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Project XL Rulemaking for New York State Public Utilities; Hazardous Waste Management Systems; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 262, 264, 265, and 270

[FRL–6374–8]

Project XL Rulemaking for New York State Public Utilities; Hazardous Waste Management System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's rule provides regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended. It allows participating New York State Utilities to consolidate hazardous waste, which they generate at remote locations, at designated Utility-owned central collection facilities (UCCFs) for up to 90 days subject to specified requirements. EPA is promulgating this rule to implement an XL project for Utilities in New York State. The terms of the XL project are defined in the Final Project Agreement (FPA) which is scheduled to be signed by the parties on July 12, 1999. The FPA explains the project in detail, while the promulgation of this federal rule will enable New York State Department of Environmental Conservation (NYSDEC) to implement portions of the project requiring regulatory changes . The requirements of this rule will not take effect in New York State until it adopts the requirements as state law. For the sake of simplicity, the remainder of this preamble refers to the effects of this rule, although it will be the corresponding state law change that will actually govern this XL project.

In order to qualify for the flexibility that the rule provides New York State Utilities must initiate and comply with public notice and participation requirements set forth in the rule regarding the designation and approval of UCCFs. Subsequent to these public participation procedures, Utilities must receive approval to participate in the flexibility provided by this rule. EPA expects this XL project to result in superior environmental performance in New York State, while providing cost savings to participating Utilities.

DATES: This final rule is effective on January 10, 2000.

ADDRESSES: A docket containing public comments and supporting materials is available for public inspection and copying at the RCRA Information Center (RIC), located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9:00 am to 4:00 pm Monday through Friday, excluding federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603–9230. Refer to RCRA docket number F–98–NYSP–FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page.

A duplicate copy of the docket is available for inspection and copying at U.S. EPA, Region 2, 290 Broadway, New York, NY 10007–1866 during normal business hours. Persons wishing to view the duplicate docket at the New York location are encouraged to contact Mr. Philip Flax in advance, by telephoning (212) 637–4143. Information is also available on the world wide web at http://www.epa.gov/ProjectXL.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Flax, U.S. EPA, Region 2, 290 Broadway, New York, NY 10007–1866, (212) 637–4143.

SUPPLEMENTARY INFORMATION:

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I. Authority

These regulations are being published under the authority of sections 2002(a), 3001, 3002, 3004, 3005, 3006, 3010, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6921, 6922, 6924, 6925, 6926, 6930, and 6974.

II. Background

A. Overview of Project XL

The FPA sets forth the intentions of EPA and the NYSDEC with regard to a project developed under Project XL, an EPA initiative to allow regulated entities to achieve better environmental results at less cost. The regulation would facilitate implementation of the project. Project XL—''eXcellence and Leadership'' was announced on March 16, 1995, as a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce the regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance. To participate in Project XL, applicants must develop alternative

pollution reduction strategies pursuant to eight criteria: superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting the risk burden. They must have full support of affected federal, state and tribal agencies to be selected.

For more information about the XL criteria, readers should refer to the two descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997), and the December 1, 1995 ''Principles for Development of Project XL Final Project Agreements'' document. For further discussion as to how the NYSDEC XL project addresses the XL criteria, readers should refer to the Final Project Agreement and fact sheet that are available from the docket for this action (see **ADDRESSES** section of today's preamble).

Project XL is intended to allow the EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow the EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. EPA may modify rules, on a site- or state-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful for the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, it expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative approach or interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and/or interpretations, on a limited, site- or state-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as EPA acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing reevaluation of environmental programs, is reflected in a variety of statutory provisions, e.g., section 8001 of RCRA.

B. Overview of the NYSDEC XL Project

1. Introduction

Today's rule will facilitate implementation of the FPA (the document that embodies EPA's intent to implement this project) that has been developed by EPA, New York State Department of Environmental Conservation (NYSDEC), New York State Utilities, and other stakeholders. EPA and NYSDEC are scheduled to sign the final FPA on July 12, 1999. The FPA is available for review in the docket for today's action and on the world wide web at http://www.epa.gov/ProjectXL. The FPA addresses the eight Project XL criteria, and the expectation of EPA that this XL project will meet those criteria. Those criteria are: (1) Environmental performance superior to what would be achieved through compliance with current and reasonably anticipated future regulations; (2) cost savings or economic opportunity, and/or decreased paperwork burden; (3) stakeholder support; (4) test of innovative strategies for achieving environmental results; (5) approaches that could be evaluated for future broader application; (6) technical and administrative feasibility; (7) mechanisms for monitoring, reporting, and evaluation; and (8) consistency with Executive Order 12898 on Environmental Justice (avoidance of shifting of risk burden). The FPA specifically addresses the manner in which the project is expected to produce superior environmental benefits.

EPA is promulgating today's rule to implement the provisions of this Project XL initiative that require regulatory changes. However, as discussed in Section IV.F. below, New York State has received authority to administer hazardous waste standards for generators that are equivalent to, or more stringent than, the federal program. Therefore, the requirements outlined in today's rule will not take effect in New York State until the State adopts equivalent requirements as State law, and EPA will not be the primary regulatory agency responsible for implementing the requirements of this rule. Although today's rule references ''EPA,'' ''NYSDEC'' will be substituted for ''EPA'' when the State adopts these requirements as State law. For this reason, this preamble discussion will use the term ''regulatory agency'' when referring to the ''EPA'' responsibilities identified in today's rule. In addition, for the sake of simplicity, the remainder of this preamble refers to the effects of this rule, although it will be the corresponding state law change that will actually govern this XL project.

2. NYSDEC XL Project Description

Utilities maintain rights-of-way, such as oil and gas pipelines, telephone lines, and electric power distribution systems, in some cases extending hundreds of miles. Frequently, hazardous waste is generated at remote locations that are not continuously staffed. The collection of the hazardous waste is sometimes planned in advance, but often is not, particularly in cases where there has been a sudden, unexpected interruption of service. Waste may also be generated as part of routine service. This waste generally consists of sediments accumulating at Utility access points.

In the case of electric power and telephone systems, the locations involved are usually transformer vaults, service boxes, and manholes, which are most often located in the middle of public roads. In order to access conduits and service the system, sediment and/or infiltration water must be removed. These materials commonly fail the Toxicity Characteristic (TC) for lead and therefore may be hazardous waste. For electric power systems, polychlorinated biphenyl (PCB) contamination is also possible. Waste containing PCBs is regulated under the Toxic Substances Control Act (TSCA). In the case of oil and gas pipelines, the waste may consist of pipeline condensate which collects in ''drip'' pipes downstream of pressure regulating stations. This waste commonly exhibits the characteristic of ignitability, commonly fails the TC for benzene and may contain PCBs.

Generally, hazardous waste may qualify for conditional exemption under RCRA because it is generated in quantities less than 100 kilograms per calendar month. However, when hazardous waste generated exceeds 100 kilograms per calendar month, it is subject to applicable regulations at 40 CFR part 262. In addition, when one kilogram or more of an acutely

hazardous waste is generated per calendar month at a remote location, it is also subject to applicable regulations at 40 CFR part 262.

Utilities are currently allowed to accumulate hazardous waste without a permit at the remote location where it is generated for up to 90 days (or, under certain circumstances, 180 days) without RCRA permits prior to transporting it to a permitted treatment, storage and disposal facility (TSDF) or other designated facility. However, since remote Utility locations are often unstaffed, it is very difficult to store hazardous waste and secure against releases resulting from accidents or vandalism. Arranging to bring hazardous waste directly to a TSDF may take several days, particularly if the event was unplanned. To enhance protection of public health, safety, and the environment, it would be preferable if hazardous waste generated at remote locations were transported to a secured location as soon as it is collected from the remote location.

RCRA regulations generally do not allow the shipment to, or consolidation of, hazardous waste at off-site facilities other than a permitted or interim status TSDF or other designated facility. Furthermore, for each remote location that generates more than 1,000 kilograms during any single month, the utility must prepare and submit a Biennial Report. The RCRA-authorized state processes each report and enters the data into state databases, and EPA enters it into the Biennial Report System (BRS) database. As a result, both state and federal databases include hundreds of ''sites'' which are actually only drip pipes and/or manholes.

