

Department of Energy
Washington, DC 20585
October 4, 2001

RCRA Docket Information Center
Office of Solid Waste (5305W)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Docket Number F-2000-UWMP-FFFFF

Dear Sir or Madam:

Re: 66 FR 28240-28318, "Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System."

On May 22, 2001, the Environmental Protection Agency (EPA) published a notice of proposed rulemaking (NPRM), in which EPA suggests changes to the Uniform Hazardous Waste Manifest regulations and to the manifest form. In addition, the proposed revisions offer waste handlers the option to electronically complete, sign and transmit the manifest form.

The Department of Energy (DOE) appreciates the opportunity to comment on the proposed rule and applauds EPA's efforts to streamline the current hazardous waste manifest system. In general, DOE supports the Agency's initiative to further standardize the manifest form, and to establish the option for waste handlers to perform tracking and recordkeeping requirements electronically.

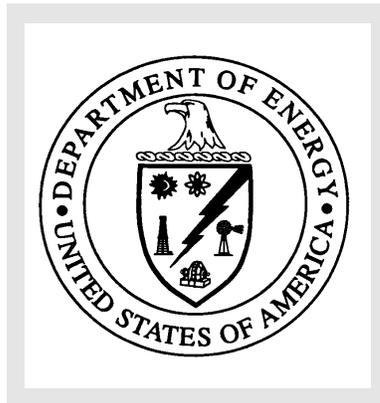
Enclosed are the Department's comments on the proposed rule. For clarity, each comment is preceded by a reference to the section of the NPRM to which it applies, and a brief description is given in boldface type of the issue within that section to which DOE's comment is directed. If you have any questions or need further clarification of our comments, please call Sharon Brown of my staff on (202) 586-6377. You may also contact Ms. Brown via e:mail at sharon.brown@eh.doe.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Traceski".

Thomas T. Traceski
Director, RCRA/CERCLA Division
Office of Environmental Policy and Guidance

Enclosure



**UNITED STATES
DEPARTMENT OF ENERGY**

**COMMENTS ON
PROPOSED MODIFICATION OF THE
HAZARDOUS WASTE MANIFEST SYSTEM**

**NOTICE OF PROPOSED RULEMAKING
(66 FR 28240 - 28318)**

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UNITED STATES DEPARTMENT OF ENERGY

**COMMENTS ON
MODIFICATION OF THE HAZARDOUS WASTE MANIFEST SYSTEM
PROPOSED RULE (66 FR 28240; May 22, 2001)**

GENERAL COMMENTS

1. The Department of Energy (DOE) supports the efforts of the U.S. Environmental Protection Agency (EPA) to reduce the reporting and recordkeeping burdens placed on generators, transporters, and treatment, storage, and disposal facilities (TSDFs) by the hazardous waste manifesting and Biennial Report requirements. DOE particularly commends EPA's attempt to further standardize the Uniform Hazardous Waste Manifest form. DOE sites have confirmed that the numerous state-specific information requirements accommodated on the current form create a considerable burden when generators transfer wastes to TSDFs in multiple states. Therefore, DOE believes the additional standardization which EPA proposes will reduce the cost and manpower burden of the manifest system on DOE sites.

2. DOE applauds EPA for its initiative to create a regulatory option that allows automation of manifesting activities through electronic reporting.

DOE supports the concept of electronic data transfers and agrees that an electronic manifesting system has potential to eventually reduce the regulatory burden that results from maintaining, managing, and locating hard copy files. Notwithstanding, DOE observes that, because States are not required to adopt the option for electronically manifesting into their hazardous waste programs, and hazardous waste generators and other handlers are not required to use electronic manifesting even if it is available, it may be some time before the framework suggested in this proposed rule will actually yield any noticeable reduction in regulatory burden.

In fact, DOE expects confusion during startup of the new manifesting system due to the unavoidable patchwork of approaches to manifesting that will result from giving each State and waste handler the option of participating or not. Accordingly, during the six-month period before the final rule becomes effective, the Department urges EPA to make guidance available, and if possible, sponsor training workshops for the regulated community.

3. As discussed below in Specific Comment IX.B.2, item 1, DOE encourages EPA to require States to adopt electronic manifest authorities consistent with the federal program. DOE believes that, without swift and widespread acceptance of a consistent, nationwide hazardous waste manifest automation approach, hazardous waste handlers will have significantly less incentive to embrace the electronic manifesting option. The proposed regulations allow electronically manifesting only if both the generator and destination facilities are able to send and receive electronic manifest transmissions [40 CFR 262.24]. Hence, neither generators nor TSDFs are likely to make the initial capital and manpower investments necessary to establish electronic manifesting systems without some expectation that the majority of their counterparts also will do so in a consistent manner. However, such an expectation is unlikely to emerge without widespread adoption of consistent electronic manifest authorities by States. Hence, DOE believes that, if most States do not adopt such authorities, waste handlers will be significantly less likely to independently develop electronic systems. This has the potential to erase savings that would otherwise result from the electronic option.

SPECIFIC COMMENTS

IV. “The Revised Manifest Form”

IV.A “Manifest Form Acquisition”

IV.A.7 “What is the Naming Convention for the Different Copies of the Manifest?”

