Ct. at 1591–92. In fact, the Court found the statute to be so free from ambiguity on this issue that there was no need to consult legislative history and no occasion to defer, under the principles of *Chevron, U.S.A.* v. *NRDC*, 467 U.S. 837 (1984), to the interpretation preferred by the Agency. *Id.* at 1594.

The Court, however, failed to reach the issue of the precise point at which regulation of ash must begin, and section 3001(i) does not expressly address the issue. For the reasons set out below, EPA believes it is reasonable to interpret Section 3001(i) to first impose hazardous waste regulation at the point that the ash leaves the "resource recovery facility," defined as the combustion building (including connected air pollution equipment). Consequently, the point at which an ash hazardous waste determination should be made (and, in the future, at which the LDRs will begin to apply) is the point at which ash exits the combustion building following the combustion and air pollution control processes.

Section 3001(i) does not define the term "resource recovery facility." EPA believes that it is reasonable to conclude that Congress intended to refer to the building that houses the combustion device. This is the common sense reading of the term, and it strikes a better balance between the objectives of section 3001(i) and the rest of Subtitle C than either of the alternative readings described below. Further, EPA believes that it is reasonable to conclude that Congress intended to exempt all handling of any hazardous waste within the building, including the handling of hazardous ash. Subjecting ash within the building to hazardous waste regulation could, for example, require operators to collect samples of ash for waste determination purposes. It also could affect the number of hazardous ash waste streams that would become subject to LDR treatment standards. "Collection" and "treatment" are among the activities included in the definition of "management" in section 1004(7) of RCRA. Section 3001(i) expressly exempts treatment, storage, disposal and management of hazardous waste at resource recovery facilities. See City of Chicago, 114 S. Ct. at 1592.

This interpretation is not only a reasonable reading of the statutory language, it also serves Congress' intent to "encourage commercially viable resource recovery facilities and to *remove impediments to their operation.*" (Emphasis added.) S. Rep. 98–284, 98th Cong., 2d Sess. at 61. Regulating ash only at the point it exits the combustion building removes some potentially significant impediments. If

the statute allowed regulation of ash inside the building, the facility owner/ operator might need to sample and analyze ash at multiple points. This approach could require owners and operators to deal with major logistical problems associated with shutting down individual boilers and retrofitting/ reconfiguring the combustor to accommodate installation of multiple handling and storage systems to separately convey the ash streams to different load out areas and ash conditioning systems. Some facilities may not currently have the space to accommodate the additional equipment required and could be forced to either close or temporarily shut down until additional space could be procured. Retrofitting a facility in this manner could be costly. Some state and industry representatives, in fact, have projected costs in excess of several million dollars per facility. Hence, this interpretation could conflict with Congressional intent by serving as an "impediment" to resource recovery facilities. S. Rep. 98-284 at 61. In addition, the cost of sampling and analysis alone probably would at least double considering collection and analysis of at least two different ash streams-bottom ash and fly ash-instead of a single combined ash stream. (Although owners and operators may legally use knowledge in lieu of testing, due to the variable nature of ash, virtually all owners and operators conduct TCLP testing.) These costs would contribute to the total burden imposed on the WTE facility.

Finally, in selecting an interpretation of section 3001(i), EPA also must consider Subtitle C's general goal of protecting human health and the environment from the threats posed by hazardous waste. As explained in greater detail in section C below, EPA does not believe that this interpretation would have any significant impact on the level of environmental protection for ash.

EPA also believes that today's interpretation is consistent with the Supreme Court's 1994 decision construing RCRA § 3001(i). In City of Chicago v. EDF, 114 S. Ct. 1588 (1994), the Court held that Congress intended to exempt "resource recovery facilities," but did not define the term. See, e.g., 114 S. Ct. at 1591-92. While the Court clearly stated that the statute did not exempt facility owners from regulation as hazardous waste generators, id. at 1592, determining that ash is not subject to regulation until it exits the combustion building does not exempt the facility owner from regulation as a generator. Rather, it defines the point at which the owner must begin to perform

the generator's duties. Further, today's interpretation does not create the type of total exemption for ash that the Supreme Court rejected in City of Chicago. Operators of MWC facilities still must comply with the generator's duty to make a hazardous waste determination. Any ash that exhibits a characteristic when exiting the combustion building must be managed in compliance with all applicable Subtitle C requirements. EPA's interpretation merely clarifies the location at which the determination for waste characterization purposes must occur (and the point at which future LDRs requirements will begin to apply).

2. Illustrative Examples

Today's interpretation is perhaps best explained through the use of specific examples. For instance, many WTE facilities automatically convey, via enclosed conveyor, the fly ash collected at its various locations (including any air pollution control devices such as the acid gas scrubbers, baghouse filters, and electrostatic precipitators that may exist outside the combustion building) to a quench tank within the combustion building where it is combined with the bottom ash. The combined ash is then conveyed to a separate, detached storage building or to trucks for direct transport to an off-site disposal facility. The point at which RCRA hazardous waste jurisdiction would begin for these facilities would be the point where the ash exits the combustion building. Under this interpretation, the owner/ operator could combine fly ash and bottom ash within the combustion building before making any hazardous waste determination. Any type of device could be used within the building for ash management activities such as collection, mixing, and conditioning.

EPA includes in its interpretation of "resource recovery facility" those air pollution control devices that are integral components of the combustion process. Ash from air pollution control devices that is reconveyed back to the combustion building in enclosed ducts has, in EPA's view, not left the "resource recovery facility" exempted under § 3001(i). Moreover, the ducts and air pollution control devices contain the ash so it does not come into contact with the environment.

A few WTE facilities may exist where the combustion device is not housed within a building. In these instances, the combustion device (including air pollution control equipment and proximate areas for handling ash) may constructively constitute a combustion building, within the meaning discussed above. Thus, if fly ash and bottom ash