Additionally, utilities must arrange frequent shipments of small loads of hazardous waste which must be sent directly to a permitted TSDF, which is often located hundreds of miles from the remote location. The current handling of hazardous waste at remote locations may result in unsafe storage and hazardous conditions, additional paperwork and expenditure of time and labor, and inefficiencies in transportation, increasing direct costs.

Utilities would prefer to transport hazardous waste immediately from remote locations to a UCCF so that hazardous waste does not remain susceptible to releases from the remote locations through accidents or vandalism. At the secured UCCFs , the Utilities could then safely combine compatible types of hazardous waste collected from different remote locations to achieve important efficiencies in transportation and waste management. By consolidating hazardous waste in this manner, vehicles transporting waste from a UCCF to a commercial TSDF could then carry relatively full loads. On the other hand, if hazardous waste must be transported to a TSDF directly from remote locations, more vehicle trips, often hundreds of miles away, would be required, each carrying smaller loads.

This rule is designed to address the problems of unsafe storage, transportation inefficiencies, and unnecessary paperwork in the following ways:

a. Hazardous waste generated at a Utility's remote locations can be consolidated without a RCRA permit for up to 90 days at a UCCF, so long as the Utility complies with requirements set forth in today's rule. Each UCCF can only consolidate waste generated at its remote locations and at the UCCF itself. Hazardous waste generated at a remote location would be transported from each remote location immediately following collection of all hazardous waste at the remote location or when the staff collecting the hazardous waste leave the remote location, whichever comes first. If wastes arriving at the UCCF on different dates are consolidated in the same unit, the 90-day period will run from the earlier of the two dates that the wastes arrived.

b. Hazardous waste generated at remote locations that is transported to a UCCF can be accounted for in a combined Biennial Report, submitted by the Utility, instead of the Utility having to submit a Biennial Report for each remote location. A separate Biennial Report must be prepared for hazardous waste sent from a remote location directly to a permitted TSDF that would ordinarily require a Biennial Report.

Thus, under the rule a UCCF would be able to consolidate hazardous waste received from remote locations at the UCCF for up to 90 days, thereby providing the Utilities with more flexibility to combine compatible hazardous wastes generated at different remote locations, prior to having to ship such waste to a treatment, storage, or disposal facility.

In order to participate in the flexibility provided by the rule, New York State Utilities must initiate and comply with public notice and participation requirements set forth in the rule regarding the designation(s) and approval of UCCF(s). In addition, the regulatory agency must respond to the comments received regarding the designation(s) and approval of UCCF(s). Subsequent to these public participation procedures, Utilities must receive approval to participate in the flexibility provided by this rule. The regulatory agency may determine that a Utility or UCCF should not be approved to participate based on relevant information learned before, during or after the public notice procedures, including a Utility's compliance history.

The rule will enhance the protection of public health and the environment by facilitating and requiring the more immediate removal of hazardous waste that is difficult to properly secure at remote locations to staffed and secure UCCFs. Hazardous traffic conditions that endanger public safety may also diminish. Once hazardous waste is transported to a UCCF it will be subject to a number of requirements, including that it must be held in units that are managed in accordance with specified requirements in 40 CFR part 265. In order to operate a UCCF under the terms of today's rule, utilities will also have to comply with personnel training, contingency planning, and other emergency preparedness and prevention requirements, and they will be subject to both general and unit-specific closure requirements. In addition, if the regulatory agency determines that the requirements identified in this rule may not fully protect human health and the environment, it may impose additional conditions on the operation of a particular UCCF.

Utilities should realize considerable savings in direct costs through efficiencies in transportation by consolidating hazardous waste. Reducing the number of trips made to often-remote TSDFs by waste-transporting vehicles also reduces mobile source emissions. Elimination of the need to complete biennial reports should bring about a very significant reduction in paperwork and savings in time and labor, both for Utilities and environmental regulatory agencies, who can then redirect such resources to other environmental needs.

In addition, the rule requires Utilities to reinvest at least one-third of the direct savings realized from participation in the XL project into one or more environmental projects, such as pollution prevention, that are over and above existing legal requirements and that were not planned prior to the Utility's receipt of approval to consolidate hazardous waste pursuant to the rule.

The rule applies only to hazardous waste at a Utility's remote locations or at a UCCF. This rule does not allow a UCCF to receive waste from locations other than remote locations that are within the same right-of-way network as the UCCF. In addition, except as explicitly provided for in the rule, the rule does not affect any other requirements pertaining to the storage, transport, and disposal of waste generated at a Utility's remote locations. For example, a Utility is still required to

determine whether waste generated at a remote location is subject to the land disposal restrictions set forth in 40 CFR part 268 and the Toxic Substances Control Act and its implementing regulations set forth in 40 CFR part 761 at the point of generation, prior to any commingling of waste. In addition, nothing in the rule prohibits a Utility from treating hazardous waste in a tank or container pursuant to the provisions set forth in § 262.90 provided the Utility complies with the requirements for tanks set forth in subpart J of 40 CFR part 265, except §§ 265.197(c) and 265.200, and/or the requirements for containers set forth in subpart I of 40 CFR part 265.

Similarly, it is not the intent of the rule to subject Conditionally Exempt Small Quantity Generator waste (i.e., hazardous waste that does not exceed 100 kilograms per calender month) generated at individual remote locations to increased regulation. Thus, a Utility may continue to follow the requirements for Conditionally Exempt Small Quantity Generators (CESQGs) at 40 CFR 261.5 for CESGQ waste generated at individual remote locations that is not sent to a UCCF. If, however, a Utility chooses to send CESQG waste generated at individual remote locations to its UCCF, that waste will be subject to the requirements of this rule once it is received at the UCCF. The Utility must comply with 40 CFR 262.34(a)–(c) (requirements for large quantity generators) for all hazardous waste consolidated at the UCCF regardless of the total amount of waste generated or consolidated per month at the UCCF.

3. Environmental Benefits

This XL project facilitates the immediate transport of hazardous waste, generated by Utilities at ''remote'' locations that are not permanently staffed, to a secured location that is subject to the enhanced requirements established by today's rule. At the present time, particularly when the collection of hazardous waste is unplanned, it may take several days to make arrangements for removal of the material directly to a TSDF. In the meantime, if the material remains at the remote location, it may endanger public health and the environment because it may be difficult for the Utility to provide secure storage for the material, safe from releases through accidents or vandalism. Moreover, if the material is left at a street location where it continues to disrupt normal traffic patterns (vehicular and/or pedestrian), public safety is threatened, even if there are no releases. Particularly in urban settings (e.g., New York City), the disruption of traffic patterns can lead to a substantial risk of vehicular collisions or vehicle/pedestrian accidents. Leaving the material at a street location may result in forced merging of high-volume traffic lanes. This project should help to enhance public safety and prevent endangerment to human health and the environment.

There should also be direct environmental results to be realized from the consolidation of compatible waste at UCCFs. By minimizing the number of vehicle trips that must be made to the often-distant TSDF, emissions from mobile sources are reduced, as well as vehicular fuel consumption and the possibility of an accident involving a vehicle transporting this waste.

Indirect environmental benefits should result from the reduced need for human resources, time and paperwork. More Utility and regulatory agency resources would be made available to address higher priority environmental issues.

In addition, participating Utilities are required to reinvest one-third of the direct cost savings accrued due to participation in this project into one or more environmentally beneficial projects that are above and beyond what is legally required by law and that were not planned prior to receipt of approval of each UCCF. Participating Utilities must identify, in annual Progress Reports, the monetary value of the direct cost savings which they have experienced as a result of the project and the environmental activities in which one-third of these direct cost savings have been reinvested.

4. Economic Benefits

Utilities should realize direct cost savings. Through the need for reduced resources, time and paperwork, they also anticipate indirect savings. NYSDEC and EPA will realize indirect savings through reduced resource demands, time saved (including computer time), and reduced paperwork.