1. **p. 28248, col. 2** – The preamble indicates that the name to be placed on Page 6 (bottom copy) of the printed manifest form is “Generator’s initial copy.” The preamble further explains that “If the generator is required to submit a copy of the manifest to the generator state, the generator should make a photocopy of the manifest to supply this additional copy.”

DOE requests that the final rule resolve the inconsistency between this section of the preamble and the proposed regulatory text for 40 CFR 262.21(b)(1)(ix)(F) [p. 28302, col. 2], as well as the proposed Appendix 1 to Part 262 [p. 28306, col. 3], which both indicate that Page 6 (bottom copy) of the printed manifest form is to be distributed as follows (if required): “Generator to generator State.”

IV.A.11 “Request for Comments”

1. **p. 28249, col. 1** – EPA requests comment on whether waste handlers would find it advantageous to print manifests for their own use under the new approach for printing and obtaining manifests.

It is unlikely that DOE or any DOE site would become registered to print paper copies of manifests for its own use. However, DOE has already embraced automated systems for managing transportation logistics. Since 1995, DOE has required its Field Elements to utilize the Automated Transportation Management System (ATMS) to perform transportation tasks to the maximum extent practicable (Order DOE O 460.2). The ATMS is a multi-tool computer application that can replace many labor intensive manual processes used in transportation logistics management, such as preparation of shipping papers and identification of regulations applicable to shipments. The ATMS relies on Electronic Data Interchange standard formats, and DOE believes it may be possible to use the ATMS to implement EPA’s proposed electronic manifesting system. For these reasons, DOE expects that a number of DOE sites would be likely to register and obtain approval for manifest tracking number systems so they may originate electronic manifests.

2. **p. 28249, col. 2** – EPA requests comment on an alternative option that would retain the proposed Federal printing specification, but not the proposed registry. Under the alternative option, States would still be the primary source of manifests, and the current acquisition hierarchy would be retained to determine from which State the manifest must be obtained. Also, waste handlers would not generally be able to print their own manifests.

DOE notes that the proposal for allowing any waste handler to register with EPA, have its manifest tracking number system approved, and print its own manifests, also makes it possible for any waste handler to register and receive approval to assign waste manifest tracking numbers to electronic manifests. It is unclear how manifest tracking numbers for electronic manifests would be assigned if EPA adopted the alternative option (described above), under which States would still be the primary source of manifests. DOE believes such an alternative could possibly hinder implementation of electronic manifesting systems, especially if each State were to implement a different system for administering electronic manifest tracking numbers.

IV.G “Elimination of Certain State Optional Boxes”

IV.G.3 “Why is EPA Proposing to Remove Each of These Boxes?”

1. **p. 28254, cols. 1 & 2** – The preamble states that EPA is proposing to remove item J and to combine

information normally entered in item J with the Special Handling Instructions and Additional Information. The combined information would be entered in a new block 14 (“Special Handling Instructions and Additional Information”). However, according to the preamble, generators would be allowed to use the new block 14 only for information that States require and for the following information: universal waste shipments; additional waste codes; alternate facility designation; name, address, and phone number of any person other than the person identified in item 4; name, address, phone number, and EPA ID number of any co-generator; and reference to the “old” manifest tracking number.

DOE notes that item J on the current manifest is commonly used by some DOE sites to identify on-site tracking information, such as drum numbers. The purpose of this is to show change of custody for the hazardous waste. DOE requests clarification in the final rule as to whether generators would be allowed to include such information in the new block 14.

IV.G.6 “EPA Invites Comment on Today’s Proposal to Reduce the Number of State Optional Fields on the Manifest”

1. **p. 28255, col. 1** – The preamble indicates that EPA requests comment on whether it would be easier on the regulated community, states, etc. to make the new Blocks A and B mandatory instead of continuing to use them as state optional fields.

DOE supports making the new Blocks A (Waste Codes) and B (Biennial Report System Type Codes) mandatory instead of continuing to use them as state optional fields. Since both federal and state-specific waste codes (where applicable) are necessary to identify wastes, DOE does not believe making it mandatory to list such codes on the manifest would increase reporting burden. Similarly, since generators must identify the Biennial Report System Type Codes for their waste in order to fulfill the requirement for filing a Biennial Report, DOE does not believe it would be overly burdensome if it were mandatory to list such codes on the manifest.

IV.H “Block K Coding System”

IV.H.2 “What Are the Biennial Report System Type Codes That EPA Proposes To Use?”

1. **p. 28255, col. 2** – The preamble contains the following statement: “EPA plans to develop a new list of system type codes for inclusion in the 2001 Biennial Report. This Biennial Report will be published about Fall 2000.”

DOE suggests that in the final rule, EPA update the statement quoted above to indicate that the 2001 Biennial Report Instructions and Forms were finalized in November 2000 and are available at the following EPA URL address: <http://www.epa.gov/epaoswer/hazwaste/data/brs01/brs01frm.pdf>

IV.H.4 “What are the Problems with the Current Coding Systems Used to Complete Block K?”

1. **p. 28256, col. 2** – The preamble section IV.H.3 explains that different States now require waste handlers to enter different handling type codes in the existing Block K of the manifest. In addition, the State codes must eventually be converted to the Biennial Reporting System waste handling type codes in order to complete the Biennial Report. This task may be difficult and labor-intensive. Based on this, section IV.H.4 concludes that confusion can result when interstate transport is involved, making it appropriate to mandate the use of the Biennial Reporting System waste handling type codes on the manifest.

