

public hearing scheduled for November 4, 2009, is cancelled.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 261**

[EPA-HQ-RCRA-2003-0004; FRL-8973-2]

RIN 2050-AE51

**Hazardous Waste Management System: Identification and Listing of Hazardous Waste: Conditional Exclusion From Hazardous Waste and Solid Waste for Solvent-Contaminated Industrial Wipes**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Data availability, management approaches, and request for comment.

**SUMMARY:** This notice of data availability (NODA) invites comments on a revised risk analysis supporting the Environmental Protection Agency's (EPA) proposed revisions to the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations governing the management of solvent-contaminated wipes. The revised analysis addresses public comments received on the risk screening analysis conducted on EPA's 2003 **Federal Register** proposal to exclude solvent-contaminated wipes from the RCRA definitions of solid and hazardous waste. To address these comments, EPA updated the data, models, and approach used in the risk analysis and then had the product peer reviewed by outside experts. The revised risk analysis, as well as the peer review comments and our response to those comments are available in the docket for this NODA. The NODA also invites comment on specific issues in light of the results of the revised risk analysis.

**DATES:** Comments must be received within December 28, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-RCRA-2003-0004 by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* [rcra-docket@epa.gov](mailto:rcra-docket@epa.gov), Attention Docket No. EPA-HQ-RCRA-2003-0004.

- *Fax:* 202-566-9744, Attention Docket No. EPA-HQ-RCRA-2003-0004.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Resource Conservation and Recovery Act (RCRA) Docket, 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket No. EPA-HQ-RCRA-2003-0004. Please include 2 copies.

• *Hand Delivery:* Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, Attention Docket No. EPA-HQ-RCRA-2003-0004. Such deliveries are only accepted during the docket's normal hours, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-RCRA-2003-0004. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not send information you consider CBI or that is otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment direct to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you send an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you send. If EPA cannot read your comment because of technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For more information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is

restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Resource Conservation and Recovery Act (RCRA) Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the RCRA Docket is (202) 566-0270.

**FOR FURTHER INFORMATION CONTACT:**

Teena Wooten, Office of Resource Conservation and Recovery (ORCR), (703) 308-8751, [wooten.teena@epa.gov](mailto:wooten.teena@epa.gov). Direct mail inquiries to the U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (Mailstop 5304P), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

This action may affect up to 164,000 entities in at least 15 industries involved in the use and handling of solvent-contaminated wipes. These industries include, but are not limited to:

Industry
1. Printing manufacturing.
2. Chemical and allied products manufacturing.
3. Plastics and rubber products manufacturing.
4. Fabricated metal products manufacturing.
5. Industrial machinery and equipment manufacturing.
6. Electronics and computers manufacturing.
7. Transportation equipment manufacturing.
8. Furniture and fixture manufacturing.
9. Auto dealers (retail trade).
10. Publishing (printed matter).
11. Business services.
12. Auto repair and maintenance.
13. Military bases.
14. Solid waste services.
15. Industrial launderers.

This list is not intended to be an exhaustive list, but rather provides a guide for readers regarding entities likely to be covered by this action. This list includes the types of entities that EPA is now aware of that could potentially be covered by this action. Other types of entities not listed above could also be addressed by this action. If you have any questions about the

applicability of this action to a particular entity or industry, consult the individual listed above in the **FOR FURTHER INFORMATION CONTACT** Section.

*B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not send CBI information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all the information that you claim to be CBI. For CBI information on a disk or CD-ROM that you mail to EPA, mark the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. As well as one complete version of the comment that includes information claimed as CBI, send a copy of the comment that does not contain the information claimed as CBI for inclusion in the public docket. Information so marked will not be disclosed, except under procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When sending comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in enough detail to allow reproduction.
- Provide specific examples to explain your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to send your comments by the comment period deadline identified.

The contents of this notice are listed in the following outline:

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## I. Background

### A. Introduction

A wide variety of industries use wipes (*i.e.*, rags, shop towels, disposable wipes and paper towels, collectively called “wipes”) for cleaning and degreasing. The wipes are handled in various ways. For example, wipes may be used once or several times before they are thrown away, while other wipes are used, laundered, and reused multiple times. During cleaning and degreasing operations, these wipes may become contaminated with solvents, as well as with other materials (*e.g.*, paints, varnishes, waxes, metal shavings, inks, dirt). When discarded, spent wipes are considered hazardous waste under the Federal hazardous waste regulations if the wipes exhibit a hazardous waste characteristic under 40 CFR part 261, subpart C or contain a solvent listed in 40 CFR 261.31 (that is, the solvents included in RCRA waste codes F001 through F005).

