HAPs in amounts above the major source threshold. This is an example of a stationary source which is not an integral component of a process or production unit, because the molding line is itself a separately functioning process unit. Therefore the molding line meets the definition of ''affected source'' under section 112(g) and should be controlled with new source MACT.

7. An auto parts manufacturer adds a new automobile surface coating line (i.e., from body shop to trim shop) which will emit HAPs in amounts above the major source threshold. This is an example of a stationary source which is not an integral component of a process or production unit, because the line is itself a separately functioning process unit, as described in AP–42. Therefore the coating line meets the definition of ''affected source'' under section 112(g) and should be controlled with new source MACT.

8. An existing chemical plant builds a new nitric acid plant onsite which will emit HAPs in amounts above the major source threshold. This is an example of a stationary source or group of stationary sources which is not an integral component of a process or production unit. Therefore the nitric acid plant meets the definition of ''affected source'' under section 112(g) and should be controlled with new source MACT.

9. A manufacturer replaces an entire process which is similar to an entire process as it is described in AP–42. This is an example of a stationary source or group of stationary sources which is not an integral component of a process or production unit. Therefore the process meets the definition of ''affected source'' under section 112(g) and should be controlled with new source MACT, provided that it will emit HAPs in amounts above the major source threshold.

III. Review of Applications for a MACT Determination

Today's draft rule contains three options for preconstruction review procedures for constructed and reconstructed major sources. The permitting authority has discretion to prescribe those procedures to be used in making a case-by-case MACT determination for constructed or reconstructed major sources (except that the owner or operator of the source may elect to use the part 70 or part 71 permitting process). The proposed rule allowed use of either the part 70 or 71 permitting process or a process, described in the proposed rule and in today's draft rule, culminating in issuance of a ''Notice of MACT Approval.'' Today's draft rule adds one more option, designed to provide flexibility to the permitting authority and the source. Proposed section 63.43(c)(2)(ii) provides that if a permitting authority establishes, or has already established, preconstruction review procedures for sources to follow, then these procedures may be used in lieu of any procedures prescribed by today's draft rule. The permitting authority's prescribed procedures may have been developed for other purposes beyond implementation of section 112(g), so long as they provide for public participation in the case-by-case MACT determination and ensure that a final MACT determination will be made prior to construction or reconstruction. The draft rule also provides that a final case-by-case MACT determination issued pursuant to any of these procedures will be deemed federally enforceable. The permitting authority need not obtain delegation under 40 CFR Part 63 subpart E in order to adopt its own review procedures for a case-by-case MACT determination. The EPA requests comment on this new provision.

The EPA also requests comment specifically on the presumption, in section 63.43(d)(iv), that the constructed or reconstructed major source should comply with the emission limitation set out in a relevant proposed MACT standard or presumptive MACT determination made by the EPA. The EPA believes that sources would be well-advised to comply with such emission limitations, as those limitations would be most likely to be consistent with the requirements of the eventual MACT standard.

IV. Extensions of Compliance Date for Subsequent Emission Standards

The EPA anticipates that new source MACT requirements adopted with respect to construction or reconstruction of a particular source under section 112(g)(2)(B) will normally be at least as stringent as any subsequent requirements for existing sources adopted as part of a MACT standard issued under section 112(d). However, should a subsequently promulgated MACT standard impose more stringent requirements, EPA believes that it may be appropriate in some instances for EPA to establish a later compliance date for those sources which have acted in reliance on a prior case-by-case MACT determination. The draft rule expressly provides that EPA may establish separate compliance dates for facilities which have notified EPA of such determinations in a timely manner. Specifically, EPA may establish, in the MACT standard, a later compliance date for those sources which have installed controls pursuant to section 112(g), and have provided the EPA with data on their section 112(g) control determination by the end of the public comment period on the subsequent Federal standard.

The EPA requests comment on this approach, and on whether such sources should be required to inform EPA, before proposal of the subsequent MACT standard, that they have installed section 112(g) controls.

In those instances where the subsequent MACT standard does not establish a compliance date for sources subject to a prior case-by-case MACT determination, the present draft rule retains the provision from the original proposal authorizing the permitting authority to grant up to eight years of additional time for the affected source to comply with the subsequent MACT standard. The EPA has previously explained that the structure of section 112 as a whole supports such a construction of section 112(g), and a source may also be afforded up to 8 years to comply with a MACT standard in instances where a prior emission limitation has been established by permit under section 112(j). The EPA requests comment on these provisions and this interpretation.

Dated: March 18, 1996.

Mary D. Nichols,

Assistant Administrator.

[FR Doc. 96–7277 Filed 3–25–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 261

[FRL–5446–3]

RIN 2050–AE31

Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to correct the text of a regulatory exclusion from the regulatory definition of solid waste for recovered oil which is inserted into the petroleum refining process. The current text of the exclusion contains a factual error inappropriately limiting the location in the refining process at which recovered oil can be inserted. The result of this error is to restrict legitimate recycling of recovered oil. The proposed correction also in fact reflects the result EPA initially intended, which was to condition the

exclusion of recovered oil on that oil being reinserted into the petroleum refining process at a point where that process removes or will remove contaminants.

In the final rules Section of today's Federal Register, EPA is promulgating this amendment as a final rule without prior proposal because EPA views this as a noncontroversial action which corrects an unintended mistake, and so anticipates no adverse comments. A detailed rationale for the amendment is set forth in the final rule. If no adverse comments are received in response to this proposal, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, EPA will withdraw the final rule and all public comments received will be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received on or before April 24, 1996, and notice of intent to file adverse comments must be received on or before April 9, 1996. An adverse comment will be considered to be any comment substantively criticizing the proposal on a basis not already provided to EPA in comment.