DOE sites have confirmed that use of state-specific waste handling type codes on manifests are problematic, as mentioned in the preamble section IV.H.3. Therefore, DOE agrees that the Biennial Reporting System (BRS)

waste handling type codes should be mandated in place of state-specific waste handling type codes. This would simplify the process of completing the manifest form and reduce the overall burden of providing the codes. It also should significantly decrease the burden of preparing the Biennial Report for both generators and TSDFs.

IV.H.6 “Who Would Be Affected by the Proposal To Change Block K to Block B?”

1. **p. 28256, col. 3 – The preamble states that because TSDFs are the most familiar with the processes that best describe the way in which a waste is managed at their facility, EPA is proposing that TSDFs be responsible for completing Block B (where required). EPA specifically requests comment on this proposal.**

DOE agrees that the generator will not necessarily know which BRS code is appropriate for waste which it sends to a TSDF. Currently, the generator must often contact the TSDF to research and verify the waste handling type code for each hazardous waste being sent with a shipment. This is particularly necessary when the TSDF has capability to manage certain wastes in multiple ways. For example, D001 ignitable waste may be deactivated, burned as a hazardous waste fuel, or brokered to a second TSDF for treatment. However, the generator may not necessarily know which of these options the TSDF plans to use. Even after the generator ascertains the planned management option for a waste, the applicable State waste handling type code must be assigned, which may vary for TSDFs located in different States, requiring further research by the generator. Accordingly, DOE agrees that the TSDF is the most appropriate party to have responsibility for completing the proposed Block B on the Uniform Hazardous Waste Manifest form, when completing Block B is required by a State. Requiring the TSDF to enter the appropriate waste handling system type code information on the manifest would significantly reduce the burden on the generator and should not significantly increase the burden on the TSDF, because the TSDF should have the information readily available.

IV.I “Block I Waste Code System”

IV.I.1 “How Would the Requirements for the Codes Used in Block I Change?”

1. **p. 28257, col. 3 & p. 28309, cols. 2 & 3, *Optional State Information, Block A* – On p. 28257, the preamble explains that “if states require the completion of Block A, then the waste handler must enter Federal waste codes in the appropriate section of Block A according to a hierarchy, with the highest toxicity waste appearing first to alert users of the manifest of their presence.” The hierarchy is further described on p. 28309 in the instructions for completing the Uniform Hazardous Waste Manifest form.**

DOE questions the necessity of requiring that waste codes be entered into Block A according to a hierarchy intended to alert users of the Uniform Hazardous Waste Manifest to the presence of certain wastes. Since Block A is optional (for State use), it is unlikely that the information it contains will be generally relied upon by emergency responders. Thus, DOE believes that requiring waste codes to be entered into Block A based on a hierarchy has little value and complicates the process of completing the manifest. Accordingly, DOE suggests that EPA allow entry of waste codes into Block A in any order.

IV.I.6 “EPA Invites Comment on the Following Questions Related to the Proposed Changes to Block A”

1. **p. 28259, col. 1 – The preamble states: “Although today’s rule does not propose to establish generic waste codes for lab packs, spent carbon, and incinerator ash, EPA may pursue this in the future as resources permit and welcomes comment on codification of such codes.”**

In June 2000, EPA published in the *Federal Register* (65 FR 37932 -37956; June 19, 2000) an advance notice of proposed rulemaking (ANPRM) regarding issues and potential directions being considered for improving the Land Disposal Restrictions (LDR) Program. Among other things, the June 2000 ANPRM requested comments on issues related to the possibility of establishing a waste code encompassing ash from incineration of more than one hazardous waste containing organic constituents (including organic toxicity wastes (D012 - D043) and waste with greater than 1 percent total organic carbon). The June 2000 ANPRM explained that EPA was considering this option because the regulated community finds it confusing to comply with the LDR notification requirements, the hazardous waste manifesting requirements, and the Biennial Reporting System requirements for incinerator ash when an incinerator manages multiple *listed* hazardous wastes. In response, DOE agreed that it can be confusing to comply with these requirements when an incinerator handles multiple listed hazardous wastes. Notwithstanding, the Department questioned whether these recordkeeping requirements are so burdensome as to justify creation of a new hazardous waste code for incinerator ash and requested that EPA consider certain issues before taking such action.¹ Specifically, DOE inquired as to whether reliance on the “derived-from” rule was an appropriate basis for creating a new incinerator ash waste code listing. In addition, DOE requested that EPA acknowledge that creating a new incinerator ash waste code would deviate from the Agency’s May 1999 policy regarding LDR treatment requirements (64 FR 25408; May 11, 1999) and explain why the deviation is warranted. DOE wishes to reiterate and incorporate herein by reference its earlier comment on the possibility of establishing a new hazardous waste code for incinerator ash. Accordingly, that earlier comment is included as Attachment 1 to this enclosure for ease of access.

VI. “Residues and Rejected Loads: How Must These Shipments be Manifested?”

VI.7 “Who Is Responsible for Deciding Where To Send a Residue or Load Rejected by the TSDF?”

