledge (emphasis added) of the hazardous characteristic of the waste in light of the materials or the processes used."

Therefore, where sufficient material or process knowledge exists, the generator need not test the waste to make a hazardous characteristic determination, although generators and subsequent handlers would be in violation of RCRA, if they managed hazardous waste erroneously classified as non-hazardous, outside of the RCRA hazardous waste system. For this reason, facilities wishing to minimize testing often assume a questionable waste is hazardous and handle it accordingly.

A generator must also comply with the land disposal restriction regulations in 40 CFR 268 which require the generator to determine whether the waste is prohibited from land disposal (refer to Section V for a detailed discussion of these requirements).<sup>8</sup> With respect to the hazardous characteristic, and the determination as to whether a waste is restricted from land disposal under 40 CFR 268.7(a), a generator may select the option of using waste knowledge. However, if the waste is determined to be land disposal restricted in 40 CFR 268.7(a), some testing will generally be required prior to land disposal, except where technologies are specified as the treatment standard. For mixed waste, EPA recommends that the frequency of such testing be held to a minimum, in order to avoid duplicative testing and repeated exposure to radiation.

In determining whether a radioactive waste is a RCRA hazardous waste, the generator may test a surrogate material (i.e., a chemically identical material with significantly less or no radioactivity) to determine the RCRA status of the radioactive waste. This substitution of a surrogate material may either partially or completely supplant the testing of the waste. A surrogate material, however, should only be used if the surrogate material faithfully represents the hazardous constituents of the mixed waste.<sup>9</sup> The following example discusses the use of surrogates. A generator is required to determine if a process waste stream containing lead (D008) exceeds the regulatory level of 5.0 milligrams per liter for the toxicity characteristic (40 CFR 261.24). If this determination cannot be made based on material and process knowledge only, the generator would need to test the hazardous material. Rather than testing the radioactive waste stream, the generator may opt to test a surrogate or chemically identical non-radioactive, or lower activity, radioactive waste stream generated by similar maintenance activities in another part of the plant. This substitution of materials is acceptable as long as the surrogate material faithfully represents the characteristics of the actual waste, and testing provides sufficient information for the generator to reasonably determine if the waste is hazardous under RCRA. Non-radioactive or lower activity quality control samples/species and spiked solutions, for instance, are acceptable to minimize exposure to radiation from duplicative mixed waste testing.

As part of the hazardous waste determination, a generator must document test results or other data and methods that it used. Specifically, 40 CFR 262.40(c) states that "a generator must keep records of any test results, waste analyses, or other determinations made in accordance with 40 CFR 262.11 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal." Section V of this guidance contains information on record keeping requirements for land disposal restricted hazardous (and mixed) wastes.

In summary, testing listed wastes to make the hazardous waste determination is not necessary, because most RCRA hazardous waste codes or listings identify specific waste streams from specific processes or specific

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<sup>8</sup> Generators who also treat their waste are subject to the requirements for treatment facilities unless they treat waste in accumulation tanks, containers, or containment buildings, for 90 days or less in accordance with 40 CFR 262.34(a). Treatment facilities must periodically test the treated waste residue from prohibited wastes to determine whether it meets the best demonstrated available technology (BDAT) treatment standards and may not rely on materials and process knowledge to make this determination (40 CFR 268.7(b)). This testing must be conducted according to the frequency specified in the facility's waste analysis plan (refer to Section IV of this guidance for a detailed discussion of treatment, storage, and disposal facility requirements).

<sup>9</sup> This definition of surrogate should not be confused with the definition of surrogate for the purposes of sampling and analysis quality control in Section 1.1.8 of "Evaluating Solid Waste—Volume IA: Laboratory Test Methods Manual Physical/Chemical Methods."

categories of wastes. Testing will most often occur to determine if a waste exhibits a hazardous characteristic. However, testing is not required if a generator has sufficient knowledge about the waste and its physical/chemical properties to determine that it is non-hazardous.<sup>10</sup> It is recognized that certain mixed waste streams, such as wastes from remediation activities or wastes produced many years ago, may have to be identified using laboratory analysis, because of a lack of waste or process information on these waste streams. Nonetheless, hazardous waste determinations based on generator knowledge can be used to reduce the sampling of mixed waste and prevent unnecessary exposure to radioactivity. The same principle holds for a generator's determination that a waste is subject to the RCRA land disposal restrictions in 40 CFR 268.7(a).

#### IV. Testing Protocols for Characteristics

When testing is conducted to determine whether a waste is a RCRA hazardous waste, there are acceptable test protocols or criteria for each of the four characteristics. Testing for characteristics must be done on a representative sample of the waste or using any applicable sampling methods specified in Appendix I of 40 CFR 261.<sup>11</sup>

**Ignitability**--For liquid wastes, other than aqueous solutions containing by volume less than 24 percent alcohol, the flash point is to be determined by a Pensky-Martens Closed Cup Tester, using the test method specified in American Society of Testing and Materials (ASTM) Standard D-93-79 or D-93-80, or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78, or as determined by an equivalent test method approved by the Administrator under procedures set forth in 40 CFR 260.20 and 260.21 (see "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," 3rd Ed., as amended, EPA, OSWER, SW-846, Methods 1010 and 1020<sup>12</sup>). (Non-liquid

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wastes, compressed gases, and oxidizers may exhibit the characteristic of ignitability as described in 40 CFR 261.21 (a)(2- 4).)

