

practice. Option 2 would consider the point of generation to occur when wastestreams from a single process are combined (e.g., residual wastestreams collected in a common unit such as a sump). In many cases, these wastestreams are similar in composition because they all come from a common unit process. The Option 3 "battery limits," is similar to Option 2; however instead of limiting aggregation to that normally occurring within a single unit process, the facility would view an entire battery of processes (associated with making a single product or related group of products) as a single manufacturing step. In the Phase III LDR proposal, EPA identified listed hazardous wastes as situations where existing point of generation determinations may remain appropriate. This is because EPA has carefully reviewed the various waste streams and has defined the point of generation as part of the listing description. Therefore, it may be inappropriate to modify that description with a more generic "point of prohibition" rule. This is important because today's rule applies only to listed hazardous wastes.

Lastly, under today's proposal, mixtures containing listed hazardous waste and residues from the treatment, storage, or disposal of listed hazardous waste that contain some constituents with concentrations below exit levels and some constituents with concentrations above exit levels would continue to be managed as listed hazardous wastes. Today's notice does not allow for partial exemptions, because the Agency does not believe that a self-implemented exemption process is well suited to partial exemptions. It is not always clear what the origin of a hazardous constituent is, particularly for constituents that are formed as by-products of treatment or waste interactions. Further, the proposed exemption criteria are not waste-specific, and thus are not suited to waste-specific or partial exemptions. Thus, the determination that a waste that carries two listing numbers should no longer bear one of the listing numbers is not always a straight-forward decision. The Agency has designed the exemption process proposed today to remove as much subjective decision making from the process as possible.

However, while the Agency is not today proposing an alternative that would allow these wastes to use only the hazardous waste codes for those listed wastes that are the origin of the constituents above the exit levels, the Agency believes that there could be merit in the concept for a future

proposed rulemaking should the implementation concerns stated above be overcome. Therefore, the Agency requests information on actual cases with waste characterization data where a waste bears more than one waste code which results in conflicting treatment standards under the land disposal restrictions rules. If the Agency finds that there is a serious compliance issue for multiple listing wastes, the Agency may reconsider this decision, as well as other potential solutions to any documented problems.

#### *J. RCRA Air Emission Standards*

Today's proposed rule, when promulgated, may have an impact on the effectiveness of two other RCRA rules developed by the Agency under HSWA authority. Section 3004(n) of HSWA directed the Agency to promulgate regulations controlling air emissions from hazardous waste TSDFs "as necessary to protect human health and the environment." Subsequent Agency analysis demonstrated that air emissions from TSDFs do pose substantial risk in the absence of controls, and that controls were therefore required under the HSWA mandate. The Agency is fulfilling this mandate in phases; EPA completed the first phase when it promulgated RCRA air standards that control organic emissions vented from certain hazardous waste treatment processes, as well as from leaks in certain ancillary equipment used for hazardous waste management processes (55 FR 25454, June 21, 1990; 40 CFR part 264/265, subparts AA and BB). More recently, EPA completed the second phase when it promulgated RCRA air standards for tanks, surface impoundments, containers, and miscellaneous units operated at TSDFs (59 FR 62896, December 6, 1994; 40 CFR part 264/265, subpart CC). Together, these rules would reduce the risk from air emissions from the vast majority of these facilities to well within the risk range of other RCRA standards. After more thorough analysis, the Agency may issue a third phase of these regulations to address any residual risk. The emission reductions achieved by these rules would also significantly reduce the formation of ozone, which has adverse effects on human health and the environment.

Hazardous waste that satisfies the exemption criteria proposed today (including any constituent-specific exit concentrations for volatile organic chemicals, or VOCs), would be exempt from Subtitle C regulations, including regulations promulgated to date under RCRA 3004(n). In other words, once a

waste is no longer regulated as hazardous, any unit in which the waste is managed (assuming no other hazardous wastes are being/have been managed in the unit) is not subject to Subtitle C regulations, including 40 CFR parts 264 and 265, subparts AA, BB, and CC. However, the Agency believes that it is important to ensure that the risks associated with air emissions both from hazardous wastes, and from wastes that would be eligible for exit under today's proposal, are adequately addressed. In the final rule establishing air emission controls for tanks, surface impoundments, containers, and miscellaneous units (the "Subpart CC" rule), the Agency established a threshold level of 100 ppmw (parts per million by weight) for total volatile organics in a waste, a concentration which if equaled or exceeded that would trigger the emission control requirements for these units. Because there are examples of exit levels proposed today for specific volatile organic constituents that exceed this 100 ppmw threshold, the Agency considered whether today's exit levels adequately addressed the air emission concerns of 3004(n) in allowing waste to exit Subtitle C. There are important differences in the underlying risk modeling between the two rules. However, the Agency believes that the constituent-specific risk evaluation done for this rulemaking results in proposed exit levels that for VOCs will not be less protective than the standards established to date under RCRA 3004(n). Despite these differences, the Agency requests comment on whether or not a total VOC concentration of 100 ppmw (parts per million weight), which is the concentration that triggers air emission controls under the Subpart CC rule, would be appropriate for use in the exit rule proposed today, and if so, how this level would be used.

#### *K. Hazardous Debris*

Hazardous debris that contains one or more listed hazardous wastes is eligible for exiting Subtitle C under today's proposed rule. The EPA notes, however, that certain exemptions already exist relating to hazardous debris. On August 18, 1992, the EPA published a final rule on the Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris (57 FR 37194). In that rule, EPA required that hazardous debris be treated prior to land disposal, using specified treatment technologies from the treatment categories of extraction, destruction, or immobilization. (See 40 CFR 268.45, Table 1.) EPA also added a conditional exemption at § 261.3(f) for non-characteristic hazardous debris (i.e.,