- 1. p. 28262, col. 3 – The preamble states the EPA believes it is appropriate to require that the TSDF contact the generator for a decision about the next destination for a rejected load or residue.**

DOE supports requiring the TSDF to involve the generator in decisions about the destination of rejected loads and regulated residues. As a matter of DOE Order 435.1, DOE sites must verify the acceptability of off-site hazardous waste management facilities before any transfer of DOE hazardous wastes is made to an offsite facility. This is considered essential because the generator is ultimately responsible for management of its hazardous waste from “cradle to grave.” Through involvement in the evaluation, selection, and approval of an alternative TSDF, the generator can assure proper disposition of its rejected waste or regulated residue. Accordingly, DOE agrees with EPA’s conclusion that a TSDF should be required to consult the generator before transferring a rejected load or regulated residues to any alternative facility that the generator has not approved in advance.

VI.8 “Must TSDFs Who Reject Waste or Who Have a Regulated Residue Prepare a New Manifest For the Shipment to the Alternative Facility?”

- 1. p. 28263, col. 1 – The preamble states that EPA is proposing that a new manifest must be prepared by the TSDF designated on the original manifest in all cases involving a rejected waste or a container residue shipment. The TSDF must close out the original manifest by noting the rejection or the regulated container residue.**

DOE supports requiring the TSDF designated on the original manifest to prepare a new manifest in all cases involving rejected waste or regulated residues. DOE believes using a consistent approach, such as issuing a new manifest, for all waste rejection and container residue scenarios, is reasonable. Some DOE sites that generate

¹DOE Comments on *Issues and Potential Directions Being Considered for Improving the Land Disposal Restrictions Program*; Advance Notice of Proposed Rulemaking (65 FR 37932 - 37956), Specific Comment X.B, item 1 (p. 19) (September 15, 2000).

hazardous waste have already implemented this approach through agreements with commercial hazardous waste management vendors.

VI.9 “Whose Facility Information Would Go in the ‘Generator’ Block of the Manifest?”

- 1. pp. 28264, col. 3 - 28265, col. 1 – The preamble explains that, under the proposal, the rejecting facility forwarding or returning rejected wastes or residue shipments would always sign the generator’s certification on the manifest, and would thereby be liable for proper execution of the pre-transportation acts included in the certification. As an alternative, the preamble suggests that EPA could require the rejecting facility to consult with the initial generator on the disposition of the rejected waste, and then sign the generator’s certification “on behalf of” the initial generator. The initial generator would be bound by the rejecting facility’s signature, and the rejecting facility would not be liable itself for the proper execution of the pre-transportation acts included in the certification. EPA requests comment on whether this alternative has more merit than the proposed approach.**

DOE supports EPA’s efforts to ensure consistency in manifesting residues and rejected wastes, and to assure that the original generator is informed of, and involved in, decisions on disposition of its waste.

DOE is concerned that, in focusing on waste tracking issues, the proposed approach (and the alternative) may not fully consider issues of liability surrounding compliance with Department of Transportation (DOT) requirements. There are a number of pre-transportation and transportation requirements that the Department of Transportation mandates for the “offeror” of a hazardous material/waste shipment. When a package of hazardous waste is offered for transportation, the person offering the package must be able to demonstrate compliance with all of these requirements, including: material classification; packaging (including all performance-oriented design, testing and certification information); marking; labeling; etc..

We note that, under EPA’s proposed approach, the TSDF will be the offeror of the package for transportation and will be liable, under DOT rules, for full compliance with the regulations. This means the TSDF will have to be able to demonstrate proper classification, have full documentation for the performance oriented packaging being used and will be liable for a number of functions which were performed by the initial generator. If the TSDF is to perform these functions in a legally compliant and defensible manner, they may have to obtain specific information and documentation from the initial generator, adding to the time and effort required to make a rejected or redirected shipment.

In general, DOE believes a TSDF that rejects and returns or redirects a shipment of hazardous waste should not be liable for the pre-transportation acts performed by the initial generator. Similarly, DOE believes the initial generator should not be liable for pre-transportation acts performed by the rejecting TSDF.

However, the Department does not support the alternative manifesting approach suggested at the bottom of page 28264, column 3, which would require a TSDF that rejects a hazardous waste shipment to sign the generator’s certification “on behalf of” the initial generator. If EPA were to require that a TSDF sign the generator certification on a hazardous waste manifest “on behalf of” DOE when returning or redirecting a rejected shipment of DOE-generated hazardous wastes, then DOE would be liable under DOT regulations for any pre-transportation functions performed by the TSDF. Under such circumstances, DOE Order 460.2 would require that due diligence audits be conducted of the TSDF’s pre-transportation program. DOE does not currently conduct such audits, and expects that they would increase the time required and costs for hazardous waste shipping. For this reason, DOE would not support the promulgation of regulations requiring a rejecting TSDF to sign the generator certification on the hazardous waste manifest “on behalf of” the initial generator when returning or redirecting a rejected shipment

VI.10 “What Would You Be Required To Do Under the New Regulations?”

1. **p. 28265, col. 1** – EPA explains that when a designated facility cannot fully empty a container according to 40 CFR 261.7, the facility may have to send the container with its residue to an alternative facility. Should this occur, the facility would have to complete a manifest according to directions, which are presented in a bullet list in the preamble. The fifth bullet says: “Copy the manifest tracking number found in Block A or Item 3 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 20).”

