

- (3) headache
- (4) muscle pain
- (5) joint pain
- (6) neurologic signs or symptoms
- (7) neuropsychological signs or symptoms
- (8) signs or symptoms involving the respiratory system (upper or lower)
- (9) sleep disturbances
- (10) gastrointestinal signs or symptoms
- (11) cardiovascular signs or symptoms
- (12) abnormal weight loss
- (13) menstrual disorders.

(c) Compensation shall not be paid under this section:

(1) if there is affirmative evidence that an undiagnosed illness was not incurred during active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War; or

(2) if there is affirmative evidence that an undiagnosed illness was caused by a supervening condition or event that occurred between the veteran's most recent departure from active duty in the Southwest Asia theater of operations during the Persian Gulf War and the onset of the illness; or

(3) if there is affirmative evidence that the illness is the result of the veteran's own willful misconduct or the abuse of alcohol or drugs.

(d) For purposes of this section:

(1) the term "Persian Gulf veteran" means a veteran who served on active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War.

(2) the Southwest Asia theater of operations includes Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations.

(Authority: Title I, Pub. L. 103-446; 38 U.S.C. 501(a))

3. Section 3.500 is amended by adding paragraph (y) to read as follows:

#### **§ 3.500 General.**

\* \* \* \* \*

(y) *Compensation for certain disabilities due to undiagnosed illnesses (§§ 3.105; 3.317).* Last day of the month in which the 60-day period following notice to the payee of the final rating action expires. This applies to both reduced evaluations and severance of service connection. (Authority: Pub. L. 103-446; 38 U.S.C. 501(a))

[FR Doc. 95-2764 Filed 2-1-95; 9:07 am]

BILLING CODE 8320-01-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 270**

[FRL-5149-1]

#### **Determination of Point at Which RCRA Subtitle C Jurisdiction Begins for Municipal Waste Combustion Ash at Waste-to-Energy Facilities**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of statutory interpretation.

**SUMMARY:** On May 2, 1994, the Supreme Court issued its decision in *City of Chicago v. Environmental Defense Fund, Inc.* 114 S.Ct. 1588 (1994). In so doing, the Court held that, although municipal waste-to-energy (WTE) facilities that burn household wastes alone, or in combination with nonhazardous wastes from industrial and commercial sources, are exempt from regulation as a hazardous waste treatment, storage, or disposal facility under Subtitle C of the Resource Conservation and Recovery Act (RCRA), the ash that they generate is not exempt. The Court, however, did not specify the point at which the ash generated by the WTE facility becomes subject to Subtitle C of RCRA. EPA is responding to numerous requests for resolution of this issue by announcing today that it interprets § 3001(i) of RCRA to first subject the ash generated by a WTE facility to RCRA Subtitle C when it exits the combustion building following the combustion and air pollution control processes.

**EFFECTIVE DATE:** February 3, 1995.

**ADDRESSES:** Docket Clerk, OSW (OS-305), Docket No. 95-XA2N-FFFFF, U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460. The public docket is located in M2616 at EPA Headquarters and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (202) 260-9327. Copies cost \$0.15/page. Charges under \$25.00 are waived.

#### **FOR FURTHER INFORMATION CONTACT:**

For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, (800) 424-9346, TDD (800) 553-7672 (hearing impaired); in the Washington, DC metropolitan area the number is (703) 920-9810, TDD (703) 486-3323.

For more detailed information on specific aspects of this Notice, contact

Andrew L. Teplitzky (703-308-7275) or Allen J. Geswein (703-308-7261), Office of Solid Waste (5306W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

#### **SUPPLEMENTARY INFORMATION:**

##### **Preamble Outline**

- I. Authority
- II. Background
  - A. Nature of Ash From Waste-To-Energy Facilities
  - B. Regulatory History of Waste-to-Energy Ash
  - C. Initial Agency Reaction to the Supreme Court Decision
- III. The Point of Subtitle C Jurisdiction
  - A. EPA's Interpretation
    - 1. Legal Analysis
    - 2. Illustrative Examples
  - B. Other Interpretations Considered
    - 1. Facility Property Boundary
    - 2. Inside the Combustion Building
  - C. Additional Policy Considerations
- IV. Conclusion

##### **I. Authority**

This action interpreting RCRA Section 3001(i) and the hazardous waste regulations in 40 CFR Parts 260-271 is being taken under the authority of sections 2002 and 3001 of the Solid Waste Disposal Act of 1970 as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912 and 6921).

##### **II. Background**

###### **A. Nature of Ash From Waste-to-Energy Facilities**

Combustion of municipal solid waste, particularly through WTE facilities, can be an important component of a local government's waste management practices. As of 1993, approximately 207 million tons of municipal solid waste were generated annually in the U.S., 16 percent of which (33 million tons) was combusted. There are approximately 150 municipal waste combustors in the U.S., 80 percent of which are WTE facilities. The remaining 20 percent incinerate waste without recovering energy.

Approximately 25 percent (dry weight) of the waste that is combusted remains as ash, amounting to around eight million tons of municipal waste combustor (MWC) ash generated annually. While the ash may be collected at a number of locations within a WTE facility, it typically is characterized as either "bottom ash" or "fly ash." Bottom ash collects at the bottom of the combustion unit and comprises approximately 75-80% of the total ash by weight. Fly ash collects in the air pollution control devices that "clean" the gases produced during the combustion of the waste and comprises