**Corrosivity**--For aqueous solutions, the pH is to be determined by a pH meter using either an EPA test method (i.e., SW-846, Method 9040 or an equivalent test method approved by the Administrator under procedures set forth in 40 CFR 260.20 and 260.21.) For liquids, steel corrosion is to be determined by the test method specified in National Association of Corrosion Engineers (NACE) Standard TM-01-69 as standardized in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," 3rd Ed., as amended (EPA, OSWER, SW-846, Method 1110), or an equivalent test method approved by the Administrator under procedures set forth in 40 CFR 260.20 and 260.21.

**Reactivity**--There are no specified test protocols for reactivity. 40 CFR 261.23 defines reactive wastes to include wastes that have any of the following properties: (1) normally unstable and readily undergoes violent change without detonating; (2) reacts violently with water; (3) forms potentially explosive mixtures with water; (4) generates dangerous quantities of toxic fumes, gases, or vapors when mixed with water; (5) in the case of cyanide- or sulfide-bearing wastes, generates dangerous quantities of toxic fumes, gases, or vapors when

<sup>10</sup> Note that characteristic only wastes (which are neither wastewater mixtures or RCRA listed hazardous wastes when generated) may be treated so that they no longer exhibit any of the four characteristics of a hazardous waste. However, these wastes may still be subject to the requirements of 40 CFR Part 268, even if they no longer exhibit a hazardous characteristic at the point of land disposal. After treatment this waste must not exhibit any RCRA hazardous waste characteristic and must meet applicable treatment standards before it can be considered a non-hazardous waste (see 57 FR 37263, August 18, 1992, and 58 FR 29869, May 24, 1993).

<sup>11</sup> Note that hazardous and mixed waste samples analyzed for waste characteristics or composition, and samples undergoing treatability studies may be exempt from all or part of the RCRA regulations if they are managed in accordance with 40 CFR 261.4 (d), (e) or (f).

<sup>12</sup> EPA incorporated by reference into the RCRA regulations (58 FR 46040, August 31, 1993), a third edition (and its updates) of "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods." The updates can be found in 60 FR 3089, January 13, 1995 (update II), 59 FR 458, January 4, 1994 (update IIA), 60 FR 17001, April 4, 1995 (update IIB), and 62 FR 32452, June 13, 1996 (update III). Hazardous and mixed waste generators and management facilities should verify that the analytical method that they use to analyze hazardous waste has not been superseded in the third edition.



exposed to acidic or alkaline conditions; (6) explodes when subjected to a strong initiating force or if heated under confinement; (7) explodes at standard temperature and pressure; or (8) fits within the Department of Transportation's forbidden explosives, Class A explosives, or Class B explosives classifications.<sup>13</sup>

EPA has elected to rely on a descriptive definition for these reactivity properties because of inherent deficiencies associated with available methodologies for measuring such a varied class of effects, with the exception of the properties discussed in No. 5, above. The method used, as guidance but not required, to quantify the reactive cyanide and sulfide bearing wastes is provided in Chapter 7 of "Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods," 3rd Ed., as amended, EPA, OSWER, SW-846.

**Toxicity Characteristic**--The test method that may be used to determine whether a waste exhibits the toxicity characteristic (TC) is the Toxicity Characteristic Leaching Procedure (TCLP), as described in 40 CFR Part 261, Appendix II (SW-846, Method 1311). The TCLP was modified and revised in 55 FR 11798, March 29, 1990. Note that this revised TCLP is used (in most cases) for land disposal restriction compliance determinations as well. Differences between the TCLP and the previously required Extraction Procedure (EP) include improved analysis of the leaching of organic compounds, the elimination of constant pH adjustment, the addition of a milling or grinding requirement for solids (waste material solids must be milled to particles less than 9.5 mm in size), and other more detailed alterations.<sup>14</sup> Additionally, the TC rule added 25 organic compounds to the toxicity characteristic.

The TCLP (Method 1311) recommends the use of a minimum sample size of 100 grams (solid and liquid phases as described in Section 7.2). For mixed waste testing, sample sizes of less than 100 grams can be used, if the analyst can demonstrate that the test is still sufficiently sensitive to measure the constituents of interest at the regulatory levels specified in the TCLP and representative of the waste stream being tested. Other variances to the published testing protocols are permissible (under 40 CFR 260.20-21), but must be approved prior to implementation by EPA. Use of a sample size of less than 100 grams is highly recommended for mixed wastes with concentrations of radionuclides that may present serious radiation exposure hazards.

Additionally, Section 1.2 of the TCLP allows the option of performing a "total constituent analysis" on a hazardous waste or mixed waste sample, instead of the TCLP. Section 1.2 of Method 1311 states:

If a total analysis of the waste demonstrated that the individual analytes are not present in the waste, or that they are present, but at such low concentrations that the appropriate regulatory levels could not possibly be exceeded, the TCLP need not be run.

For homogenous samples, the use of total constituent analysis in this manner eliminates the need to grind or mill solid waste samples. The grinding or milling step in the TCLP has raised ALARA concerns for individuals who test mixed waste. The use of total constituent analysis, instead of the TCLP, may also minimize the generation of secondary mixed or radioactive waste through the use of smaller sample sizes and reduction, or elimination, of high dilution volume leaching procedures.

### **Flexibility in Mixed Waste Testing**

Flexibility exists in the hazardous waste regulations for generators, TSDFs, and mixed waste permit writers to tailor mixed waste sampling and analysis programs to address radiation hazards. For example, upon the request of a generator, a person preparing a RCRA permit for a TSDF has the flexibility to minimize the frequency of mixed waste testing by specifying a low testing frequency in a facility's waste analysis plan. EPA

<sup>13</sup> When evaluating test protocols for explosive mixed waste, consideration should be given to the likelihood for dispersing radioactivity during detonation. Using process knowledge or a surrogate material would, in most instances, be appropriate for these wastes.