DOE requests verification that the manifest tracking number would be found in Block A. On the proposed manifest form (p. 28307), Block A is designated for “Waste Codes.” DOE notes that the instruction quoted above appears at three other locations on p. 28265 in columns 2 and 3 with respect to residues being sent back to the generator, rejected loads being sent to an alternate TSDf, and rejected loads being sent back to the generator. If EPA intended to reference Block A as it now appears on the existing EPA Form 8700-22 (Rev. 9-88), DOE suggests this be indicated when the final rule is issued.

2. **p. 28265, cols. 1-4** – The preamble provides instructions to TSDfS for use in four scenarios: (1) residues being sent to an alternate facility; (2) residues being sent back to the generator; (3) rejected loads being sent to an alternate TSDf; and (4) rejected loads being sent back to the generator.

DOE suggests that, to avoid any confusion, the final rule clarify that, in all four scenarios listed above, the TSDf must enter an emergency response phone number on the new manifest, and that this phone number must meet the same criteria as specified for initial shipments of hazardous waste. That is, the emergency phone number must (p. 28251):

- be the number of the original generator or the number of an agency or organization capable of and accepting responsibility for providing detailed information about the shipment (e.g., the TSDf forwarding or returning the waste);
- reach a phone that is monitored 24 hours a day at all times the waste is in transportation (including transportation-related storage); and
- must reach someone who is either knowledgeable of the hazardous waste being shipped and has comprehensive emergency response and spill cleanup/incident mitigation information for the material being shipped or has immediate access to a person who has that knowledge and information about the shipment.

DOE also requests that EPA clarify that the TSDf should coordinate with the generator regarding the appropriate phone number to enter. For some shipments, it may not be appropriate to simply use the emergency phone number on the original manifest because that number may have been selected to provide access to a knowledgeable person at all times when that waste shipment was in transportation from the original generator to the TSDf.

VI.11 “What Conditions Would Apply to a Rejected Waste or Container Residue Shipment Once the Generator Receives it Back From the TSDf?”

1. **p. 28265, col. 3** – The preamble indicates that a generator to which a rejected waste or residue container shipment is returned would have up to 90 or 180 days (depending on the generator’s status as a large or small quantity generator at the time of the original shipment to the TSDf) to send the rejected waste or container residue to an alternate TSDf.

DOE agrees that a generator who sends waste to a TSDf in good faith should be allowed to “restart” the accumulation clock if, subsequently, either the waste is rejected and returned to the generator or container residues are returned to the generator. In such unusual situations, further characterization is often needed upon

the original generator's receipt of the returned material. As a result, the actions that the generator must take are similar to actions taken at the time waste is originally generated.

VII.12 “On What Issues Would EPA Like To Receive Comments?”

- 1. p. 28266, col. 2 – What should be the designated facility's responsibility for managing rejected waste while it is awaiting shipment to an alternative facility?**

DOE suggests that management responsibility for rejected waste be left to the contract between the generator and the designated facility, except that any activities conducted by the TSDF to prepare rejected wastes for shipment to an alternative facility should be conducted in compliance with the TSDF's hazardous waste permit.

VII. “Automation of the Manifest System”

VII.A “Introduction”

VII.A.5 “How Much Reduction in Burden and Cost Would Be Achieved by Automation?”

- 1. p. 28268, col. 2 – The preamble states that EPA projects that manifest automation could produce between \$14.4 million and \$26.6 million in cost savings to waste handlers and about \$1.5 million annually to States in operating their manifest programs.**
 - a. DOE agrees that automating the manifest system has potential to result in an overall net savings at some future time after the new system reaches steady state operation. However, in the interim, DOE foresees potentially high front-end costs for individual waste handlers to purchase and deploy new hardware and software to implement the system. Also, individual waste handlers would incur up-front and continuing costs for maintenance, backup systems, specialized training, and security.
 - b. One DOE site, which initiates only a small number of hazardous waste shipments annually, reports that all of its manifests are currently prepared by vendors. Consequently, this site would be unlikely to install an electronic manifesting system. Furthermore, unless its vendors installed electronic manifesting systems from which cost savings were realized and passed on through reductions in the cost of services, this site would experience no reduction in the burden or cost of manifesting hazardous waste.

VII.C “Overview of the Electronic Manifest Proposal”

VII.C.3 “Must Authorized State Programs Adopt Electronic Manifesting?”

- 1. p. 28272, col. 2 – The preamble states that EPA is still considering whether States should be required to adopt electronic manifest authorities as part of their authorized RCRA programs.**

DOE believes that the electronic manifest option will not be readily embraced by hazardous waste handlers unless a consistent, nationwide hazardous waste manifest automation approach is swiftly implemented. Therefore, for reasons further explained in Specific Comment IX.B.2, item 1, below, DOE encourages EPA to enact a final rule requiring States to adopt electronic manifest authorities consistent with the Federal program.

VII.F “What Electronic Record System Controls and Procedures Would This Proposal Require?”

VII.F.8 “Full Interoperability of System Software”

- 1. p. 28282, col. 2 – The preamble identifies an issue related to how EPA and the States can know that new electronic manifest systems are being implemented. The preamble indicates that “EPA is taking comment on one additional measure, which would require system sponsors to notify EPA on**

a one-time basis that they have developed and would be implementing an electronic manifest system.”