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. F–96–SW2P-FFFFF and are located in the EPA RCRA docket, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA. The docket is open from 9:00 to 4:00, Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any one regulatory docket at no cost. Additional copies cost § .15 per page. Persons wishing to notify EPA of their intent to submit adverse comments on this action should contact Steven Silverman, Office of General Counsel (2366), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steven Silverman, (202) 260–7716, Office of General Counsel at the above address.

SUPPLEMENTARY INFORMATION:

Outline of Today's Action

I. Authority

These regulations are being proposed under the authority of Sections 2002 and 3001 *et seq.* of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6912 and 6921 *et seq.*

II. Background

As set out in detail in the related direct final rule, EPA is proposing to correct an error in the text of a regulatory exclusion (found at 261.4(a)(12)), regarding the location in a petroleum refining process at which recovered oil can be inserted in order to be excluded from the authority of RCRA subtitle C. The test for point of insertion should be at or before any point in the process that removes contaminants from recovered oil.[1] The current regulatory text limiting insertion to locations before distillation and catalytic cracking is too restrictive because there are points in the petroleum process downstream of these unit operations (such as fractionation) which remove contaminants. The current terms of the exclusion impede legitimate recycling of recovered oil without providing any corresponding environmental benefit, and moreover are based on a factual error. Accordingly, EPA believes the rule should be amended.

III. Additional Information

For additional information, see the corresponding direct final rule published in the rules section of this Federal Register.

IV. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this amendment to the final rule is not a ''significant regulatory action'' under the terms of the Executive Order and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on ''small entities''. If a rulemaking will have a significant impact on a substantial number of small entities, agencies must consider regulatory alternatives that minimize economic impact.

EPA believes that this amendment will have negligible impact on any small entity because it expands the terms of an exclusion from regulation. In addition, the underlying rule itself was deregulatory and so did not have significant adverse economic impact on small entities. See 59 FR at 38545. Therefore, the Administrator certifies pursuant to 5 U.S.C. 601 *et seq.*, that this rule will not have a significant impact on a substantial number of small entities because this amendment reduces the scope of the RCRA subtitle C regulatory program.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This rule will not impose any new information collection requirements.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory

[1] The issue of whether this should include insertion into petroleum cokers is being addressed in a separate rulemaking proceeding. 60 FR 57747 (November 20, 1995).

alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector because it imposes no enforceable duties on any of these governmental entities or the private sector. The rule merely corrects a factual error in the regulatory text of the regulatory definition of solid waste. In any event, EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Solid Waste, Petroleum, Recycling.

Dated: March 19, 1996.

Carol M. Browner,

Administrator.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

2. Section 261.4 in amended by revising paragraph (a)(12) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(12) Recovered oil from petroleum refining, exploration and production, and from transportation incident thereto, which is to be inserted into the petroleum refining process (SIC Code 2911) at or before a point (other than direct insertion into a coker) where contaminants are removed. This exclusion applies to recovered oil stored or transported prior to insertion, except that the oil must not be stored in a manner involving placement on the land, and must not be accumulated speculatively, before being so recycled. Recovered oil is oil that has been reclaimed from secondary materials (such as wastewater) generated from normal petroleum refining, exploration and production, and transportation practices. Recovered oil includes oil that is recovered from refinery wastewater collection and treatment systems, oil recovered from oil and gas drilling operations, and oil recovered from wastes removed from crude oil storage tanks. Recovered oil does not include (among other things) oil-bearing hazardous waste listed in 40 CFR part 261 D (e.g., K048–K052, F037, F038). However, oil recovered from such wastes may be considered recovered oil. Recovered oil also does not include used oil as defined in 40 CFR 279.1.

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[FR Doc. 96–7276 Filed 3–25–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5445–8]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Waste Disposal Engineering Inc. site from the national priorities list; request for comments.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) Region 5 announces its intent to delete the Waste Disposal Engineering Inc. (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which U.S. EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by U.S. EPA because it has been determined that Responsible Parties and the State of Minnesota have implemented all appropriate response actions required. U.S. EPA, in consultation with the State of Minnesota, have also determined that no further response is appropriate. Although full compliance with off-site surface water and ground water standards has not been demonstrated as yet due to past interruptions in ground water remediation, the State of Minnesota has assumed the legal obligation to carry out the response action duties, including but not limited to operation and maintenance of the remedy and attaining the response action objectives and cleanup standards. A determination of compliance with the off-site surface water and ground water standards will be demonstrated by the State after a longer period of operation and maintenance of the remedy. Moreover, U.S. EPA and the State have determined that remedial activities conducted at the Site to date are and will continue to be protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of the Site from the NPL may be submitted on or before April 25, 1996.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, Office of Superfund, U.S. EPA, Region 5, 77 W. Jackson Blvd. (SR–6J), Chicago, IL 60604. Comprehensive information on the site is available at U.S. EPA's Region 5 office and at the local information repository located at: Anoka County Community Health and Environmental Service, Anoka County Government Center, Rm. 360, 2100 3th Ave., Anoka, MN 55303 and Andover City Hall, 1685 Crosstown Blvd. Andover, MN 55304. Requests for comprehensive copies of documents should be directed formally to the Region 5 Docket Office. The address and phone number for the Regional Docket Officer is Jan Pfundheller (H–7J), U.S. EPA, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Lawrence Schmitt, Remedial Project Manager at (312) 353–6565, Gladys Beard (SR–6J), Associate Remedial Project Manager, Office of Superfund, U.S. EPA, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–7253 or Susan Pastor (P–19J), Office of