<sup>14</sup> Note that when using the TCLP, if any liquid fraction of the waste positively determines that hazardous constituents in the waste are above regulatory levels, then it is not necessary to analyze the remaining fractions of the waste. Extraction using the zero headspace extraction vessel (ZHE) is not required, furthermore, if the analysis of an extract obtained using a bottle extractor demonstrates that the concentration of a volatile compound exceeds the specified regulatory levels. The use of a bottle extractor, however, may not be used to demonstrate that the concentration of a volatile compound is below regulatory levels (40 CFR Part 261 Appendix II Sections 1.3 and .4).

believes, as stated in 55 FR 22669, June 1, 1990, that "the frequency of testing is best determined on a case-by-case basis by the permit writer."

EPA's hazardous waste regulations also allow a mixed waste facility the latitude to change or replace EPA's test methods (i.e., Test Methods for Evaluating Solid Waste (SW-846)) to address radiation exposure concerns. There are only fourteen sections of the hazardous waste regulations that require the use of specific test methods or appropriate methods found in SW-846 which are outlined in Appendix A.<sup>15</sup> However, any person can request EPA for an equivalent testing or analytical method that would replace the required EPA method (see 40 CFR 260.21).

In a recent amendment to the testing requirements, EPA added language to SW-846 that describes fourteen citations in the RCRA program (listed in Appendix A) where the use of SW-846 methods is mandatory (Update II, 60 FR 3089, January 13, 1995). In all other cases, the RCRA program functions under what we call the Performance Based Measurement System (PBMS) approach to monitoring. Language clarifying this approach was included in the final FR Notice which promulgated Update III (62 FR 32542, June 13, 1997) and in appropriate sections (Disclaimer, Preface and Overview, and Chapter 2) of SW-846. Under PBMS, the regulation and/or permit focus is on the question(s) to be answered by the monitoring, the degree of confidence (otherwise known as the Data Quality Objective (DQO)) or the measurement quality objectives (MQO) that must be achieved by the permittee to have demonstrated compliance, and the specific data that must be gathered and documented by the permittee to demonstrate that the objectives were actually achieved. "Any reliable method" may be used to demonstrate that one can see the analytes of concern in the matrix of

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concern at the levels of concern. Additional reference documents on the characterization and testing methods are listed in Appendix C.

NRC regulations do not describe specific testing requirements for wastes to determine if a waste is radioactive. However, both NRC and Department of Transportation regulations contain requirements applicable to characterizing the radioactive content of the waste before shipment. For example, NRC's regulations in 10 CFR 20.2006 require that the waste manifest include, as completely as practicable, the radionuclide identity and quantity, and the total radioactivity. NRC regulations also require that generators determine the disposal Class of the radioactive waste, and outline waste form requirements that must be met before the waste is suitable for land disposal. These regulations are referenced in 10 CFR 20.2006, and are outlined in detail at 10 CFR 61.55 and 61.56. Mixed waste generators are reminded that both RCRA waste testing and NRC waste form requirements must be satisfied. Generators may also be required to amend their NRC or Agreement State licenses in order to perform the tests required under RCRA. In addition, if an NRC licensee uses an outside laboratory to test his or her waste, that laboratory may be required to possess an NRC or Agreement State license. It is the responsibility of the generator to determine if the outside laboratory possesses the proper license(s) prior to transferring the waste to the laboratory for testing.

Where radioactive wastes (or wastes suspected of being radioactive) are involved in testing, it has been suggested that the testing requirements of RCRA may run counter to the aims of the AEA. The AEA requirements that have raised inconsistency concerns with respect to RCRA testing procedures include ALARA, criticality, and security. Neither EPA nor NRC is aware of any specific instances where RCRA compliance has been inconsistent with the AEA. However, both agencies acknowledge the potential for an inconsistency to occur.<sup>16</sup> A licensee or applicant who suspects that an inconsistency may exist should contact both the AEA and RCRA regulatory agencies. These regulatory agencies may deliberate and consult on whether there is an unresolvable inconsistency and, if one exists, they may attempt to fashion the necessary relief from the particular RCRA provision that gives rise to the inconsistency. However, all other RCRA regulatory

<sup>15</sup> With the exception of the fourteen areas (see Appendix D) where test methods are required by hazardous waste regulation, use of EPA's Test Methods for the Evaluation of Solid Waste (SW-846) is not required, and should be viewed as guidance on acceptable sampling and analysis methods.

<sup>16</sup> An inconsistency occurs when compliance with one statute or set of regulations would necessarily cause non-compliance with the other. It may stem from a variety of considerations, including those related to occupational exposure, criticality, and other safeguards.

requirements would apply. That is, such a conclusion does not relieve hazardous waste facility owner/operators of the responsibility to ensure that the mixed waste is managed in accordance with all other applicable RCRA regulatory requirements. Owner/operators of mixed waste facilities are encouraged to address and document this potential situation and its resolution in the RCRA facility waste analysis plan which must be submitted with the Part B permit application, or addressed in a permit modification.