Utilities should realize a variety of direct cost savings. First, Utilities will not incur expenses for having to store hazardous waste at remote locations, even temporarily. Second, Utilities will realize direct cost savings through efficiencies in transportation. By being able to combine waste at the UCCF that is compatible, fewer vehicle trips to ultimate destination facilities will be required. These savings may include: database management for each remote location as an individual generator, State annual Hazardous Waste Report preparation costs, Biennial Report preparation costs, and cost savings realized from consolidation of waste for economical shipment (including no longer sending waste directly to a TSDF from a remote location.). The proposed rule explicitly identified as reportable cost savings, cost savings achieved as a result of not being required to obtain a TSDF permit or comply with substantive TSDF requirements. It is EPA's understanding, however, that in the absence of today's rule, utilities would probably continue to comply with the existing requirements for hazardous waste generators rather than obtain a permit for a UCCF. Thus, EPA does not generally expect these savings identified in the proposed rule to result from this project. Accordingly, EPA has modified the proposed rule by deleting the explicit references to these types of savings. Instead § 262.90(h) includes a more general request for cost savings achieved by a particular utility, thus ensuring that all cost savings based on any regulatory requirements which a particular utility is actually relieved from due to compliance with today's rule will be accounted for in its estimate of cost savings. EPA believes that this is a more appropriate approach given that the specific cost savings for each utility are difficult to precisely anticipate and are based in large part on the operating decisions a particular utility may make when faced with the options that still exist in the absence of this XL project.

Utilities will realize indirect savings in resources, time, and reduced paperwork by not having to submit separate Biennial Reports for each remote location that generates in excess of 1,000 kilograms of hazardous waste per calender month. Instead, the hazardous waste generated at remote locations will be included in the Biennial Reports of the UCCFs to which they are brought. All such hazardous waste will still be fully accounted for without increasing the number of Biennial Reports that the Utility must prepare and submit. EPA and NYSDEC will also realize indirect savings in human resources, time (including computer time), and reduced paperwork. Biennial Reports for remote locations will no longer need to be processed and entered in state and federal databases. As long as the quantities and types of hazardous waste from these locations are accounted for, the minimal benefits of these excess reports do not justify the extra work involved in preparing and processing the reports.

5. Stakeholder Involvement

NYSDEC and EPA have been involved in the development of this project, and

both support it. Bell Atlantic acted as lead for the telephone industry. Consolidated Edison acted as lead for the electric power industry, with assistance from the New York State Power Pool. Brooklyn Union Gas acted as lead for the oil and gas pipeline industry (intrastate and interstate). Consolidated Edison and the New York State Power Pool solicited comments from other electric power companies in New York State which were then funneled through Consolidated Edison. Brooklyn Union Gas provided the same service to other intrastate and interstate oil and gas pipelines.

The development of the FPA was accomplished through implementation of a Public Participation and Outreach Plan, which is included in the docket for this rulemaking. This Plan provided opportunity for participation by potential industrial participants, environmental organizations, the general public and other interested parties. The rule and FPA also provide for public participation in the designation and approval of UCCFs.

Finally, the NYSDEC intends to propose and (subject to public comment) promulgate an equivalent state regulation.

6. Project Duration and Completion

As with all XL projects testing alternative environmental protection strategies, the term of the NYSDEC XL project is one of limited duration. The duration of the regulatory relief provided by this rule is anticipated to be 60 months from the effective date of this rule. However, a participating UCCF or Utility may be terminated or suspended at any time for failure to comply with any of the requirements of the rule.

C. Rule Description

The rule adds a new section to the Standards Applicable to Generators of Hazardous Waste, 40 CFR 262.90. Paragraph (a) of the rule defines terms used in the new rule. The definition of remote location in paragraph (a)(3) is of particular interest because of its importance in the implementation of the regulation. Paragraph (b) includes the requirements that a Utility and UCCF will comply with in order to consolidate hazardous waste for up to 90 days at the UCCF. For example, under § 262.90(b)(1), the utility is required to use a Uniform Hazardous Waste Manifest (Form 8700–22) for all shipments of hazardous waste greater than 100 kilograms being sent from a remote location to a UCCF. The manifest used to transport hazardous waste from the remote location to the UCCF will be prepared as follows:

(1) The EPA ID # of the UCCF would be entered on the Manifest Form in Item 1.

(2) The name and location of the remote location would be entered in the Generator's Name and Mailing Address block (Item 3).

(3) The transporter's name and EPA ID number would be entered in the Transporter 1 Company Name box (Items 5 and 6).

(4) The UCCF name would be entered in the Designated Facility Name and Site Address (Item 9) as the facility which will be handling the waste described on the manifest.

(5) The DOT description and other information about the waste would be entered in Items 11 through 14.

(6) The Generator's Certification (Item 16) would be signed.

(7) The Transporters Acknowledgment of Receipt (Item 18) would be signed.

(8) The person accepting the waste on behalf of the UCCF would sign the Certification of receipt of hazardous materials covered by this manifest (Item 20).

(9) A copy of the manifest, signed by all required signatories, must be retained at the UCCF for a minimum of three years. A copy of the manifest must also be provided to the transporter, if other than the utility.

The utility would also complete a new manifest in accordance with 40 CFR 262.20, for all hazardous waste transported to a TSDF from the UCCF.

EPA has modified the rule to consistently refer to a Utility's waste handling activities as ''consolidation.'' The proposed rule and its accompanying preamble interchangeably used the terms ''accumulate'' and ''consolidate'' to refer to Utility waste handling activities. EPA has modified the rule to uniformly refer to ''consolidation'' because that term more accurately reflects the range of activities that a Utility will carry out under this project. The activities that a Utility will carry out include, collecting hazardous waste from multiple remote locations, transporting the collected hazardous waste to a designated UCCF, keeping that hazardous waste at the UCCF for up to 90 days, and combining, where feasible and appropriate, physically and chemically similar hazardous waste.

Paragraph (c) of the rule requires public notification of a Utility's and UCCF's participation. These requirements ensure that there is adequate public notice and comment on participation. Paragraph (d) includes items that need to be included in a notification of participation that would be sent to the regulatory agency. Paragraph (e) describes the procedures for designating UCCFs, including how information from the public comments will be incorporated in the approval process. Paragraph (f) includes requirements for the addition or deletion of UCCFs from participation. Paragraph (g) includes the requirement that a participating Utility submit an Annual Progress Report, including information on the number of remote locations, the total tonnage of each type of waste handled, and savings reaped from participation. Paragraph (h) requires a Utility to assess any direct savings that result from its participation in the project, and sets forth examples of the direct savings that a Utility may experience as a result of participation. Paragraph (i) discusses grounds for termination of a Utility or UCCF's participation. Paragraph (j) sets forth the expiration date of the rule. Amendments to parts 264, 265, and 270 clarify that a UCCF operating in accordance with the requirements of 40 CFR 262.90 is exempt from TSDF and permitting requirements.

EPA has made several changes to the proposed rule in response to comments. These are: (1) A clarification regarding when hazardous waste must be transported from a remote location to a UCCF; (2) a clarification regarding whether the UCCF may also consolidate hazardous waste generated at the UCCF under the terms of this rule; (3) additional requirements applicable to containers of hazardous waste; (4) additional public notice and public participation requirements; and (5) an additional reporting requirement for participating utilities. Each of these changes is discussed in detail in section III below.

III. Response to Public Comments

A. Public Comments Received

On December 7, 1998, EPA requested comments on the proposed rule and draft Final Project Agreement for the NYSDEC XL project. See 63 FR 67561. As a result of this **Federal Register** document, EPA received four comments: one from Consolidated Edison Company of New York, Inc., (ConEd), one from the Utility Solid Waste Activities Group (USWAG), one from Niagara Mohawk, and one from the Atlantic States Legal Foundation (ASLF) (joined by New York Rivers Unlimited, Great Lakes United, and the New York Public Interest Research Group).

1. ConEd Comment

ConEd supports the NYSDEC XL project because it believes that the

project will achieve better environmental results at less cost. It believes that these cost savings will result from unnecessary paperwork reductions, the consolidation of waste, and cost reductions from allowing UCCFs to operate under certain conditions without obtaining TSD permits and maintaining TSD facilities. In its comment, ConEd also extols the environmental benefits of the project which it identifies as the reinvestment of cost savings in environmentally beneficial projects, the expedited removal of waste, and the reduction in vehicle trips through the consolidation of waste. ConEd suggests that EPA clarify whether UCCFs may handle hazardous waste generated at the UCCF as well as hazardous waste generated at remote locations. ConEd points out that, although the proposed rule suggested that a UCCF could handle both remote location hazardous waste and UCCF generated hazardous waste, a statement in the preamble to the proposed rule suggested that each UCCF could only handle waste generated at its remote locations. EPA agrees that this issue should be clarified. EPA's intent with the proposed rule was that each UCCF would handle both the hazardous waste generated at its remote locations as well as hazardous waste generated at the UCCF. EPA's statement in the preamble to the proposed rule was not meant to suggest that UCCFs would not be able to handle UCCF-generated hazardous waste, but rather to clarify that a UCCF would not be allowed to receive hazardous waste from any off-site location other than a remote location. EPA has modified § 262.90(b) to clarify that UCCFs may consolidate, under the terms of this rule, hazardous waste generated at remote locations and hazardous waste generated at the UCCF itself. The Utility must comply with the requirements of 40 CFR 262.34(a)–(c) (requirements for large quantity generators), regardless of the total quantity of waste generated or consolidated each calender month (see, § 262.90(b)(4)(i)).

