The Agency did not meet this latter statutory deadline for all of the wastes identified or listed after the 1984 amendments. As a result, a suit was filed by the Environmental Defense Fund (EDF). EPA and EDF signed a consent decree that establishes a schedule for adopting prohibitions and treatment standards for newly identified and listed wastes. (EDF v. Reilly, Cir. No. 89-0598, D.D.C.) This proposed consent decree was modified as a result of the court decision on the Third Third final rule (Chemical Waste Management v. EPA, 976 F. 2d 2 (D.C. Cir. 1992), cert. denied 113 S. Ct. 1961 (1993); hereafter referred to as CWM v. EPA, or the Third Third opinion). Today's proposed rule fulfills several provisions of the proposed consent decree. The rule proposes land disposal restrictions for characteristic hazardous wastes managed in CWA and CWA-equivalent treatment systems, and injected into underground injection control (UIC) Class I nonhazardous injection wells regulated under the SDWA. Today's rule also proposes treatment standards for carbamate and organobromine wastes. The rule also proposes treatment standards for newly listed spent aluminum potliners (K088), which according to the proposed consent decree need not be proposed until June 30, 1995.

B. Summary of the D.C. Circuit's Opinion on the Third Third Standards for Ignitable, Corrosive, Reactive, and Toxic Characteristic Wastes and EPA's Implementation of the Opinion to Date

Characteristic hazardous wastes that are treated or diluted such that they no longer exhibit the hazardous characteristic are no longer subject to RCRA Subtitle C management standards, and thus may be discharged into units that are not subject to the stringent RCRA Subtitle C standards, such as UIC wells. In CWM v. EPA, 976 F.2d 2 (D.C. Cir. 1992), the U.S. Court of Appeals for the D.C. Circuit interpreted RCRA section 3004(m) as requiring treatment of underlying hazardous constituents in decharacterized hazardous wastes so as to minimize threats to human health and the environment. As yet, the Agency has not set minimize threat levels under RCRA and therefore must require treatment.

However, the Agency has a process to set levels under the Hazardous Waste Identification Rule (HWIR). If risk-based minimize threat levels are established under HWIR, these levels would implement section 3004(m) and consequently supersede the technologybased treatment standards presently

utilized. See HWTC III, 886 F. 2d at 362-63. Wastes treated to these levels also would not be classified as hazardous wastes and consequently could be disposed in units not subject to subtitle C standards (e.g., landfills not receiving federal permits.) EPA has lodged a proposed consent decree with the U.S. District Court to propose the HWIR levels not later than August 15, 1995, and finalize by December 15, 1996. As was previously mentioned, the Agency entered into a consent decree setting out a schedule for fulfilling the court's mandate for the wastes addressed in today's rule. This consent decree requires the Agency to set treatment standards for these wastes before the HWIR rulemaking

That being said, the risks addressed by this rule, particularly UIC wells, are very small relative to the risks presented by other environmental conditions or situations. In a time of limited resources, common sense dictates that we deal with higher risk activities first, a principle on which EPA, members of the regulated community, and the public can all agree.

Nevertheless, the Agency is required to set treatment standards for these relatively low risk wastes and disposal practices during the next two years although there are other actions and projects with which the Agency could provide greater protection of human health and the environment. At the same time, however, EPA has sought to exercise the full extent of its authority under current law to develop innovative options designed to significantly lower the potential cost of these controls while ensuring protectiveness, such as giving credit for up-stream reductions in hazardous constituents, and crafting limited exemptions for wastewaters containing de minimis amounts of hazardous constituents. Through the public comment process and further consultation with stakeholders, EPA expects to obtain guidance for any future action we may take.

A detailed discussion of the Agency's interpretation of the opinion in *CWM* v. *EPA* is provided in the next section. For background information on the relevant portions of the Third Third final rule (i.e., the treatment standards promulgated for hazardous wastes exhibiting the characteristics of ignitability, corrosivity, reactivity, or Extraction Procedure (EP) toxicity), see 55 FR 22653–22659 (June 1, 1990).

The Agency's immediate response following issuance of the opinion can be found in the January 19, 1993 Supplemental Information Report to the Notice of Data Availability (58 FR 4972). This report sets out the Agency's options for complying with the court's decision. The options discussed in this report applied to reactive, as well as ignitable and corrosive wastes, since EPA knows of no inherent differences among these wastes with respect to propensity to contain hazardous constituents.

1. Summary of the Third Third Standards

On May 8, 1990, EPA promulgated regulations addressing the last of five congressionally-mandated prohibitions on land disposal of hazardous wastes, which was the third one-third of the schedule of restricted hazardous wastes, referred to as the Third Third. Among other things, the Third Third final rule promulgated treatment standards and prohibition effective dates for hazardous wastes that exhibited one or more of the following characteristics: ignitability, corrosivity, reactivity, or EP toxicity (40 CFR 261.21–261.24). The Third Third rule established treatment standards for the characteristic wastes in one of four forms: (1) a concentration level equal to, or greater than, the characteristic level; (2) a concentration level less than the characteristic level; (3) a specified treatment technology (e.g., for ignitable wastes containing high levels of total organic carbon); and (4) a treatment standard of "deactivation" which allowed the use of any technology, including dilution, to remove the characteristic.

The Agency also evaluated the applicability of certain provisions of the land disposal restrictions' framework with respect to characteristic wastes, including wastes regulated under the National Pollutant Discharge Elimination System (NPDES) or pretreatment programs under sections 402 and 307(b) of the CWA and the SDWA UIC programs to try to ensure successful integration of these programs with the regulations being promulgated under RCRA. See generally 55 FR 22653-59 (June 1, 1990). Specifically, the Agency considered the appropriateness of the dilution prohibition for each of the characteristic waste streams, and the applicability of treatment standards expressed as specified methods.

The Agency found, generally, that mixing waste streams to eliminate certain characteristics was appropriate and permissible for corrosive wastewaters, or in some cases, reactive or ignitable wastewaters. Furthermore, EPA stated that the dilution prohibition did not normally apply to characteristic wastewaters that are managed in treatment trains including surface impoundments whose ultimate