Both agencies also believe that the potential for inconsistencies can be reduced significantly by a better understanding of the RCRA requirements, a greater reliance on materials and process knowledge, the use of surrogate materials when possible, and the use of controlled atmosphere apparatuses for mixed waste testing. Where testing is conducted, the use of glove boxes and other controlled atmosphere apparatuses during the testing of the radioactive waste material lessens radiation exposure concerns significantly. These protective measures may also help to reconcile the required testing requirements (including milling) with concerns about maintaining exposures to radiation ALARA and complying with other AEA protective standards. If such protective measures do not exist, or do not adequately reduce individual exposure to radiation or address other factors of concern, relief may be available under Section 1006 of RCRA.

## **V. Determinations by Treatment, Storage, or Disposal Facility Owner/ Operators and Certain Generators to Ensure Proper Waste Management**

### **General Waste Analysis**

Owner/operators of facilities that treat, store, or dispose of hazardous wastes must obtain a chemical and physical analysis of a representative sample of the waste (see 40 CFR 264.13 for permitted facilities, or 40 CFR 265.13 for interim status facilities).<sup>17</sup> The purpose of this analysis is to assure that owner/operators have sufficient information on the properties of the waste to be able to treat, store, or dispose of the waste in a safe and appropriate manner.

The waste analysis may include data developed by the generator, and existing, published, or documented data on the hazardous waste or on hazardous waste generated from similar processes. In some instances, however, information supplied by the generator may not fully satisfy the waste analysis requirement. For example, in order to treat a particular waste, one may need to know not only the chemical composition of the waste, but also its compatibility with the techniques and chemical reagents used at the treatment facility. Where such information is not otherwise available, the owner/operator will be responsible for gathering relevant data on the waste in order to ensure its proper management.

The analysis must be repeated only if the previous analyses are inaccurate or needs updating. EPA regulations at 40 CFR 264.13(a)(3) do require that, at a minimum, a waste must be re-analyzed if:

- (1) The owner/operator is notified, or has reason to believe, that the process or operation generating the waste has changed [in a way such that the hazardous property or characteristics of the waste would change]; and
- (2) For off-site facilities, when the results of the verification analysis indicate that the [composition or characteristics of the] waste does not match the accompanying manifest or shipping paper.

The requirements and frequency of waste analysis for a given facility are described in the facility's waste analysis plan. As required by 40 CFR 264.13(b), the waste analysis plan must specify the parameters for which each hazardous waste will be analyzed; the rationale for selecting these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties); and the test methods that will be used to test for these parameters. The waste analysis plan also must specify the sampling method that will be used to obtain a representative sample of the waste to be analyzed; the frequency with which the initial analysis of the waste will be reviewed or repeated, to ensure that the analysis is accurate and up to date; and, for off-site facilities, the waste analyses to be supplied by the hazardous waste generators. Finally, the waste analysis plan

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<sup>17</sup> A representative sample is defined in 40 CFR 260.10 as "a sample of a universe or whole (e.g., waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole." For further guidance see Chapter 9 of the EPA's testing guidance entitled *Test Methods for Evaluating Solid Waste or SW-846*.

must note any additional waste analysis requirements specific to the waste management method employed, such as the analysis of the waste feed to be burned in an incinerator.

The appropriate parameters for each waste analysis plan are determined on an individual basis as part of the permit

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application review process. To reduce the inherent hazards of sampling and analyzing radioactive material, and in particular, the potential risk to workers from exposure to radiation posed by duplicative testing of mixed wastes, redundant testing by the generator and off-site facilities should be avoided. In addition, waste analysis plans must include provisions to keep exposures to radiation ALARA, and incorporate relevant AEA-related requirements and regulations.

#### **Analysis Required to Verify Off-site Shipments**

The owner/operator of a facility that receives mixed waste from off-site must inspect and, if necessary, analyze each hazardous waste shipment received at the facility to verify that it matches the identity of the waste specified on the accompanying LDR notification or manifest (see 40 CFR 264.13 or 265.13(c)). This testing is known as verification testing. Such inspections and analysis will follow sampling and testing procedures set forth in the facility's waste analysis plan, which is kept at the facility.

It should also be emphasized that, where analysis is necessary, RCRA regulations do not necessarily require the analysis of every movement of waste received at an off-site facility. As explained above, the purpose of the waste analysis is to verify that the waste received at off-site facilities is correctly identified, and to provide enough information to ensure that it is properly managed by the facilities.

For example, if a facility receives a shipment of several sealed drums of mixed waste, a representative sample from only one drum may be adequate, if the owner/operator has reason to believe that the chemical composition of the waste is identical in every drum. In such a case, the drum containing the least amount of measurable radioactivity could be sampled to minimize radiation exposures (variations in radioactivity do not necessarily suggest different chemical composition). This procedure also would apply to a shipment of several types of waste. If the owner/operator has reason to believe that the drums in the shipment contain different wastes, then selecting a representative sample might involve drawing a sample from each drum or drawing a sample from one drum in each "set" of drums containing identical wastes. Once this waste analysis requirement has been satisfied, routine retesting of later shipments would not be required if the owner/operator can determine that the properties of the waste he or she manages will not change.

#### **Fingerprint Analysis Versus Full Scale Analysis**

Full scale analysis (i.e., detailed physical and chemical analysis) may be used to comply with the waste analysis plan, including verification of off-site shipments. However, for mixed waste, abbreviated analysis or "fingerprint analysis" may be more appropriate to meet general waste analysis requirements. The test procedure should be determined on a case-by-case basis.