The preamble explains in section IV.A.2 that, as with the printers of paper manifests, waste handlers who originate electronic manifests would have to register to get an approved tracking number system (p. 28247, col. 3). If this is true, DOE believes the required registration would serve to notify EPA of implementation of most new electronic manifest systems. Therefore, DOE suggests that any additional one-time notification requirement not be applied to originators of electronic manifests who already must register with EPA to get an approved tracking number system.

IX. “How Would Today’s Proposed Regulatory Changes Be Administered and Enforced in the States?”

IX.B “Authorization of States for Today’s Proposal”

IX.B.2 “Would Authorized States Be Required To Adopt Electronic Manifesting?”

1. **p. 28299, col. 2 – EPA states that the proposed rule does not require States to adopt the electronic manifest option. However, the Agency is considering whether States should be required to adopt the electronic manifest option in order to ensure consistency with the Federal program and other State programs.**

DOE believes that, without swift and widespread acceptance of a consistent, nationwide hazardous waste manifest automation approach, hazardous waste handlers will have significantly less incentive to embrace the electronic manifesting option. The proposed regulations allow electronically manifesting only if both the generator and destination facilities are able to send and receive electronic manifest transmissions [40 CFR 262.24]. Hence, neither generators nor TSDFs are likely to make the capital and manpower investments necessary to establish electronic manifesting systems without some expectation that the majority of their counterparts also will do so in a consistent manner. However, such an expectation is unlikely to emerge without widespread adoption of consistent electronic manifest authorities by States. Hence, DOE believes that, if most States do not adopt such authorities, waste handlers will be significantly less likely to independently develop electronic systems, which would significantly frustrate implementation of the electronic manifest option. This has the potential to erase savings and minimize benefits that would otherwise result from the electronic option. Considering this potential consequence in the event that States falter, DOE encourages EPA to enact a final rule requiring States to adopt electronic manifest authorities consistent with the Federal program.

Proposed Amendments to Title 40, Chapter I of the Code of Federal Regulations

1. **p. 28302, col. 2, §262.21(b)(1)(viii) – This section contains the following specification for printing of paper manifest forms: “Follow the same copy naming structure as outlined below in §262.21(c)(3).”**

DOE requests confirmation that the reference to “§262.21(c)(3)” is correct because the proposed regulatory text for §262.21 contains no “§262.21(c)(3).” This comment also applies to the section of Appendix 1 to Part 262 entitled “Copies and Copy Distribution” [p. 28306, col. 3, 9th bullet].

2. **p. 28302, col. 2, §262.21(b)(2)(i) – This section indicates that the following may be printed on the manifest form: “In items 10 and 28 (DOT description), a hazardous materials (HM) column for use in distinguishing between federally regulated wastes and other materials according to 49 CFR 172.201(a)(1).”**

DOE requests confirmation that the reference to item “28” is correct because the proposed manifest form presented in Appendix 1 to Part 262 [p. 28307] contains no item “28.”

3. **p. 28302, col. 3, §262.21(c)(2) – This section refers twice to the “consignment state,” but no definition of the term is provided.**

DOE notes that §262.21(c)(2) is the only location in the regulatory text where the term “consignment state” is used. Furthermore, while the existing §262.21 explains the meaning of the term “consignment state,” the text proposed for the new §262.21 does not. Therefore, DOE requests that the term “consignment state” be replaced in the final rule by the term “destination state,” or that a definition for “consignment state” be provided.

4. **p. 28305, col. 2, §262.27 – The introductory sentence of this proposed section reads as follows: “A generator who initiates a shipment of hazardous waste must certify to one of the following statements in Item 16 of the uniform hazardous waste manifest.”**

DOE notes that the Generator’s Certification on the proposed Uniform Hazardous Waste Manifest (p. 28307) appears as Item 15, rather than Item 16. DOE suggests reconciliation of the discrepancy between the proposed regulatory text and the proposed Uniform Hazardous Waste Manifest form.

5. **p. 28306, col. 3, Appendix 1 to Part 262, “Copies and Distribution,” 3rd bullet – The instructions indicate that among the specifications for printing the paper manifest is the following: “preprint an eleven digit alphanumeric number (i.e., the three letter prefix followed by eight digits) under Item Three of the manifest as the Manifest Tracking Number.”**

For large quantity generators, such as DOE, the assignment of unique manifest numbers has become more challenging over time. For the purpose of gathering and tracking manifests for annual reporting, DOE believes it would be helpful if manifests could be numbered consecutively to allow for rapid identification of record gaps, letter codes could be included in the manifest number designating contractors and subcontractors, and the manifest number could reflect the year of shipment. To accommodate this, DOE requests that EPA extend the Manifest Tracking Number to at least fifteen (15) alphanumeric characters.

6. **p. 28308, col. 1, Appendix 1 to Part 262, Sec. I, Items 4 and 5 – Item 4, “Generator’s Mailing Address and Phone Number,” instructs the user of the manifest form to enter as the Generator’s phone number a number that “should be the number where the generator or his authorized agent may be reached to provide instructions in the event of an emergency or if the designated and/or alternate (if any) facility rejects some or all of the shipment.” The Item 4 instructions also describe the attributes required for this “emergency response phone number.” Then, Item 5, “Emergency Response Phone Number,” instructs the user of the manifest form simply to “enter the number of the generator or the number of a party responsible for providing information about the shipment 24 hours a day.”**

DOE requests that the manifest instructions for Items 4 and 5 be modified to clarify the difference between the phone numbers to be entered. DOE believes the specific instructions given for Item 4 concerning the attributes required for an “emergency response phone number” might be more appropriately placed in the instructions for the new Item 5, “Emergency Response Phone Number.” It could be confusing to instruct the user of the manifest form to insert a generator phone number in Item 4, which the instructions describe as having attributes that would be appropriate for the emergency phone number requested in Item 5.