Members of the regulated community petitioned EPA to remove solvent-contaminated wipes from the hazardous waste regulations. The petitioners argued that when small amounts of solvent are used on each wipe, minimal risk occurs from the disposal of such wipes in municipal solid waste landfills (MSWLF). Thus, they viewed the required disposal of the solvent-contaminated wipes in RCRA Subtitle C hazardous waste facilities as overregulation. Industrial laundries presented similar arguments and requested that the solvent-contaminated wipes they wash before returning them to their customers for reuse be excluded from the definition of solid waste. After a review of the petitions, subsequent industry requests and information, and internal EPA analysis, the Agency decided to propose exclusions from the RCRA definition of solid waste for solvent-contaminated wipes sent to a laundry or dry cleaner and from the definition of hazardous waste for solvent-contaminated wipes sent to a landfill or combustion facility, provided certain conditions were met. We published the proposed changes in the November 20, 2003, **Federal Register**

(68 FR 65586). The result of this proposal, if finalized, would reduce the regulatory burden on users and handlers of solvent-contaminated wipes. In support of the proposed regulatory change, we completed a risk screening analysis to evaluate the potential risk at MSWLFs from the disposal of solvent-contaminated wipes and industrial laundry sludge.

### B. November 2003 Proposed Rule Standards and Approach

To evaluate the appropriate regulatory status for solvent-contaminated wipes, we considered the risks to the environment and public health from the management of solvent-contaminated wipes and wastewater treatment sludge from laundries (laundry sludge) in MSWLFs. This was done by conducting a screening analysis to determine the constituent-specific risks from landfilling wipes and laundry sludge contaminated with the F001–F005 listed (40 CFR 261.31) spent solvents. Then we estimated the risks from exposure to the 30 F001–F005 listed solvents potentially used on wipes, assuming disposal in an unlined MSWLF. Specifically, we looked at potential risks from inhalation of the spent solvents volatilizing from the landfill, from ingestion of groundwater contaminated by the spent solvents leaching from the landfill, and from inhalation of the spent solvent vapors released from contaminated groundwater during showering and other such uses. Section V of the Technical Background Document for the proposed rule [Docket EPA–HQ–RCRA–2003–0004] provides details on the risk screening analysis conducted for the 2003 proposed rule.

### C. Comments on the 2003 Proposal

During the comment period on the proposed rule, we received substantive comments on the risk screening analysis and solvent loading calculations from 23 commenters. In addition to public review and comment, we received comments from outside peer reviewers. Both the public and the peer reviewers questioned the validity of the risk screening analysis and the modeling assumptions. These comments are available in EPA’s Docket No. EPA–HQ–RCRA–2003–0004.

## II. Methodology and Results of the Revised Risk Analysis

### A. Introduction

In response to the comments received from the peer reviewers and the public on the risk screening analysis used to support the proposed rule, we decided to revisit our risk analysis. Based on this

review, we determined that a more robust risk analysis was required to adequately determine the potential risk from disposal of solvent-contaminated wipes and laundry sludge in MSWLFs, also referred to in this NODA as landfills or non-hazardous waste landfills. We have thus completed a revised risk analysis which is more robust and more sophisticated than the original risk screening analysis. The revised risk analysis includes updated data and information, a new model to evaluate the behavior of solvents in a landfill, revised fate and transport modeling, including additional probabilistic modeling, uncertainty and sensitivity analyses, and an improved approach to compare the solvent quantity estimates to the risk-based solvent levels. Because so much of the revised risk analysis is new, we believe it appropriate to make it available for public comment before making decisions on the final rule.