Fingerprint analysis (which may involve monitoring pH, percent water, and cyanide content) is particularly recommended for mixed waste streams with high radiation levels that are received by an off-site TSDF for RCRA waste manifest verification purposes. It may be appropriate to use full scale analysis, instead of, or after, fingerprint analyses, if the facility suspects that the waste was not accurately characterized by the generator, information provided by a generator is incomplete, waste is received for the first time, or the generator changes a process or processes that produced the waste.

#### **Generators Who Treat LDR Prohibited Waste In Tanks, Containers or Containment Buildings To Meet LDR Treatment Requirements**

Hazardous waste generators may treat hazardous wastes in tanks or containers without obtaining a permit if the treatment is done in accordance with the accumulation timeframes and requirements in 40 CFR 262.34. However, generators who treat hazardous waste (including mixed wastes) to meet the EPA treatment standards

for land disposal prohibited wastes must also prepare a waste analysis plan similar to that prepared by TSDFs. The plan must be based on a detailed analysis of a representative sample of the LDR prohibited waste that will be treated. In addition, the plan should include all the information that is necessary to treat the waste, including the testing frequency (See 40 CFR 268.7(a)(5)).

## VI. Determinations Under the Land Disposal Restrictions

Generators, as well as treatment facilities and land disposal facilities, that handle mixed waste may have to obtain or amend their radioactive materials licenses if they test or treat mixed waste under the LDRs. The following discussion assumes that generators and treatment and disposal facilities have satisfied the requirement to obtain, or amend, their radioactive materials licenses, as appropriate.

Waste knowledge may also be used to satisfy certain waste characterization requirements imposed by the LDRs for mixed wastes. The Hazardous and Solid Waste Amendments (HSWA) to RCRA (P.L. 98-616), enacted on November 8, 1984, established the LDR program. This Congressionally mandated program set deadlines (RCRA Sections 3004(d)-(g)) for EPA to evaluate all hazardous wastes and required EPA to set levels, or methods, of treatment which would substantially diminish the toxicity of the waste, or minimize the likelihood of migration of hazardous constituents from any RCRA waste. Beyond specified dates, prohibited wastes that do not meet the treatment standards before they are disposed of, are banned from land disposal unless they are disposed of in a so-called "no-migration" unit (i.e., a unit where the EPA Administrator has granted a petition which successfully demonstrated to a reasonable degree of certainty that there will be no migration of hazardous constituents from the disposal unit for as long as the wastes remain hazardous)(40 CFR 268.6). Certain categories of prohibited wastes also may be granted extensions of the effective dates of the land disposal prohibitions (i.e., case-by-case and national capacity variances (40 CFR 268.5 and Subpart C, respectively)). However, these wastes are still restricted and, if disposed in landfills or surface impoundments, must be disposed of in units meeting the minimum technology requirements.<sup>18</sup>

The requirements of the LDR program apply to generators, transporters, and owner/operators of hazardous waste treatment, storage, and disposal facilities. Not all hazardous wastes are subject to 40 CFR Part 268. For instance, certain wastes that are identified or listed after November 8, 1984, such as newly identified mineral processing wastes for which land disposal prohibitions or treatment standards have not yet been promulgated, are not regulated under 40 CFR Part 268.<sup>19</sup>

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### Determinations by Generators

Under 40 CFR 268.7(a), generators must determine whether their waste is restricted from land disposal (or determine if they are subject to an exemption or variance from land disposal (40 CFR 268.1)) by testing their waste (or a leachate of the waste developed using the TCLP or, in certain cases, the Extraction Procedure Toxicity Test (EP), or by using waste or process knowledge). If the waste exhibits the characteristic of ignitability (and is not in the High Total Organic Constituents (TOC) Ignitable Liquids Subcategory or is not treated by the "CMBST" or "RORGS" treatment technology in 40 CFR 268.42, Table 1), corrosivity, reactivity and/or organic toxicity, the generator must also determine the underlying hazardous constituents (UHCs) in the waste. Two exceptions to this requirement are: (1) if these wastes are treated in wastewater treatment systems

<sup>18</sup> A prohibited waste may not be land disposed unless it meets the treatment standards established by EPA. These standards are usually based on the performance of the BDAT. A waste that is subject to an extension, such as a national capacity variance, does not need to comply with the BDAT treatment standards, but is "restricted" and if it is going to be disposed in a landfill or surface impoundment, it can only be disposed of in a unit that meets the minimum technology requirements (MTRs). An exception exists for interim status surface impoundments which may continue receiving newly identified and restricted wastes for four years from the date of promulgation of the listings or characteristics before being retrofitted to meet the MTRs (RCRA Section 3005(j)(6)), so long as the only hazardous wastes in the impoundment are newly identified or listed.

<sup>19</sup> The treatment standards for mineral processing wastes and certain additional newly listed waste streams were proposed in 61 FR 2338, January 25, 1996, and a second supplemental proposed rule signed April 18, 1997.

subject to the Clean Water Act (CWA) or CWA equivalent; or, (2) if they are injected into a Class I, non-hazardous Underground Injection Control well. A UHC is any constituent listed in 40 CFR 268.48, Table UTS-Universal Treatment Standards, with the exceptions of nickel, zinc and vanadium, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific UTS treatment standard. Determining the presence of the UHCs may be made based on testing or knowledge of the waste. The UHCs must meet the UTS before the waste may be land disposed.

If a generator chooses to test the waste rather than use waste or process knowledge for hazardous waste that is not listed and exhibits a characteristic only, the generator must use the TCLP. The only exception is TC metals.