7. **p. 28312, col. 1, §263.21(b)(1) – This proposed section states: “If the hazardous waste cannot be delivered in accordance with paragraph (a) of this section because of an emergency condition other than rejection of the waste by the designated facility, then the transporter must contact the generator for further directions and must revise the manifest according to the generator’s instructions.”**

DOE requests clarification of the transporter’s responsibility to “revise the manifest according to the generator’s instructions” when an electronic manifest is used. It is unclear how the transporter could effect a change on the

original electronic manifest without compromising the validity of the generator's electronic signature.

DOE also requests that the final rule provide additional guidance for the circumstance described in the proposed text of §263.21(b)(1) quoted above, if an electronic manifest is used and the transporter does not participate in manifest automation.

8. **p. 28314, col. 1, §264.72(e)(3)** – This proposed section reads as follows regarding rejected loads and residues that are to be sent off-site by the designated TSDF to an alternate TSDF: “Copy the manifest tracking number found in Block A or Item 3 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.”

DOE requests verification that the manifest tracking number would be found in Block A. On the proposed manifest form (p. 28307), Block A is designated for “Waste Codes.” If EPA intended to reference Block A as it appears on the existing EPA Form 8700-22 (Rev. 9-88), DOE suggests the regulatory text be modified to indicate this. This comment also applies to proposed §264.72(f)(3) regarding rejected wastes and residues that the designated TSDF must send back to the generator, proposed §265.72(e)(3) regarding rejected wastes and residues that a designated interim status TSDF sends off-site to an alternate TSDF, and §265.72(f)(3) regarding rejected wastes and residues that a designated interim status TSDF must send back to the generator.

9. **p. 28314, cols. 1 & 2, §264.72(g)** – This proposed section instructs that, if a TSDF rejects a shipment or identifies container residues exceeding the “empty” quantity after having certified receipt of a shipment, then the TSDF must: (1) “amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest”; and (2) “re-sign and date the manifest to certify to the information as amended.”

DOE requests clarification of the TSDF's responsibility to amend its copy of the manifest and “re-sign and date the manifest to certify to the information as amended” when an electronic manifest is used. It is unclear how the designated TSDF could effect a change in the information on the original electronic document, as well as its signature and the date thereof, without compromising the validity of prior electronic signatures on the document. This comment also applies to §265.72(g) regarding interim status TSDFs.

10. **p. 28314, col. 2, §264.76(a)** – This proposed section requires a TSDF that accepts hazardous waste from off-site without an accompanying manifest to “prepare and submit a letter to the Regional Administrator within fifteen days after receiving the waste,” unless the waste is excluded from the manifest requirement.

DOE notes that the discussion in the preamble of this proposed regulatory change (p. 28259) states that TSDFs who accept unmanifested wastes will be required to submit “a typed, handwritten, or electronic note” containing specified information to the EPA Regional Administrator. Based on this language in the preamble, DOE suggests that the word “letter” in the proposed regulatory text be changed to “a legible typed, handwritten, or electronic note.” DOE believes the preamble language is more instructive and would assist the regulatory community in understanding the format required for unmanifested waste reporting. This comment also applies to §265.76(a) regarding interim status TSDFs.

11. **p. 28314, col. 2, §264.76(a)(6)** – This proposed section indicates that the following is one item of information that TSDFs must include in an unmanifested waste report: “The certification signed by the owner or operator of the facility or his authorized representative.”

DOE requests that EPA clarify the exact text of the certification to which §264.76(a)(6) refers either by including such text in the language of §264.76(a)(6) or by referencing its location in another section of the regulations. This comment also applies to §265.76(a)(6) regarding interim status TSDFs.

ENCLOSURE 1

**Specific Comment X.B, item 1
from**

**DOE Comments on *Issues and Potential Directions Being Considered for Improving the Land Disposal Restrictions Program*; Advance Notice of Proposed Rulemaking (65 FR 37932 - 37956);
September 15, 2000**

**Specific Comment X.B, item 1
from**

DOE Comments on *Issues and Potential Directions Being Considered for Improving the Land Disposal Restrictions Program*; Advance Notice of Proposed Rulemaking (65 FR 37932 - 37956); September 15, 2000

X. Should EPA Establish a Special Category for Incineration Ash?

X.B What Are the Approaches We Are Considering for Regulating Incineration Ash?

- 1. p. 37952, cols. 2 & 3 – The ANPRM explains that EPA is considering establishing a waste code encompassing ash from *incineration* of more than one hazardous waste containing organic constituents (including organic toxicity wastes (D012-D043) and wastes with greater than 1 percent total organic carbon) . Comments are requested on whether the incineration ash waste code should be defined in some other way.**

DOE agrees with others in the regulated community that it can be confusing to comply with the LDR notification requirements, the hazardous waste manifesting requirements, and the Biennial Reporting System requirements for incinerator ash when an incinerator manages multiple *listed* hazardous wastes. Notwithstanding, the Department questions whether these recordkeeping requirements are so burdensome as to justify creation of a new hazardous waste code. DOE believes the issues described below warrant consideration before EPA takes such action.

