nonhazardous wastestreams being coinjected.

EPA is proposing that these characteristic wastestreams be considered prohibited at the point they are generated. The Agency is further proposing that underlying hazardous constituents in these prohibited wastes be treated to meet UTS levels before the waste is injected. The treatment must destroy, remove, or immobilize the underlying hazardous constituents in the waste that are present in concentrations exceeding UTS at the point the wastes are generated. It may be that in some situations, one type of treatment may pose more risk than another type, notwithstanding that it removes or destroys hazardous constituents to a greater degree. In such cases, facilities may seek a treatability variance to allow the use of the less aggressive treatment technology (assuming such treatment technology satisfies the 3004(m) standard). In such a situation, the technology posing greater risk could be considered to be 'not appropriate to the waste,'' (see 40 CFR 268.44(a)) and a variance could be granted to allow the use of alternative treatment. EPA believes this result satisfies the court's mandate in the Third Third opinion.

EPA believes that the decision in the Third Third opinion necessitates revising the applicability of the 40 CFR Part 148 requirements, Hazardous Waste Injection Restrictions, as they now apply to Class I nonhazardous injection wells. The Agency is clarifying in proposed revisions to 40 CFR 148.1, that owners and operators of Class I nonhazardous wells must determine, under certain circumstances, whether the LDRs now apply to their facilities. Class I wells which inject nonhazardous wastes at the point of injection must now determine if any of these wastes exhibited a characteristic of hazardous waste at the point they were generated. Accordingly, EPA is proposing to amend § 148.1 and redefine the purpose, scope, and applicability of the Part 148 regulations.

To conform with the Court's ruling the Agency is also proposing to include Class I nonhazardous wells within the scope of the dilution prohibition at 40 CFR 148.3. Class I wells thus may not impermissibly dilute their hazardous waste streams in order to substitute for or avoid treatment levels or methods established in the LDRs.

2. Compliance Options for Class I Nonhazardous UIC Wells

In order to comply with today's requirements, facilities could segregate their characteristic streams for separate

treatment. Treatment could occur either on-site or off-site. After the characteristic wastes have been treated to meet UTS, they can be land disposed (either by injection or by some other means). A facility could also treat the aggregated mass of wastewaters (i.e. the commingled characteristic and non-characteristic wastewaters) to meet UTS before injection.

Another option is for the facility to seek a no-migration variance under § 148.20. Thus, EPA is proposing today to amend the provisions under § 148.20 to allow facilities to seek a no-migration variance for their injection well(s). This amendment, however, would simply formalize EPA's existing interpretation that no-migration variances are already available for such wells. See 59 FR at 48013 (September 19, 1994). If these facilities submit a no-migration petition to EPA and effectively demonstrate to EPA that their formerly characteristic wastes (including any hazardous constituents contained in those wastes) will not migrate from the injection zone for 10,000 years or no longer pose any threat to human health and the environment because the wastes are attenuated, transformed, or immobilized by natural means in the injection zone, then they may continue injection without further treatment.

Each no-migration petition has, to date, taken on average 3 years to process. This time may increase if the Agency receives a large number of petitions. EPA continues to emphasize, however, that interested petitioners need not wait for this rule to be promulgated before pursuing the petition process. Petitions for a nomigration variance for Class I nonhazardous wells receiving decharacterized wastes can be received and evaluated now. Id.

EPA is also proposing to extend the availability of case-by-case extensions of the effective date to Class I nonhazardous injection facilities for any applicable Part 148 prohibition. Proposed revisions to § 148.1(c)(1) and § 148.4 will allow Class I well owners and operators on a case-specific basis to follow procedures of § 268.5 to receive a one-year extension, renewable for an additional year, from the effective date of the prohibitions, in order to acquire or construct alternative treatment capacity.

EPA today is proposing two other means for facilities with Class I UIC wells to comply with the LDR requirements. The first involves removing the same mass of hazardous constituents from streams to be injected through pollution prevention rather than pre-injection wastewater treatment.

The second involves creating an exception for situations when the characteristic wastestreams make only a de minimis contribution to the waste mixture being injected. These two proposed options are described below in more detail.

3. Pollution Prevention Compliance Option

The D.C. Circuit stressed that the equivalency test, if enunciated, is required to ensure that mass loadings of hazardous constituents to permanent disposal units are reduced to the same extent they would be if a prohibited waste was treated exclusively under a RCRA regime. 976 F. 2d at 23 n. 8. EPA is proposing that these reductions in mass loadings can be achieved by removing hazardous constituents from any of the wastestreams that are going to be injected, and that these reductions in mass loadings can be accomplished by means of pollution prevention.⁷ Thus, if a facility can, for example, make process changes that reduce the mass of cadmium by the same amount that would be removed if the prohibited wastestream was treated to satisfy UTS, the facility would have satisfied LDR requirements. The facility would thus no longer have to demonstrate that it is meeting UTS concentration levels.

Under this option, a hazardous constituent could be removed from either the hazardous or nonhazardous portion of the injectate, and could be removed before a waste is generated. The result would be that the mass loading into the injection unit would be reduced by the same amount as it would be reduced by treatment of the prohibited, characteristic portion of the injectate.

⁷ In a 1992 memorandum from F. Henry Habicht, then EPA Deputy Administrator, and reiterated in a June 15, 1993 memorandum from Carol Browner, EPA Administrator, the Agency has defined pollution prevention as "source reduction" (as defined in the 1990 Pollution Prevention Act (PPA)), and other practices that reduce or eliminate the creation of pollutants through (1) increased efficiency in the use of raw materials, energy, water, or other resources; or (2) protection of natural resources by conservation. The PPA defines "source reduction" to mean any practice which (1) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; (2) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

[&]quot;Source reduction" includes: equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control. Recycling, energy recovery, treatment, and disposal are not included in the definition of pollution prevention in the PPA.