

by a facility located in a LDR-authorized State: the Phase II UTS levels, or the treatment standards in a State's authorized RCRA program? An additional concern is whether the authorized States would lose their ability to implement their LDR treatment standards if they were superseded by the UTS.

A memorandum from Michael Shapiro, Director of the Office of Solid Waste, to the EPA Regional Waste Management Division Directors, announced that the new UTS are neither more nor less stringent than the previous standards. Therefore, the new standards do not supersede existing standards in States authorized. States authorized for the LDRs for some or all waste streams would continue to implement the treatment standards for the streams for which they are authorized. The new UTS do not apply, for those waste streams, until the State has incorporated them into State law. EPA strongly urges States to implement the new UTS standards as soon as possible, both for simplicity of implementation and national consistency. In any case, State law (as interpreted by the State) would determine which standards applied. This approach would avoid the dual regulatory problem which would occur during the time before new HSWA requirements are adopted and authorized in the State.

EPA has a strong interest in uniformity and consistency of regulations and believes that the improvements in the UTS meet these objectives. Thus, States are encouraged to adopt and apply for authorization of the Phase II LDR rule. States that are currently authorized for portions of the LDRs may submit an abbreviated authorization revision application for the UTS. Details about what would be required for this abbreviated authorization are in the memorandum, which can be obtained by calling the RCRA docket.

It should be noted that the Agency, generally, is not relinquishing its statutory responsibility to implement significant new HSWA rules in States as soon as the rules become effective. The new approach set out in the memorandum is reserved only for areas of the hazardous waste program already authorized and regulated by the States, not new areas of the HSWA regulations. For example, the Phase II rule established treatment standards for several newly listed wastes; these new requirements are immediately effective in the States and will be enforced by EPA.

B. Flowchart Clarification

EPA is clarifying in today's amendment the Phase II flowchart entitled, "Implementation of Key Phase II LDRs," at 59 FR 48018. The second block from the bottom left poses the question, "Is the waste a mixture of a newly identified TC organic waste (D012-43) with a prohibited listed waste . . ." This language is not correct and should read in full: "Is the waste a prohibited listed waste, or one of the newly listed Phase II wastes, that also exhibits an organic toxicity characteristic?"

Another clarification is being made on page 48021, in the first diamond. Questions have been raised as to whether the "constituents" mentioned there include underlying hazardous constituents. No, "constituents" does not include UHCs. The wording inside the diamond should say "Does the treatment standard for the listed waste include the treatment standard for the constituent that causes the waste to exhibit the characteristic?"

C. Telephone Number Correction

At 59 FR 47983, Richard Kinch's name appeared as an EPA contact for "other information" about the Phase II final rule. The phone number provided in the Phase II rule, (703) 308-8414, is incorrect; Mr. Kinch's telephone number is (703) 308-8434.

IV. Rationale for Immediate Effective Date

Today's notice does not create any new regulatory requirements; rather, it restates and clarifies requirements already in effect by correcting a number of errors in the September 19, 1994 final rule (59 FR 47982). For these reasons, EPA finds that good cause exists under section 3010(b)(3) of RCRA, 42 U.S.C. 9903(b)(3), to provide for an immediate effective date. In addition, there already was full opportunity to comment on all of these issues during the rulemaking so that further comment is unnecessary. For the same reasons, EPA finds that there is good cause under 5 U.S.C. 553(b)(3) to promulgate today's corrections in final form and that there is good cause under 5 U.S.C. 553(b)(3) to waive the requirement that regulations be published at least 30 days before they become effective. Finally, EPA notes that although it is not withdrawing any existing regulatory language, all of today's revisions operate prospectively.

V. Executive Order 12866

Under Executive Order 12866, EPA must judge whether a regulation is "significant" and, therefore, subject to

review under the Executive Order. Due to the nature of this regulation (technical correction), it is not "significant"; therefore, no Executive Order 12866 review is required.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: December 16, 1994.

Peter Roberts,

Acting Assistant Administrator for Solid Waste and Emergency Response.

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

PART 268—LAND DISPOSAL RESTRICTIONS

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

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

Subpart A—General

2. In § 268.2, paragraph (i) is revised to read as follows:

§ 268.2 Definitions applicable in this part.

* * * * *

(i) *Underlying hazardous constituent* means any constituent listed in § 268.48, Table UTS—Universal Treatment Standards, except vanadium and zinc, 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 standards.

3. Section 268.7 is amended by revising the introductory text of paragraphs (a)(1) and (d); revising paragraphs (a)(1)(ii); (a)(1)(iv), (a)(1)(v), (a)(2)(i)(B); (a)(3)(vi); (a)(8); (b)(4)(ii); and (d)(1); and by adding paragraphs (a)(1)(vi) and (a)(3)(vii) to read as follows:

§ 268.7 Waste analysis and recordkeeping.

(a) * * *

(1) If a generator determines that he is managing a restricted waste under this part and the waste does not meet the applicable treatment standards set forth in subpart D of this part or it exceeds the applicable prohibition levels set forth in § 268.32 or RCRA section 3004(d), with each shipment of waste the generator must notify the treatment or storage facility in writing. The notice must include the following information:

* * * * *

(ii) The waste constituents that the treater will monitor, if monitoring will not include all regulated constituents,