Until the "Phase IV" LDR rule is promulgated in the spring of 1998, generators who characterize their wastes as TC toxic only for metals may use the EP instead of the TCLP result to determine if their waste is land disposal restricted, because the TC wastes do not have final EPA treatment standards whereas, at this time, the EP metals do. If the EP result is negative, the waste will still be considered hazardous, but is not prohibited from land disposal. The TCLP generally yields similar results as the EP. However, in certain matrices the TCLP yields higher lead and arsenic concentrations than the EP. The rationale for using the EP instead of the TCLP for characteristic wastes is explained in 55 FR 3865, January 31, 1991. For further guidance on using the EP for the land disposal restriction determination, refer to the Figures 1 and 2, of this guidance.

If a waste is found to be land disposal restricted, generators must determine if the waste can be land disposed without further treatment. A prohibited waste may be land disposed if it meets applicable treatment standards (whether through treatment or simply as generated), or is subject to a variance from the applicable standards. As explained above, this determination can be made either based on knowledge of the waste or by testing the waste, or waste leachate using the TCLP.

Generators who determine that their listed waste meets the applicable treatment standards must certify to this determination and notify the treatment, storage, or land disposal facility that receives the waste (40 CFR 268.7(a)(3)). Notification to the receiving facility must be made with the initial shipment of waste and must include the following information:

- EPA Hazardous Waste Number;
- Certification that the waste delivered to a disposal facility meets the treatment standard, and that the information included in the notice is true, accurate, and complete;
- Waste constituents that will be monitored for compliance if monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, and D012-D043;
- Whether the waste is a non-wastewater or wastewater;
- The subcategory of the waste (e.g., "D003 reactive cyanide"), if applicable;
- Manifest number; and,
- Waste analysis data (if available).

If a generator determines that a waste that previously exhibited a characteristic is no longer hazardous, or is subject to an exclusion from the definition of hazardous waste, a one-time notification and certification must be placed in the generator's files (40 CFR 268.7(a)(7) or 268.9).

Generators who determine that their waste does not meet the applicable treatment standards must ensure that this waste meets the applicable standards prior to disposal. These generators may treat (or store) their prohibited wastes on-site for 90 days or less in qualified tanks, containers (40 CFR 262.34), or containment buildings (40 CFR 268.50), and/or send their wastes off-site for treatment.<sup>20</sup> When prohibited listed wastes are sent off-site, generators must notify the treatment facility of the appropriate treatment standards (40 CFR 268.7(a)(2)). This notification must be made with the initial shipment of waste and must include the following information:

- EPA Hazardous Waste Number;
- Waste constituents that the treater will monitor if monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, and D012-D043;

<sup>20</sup> Non-wastewater residues (e.g., slag) that result from high temperature metals recovery that are excluded from the definition of hazardous waste by meeting the conditions of 40 CFR 261.3(c)(2)(ii)(C), and hazardous debris that is excluded from the definition of hazardous waste in 40 CFR 261.3(f) have reduced LDR notification requirements. Specifically, these wastes, and characteristic hazardous wastes that are rendered non-hazardous, do not require a notification and certification accompanying each shipment. Instead, they may be sent to an AEA-licensed facility with a one-time notification and certification sent to the EPA Region or authorized State.

- Whether the waste is a non-wastewater or wastewater;
- The subcategory of the waste (e.g., "D003 reactive cyanide"), if applicable;
- Manifest number; and,
- Specified information for hazardous debris.

Generators whose wastes are subject to an exemption such as a case- by-case extension under 40 CFR 268.5, an exemption under 40 CFR 268.6 (a no-migration variance), or a nationwide capacity variance under 40 CFR 268, Subpart C must also notify the land disposal facility of the exemption. In addition, records of all notices, certifications, demonstrations, waste analysis data, process knowledge determinations, and other documentation produced pursuant to 40 CFR Part 268 must be maintained by the generator for at least three years from the date when the initial waste shipment was sent to on-site or off-site treatment, storage, or disposal (40 CFR 268.7(a)(8)).

### Determinations by Treaters and Disposers

Owner/operators of treatment facilities that receive wastes that do not meet the treatment standards are responsible for treating the wastes to the applicable treatment standards or by the specified technology(ies). In addition, the owner/operators of treatment facilities must determine whether the wastes meet the applicable treatment standards or prohibition levels by testing:

- (1) The treatment residues, or an extract of such residues using the TCLP, for wastes with treatment standards expressed as concentrations in the waste extract (40 CFR 268.40); and,
- (2) The treated residues (not an extract of the treated residues) for wastes with

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treatment standards expressed as concentrations in the waste extract (40 CFR 268.40). This testing should be done at the frequency established in the facility's waste analysis plan. Owner/operators of treatment facilities, however, do not need to test the treated residues or an extract of the residues if the treatment standard is a specified- technology (i.e., a technology specified in 40 CFR 268.40 or 268.45, Table 1.--Alternative Treatment Standards for Hazardous Debris).

Owner/operators of land disposal facilities under the LDRs are responsible for ensuring that only waste meeting the treatment standards (i.e., wastes not prohibited from disposal or wastes that are subject to an exemption or variance) is land disposed. Like a treatment facility, a disposal facility must test a treatment residue or an extract of the treatment residue, except where the treatment standard is a specified technology.