2. USWAG Comment

USWAG is an informal consortium of the Edison Electric Institute, the American Public Power Association, the National Rural Electric Cooperative Association, and about 80 electric utilities located throughout the country. In its comment, USWAG states that (1) ''the current hazardous waste reporting and waste consolidation rules are inefficient and increase costs when applied to electric utility individual 'remote locations;' '' (2) ''the NYSDEC Project XL will provide regulatory flexibility and costs savings to electric utilities by reducing the paperwork burdens and waste consolidation restrictions under the current hazardous waste rules;'' and (3) ''the NYSDEC Project XL will not only maintain the same levels of environmental protection and public safety under existing rules, but will facilitate their improvement.'' USWAG, like ConEd, requests that EPA clarify that hazardous waste generated at a UCCF can also be consolidated at the UCCF in accordance with the terms of this XL rule. As discussed above, EPA agrees and has clarified § 262.90(b) of the rule accordingly. USWAG also requests that EPA clarify the meaning of the term, ''generation event.'' USWAG suggests that a ''generation event'' ends when the utility has completed the removal of the hazardous waste from inside the manhole, oil or gas pipeline, or other remote location. EPA agrees that the term ''generation event'' should be clarified. One of the purposes of this XL project is to improve the existing situation in which hazardous waste generated at an unstaffed or unsecure remote location can remain at that site, unsupervised, for extended periods of time. Thus, EPA's intent with this rule is that waste that is collected from a manhole or other remote location will not remain at a remote location where it might be unsupervised prior to being transferred to a UCCF. In light of this comment, EPA believes that use of the term ''generation event'' is insufficient to indicate when hazardous waste must be transferred from a remote location to the UCCF. EPA has modified the rule to clarify that hazardous waste must be transferred from the remote location to a UCCF immediately following collection of all hazardous waste at the remote location or when the staff collecting the hazardous waste leave the remote location, whichever comes first. This approach will ensure that hazardous waste that is collected at a remote location is never left unsupervised and that it does not unnecessarily remain on-site for extended periods of time. For example, if it takes Utility workers several days to collect all the hazardous waste at a remote location, but the workers leave the remote location at the end of each day, the hazardous waste collected during the course of the day will have to be transported to the UCCF when the workers leave the remote location. Alternatively, hazardous waste must be transported to the UCCF once all the hazardous waste at the remote location has been collected, even if utility staff remain at the remote location.

In addition, USWAG requests that EPA ''consider eliminating the requirement that remote locations comply with the identification number and manifesting requirements in order to further reduce unnecessary, time-consuming and costly paperwork burdens.'' EPA did not intend that each remote location would be required to have an individual identification number under this project. Rather, under this project, the identification number of the UCCF will also be used by its remote locations (see, section II.C. above). With respect to the manifesting requirements, EPA does not consider the manifest requirements of 40 CFR part 262, subpart B (incorporated by reference in today's rule) to be unnecessary. Hazardous waste generated at remote locations and transported to a UCCF will be traveling on public roads, and thus EPA believes that the tracking and emergency response functions served by these requirements are still necessary. Moreover, this project is focused on experimenting with flexibility regarding hazardous waste consolidation, not flexibility with regard to manifest preparation.

3. Niagara Mohawk Comment

In its comment, Niagara Mohawk supports the initiative proposed by this rule and asserts that it will provide substantial regulatory relief to the utility industry while reducing environmental impact. However, Niagara Mohawk believes that the rule contains two requirements that are disincentives to participation. First, it believes that the public notice requirements are excessive. Specifically, Niagara Mohawk asserts that placing a public notice in a newspaper of local circulation should be sufficient and that two additional outreach methods are unnecessary. EPA disagrees. Stakeholder involvement is one of the criteria for XL projects. The provision of two methods of public notice in addition to a public notice in the newspaper will help to ensure that all interested members of the community will be aware of, and able to participate in the process of designating UCCFs. Second, Niagara Mohawk requests a utility exemption from the need to obtain a permit under 6 NYCRR part 364. Niagara Mohawk is referring to a New York State requirement that a transporter of hazardous waste obtain a permit. This requirement is a state-only requirement and can be addressed by NYSDEC. It is not appropriate for EPA to address this issue in this federal rulemaking.

4. ASLF Comment

ASLF agrees that the portion of the project pertaining to RCRA identification numbers and biennial reports will achieve RCRA objectives in a superior manner while achieving cost savings. ASLF does, however, raise a number of concerns regarding the consolidation of remote location hazardous waste at a UCCF.

a. RCRA Permits

ASLF asserts that RCRA section 3005(a) requires that a UCCF obtain a permit before it can accept waste from a Utility remote location. EPA disagrees. RCRA section 3005(a) requires treatment, storage, and disposal facilities (TSDFs) to obtain permits. RCRA section 3002 establishes separate requirements for generators. Thus, the statute clearly recognizes that generators and TSDFs are separate classes of regulated entities subject to different regulatory regimes, although it does not clearly specify where the line between these classes of regulated entities is drawn. Specifically, it does not identify at what point a generator's waste handling activities become ''treatment'' or ''storage'' under the statute such that the generator becomes a TSDF. EPA believes it is clear that some amount of waste handling by a generator must fall outside the scope of the RCRA TSDF requirements; otherwise, virtually every generator in the country would also be a TSDF and the distinction between the two classes of regulated entities would be meaningless. EPA does not believe that Congress intended that every entity in the country that generates hazardous waste become a TSDF subject to the requirement to obtain a RCRA permit.

In the case of hazardous waste generated at Utility remote locations and consolidated at a central collection facility, EPA believes it is inappropriate to require a UCCF to obtain a permit because it is not acting as a TSDF. Rather, the consolidation of remote location hazardous waste at the UCCF is an activity that is incidental to the Utility's operations. As discussed previously, the purpose of consolidating hazardous waste at the UCCF prior to transportation to a TSDF is to ensure that remote location hazardous waste is not left in an unsecured, unstaffed location and to achieve transportation efficiencies. These are issues that the Utilities face as generators of hazardous waste. For this reason, EPA believes that RCRA does not prohibit the participating Utilities from consolidating remote location hazardous waste for up to 90 days at a UCCF without a TSDF permit. In addition, EPA believes that the procedural and substantive requirements that participating Utilities will have to comply with in order to consolidate remote location waste at a UCCF ensure the protection of human health and the environment. These requirements include that hazardous waste can only be held at a UCCF for a limited duration (up to 90 days) and such waste must be held in units that are managed in accordance with specified technical requirements in 40 CFR part 265, as well as with additional requirements for closure and secondary containment of containers. Utilities will also have to comply with personnel training, contingency planning, and other emergency preparedness and prevention requirements, and they will be subject to both general and unit-specific closure requirements. In addition, the regulatory agency may impose additional conditions on the operation of a particular UCCF if it determines that the requirements identified in this rule may not fully protect human health and the environment. Finally, the designation of a particular UCCF is subject to public notice and comment (including the opportunity for a public meeting if the regulatory agency determines such a meeting is warranted) and must be approved by the regulatory agency. If the regulatory agency believes that the designation of a UCCF will not ensure protection of human health and the environment, the UCCF will be rejected as provided for in § 262.90(e)(4).