- a. Nothing in the ANPRM suggests that EPA has made an independent listing determination (under 40 CFR 261.11) for incinerator ash. Instead, EPA appears to be relying on the “derived-from” rule (40 CFR 261.3(c)(2)(i)) as the basis for the new incinerator ash waste code listing (F040). This approach is like the approach taken when multi-source leachate (F039) was listed. However, DOE submits that reliance on the “derived-from” rule may be less appropriate for ash from incinerators than it was for multi-source leachate. This belief has two bases. First, as the ANPRM states (p. 37952, col. 3), the production of ash by incineration units can properly be considered a new point of generation “since the incineration unit will significantly alter the physical and chemical composition of, and the hazards associated with, the original waste.” In fact, “the composition and nature of the waste [exiting the incinerator will] have changed [from the composition and nature of the waste entering the incinerator] to the point that the hazards posed by the incinerator ash are likely to be significantly different than the original waste.” Accordingly, “the subsequent management and handling that would be environmentally warranted for incinerator ash could be significantly different from those for the original waste.” Hence, the situation for incinerator ash clearly differs from that for multi-source leachate, which is derived from *disposal* rather than *treatment* of the original waste. Unlike incinerator ash, there are substantial reasons to expect that disposal would yield multi-source leachate containing the same hazardous constituents as the original waste, and posing similar hazards to human health and the environment. Therefore, it would be logical to conclude that most multi-source leachate derived from disposal of hazardous wastes would meet the criteria for listing of a hazardous waste, and that all multi-source leachate could appropriately be assigned to a single hazardous waste code. However, as explained above, since the nature and composition of incinerator ash derived from treatment of hazardous wastes may not resemble the original waste, it is not logical to conclude that most incinerator ash will meet the criteria for listing of a hazardous waste, or that all ash which does meet those criteria should be assigned to a single hazardous waste code. In fact, the general variability of hazardous waste incinerator design and operation has been documented in the EPA data base supporting development (pursuant to the Clean Air Act and RCRA) of the maximum achievable control technology (MACT) requirements for hazardous waste combustors [see 40 CFR 63, Subpart EEE (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors)]. While the database does not include ash analyses, the high variability of off-gas characteristics, ash collection systems, and waste feed characteristics are well documented and suggest that the nature and composition of bottom ash and fly ash from hazardous waste incinerators would vary considerably.

Second, the “derived-from” rule applies only to wastes derived from listed hazardous wastes (e.g., F001 - F005). Therefore, it is unclear how the “derived-from” rule could serve as the basis for listing a waste code that would comprise ash generated by all hazardous waste incinerators, including those that treat only hazardous wastes exhibiting the toxicity characteristic for organics (i.e., D012 - D043).

Accordingly, if EPA decides to propose a new hazardous waste code for incineration ash based on the “derived-from” rule, DOE suggests limiting the listing to ash from incinerators that treat one or more *listed* hazardous wastes (e.g., F001 - F005). Ash from incinerators that treat only hazardous wastes that exhibit the toxicity characteristic for organics (e.g., D012 - D043) should not be included. Such ash does not have the same burdensome LDR reporting requirements as ash derived from listed hazardous waste. Moreover, such ash has existing LDR treatment standards which require treatment of UHCs to meet UTS limits.

- b. In May 1999, EPA published in the *Federal Register* (64 FR 25408; May 11, 1999) a final rule technical correction clarifying, among other things, the final regulations containing LDR treatment standards for wastes which exhibit the toxicity characteristic for metals (63 FR 28641; May 26, 1998). In particular, the Agency responded to several inquiries concerning treatment of TC metal wastes and the potential for finding underlying hazardous constituents at levels above the UTS in the treatment residuals that were either not present in the waste prior to treatment or may have been present but only at levels below the UTS [see 64 FR 25408, 25411, section III.B.8]. In the response, EPA explained that, if treatment of a characteristically hazardous waste removes the original characteristic but yields a residual which itself exhibits a different hazardous characteristic, the Agency regards generation of this newly-formed hazardous waste as being a new point of generation for LDR purposes. Hence, the newly-formed hazardous waste must be treated prior to disposal to meet the LDR treatment standards applicable to it (i.e., the treater is responsible for a new determination of UHCs that are present in the newly-formed waste). The LDR treatment standards applicable to the original waste (including any UHCs in the original wastes) are no longer relevant to the newly formed waste. EPA clarified, however, that “the Agency looks to the entire treatment process, not to each component part,” when determining whether a new hazardous waste has been generated for LDR purposes.

DOE believes that, if EPA decides to create a new hazardous waste code for ash generated by hazardous waste incinerators (including ash that does not exhibit any toxicity characteristic), doing so would deviate from the May 1999 Agency policy regarding LDR treatment requirements by establishing a new hazardous waste code at an intermediate step within an entire treatment process. Consequently, DOE requests that, if EPA decides to create a new hazardous waste code for incinerator ash, the Agency acknowledge that its approach deviates from the May 1999 policy, and explain why the deviation is warranted.