Owner/operators must periodically test wastes received at the facility for disposal (i.e., independent corroborative testing) as specified in the waste analysis plan to ensure the treatment has been successful and the waste meets EPA treatment standards, except where the treatment standard is expressed as a technology.<sup>21</sup> The results of any waste analyses are placed in a TSDF's operating records along with a copy of all certifications and notices (40 CFR 264.73 or 40 CFR 265.73).<sup>22</sup>

### Mixed Waste Under the LDRs

As clarified in the Land Disposal Restrictions rule published on June 1, 1990 (see EPA's "Third Third rule," 55 FR 22669, June 1, 1990), the frequency of testing, such as corroborative testing for treatment and disposal facilities, should be determined on a case-by- case basis and specified in the RCRA permit. This flexibility is necessary because of the variability of waste types that may be encountered. Mixed waste is unique for its radioactive/hazardous composition and dual management requirements. Each sampling or analytical event

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<sup>21</sup> Note that verification testing is a means to verify that the wastes received match the waste description on the manifest, which is required under 40 CFR 264.13 and 40 CFR 265.13(c). The main objective of corroborative testing is to provide an independent verification that a waste meets the LDR treatment standard.

<sup>22</sup> Land disposal facilities must maintain a copy of all LDR notices and certifications transmitted from generators and treaters (40 CFR 268.7(c)).

involving mixed waste may result in an incremental exposure to radiation, and EPA's responsibility to protect human health and the environment must show due regard for minimizing this unique risk. These are factors which should be considered in implementing the flexible approach to determining testing frequency spelled out in the Third Third Rule language. This flexible approach encourages reduction in testing where there is little or no variation in the process that generates the waste, or in the treatment process that treats the waste, and an initial analysis of the waste is available. Also, the approach may apply to mixed wastes shipped to off-site facilities, where redundant testing is minimized by placing greater reliance on the characterization developed and certified by earlier generators and treatment facilities. On the other hand, where waste composition is not well-known, testing frequency may be increased. Waste analysis plan conditions in the permits of mixed waste facilities should reflect these principles.

### Revised Treatment Standards for Solvent Wastes

EPA promulgated revised treatment standards for wastewater and non-wastewater spent solvent wastes (F001-F005) in 57 FR 37194, August 18, 1992. The revision essentially converts the treatment standards for the organic spent solvent waste constituents (F001-F005) from TCLP based to total waste constituent concentration based. This conversion of the spent solvent treatment standards is particularly advantageous to mixed waste generators, since the entire waste stream or treatment residual must be analyzed (instead of a waste or treatment residual extract). This holds true for other mixed waste streams where the hazardous component is measured using a total waste analysis. As discussed in Section IV of this guidance, total constituent analysis has several advantages over the use of the TCLP for high activity waste streams.

EPA and NRC are aware of potential hazards attributable to testing hazardous waste. Moreover, EPA and NRC recognize that the radioactive component of mixed waste may pose additional hazards to laboratory personnel, inspectors, and others who may be exposed during sampling and analysis. All sampling should be conducted in accordance with procedures that minimize exposure to radiation and ensure personnel safety. Further, testing should be conducted in laboratories licensed by NRC or the appropriate NRC Agreement State authority. EPA and NRC believe that a combination of common sense, modified sampling procedures, and cooperation between State and Federal regulatory agencies will minimize any hazards associated with sampling and testing mixed waste.

Note: Section V, "Determinations under the Land Disposal Restrictions (LDRs)" and the following flow charts represent a brief summary of the Land Disposal Restriction Regulations. They are not meant to be a complete or detailed description of all applicable LDR regulations. For more information concerning the specific requirements, consult the Federal Registers cited in the document and the Code of Federal Regulations, Title 40 Parts 124, and 260 through 271.

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[GRAPHIC] [TIFF OMITTED] TN20NO97.001

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[GRAPHIC] [TIFF OMITTED] TN20NO97.002

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[GRAPHIC] [TIFF OMITTED] TN20NO97.003

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[GRAPHIC] [TIFF OMITTED] TN20NO97.004



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**Appendix A--RCRA Regulations That Require Specific EPA Test Methods**

The use of an SW-846 method is mandatory for the following nine Resource Conservation and Recovery Act (RCRA) applications contained in 40 CFR Parts 260 through 270:

- Section 260.22(d)(1)(I)--Submission of data in support of petitions to exclude a waste produced at a particular facility (i.e., delisting petitions);
- Section 261.22(a)(1) and (2)--Evaluations of waste against the corrosivity characteristic;
- Section 261.24(a)--Leaching procedure for evaluation of waste against the toxicity characteristic;
- Section 261.35(b)(2)(iii)(A)--Evaluation of rinsates from wood preserving cleaning processes;
- Sections 264.190(a), 264.314(c), 265.190(a), and 265.314(d)--Evaluation of waste to determine if free liquid is a component of the waste;
- Sections 264.1034(d)(1)(iii) and 265.1034(d)(1)(iii)-- Evaluation of organic emissions from process vents;
- Sections 264.1063(d)(2) and 265.1063(d)(2)--Evaluation of organic emissions from equipment leaks;
- Section 266.106(a)--Evaluation of metals from boilers and furnaces;
- Sections 266.112(b)(1) and (2)(I)--Certain analyses in support of exclusion from the definition of a hazardous waste for a residue which was derived from burning hazardous waste in boilers and industrial furnaces;
- Sections 268.7(a), 268.40(a), (b), and (f), 268.41(a), 268.43(a)--Leaching procedure for evaluation of waste to determine compliance with land disposal treatment standards;
- Sections Sec. 270.19(c)(1)(iii) and (iv), and 270.62(b)(2)(I)(C) and (D)--Analysis and approximate quantification of the hazardous constituents identified in the waste prior to conducting a trial burn in support of an application for a hazardous waste incineration permit; and
- Sections 270.22(a)(2)(ii)(B) and 270.66(c)(2)(I) and (ii)--Analysis conducted in support of a destruction and removal efficiency (DRE) trial burn waiver for boilers and industrial furnaces burning low risk wastes, and analysis and approximate quantification conducted for a trial burn in support of an application for a permit to burn hazardous waste in a boiler and industrial furnace.