This limited exemption is, in fact, necessary in order to provide utilities with the incentive to more immediately remove hazardous waste generated at unstaffed remote locations. If permitting were required, utilities who permitted their facilities would incur high transaction costs as a result of lengthy permitting procedures and high state permitting fees. Utilities have not found permitting of these facilities to be cost-effective, and utilities are thus unlikely to permit them. As a result, waste is generally sent to non-utility-owned permitted facilities. Because utilities await authorization from these TSD facilities prior to transport, the waste remains at the remote location for several days. EPA is entering into this project to experiment with ways to avoid this situation and allow waste to be removed from remote locations faster. In fact, this project idea was initiated when three utilities independently expressed concern to New York State that the storage of hazardous waste ''on-site'' at remote locations was a problem in terms of potential liability, traffic disruption, accidental releases and attendant environmental damage, and vandalism.

ASLF also asserts that the Agency has reopened the issue of its authority to exempt 90-day generator on-site accumulation units from the RCRA permit requirement. EPA disagrees. EPA has never indicated in any way that it intended to reconsider the existing regulatory provisions for the on-site accumulation of hazardous waste. EPA did not propose to amend or otherwise modify the existing provisions for on-site accumulation of hazardous waste, nor did the Agency solicit comment on these provisions. Today's rule is limited to the off-site consolidation of hazardous waste for a limited class of hazardous waste generators. It does not in any way affect the existing requirements for on-site accumulation of hazardous waste.

1. Utility-owned Rights-of-Way and Remote Locations

ASLF states that the rule excludes from ''permitting a storage or treatment facility simply because it is located along a utility right-of-way, and would thereby regulate the entire right-of-way as if it were one onsite individual generation location,'' and concludes that the rule extends the current provisions for on-site accumulation beyond their limits. EPA disagrees. Today's rule is not intended to treat a utility right-of-way as one site (see, e.g., § 262.90(b)(1) which requires participating utilities to manifest hazardous waste shipments from a remote location to an off-site UCCF). EPA did not include the notion of the Utility right-of-way in today's rule for any reason other than to limit the waste a UCCF may receive. By linking the definition of ''remote location'' to a Utility's right-of-way network, the rule ensures that a UCCF may only receive waste generated by that Utility at predictable and expected locations. Finally, today's rule is not intended to be an ''extension'' of the existing provisions for on-site accumulation, rather it is a distinct set of requirements under which participating Utilities can consolidate remote location waste at off-site UCCFs.

ASLF further states that some ''rights-of-way may include hundreds of miles of rural areas where the utility may actually own (or operate) little or none of the land'' and that concepts of contiguous ownership inherent in EPA's definition of ''facility'' are disregarded. As discussed above, today's rule is not intended to treat a Utility right of way as one site or one facility.

2. Small Quantity Generator Exclusion

ASLF notes that this rule does not modify the small quantity generator exclusion threshold for individual remote locations, and asserts that this is inconsistent with otherwise regulating ''the entire right-of-way as one collective onsite generator location.'' As discussed above, this rule does not regulate a right-of-way as one site. In addition, it is not the intent of the rule to subject Conditionally Exempt Small Quantity Generator waste (i.e., hazardous waste that does not exceed 100 kilograms per calender month) generated at individual remote locations to increased regulation. Thus, a Utility may continue to follow the requirements for Conditionally Exempt Small Quantity Generators (CESQGs) at 40 CFR 261.5 for CESGQ waste generated at individual remote locations that is not sent to a UCCF. If, however, a Utility chooses to send CESQG waste generated at individual remote locations to its UCCF, that waste will be subject to the requirements of § 262.90 (see 40 CFR 262.90(b)).

3. Quantity Limits

ASLF expresses concern that the rule does not include quantity limits restricting the consolidation of large quantities of waste at each UCCF, particularly because UCCFs may be located at or near population centers. EPA agrees that there may be circumstances where it will be necessary to limit the amount of hazardous waste that may be consolidated at a particular UCCF; however, EPA does not believe it is necessary to impose a universal limit on all UCCFs regardless of their particular circumstances. Instead, the rule provides that such restrictions may be imposed on a UCCF on a case-by-case basis at the time the UCCF is approved (see, 40 CFR 262.90(e)(3)). In addition, EPA has modified the rule to require the inclusion in the utilities' Annual Report of the total tonnage of each type of hazardous waste handled at each UCCF. This information will enable EPA to conduct reviews to determine whether the approach is working. If this experiment is later extended to the rest of the nation, the collection of this data will assist EPA in determining whether quantity limits should be imposed.

4. Substantive TSDF Requirements

ASLF voices concern that some of the substantive requirements applicable to permitted TSDFs would not apply to UCCFs. Specifically, ASLF highlights that a UCCF would not be subject to the following standards: (1) Secondary containment for container storage areas; (2) clean closure of container storage areas; and (3) facility wide corrective action. At the time of proposal, EPA did not consider additional requirements for containers because, given the types of hazardous waste generated at utility remote locations, it is unlikely that the utilities will be consolidating hazardous waste in containers. Upon consideration of ASLF's comment, however, EPA agrees that additional requirements for containers may be appropriate to include as part of this XL project in the event that containers are used to consolidate hazardous waste. As a result, EPA has included in today's rule a requirement for secondary containment of containers that is based on New York State requirements currently applicable to all generators (i.e., requirements that are not currently federal requirements). This requirement is that participating Utilities operating a UCCF that holds liquid hazardous waste in containers must provide secondary containment for those containers under two sets of circumstances: (1) If the UCCF is consolidating 8,800 gallons or more of liquid hazardous waste at any time; and (2) if the UCCF is consolidating 185 gallons or more of liquid hazardous waste at any time and is located in an area designated by New York State that overlays a sole-source aquifer (this would include, for example, areas in Brooklyn, Queens, and Long Island). In addition, EPA has incorporated the closure requirements of 40 CFR 264.178 for containers into today's rule. EPA does not, however, believe that it is appropriate to require corrective action because the purpose of today's rule is to provide flexibility so that utilities will have an incentive to quickly remove hazardous waste generated at remote locations to a secure location. Because facility-wide corrective action can be extremely expensive, imposing such a requirement would likely create a disincentive to the very behavior the Agency seeks to promote. Overall, EPA believes today's rule will result in hazardous waste management practices that provide a benefit of superior protection of human health and the environment as compared with current practices. In addition, if a UCCF is not operated in compliance with the terms of today's rule, it may be deemed a treatment, storage or disposal facility subject to enforcement or corrective action under RCRA section 3008 or section 3004. Furthermore, UCCFs participating in this project remain subject to enforcement or cleanup authorities under RCRA and other environmental statutes (e.g., RCRA section 7003, CERCLA section 106).

5. Public Participation

ASLF is also concerned that certain procedural rights associated with permitted facilities may not apply under this rule. In particular, ASLF expresses concern regarding (1) reduced public notice requirements at the time a facility is first proposed for designation; (2) lack of an opportunity to administratively appeal the approval of a facility; (3) lack of opportunity to review and comment on closure plans; and (4) no formal opportunity to seek modifications of an approval once it is issued. With respect to public notice requirements, EPA believes the types of public outreach required at the time that the UCCF is proposed are sufficient to ensure that all interested parties will be notified about a proposed UCCF. However, to further ensure that notice of a proposed UCCF designation is provided to all interested parties, EPA has modified the rule to ensure that the parties who commented on the proposed rule for this XL project are notified by a Utility when that Utility seeks approval for a particular UCCF. Today's rule also includes other requirements to ensure public involvement in the decision process for UCCFs. Utilities are required to respond to all of the comments that are submitted at the time that the UCCF is proposed. EPA has also modified the rule to clarify that the regulatory agency responsible for deciding whether to approve a particular UCCF will also respond to all of the comments submitted at the time that the UCCF is proposed, and consider these comments in determining whether or not to approve the UCCF, impose restrictions on the approval, or hold a site-specific meeting. EPA has also modified the rule to require that notification of the decision on whether or not to approve the UCCF be sent to each party that commented on the proposed designation.

ASLF expresses concerns about the lack of an opportunity to administratively appeal the approval of a facility. ASLF is correct that this rule provides no opportunity for administrative appeals following the regulatory agency's decision regarding designation of a UCCF; however, as part of this XL initiative there will be an annual opportunity for public input on the continued operation of a UCCF. As it does for all XL projects, EPA will be conducting annual evaluations of this project's progress. At the time of the evaluation, EPA will solicit public comment on how the project is progressing, and will contact all persons

who have expressed an interest in the project as a whole or in particular UCCFs. Where information provided by the public indicates a Utility or UCCF is not operating in compliance with today's rule, EPA may consider taking appropriate enforcement action or terminating or suspending a Utility or UCCF from the project. In addition, EPA will consider comments on a UCCF that are submitted at any time during the project.

