TCLP 116. This significant interference with the analytical method for detecting lead, in conjunction with the concerns about the temporary nature of any stabilization that would occur, fully supports identifying this practice as impermissible dilution or otherwise failing to satisfy the requirements of RCRA section 3004(m) to minimize short- and long-term threats to human health and the environment. Comments and data are solicited on whether this type of stabilization is effective in achieving long-term treatment. Comments and data are also solicited on whether a test method other than the TCLP is more appropriate for measuring compliance for this waste.

D. Expansion of Methods Requiring Incineration

EPA is proposing to modify the treatment standard expressed as INCIN, which specifies hazardous waste incineration, to, CMBST, which allows combustion in incinerators and boilers and industrial furnaces. The INCIN requirement was set before EPA had issued air emission requirements for boilers and industrial furnaces (BIFs). Now that BIF regulations are in place, the need to constrain treatment to one type of combustion device is no longer appropriate. With the development of innovative technologies, EPA also solicits comment on whether the Catalytic Extraction Process, for which Molten Metal Technology received a determination of equivalent treatment under § 268.42(b) 17, should also be allowed for all wastes which have a treatment standard of CMBST, and whether there are other technologies which are equivalent to CMBST.

E. Clean Up of 40 CFR Part 268

EPA is proposing further changes to the LDR program to achieve the goal of simplified regulations. The Agency is committed to improving the LDR program by implementing participant suggestions from the LDR Roundtable held on January 12–14, 1993.

The LDR requirements are found, primarily, in 40 CFR Part 268. EPA intends to remove language that is out-of-date, and to clarify language which

may be confusing, in an effort to make the LDR program easier to understand, implement, and enforce. This effort will continue in the LDR Phase IV rule, scheduled for proposal in June 1995.

1. Section 268.8

Section 268.8 stated that First and Second Third wastes for which EPA did not promulgate treatment standards by their respective effective dates could continue to be disposed of in landfill and surface impoundment units until May 8, 1990 (see 55 FR 22526). Because treatment standards for all scheduled wastes were promulgated in the Third Third rule in 1990, these "soft hammer" requirements are no longer necessary. Therefore, § 268.8 is proposed to be removed from part 268.

2. Sections 268.10-268.12

The purpose of Subpart B of § 268 was to set out a schedule for hazardous wastes by the date when treatment standards were to be established. Sections 268.10, 268.11, and 268.12 of Subpart B included the First Third, Second Third, and Third Third scheduled wastes respectively. Deadlines in all three of these sections were met on time, and the wastes are subject to treatment standards. Therefore, these three sections are no longer necessary, and are proposed to be removed.

3. Section 268.2(f)

The existing wastewater definition found in § 268.2(f) includes wastes that have less than 1% TOC and less than 1% TSS. There are three exceptions given to this definition: (1) F001-F005 wastewaters have no criteria for TSS, and must contain less than 1% solvent constituents, (2) K011, K013, K014 wastewaters must contain less than 5% TOC and less than 1% TSS, and (3) K103 and K104 wastewaters must contain less than 4% TOC and less than 1% TSS. With the promulgation of UTS in the LDR Phase II final rule (59 FR 47982, September 19, 1994), such distinctions are inconsistent and an unnecessary complication of the regulations. While such initial classifications may have had some meaning, after effective BDAT treatment the residuals are appropriately regulated by the wastewater or nonwastewater limit as specified by the 1% TOC and TSS criteria. The Agency is therefore proposing to remove paragraphs (1)–(3) from § 268.2(f).

VIII. Proposed Prohibition of Hazardous Waste as Fill Material

EPA is also proposing today to amend the LDR rules so as to prohibit the

placement of hazardous waste as a fill material unless the prohibited waste is treated so that short- and long-term threats have been minimized. By "fill material", the Agency means uses 18 of waste as a substitute for low grade material (such as sand or dirt) to raise the level of land, occupy space, or otherwise fill in depressions. Hazardous waste includes, of course, any waste that is identified or listed as hazardous under § 261.3, and so includes wastes (such as residues from treating listed wastes) that are hazardous by virtue of the mixture and derived-from rules. The result of this rule, if finalized, would thus be to confirm that such uses are prohibited and therefore illegal unless the fill area is a regulated unit (i.e., a subtitle C landfill).

EPA in fact already interprets current rules as ordinarily providing a similar result. In the preamble to the May 19, 1980 rules establishing the subtitle C hazardous waste management program, EPA stated that an exemption from regulation for legitimate recycling activities does not apply to "sham uses and recovery or reclamation-e.g. 'landfilling' or 'land reclamation' ''. 45 FR at 33093. In the April 4, 1983 Federal Register Notice proposing a separate regulatory regime for hazardous wastes legitimately recycled in a manner constituting disposal (ultimately promulgated as 40 CFR 260.20–.23), the Agency stated that this provision would not apply to hazardous wastes used as fill material, the specific example provided being "waste stabilization processes where the stabilized material is then used as fill." 48 FR at 14985. The Agency further stated that it was "convinced that these waste treatment operations are not production processes and can therefore be regulated as waste management." Id.

The reasons for the Agency's interpretation are evident. The wastes are being put into the environment without any safeguards to prevent exposure. Hazardous constituents can migrate into the environment and reach human and environmental receptors by any number of direct pathways, including inhalation, dermal contact, surface runoff, and leaching to groundwater. Indirect exposure pathways exist as well.

The amended rule, if adopted, would prohibit the use of hazardous waste as fill material, and add a conforming amendment to § 266.20(b) stating that

¹⁶ See memo from John V. Cignatta, Datanet to John Gauthier, EPA Region 1, dated September 8, 1992

¹⁷The Catalytic Extraction Process, used by Molten Metal Technology, involves a molten metal bath, with temperatures around 3000°F, into which liquid wastes are injected, and solid wastes are fed with a carrier gas (Ar). The process treats the wastes in a high temperature reduction environment, which reduces the compounds to their elemental state. The metallic, inorganic ceramic, and gaseous phases which result are then reused, or purified and released.

¹⁸ Incidentally, the term "use" here has no specific meaning other than the normal dictionary definition. It is not meant to connote the phrase "used or reused" found in § 261.1(c)(5), which is a term of art for determining the scope of the exclusion in § 261.2(e)(1) (i) and (ii).