**Appendix B.--States and Territories With Mixed Waste Authorization**  
**[As of June 30, 1997]**

State/territory	FR date	Effective date	FR cite
Colorado.....	10/24/86	11/7/86	51 FR 37729.
Tennessee.....	6/12/87	8/11/87	52 FR 22443.
S. Carolina.....	7/15/87	9/13/87	52 FR 26476.
Washington.....	9/22/87	11/23/87	52 FR 35556.
Georgia.....	7/28/88	9/26/88	53 FR 28383.
Nebraska.....	10/4/88	12/3/88	53 FR 38950.
Kentucky.....	10/20/88	12/19/88	53 FR 41164.
Utah.....	2/21/89	3/7/89	54 FR 7417.
Minnesota.....	4/24/89	6/23/89	54 FR 16361.
Ohio.....	6/28/89	6/30/89	54 FR 27170.
Guam.....	8/11/89	10/10/89	54 FR 32973.
N. Carolina.....	9/22/89	11/21/89	54 FR 38993.
Michigan.....	11/24/89	12/26/89	54 FR 48608.
Texas.....	3/1/90	3/15/90	55 FR 7318.
New York.....	3/6/90	5/7/90	55 FR 7896.
Idaho.....	3/26/90	4/9/90	55 FR 11015.
Illinois.....	3/1/90	4/30/90	55 FR 7320.
Arkansas.....	3/27/90	5/29/90	55 FR 11192.
Oregon.....	3/30/90	5/29/90	55 FR 11909.
Kansas.....	4/24/90	6/25/90	55 FR 17273.
N. Dakota.....	6/25/90	8/24/90	55 FR 25836.
New Mexico.....	7/11/90	7/25/90	55 FR 28397.
Oklahoma.....	9/26/90	11/27/90	55 FR 39274.
Connecticut.....	12/17/90	12/31/90	55 FR 51707.
Florida.....	12/14/90	2/12/91	55 FR 51416.
Mississippi.....	3/29/91	5/28/91	56 FR 13079.
S. Dakota.....	4/17/91	6/17/91	56 FR 15503.
Indiana.....	7/30/91	9/30/91	56 FR 41959.
Louisiana.....	8/26/91	10/26/91	56 FR 41959.
Wisconsin.....	4/24/92	4/24/92	57 FR 15092.
Nevada.....	4/29/92	6/29/92	57 FR 18083.
California.....	7/23/92	8/1/92	57 FR 32725.
Arizona.....	11/23/92	1/22/93	57 FR 54932.
Missouri.....	1/11/93	3/12/93	58 FR 3497.
Alabama.....	3/17/93	5/17/93	58 FR 14319.
Vermont.....	6/7/93	8/6/93	58 FR 31911.
Montana.....	1/19/94	3/21/94	59 FR 2752.
New Hampshire.....	11/14/94	1/13/95	59 FR 56397.
Wyoming.....	10/04/95	10/18/95	60 FR 51925.
Delaware.....	8/8/96	10/7/96	61 FR 41345.
Total: 39 States and 1 Territory.			

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**Appendix C: Testing Reference Documents**

The following references provide information on approved methods for testing hazardous waste samples:

- American Public Health Association, Standard Methods for the Examination of Water and Wastewater, 17th Edition. 1989. Available from the Water Pollution Control Federation, Washington, D.C., &S0037.
- U.S. Environmental Protection Agency, Design and Development of a Hazardous Waste Reactivity Testing Protocol. EPA Document No. 600/2- 84-057, February 1984.
- U.S. Environmental Protection Agency, Methods for Chemical Analysis of Water and Waste. EPA-600/114-79-020. Washington, D.C., 1983.
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**Appendix D: List of Regulations**

Environmental Protection Agency General Regulations for Hazardous Waste Management, 40 CFR Part 260.  
Environmental Protection Agency Regulations for Identifying Hazardous Waste, 40 CFR Part 261.  
Environmental Protection Agency Regulations for Hazardous Waste Generators, 40 CFR Part 262.  
Environmental Protection Agency Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities, 40 CFR Part 264.  
Environmental Protection Agency Interim Status Standards for Owners and Operators of Hazardous Waste Facilities, 40 CFR Part 265.  
Environmental Protection Agency Regulations on Land Disposal Restrictions, 40 CFR Part 268.  
Nuclear Regulatory Commission Regulations--Standards for Protection Against Radiation, 10 CFR Part 20.  
Nuclear Regulatory Commission Regulations--Rules of General Applicability to Domestic Licensing of Byproduct Material, 10 CFR Part 30.  
Nuclear Regulatory Commission Regulations--Domestic Licensing of Source Material, 10 CFR Part 40.  
Nuclear Regulatory Commission Regulations--Domestic Licensing of Production and Utilization Facilities, 10 CFR Part 50.  
Nuclear Regulatory Commission Regulations--Licensing Requirements for Land Disposal of Radioactive Waste, 10 CFR Part 61.  
Nuclear Regulatory Commission Regulations--Domestic Licensing of Special Nuclear Material, 10 CFR Part 70.

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