ASLF comments that it is unclear whether there will be an opportunity for judicial review of the regulatory agency's approval of a particular UCCF. As discussed in section II.B., NYSDEC will be the primary regulatory authority responsible for implementing the requirements of this rule and will therefore be the regulatory agency determining whether or not a UCCF may be approved to participate. Thus, the right to judicial review of the approval of a particular UCCF would be governed by the State Administrative Procedures Act.

ASLF expresses concern that there is no formal opportunity to seek modifications of a UCCF approval once it is issued. ASLF is correct that this rule will provide no formal opportunity for the public to request a modification of a UCCF approval. EPA notes, however, that there is also no formal opportunity for the public to request modification of a RCRA permit once it is issued. As discussed above, as part of this XL initiative, there will be an annual opportunity for public input regarding continued operation of a UCCF. Each year, EPA, using the annual reports that utilities are required to file with the regulatory agency as a starting point, will evaluate the progress of the project. EPA conducts this annual evaluation for all XL projects. At the time of the evaluation, EPA will solicit public comment on how the project is progressing. At this point in time, EPA will contact all persons who have expressed an interest in the project as a whole or in particular UCCFs. In addition, EPA will consider comments on a UCCF that are submitted at any time during the project. Where information provided by the public indicates a Utility or UCCF is not operating in compliance with today's rule, EPA or NYSDEC may consider taking appropriate enforcement action or terminating or suspending a Utility or UCCF from the project.

ASLF is also concerned about the lack of opportunity to review and comment on closure plans for UCCFs. In response, EPA wishes to clarify that there is no opportunity for public review on closure plans because utilities are not required to develop closure plans to participate in this XL project. Under today's rule, utilities are required to comply with general and unit-specific closure requirements, but they are not required to develop closure plans.

Finally, EPA notes that the appropriate baseline against which the environmental benefits of this project should be measured is the status quo, under which waste is accumulated at remote locations without any of these public participation opportunities. EPA does not believe that a comparison to the safeguards provided at permitted facilities is meaningful, since (with limited exceptions) the utilities have not chosen to obtain permits and are not required to do so.

b. Need for Flexibility Provided by Rule

1. Transfer Facilities and Other Existing Provisions

ASLF suggests that existing regulatory provisions, such as requirements for transfer facilities (where hazardous waste may be held for up to 10 days as part of the normal course of transportation) could be sufficient to deal with the problem identified in this rulemaking. ASLF also states that emergency identification numbers are available, and some utilities are licensed to transport the waste. EPA does not believe these options are generally sufficient to deal with the identified problems. First, none of these options help a utility to remove hazardous waste from a remote location more quickly if the only place that it can ultimately be transported to is a TSDF. Under current regulations, prior to transport to a TSDF or a transfer facility, a utility must complete a manifest, which includes identifying the name of the TSDF (regardless of whether the waste will be held at a transfer facility during the course of transportation to that TSDF). The requirements for holding hazardous waste at a transfer facility include that the hazardous waste be manifested. Since the waste cannot be taken to a TSDF or even manifested unless the TSDF grants its permission, utilities do not, in practice, transport the waste until authorization from the TSDF is received. Waiting for authorization from the TSDF can cause a delay of two to three days before the hazardous waste can be removed from the remote location. By allowing the utility to transport waste directly to the UCCF, this rule facilitates more immediate transport of the hazardous waste. Also, while waste may be held at a transfer facility for up to 10 days, the utilities have not found this time period to be long enough to provide a meaningful opportunity to consolidate the hazardous waste generated at remote locations so that the hazardous waste can be transported to a TSDF in a cost-effective manner. The reason that 10 days is insufficient is that utilities cannot predict how much waste will be removed from each remote location or how the hazardous waste generated at each remote location will combine to make an efficient load.

2. Utilities Could Obtain Permits

ASLF states that there is no evidence in the rulemaking record that utilities are unable to obtain a RCRA permit where necessary or advantageous to do so. ASLF states that utilities can obtain permits under current regulations so the flexibility provided by this rule is unnecessary. EPA disagrees with the assertion that the flexibility provided by this rule is unnecessary. While utilities may obtain permits for UCCFs under current regulations, in practice they generally do not because of the high cost of obtaining a permit and paying annual state permit fees.[1] This project is an experiment to determine if an alternate regulatory approach can create incentives for utilities to expedite the removal of hazardous waste from remote locations and to achieve transportation efficiencies. As discussed in section II.A., the overall purpose of Project XL is to experiment with untried, potentially promising regulatory approaches. EPA believes that this approach will accomplish faster removal of hazardous waste and result in superior environmental performance. The proposed rule was developed based on EPA's understanding from communications with NYSDEC and various New York State utilities. Confirmatory information supporting this final rule that addresses this point has been included in the rulemaking record.

3. Delays in Securing Hazardous Waste Transporters

ASLF expresses concern that, to the extent that securing the services of a hazardous waste transporter is the cause of the delay in removing hazardous waste from a remote location, this project will not solve that problem. EPA has not found that the delay in removing hazardous waste from the remote locations is generally a result of

[1] There are currently five TSDFs operating under a RCRA permit and owned by a utility in all of New York State. However, not all utilities currently own or operate a permitted TSDF and of those that do, the TSDF may not be accessible to all of their remote locations. Whether a utility already owns or operates a TSDF will be an issue considered by the regulatory agency when it decides whether to approve a designation of a particular UCCF.

having to secure a licensed transporter, but rather of having to obtain authorization from the TSDF before that TSDF can be entered on the manifest (see (4)(b)(2) above). To the extent that securing a commercial transporter is a problem, this rule will address it because allowing the Utilities to transport waste to a UCCF will mean that Utilities could remove the waste immediately with their own licensed transporters.

4. Existence of Delays in Hazardous Waste Removal

ASLF comments that the rulemaking record does not contain any evidence that the delay in transporting hazardous waste from remote locations actually occurs and that there is no analysis of why a delay should ever occur. For an explanation of why this delay occurs, see section III. A.4.b.1. Regarding the rulemaking record, the proposed rule was developed based on EPA's understanding from communications with NYSDEC and various New York State utilities. Confirmatory information supporting this final rule that addresses these points has been included in the rulemaking record.

5. Streamlined Permits

ASLF questions why EPA did not consider an option of a streamlined permit for UCCFs because streamlined permitting in general is being considered by EPA's Office of Solid Waste. Under Project XL potential participants are invited to develop *their* proposals for common sense, cost-effective strategies that will replace or modify specific regulatory requirements and result in superior environmental benefits. Project XL is intended to allow EPA to experiment with these proposals to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. In this case, several Utilities and NYSDEC proposed this approach to EPA. This approach provides a commonsense way to ensure the fast removal of hazardous waste from remote locations. Because of the hazards involved in leaving the waste at the remote locations, EPA has determined that this project is beneficial to human health and the environment and is worth evaluating as an alternative to the existing system.

c. Environmental Benefits

ASLF also expresses concern over the environmental benefits of the project. ASLF states that the immediate removal of hazardous waste from remote locations is not derived from the exemption from permitting requirements for UCCFs. EPA disagrees. As discussed above, nothing currently prevents utilities from leaving hazardous waste at unstaffed, unsecured remote locations. In fact, there is generally, a two to three day delay in the transport of the hazardous waste from the remote locations (after all the hazardous waste is collected) because utilities wait for TSDF authorization prior to listing the TSDF on the manifest and transporting the waste. While utilities may obtain permits for UCCFs under current regulations, in practice they generally do not. This project is an experiment to determine if an alternate regulatory approach can create incentives for utilities to expedite the removal of hazardous waste from remote locations and to achieve transportation efficiencies. ASLF questions the amount of environmental benefits resulting from the consolidation of waste resulting in fewer vehicle trips. While EPA does not consider this environmental benefit in of itself to constitute superior environmental performance, EPA believes that a reduction in vehicle trips does create some environmental benefit. EPA considers all of the environmental benefits as a whole when deciding whether a project achieves superior environmental performance. ASLF also expresses concern that the utilities may choose the environmental projects. EPA views this as one of the areas of experimentation under this project. Because utilities know their facilities and operations better than EPA, they should know where they can achieve the greatest environmental benefit. Thus, EPA is experimenting with giving the utilities discretion to choose the best environmental projects for their particular facilities. These environmental projects, as well as the amount of money spent, must be described in the utilities' annual reports. As discussed above, as in all XL projects, EPA will solicit public comment on the project when it evaluates the annual reports. EPA will consider these comments in determining whether the approval of individual UCCFs and the project as a whole provide sufficient environmental benefits. In addition, if the regulatory agency finds that the environmental projects are a sham, the regulatory agency has the authority to terminate a UCCF's approval or a utility's participation in this project.

