1. CWA Standards and Limitations as RCRA Section 3004(m) Treatment Standards

RCRA section 1006(b) requires EPA (among other things) to integrate provisions of RCRA and the CWA when implementing RCRA and to avoid duplication to the maximum extent possible with CWA requirements. In keeping with this requirement, EPA is proposing to implement the end-of-pipe equivalency standard in the court's opinion so that a technology-based or water quality-based CWA standard for an underlying hazardous constituent in a CWA facility's discharge will also be considered to be the RCRA BDAT treatment standard for that constituent. (If a CWA standard for an underlying hazardous constituent is not included in the CWA permit, the facility must meet UTS at end-of-pipe. See further discussion in the next subsection.) Consequently, satisfying the CWA standard or limitation for that constituent will also satisfy RCRA. Thus, for example, if a facility managing decharacterized wastes containing benzene has an NPDES permit with a limitation for benzene which reflects Best Available Technology (BAT), that limitation would also satisfy RCRA LDR requirements. In addition, the facility would not be subject to a separately enforceable RCRA standard for benzene. In order to limit the amount of potential administrative duplication, EPA is proposing that the standard remain enforceable only under the Clean Water Act

EPA is proposing that a technologybased CWA limitation or standard for a hazardous constituent satisfies RCRA because such a limitation or standard best reflects the capability of best treatment technologies to treat a specific industry's wastewater (or, when the limitation is determined by a permit writer using Best Professional Judgment. a specific plant's wastewater). The RCRA UTS for wastewaters were developed by transferring performance data from various industries, and thus EPA need not make that same transfer when industry-specific (or plantspecific) wastewater treatment data is available. (EPA notes, however, that the UTS reflect treatment of wastewater matrices that are particularly difficult to treat, and hence that the Agency's conclusion that these standards are typically achievable is sound.)

It is also reasonable for water qualitybased limitations to satisfy RCRA requirements. These limitations must be at least as stringent as the limitations required to implement an existing technology-based standard. (See CWA section 301(b)(1)(c).) Even where there is no existing BAT limitation for a toxic or nonconventional pollutant, a permit writer must determine whether BAT would be more stringent than the applicable water quality-based limitation, and again, must apply the more stringent of the two potential limitations. (40 CFR 125.3(c)(2).) Consequently, a water quality-based limitation not only reasonably satisfies RCRA section 3004(m) requirements, but can be viewed as a type of sitespecific minimize threat level.

If a facility has received a Fundamentally Different Factors (FDF) variance, EPA is proposing that the limitations established by that variance also satisfy RCRA requirements. Limitations established by the FDF variance process are technology-based standards reflecting facility-specific circumstances, and hence can appropriately be viewed as BDAT as well, just as with RCRA treatability variance standards. See 51 FR at 40605 (Nov. 7, 1986).

EPA also believes that there are adequate constraints in the CWA implementing rules to prevent these end-of-pipe standards from being achieved by means of dilution. First, many of the effluent limitation guidelines and standards regulate the mass of pollutants discharged, and thus directly regulate not only the concentration of pollutant discharged but the degree of wastewater flow as well. Where rules are concentrationbased, NPDES permit writers can set requirements which preclude excessive water use, and EPA has so instructed permit writers. (See 58 FR 66151, December 17, 1983, encouraging permit writers to estimate reasonable rate of flow per facility and factor that flow limit into the permit.) These permit conditions can take the form of best management practices, explicit mass limitations, and conditions on internal waste streams. 40 CFR 122.44(k); 122.45(f), (g) and (h). Indirect dischargers are also subject to specific CWA dilution rules in both the general pretreatment rules and the Combined Wastestream Formula (as well as through many of the categorical standards). 40 CFR 403.6(d) and (e). Many of the guidelines and standards also preclude addition of stormwater runoff to process wastewater to preclude achieving treatment requirements by means of dilution. The Agency is accordingly of the view that end-of-pipe equivalence would be achieved by treatment that removes or destroys hazardous constituents, as required by section 3004(m). (This discussion, of course, still leaves open the questions,

left for the LDR Phase IV rule, of how existence of leaks, air emissions, or depositions of constituents in sludges affects determinations of equivalent treatment and similar issues.)

With respect to indirect dischargers, EPA is further proposing that national categorical standards or, potentially, plant-specific standards contained in control mechanisms (i.e. contracts between industrial users and the POTW or other governmental entity) satisfy RCRA where these standards reflect pass through findings. If it is found that a particular pollutant/hazardous constituent will not pass through to navigable waters because of efficacious treatment by the POTW, there will be full-scale treatment of the pollutant/ hazardous constituent before its final release into the environment. EPA is proposing that such full-scale treatment satisfies the court's equivalency test. EPA is also proposing to add such passthrough situations as a valid ground for indirect dischargers to obtain a RCRA treatability variance, for the same reasons

However, the Agency is not proposing that standards based on interference with POTW operations be deemed to also satisfy RCRA requirements. Interference findings reflect the effect the pollutant may have on overall POTW treatment, not necessarily treatment of the particular constituent. Because the relationship of an interference-based standard with treatment of a particular pollutant is tenuous, the Agency does not believe such a standard can be said to be equivalent to RCRA treatment. The Agency solicits comment on the prevalence of interference-based standards.

2. Implementation When CWA Standards and Limitations Will Be the Exclusive Standard

a. Direct Dischargers

EPA is proposing that if a direct discharger subject to this rule (i.e. generating ICRT wastes containing hazardous constituents at concentrations exceeding UTS at the point the wastes are generated and treating those wastes in surface impoundments) has an NPDES permit containing a limitation for that pollutant based on BAT, New Source Performance Standards, or a more stringent water quality standard, or is regulated through controls on an indicator pollutant, then there are no RCRA requirements other than documentary recordkeeping. An indicator pollutant is a pollutant for which control of that pollutant is considered to indicate control of a