discharge is regulated under the pretreatment and NPDES programs under sections 307(b) and 402 of the CWA, or in Class I underground injection well systems regulated under the SDWA. The Agency stated that the treatment requirements and associated dilution rules under the CWA are generally consistent with the dilution rules under RCRA, and that the Agency should rely on the existing CWA provisions. The Agency also singled out certain particularly toxic wastewaters to which the dilution prohibition still applies notwithstanding management in CWA systems. 40 CFR 268.3(b). Similarly, EPA stated that a regulatory program had been established under the SDWA to prevent underground injection which endangers drinking water sources. Class I deep wells inject below the lowermost geologic formation containing an underground drinking water source and are subject to federal location, construction, and operation requirements. The Agency stated that application of the dilution rules to these wastes would not provide further protection to human health and the environment, and that disposal of these wastes by underground injection at the characteristic levels was as sound a practice as treating them.

2. The Court's Decision

On September 25, 1992, the United States Court of Appeals for the District of Columbia Circuit ruled on the various petitions for review. The principal holdings of the case with respect to characteristic wastes are that: (1) EPA may require treatment under RCRA section 3004(m) to more stringent levels than those at which wastes are identified as hazardous, 976 F. 2d at 12-14; (2) section 3004(m) requires that treatment standards address both shortterm and long-term potential harms posed by hazardous wastes, and consequently must result in destruction and removal of hazardous constituents as well as removal of the characteristic property, id. at 16, 17, 23. As a consequence, dilution is permissible as an exclusive method of treatment only for those characteristic wastes that do not contain hazardous constituents "in sufficient concentrations to pose a threat to human health or the environment' (i.e., the minimize threat level in section 3004(m)), id. at 16; and (3) situations where characteristic hazardous wastes are diluted, lose their characteristic(s) and are then managed in centralized wastewater management land disposal units (i.e., subtitle D surface impoundments or Class I nonhazardous injection wells) are legal only if it can be demonstrated that hazardous

constituents are reduced or destroyed to the same extent they would be pursuant to otherwise applicable RCRA treatment standards, *id.* at 7.

As a consequence of these holdings, the court held that the deactivation standard for ignitable and corrosive wastes did not fully comply with RCRA section 3004(m). This was because that standard could be achieved by dilution, and dilution fails to destroy or remove the hazardous constituents that can be present in the wastes. *Id.* (A more detailed analysis of the D.C. Circuit's *Third Third opinion* is found in section II of this notice.)

3. Options Prepared for the Notice of Data Availability

On January 19, 1993, EPA published a Notice of Data Availability to solicit as many comments as possible on all issues in the court opinion (58 FR 4972). The Agency prepared a Supplemental Information Report that was distributed to the public that set 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.

The report included options for establishing treatment standards for the underlying hazardous constituents in ignitable, corrosive and reactive (ICR) wastes that would have to be met prior to land disposal (including disposal in UIC wells). (It should be noted that the Agency also believes that underlying hazardous constituents can be present in wastes displaying the toxicity characteristic.) Two approaches were set out, along with the Agency's views on possible advantages and disadvantages of each.

Under approach one, the Agency discussed the possibility of adopting concentration limits for underlying hazardous constituents. Under approach two, the Agency discussed specifying required treatment technologies. The Agency discussed how these possible approaches might apply to ICR wastes that are not managed in CWA centralized wastewater treatment systems. Furthermore, the applicability of LDR treatment standards to CWA facilities, and possible implementation scenarios under the CWA, were also discussed.

The Agency also discussed options for how to determine the equivalency of CWA treatment systems with treatment under RCRA. The "equivalency" discussion included possible options for addressing air emissions, leaks, and sludges from CWA treatment surface impoundments. Also mentioned were other Agency efforts such as the Hazardous Organic NESHAPs (HON) (59 FR 19402, April 22, 1994) developed by the Office of Air. These options will be developed in a later LDR rulemaking, but are discussed here and elsewhere in this preamble in order to inform and gather comments from all potentially affected persons.

Approximately 60 public comments were received in response to the Notice of Data Availability. Those that pertain to establishing treatment standards for characteristic waste managed in CWA, CWA-equivalent, and Class I nonhazardous UIC wells have been considered as this proposed rule was developed.

4. Contents of the Interim Final Rule

EPA issued an interim final rule on May 24, 1993 (58 FR 29860) to address those treatment standards that were vacated (as opposed to remanded) by the court. Today's rule proposes treatment standards for some of the portions of the rule that were remanded. The distinction between vacated and remanded rules is that vacated rules are no longer in effect after the court's mandate issues, whereas remanded rules remain in force until the Agency acts to replace them.

The Agency's opinion at that time was that the rules dealing with centralized wastewater management involving land disposal (§§ 268.1(c)(3) and 268.3(b)) were remanded, not vacated. (See 976 F. 2d at 7, 19-26 where these rules are discussed and not expressly vacated.) This means that the only wastes to which the interim final rule applied were those ignitable and corrosive wastes for which the treatment standard was deactivation (since the deactivation standard for these wastes was vacated) and which were not managed in the types of centralized wastewater management systems covered by the remanded rules cited above.

The Agency thus promulgated revised treatment standards for certain ignitable and corrosive wastes that are managed in systems other than those managed: (1) In centralized wastewater treatment systems subject to the CWA or in Class I underground injection wells subject to the SDWA UIC program; or, (2) by a zero discharger with a wastewater treatment system equivalent to that utilized by CWA dischargers prior to land disposal. The treatment standards retained the requirement of deactivation to remove the hazardous characteristic (see DEACT in Table 1, 40 CFR 268.42); however, the rule also set numerical treatment standards for the underlying hazardous