ASLF also expresses concern that the determination of whether an environmental project is otherwise required by law is subject to interpretation. EPA believes that the regulatory agencies have the knowledge and expertise to determine whether a particular environmental project is otherwise required by law. If a Utility chooses a project that it is otherwise required to do, the regulatory agency has the authority to terminate a UCCF's approval or a utility's participation in this project.

ASLF is concerned that there is no opportunity for public input into the areas of reinvestment chosen by the utilities. EPA disagrees. The public may provide suggestions to the utilities about the environmental projects chosen by the utilities at any time. In addition, when EPA conducts its annual evaluation of this project, it will solicit public input on the benefit of the environmental projects chosen by the utilities. All information received from the public will be included in EPA's annual evaluation of the project. EPA will also provide this information to NYSDEC and the relevant utilities.

IV. Additional Information

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this rule will be significantly less than $100 million and will not meet any of the other criteria specified in the Executive Order, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an Agency to conduct a Regulatory Flexibility analysis of any rule subject to notice and comment

rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. EPA believes that in determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the required analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed [or final] rule on small entities.'' 5 U.S.C. 603 and 604. Thus, EPA may certify as not having a significant economic impact on a substantial number of small entities rules that relieve regulatory burden, or otherwise have a positive economic effect on the small entities subject to the rule. EPA has concluded that today's rule will relieve regulatory burden for all types of entities, including any affected small entities. Further, today's rule does not impose any requirements on any utility unless the utility opts to participate and receives approval to participate. Therefore, EPA certifies today's rule is unlikely to have a significant economic impact on a substantial number of small entities.

C. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 10, 2000.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and has assigned OMB control number 2010–0026.

EPA is collecting information regarding the locations and amount of waste involved as well as the money saved and what the savings was invested in. EPA plans to use this information to determine whether the XL project is successful. The success of the project will help determine whether it should be extended to other areas of the country. Participation in the project is voluntary; however, if a Utility decides to participate, EPA requires the filing of a report containing pertinent information. These reports will be publicly available. The estimated cost burden of filing the annual report is $10,000 and the estimated length of time to prepare the report is 40 hours. The estimated number of respondents is 15. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA is amending the 40 CFR part 9 table of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule. The table lists the CFR citations for EPA's reporting and recordkeeping requirements, and the current OMB control numbers. This listing of OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act and OMB's implementing regulations at 5 CFR part 1320.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number or regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule is applicable only to New York State Utilities. The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. RCRA/HSWA

1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA program for hazardous waste within the state. (See 40 CFR part 271 for the standards and requirements for authorization.) States with final

authorization administer their own hazardous waste programs in lieu of the federal program. Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA.

After authorization, rules written under RCRA provisions that predate the Hazardous and Solid Waste Amendments of 1984 (HSWA) no longer apply in the authorized state. New federal requirements imposed by those rules do not take effect in an authorized state until the state adopts the requirements as state law.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized states at the same time they take effect in nonauthorized states. EPA is directed to carry out those requirements and prohibitions in authorized states until the state is granted authorization to do so.

2. Effect on New York State Authorization

Today's rule is promulgated pursuant to RCRA provisions that predate HSWA. New York State has received authority to administer most of the RCRA program; thus, authorized provisions of the State's hazardous waste program are administered in lieu of the federal program. New York State has received authority to administer hazardous waste standards for generators. As a result, today's rule will not be effective in New York State until the State adopts equivalent requirements as State law. It is EPA's understanding that subsequent to the promulgation of this rule, New York State intends to propose a rule containing equivalent provisions. EPA may not enforce these requirements until it approves the State requirements as a revision to the authorized State program.

G. Applicability of Executive Order 13045

The Executive Order, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under EO 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

H. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standard. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Hazardous materials transportation, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 265

Environmental protection, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Hazardous waste, Recordkeeping requirements.

Dated: July 1, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, parts 9, 262, 264, 265, and 270 of title 40 of the Code of Federal Regulations are amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding a new entry in numerical order under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB Control No.
* * * * * * *	
Standards Applicable to Generators of Hazardous Waste	
* * * * * * *	
262.90(c), (d), (f), (g)	2010–0026
* * * * * * *	

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

2. Subpart I consisting of § 262.90 is added to read as follows:

Subpart I—New York State Public Utilities

§ 262.90 Project XL for Public Utilities in New York State.

(a) The following definitions apply to this section:

(1) A *Utility* is any company that operates wholesale and/or retail oil and gas pipelines, or any company that provides electric power or telephone service and is regulated by New York State's Public Service Commission or the New York Power Authority.

(2) A *right-of-way* is a fixed, integrated network of aboveground or underground conveyances, including land structures, fixed equipment, and other appurtenances, controlled or owned by a Utility, and used for the purpose of conveying its products or services to customers.

(3) A *remote location* is a location in New York State within a Utility's right-of-way network that is not permanently staffed.

(4) A *Utility's central collection facility (UCCF)* is a Utility-owned facility within the Utility's right-of-way network to which hazardous waste, generated by the Utility at remote locations within the same right-of-way network, is brought.

(b) A UCCF designated pursuant to paragraph (e) of this section may consolidate hazardous waste (with the exception of mixed waste) generated by that Utility at its remote locations (and at that UCCF) for up to 90 days without a permit or without having interim status, provided that:

(1) The Utility complies with all applicable requirements for generators in 40 CFR part 262 (except § 262.34 (d) through (f)) for hazardous waste generated at its remote locations and at the UCCF, including the manifest and pretransport requirements for all shipments greater than 100 kilograms sent from a remote location to a UCCF.

(2) The Utility transports the hazardous waste from the remote location to a UCCF immediately after collection of all hazardous waste at the remote location is complete or when the staff collecting the hazardous waste leave the remote location, whichever comes first.

(3) The Utility complies with all applicable requirements for transporters in 40 CFR part 263 for each shipment of hazardous waste greater than 100 kilograms which is sent from remote location to the UCCF, and all applicable Department of Transportation requirements.

(4) (i) The Utility complies with 40 CFR 262.34 (a) through (c), regardless of the total quantity of hazardous waste generated or consolidated at the UCCF per calendar month;

(ii) The Utility complies with 40 CFR 264.178; and

(iii) Secondary containment is provided for all liquid hazardous waste consolidated in containers if:

(A) The UCCF is consolidating 8,800 gallons or more of liquid hazardous waste, or

(B) The UCCF is consolidating 185 gallons or more of liquid hazardous waste and is located in an area designated by New York State that overlays a sole-source aquifer.

(5) The Utility submits a biennial report in accordance with 40 CFR 262.41 including all hazardous waste shipped from remote locations to the UCCF. This UCCF biennial report may be submitted in lieu of submitting a biennial report for each remote location. However, for hazardous waste generated at a particular remote location that exceeds 1000 kg per calendar month and that is not sent to the UCCF, the Utility must submit a separate biennial report.

(6) Waste generated at a remote location that is not sent to a UCCF is managed according to the requirements of parts 260 through 270 of this chapter.

(7) The Utility maintains records at the UCCF in accordance with all the recordkeeping requirements set forth in subpart D of 40 CFR part 262, including 40 CFR 262.40, and maintains records on any PCB test results for hazardous wastes brought to the facility from remote locations.

(8) The UCCF obtains an EPA identification number.

(9) The UCCF receives hazardous waste only from its remote location.

(10) The Utility reinvests at least one-third of the direct savings described in paragraph (h) of this section in one or more environmentally beneficial projects, such as remediation or pollution prevention, that are over and above existing legal requirements and

that have not been initiated prior to the Utility's receipt of approval to consolidate hazardous waste pursuant to this section.

(c) Utilities seeking to have UCCFs designated under paragraph (e) of this section must comply with the following requirements:

(1) Any New York State Utility seeking approval to consolidate hazardous waste under this section must notify local governments and communities of the Utility's intent to designate specific UCCFs.

(2) In carrying out paragraph (c)(1) of this section, the Utility must solicit public comment. In soliciting public comment, the Utility must use the notice method set forth in paragraph (c)(2)(i) of this section, as well as at least two of the methods set forth in paragraphs (c)(2)(ii) through (vii) of this section. Each Utility must also notify by mail all parties who commented on the proposed rule for this XL project.

(i) A public notice in a newspaper of general circulation within the area in which each proposed UCCF is located;

(ii) A radio announcement in each affected community during peak listening hours;

(iii) Mailings to all citizens within a five-mile radius of proposed UCCF;

(iv) Well-publicized community meetings;

(v) Presentations to the local community board;

(vi) Placement of copies of this section and the Final Project Agreement that explains the regulatory relief outlined in this section in the local library nearest the proposed UCCF, and inclusion of the name and address of the library in the newspaper notice; and

(vii) Placement of copies of this section and the Final Project Agreement that explains the regulatory relief outlined in this section on the Utility's web site, and inclusion of the web site's address in the newpaper notice.

(3) All outreach efforts made under paragraph (c)(2) of this section shall be prepared in English (and any other language spoken by a large number of persons in the community of concern) and at a minimum shall include the following information:

(i) A brief description of the XL project, the intended new use of the facility, and a request for comments on the proposed UCCF.

(ii) The name, if any, and address of the proposed UCCF and its current status under the RCRA Subtitle C program.

(iii) The intended duration of use of the UCCF under the requirements of this section.

(iv) Names, addresses, and telephone numbers of contact persons, representing the Utility, to whom questions or comments may be directed.

(v) Notification of when the comment period of no less than 30 days will close.

(4) Prior to the solicitation of public comment pursuant to paragraph (c)(2) of this section, the Utility must submit copies of each notice, announcement or mailing directly to local governments and to EPA.

(5) At the close of the comment period, the Utility shall prepare a Responsiveness Package containing a summary of public outreach efforts, all comments and questions received as a result of its outreach efforts, and the Utility's written responses to all comments and questions. The Utility shall provide copies of its Responsiveness Package to any citizens that participated in the public notice process, local governments and EPA.

(d) Upon completion of the public notice procedures described in paragraph (c) of this section, the Utility must provide written notice to EPA of its intent to participate. The Notice of Intent must contain the following information:

(1) The name of the Utility, corporate address, and corporate mailing address, if different.

(2) The name, mailing address, and telephone number of a corporate-level contact person to whom communications and inquiries may be directed.This contact person may be changed by written notification to EPA.

(3) A list of the names, addresses, and EPA identification numbers, if applicable, of all Utility-owned facilities in New York State that are proposed UCCFs and the names and telephone numbers of a designated contact person at each facility.

(4) A summary of public outreach efforts undertaken pursuant to paragraph (c) of this section.

(5) A commitment that one-third of the direct cost savings outlined in paragraph (h) of this section due to project participation will be reinvested in one or more environmentally beneficial projects which are over and above existing legal requirements and which have not been initiated prior to the Utility's receipt of approval to consolidate hazardous waste pursuant to this section.

(6) An acknowledgment that the signatory is personally familiar with the terms and conditions of this section and has the authority to obligate and does obligate the Utility to comply with all such terms and conditions. The Utility shall comply with the signatory requirements set forth in 40 CFR 270.11(a)(1).

(e) The procedures for designating UCCFs are as follows:

(1) Subject to paragraphs (e)(2) through (5) of this section, the Utility and specified UCCF shall receive approval to comply with the requirements set forth in paragraph (b) of this section upon the receipt of written acknowledgment from EPA that the Notice of Intent described in paragraph (d) of this section has been received and found to be complete and in compliance with all the requirements set forth in paragraph (d) of this section. This acknowledgment will state whether the UCCF has been designated under this section and any additional limitations which have been placed on the UCCF.

(2) Based on information provided and comments received during the public notice and comment period, EPA shall prepare a response to the comments received. The response to comments shall be attached to the acknowledgment described in paragraph (e)(1). Both the acknowledgment and the response to comments shall be sent to all persons who commented on the designation of the UCCF(s) that are the subject of the acknowledgment.

(3) Based on information provided and comments received during or after the public notice and comment period, designated UCCFs may be rejected for the proposed use, or, if EPA determines that acceptance for the proposed use under the conditions of paragraph (b) of this section may not fully protect human health and the environment based on the Utility's compliance history or other appropriate factors, the acknowledgment may impose conditions in addition to those in paragraph (b) of this section.

(4) If EPA determines that a site-specific informational public meeting is warranted prior to determining the acceptability of a designated UCCF, the acknowledgment will so state.

(5) Subsequent to any public meeting, EPA may reject or prohibit UCCFs from participating in this project based on information provided or comments received during or after the public notice process or based on a determination that acceptance for the proposed use under the conditions of paragraph (b) of this section may not fully protect human health and the environment based on the Utility's compliance history or other appropriate factors.

(f) At any time, a Utility may add or remove UCCF designations by complying with the following requirements:

(1) A Utility may notify EPA of its intent to designate additional UCCFs. Such a notification shall be submitted to, and processed by, EPA, in the manner indicated in paragraphs (d) and (e) of this section.

(2) To have one or more additional UCCFs designated, the Utility must comply with paragraph (c) of this section.

(3) A Utility can discontinue use of a facility as a UCCF by notifying EPA in writing.

(g) Each Utility that receives approval to consolidate hazardous waste pursuant to this section shall submit an Annual Progress Report with the following information for the preceding year:

(1) The number of remote locations statewide for which hazardous waste was handled in accordance with paragraph (b) of this section.

(2) The total tonnage of each type of hazardous waste handled by each UCCF.

(3) The number of remote locations statewide from which 1,000 kilograms or more of hazardous waste were collected per calendar month.

(4) The number of remote locations statewide from which between 100 and 1,000 kilograms of hazardous waste were collected per calendar month.

(5) An estimate of the monetary value, on a Utility-wide basis, of the direct savings realized by participation in this project. Direct savings at a minimum include those outlined in paragraph (h) of this section.

(6) Descriptions of the environmental compliance, remediation, or pollution prevention projects or activities into which the savings, described in paragraph (h) of this section, have been reinvested, with an estimate of the savings reinvested in each. Any such projects must consist of activities that are over and above existing legal requirements and that have not been initiated prior to the Utility's receipt of approval to consolidate hazardous waste pursuant to this section.

(7) The addresses and EPA identification numbers for all facilities that served as UCCFs for hazardous waste from remote locations.

(h) Utilities that receive approval to consolidate hazardous waste pursuant to this section must assess the direct savings realized as a result. Cost estimates shall include direct savings based on relief from any regulatory requirements, which the facility expects to be relieved from due to compliance with the provisions of this section including, but not limited to, the following:

(1) Database management for each remote location as an individual generator;

(2) Biennial Report preparation costs; and/or

(3) Cost savings realized from consolidation of waste for economical shipment (including no longer shipping waste directly to a TSD from remote locations).

(i) If any UCCF or Utility that receives approval under this section fails to comply with any of the requirements of this section, EPA may terminate or suspend the UCCF's or Utility's participation. EPA will provide a UCCF or Utility with 15 days written notice of its intent to terminate or suspend participation. During this period, the UCCF will have the opportunity to come back into compliance or provide a written explanation as to why it was not in compliance with the terms of this section and how it will come back into compliance. If EPA then issues a written notice terminating or suspending participation, the Utility must take immediate action to come into compliance with all otherwise applicable federal requirements. EPA may also take enforcement action against a Utility for non-compliance with the provisions of this section.

(j) This section will expire on January 10, 2005.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.1 is amended by adding paragraph (g)(12) to read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(g) * * *

(12) A New York State Utility central collection facility consolidating hazardous waste in accordance with 40 CFR 262.90.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936 and 6937.

2. Section 265.1 is amended by adding paragraph (c)(15) to read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(c) * * *

(15) A New York State Utility central collection facility consolidating hazardous waste in accordance with 40 CFR 262.90.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.1 is amended by adding paragraph (c)(2)(ix) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) * * *

(2) * * *

(ix) A New York State Utility central collection facility consolidating hazardous waste in accordance with 40 CFR 262.90.

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