The revised risk analysis estimates the amount of each F-listed solvent that is present in solvent-contaminated wipes and laundry sludge disposed of in MSWLFs. We compared these amounts to the quantities of spent solvents that may be disposed of in MSWLFs without presenting unacceptable risks to human health and the environment (risk-based mass loadings). The revised risk analysis consists of three separate documents, which are described generally in this NODA. The documents are:

- “Landfill Loadings Calculations for Disposed Solvent-Contaminated Wipes and Laundry Sludge Managed in Municipal Landfills”
- “Risk-Based Mass Loading Limits for Solvents in Disposed Wipes and Laundry Sludges Managed in Municipal Landfills”
- “F001–F005 Solvent-Contaminated Wipes and Laundry Sludge: Comparison of Landfill Loading Calculations and Risk-Based Mass Loading Limits”

For more details about the revised risk analysis, please see the above documents in the Docket (EPA–HQ–RCRA–2003–0004).

The discussion below summarizes our revised risk analysis for disposal of the solvent-contaminated wipes and laundry sludge in landfills.

#### *B. Were the Documents Peer Reviewed before Issuing this Notice?*

The revised risk analysis will be used to support EPA’s rulemaking to the RCRA hazardous waste regulations governing the management of solvent-contaminated wipes. Under our peer

review policy, risk analyses used to support rulemaking decisions are influential scientific information. Therefore, we conducted an external peer review in accordance with both EPA’s peer review policy and the Office of Management and Budget’s (OMB’s) Final Information Quality Bulletin for Peer Review. We asked the peer reviewers to conduct a comprehensive review of the risk analysis. The peer reviewers were asked to respond to a set of questions, which are included in the public docket for this NODA addressing the technical basis of the approaches we used and to prepare a report highlighting their comments and recommendations. The peer reviewers suggested clarifications in several sections of the “Landfill Loadings Calculations for Disposed Solvent-Contaminated Wipes and Laundry Sludge Managed in Municipal Landfills” document. One reviewer questioned the method chosen to determine the uncertainty/variability distribution, while two reviewers asked for more information on determining the number of generators using wipes. The reviewers also suggested that EPA review its discussion on sensitivity analysis. For the “Risk-Based Mass Loading Limits for Solvents in Disposed Wipes and Laundry Sludges Managed in Municipal Landfills” document, the reviewers recommended more data and discussion on the model methodology and results. EPA revised these documents incorporating the peer reviewers’ comments, where necessary and appropriate. The docket contains the individual peer reviewer reports, EPA’s response to the peer reviewers’ comments, and supporting documents for the peer reviews.<sup>1</sup> For more information about the peer review process, see EPA’s Peer Review Handbook at [http://www.epa.gov/iris/Peer\\_Review\\_Handbook\\_2006\\_3rd\\_edition.pdf](http://www.epa.gov/iris/Peer_Review_Handbook_2006_3rd_edition.pdf).

#### *C. How were the Landfill Loadings for Solvent-Contaminated Wipes Determined?*

We began the evaluation by looking at the 30 solvents listed in 40 CFR 261.31 (F001–F005). Through literature review and site visits, we eliminated 10 of these 30 solvents<sup>2</sup> from the analysis. Of the

<sup>1</sup> The “F001–F005 Solvent-Contaminated Wipes and Laundry Sludge: Comparison of Landfill Loading Calculations and Risk-Based Mass Loading Limits” document was developed after completion of the peer reviews.

<sup>2</sup> Carbon tetrachloride, 1,1,1-Trichloroethane, Trichlorofluoromethane, Dichlorodifluoromethane, 1,1,2-Trichlorotrifluoroethane (ozone depleting substances), Carbon disulfide, ethyl ether, Nitrobenzene, 2-Nitropropane, Pyridine (not know to be used as solvents in wipes applications). For

10 eliminated solvents, 5 are ozone-depleting or present other serious hazards and are therefore banned or restricted from use. The other 5 solvents eliminated from the analysis may have been used on wipes in the past; however, our research found that these solvents are currently not used or are used only in limited quantities in conjunction with wipes. The Agency solicits comment on this finding.

After identifying the remaining 20 solvents<sup>3</sup> to evaluate, we used both deterministic (point-value) and Monte Carlo (probabilistic) methods in the analysis. We estimated the number of generators and the number of wipes used by those generators. Few generators have the same solvent use practices or use the same number of wipes. To account for these differences, our revised risk analysis included an assessment of the uncertainty using empirical data-based probability distributions in a Monte Carlo analysis. We conducted a separate sensitivity analysis to assess the influence that each input parameter has on the result. These results identify the most and least influential assumptions. We estimated the amount of solvent that could be on a wipe or in laundry sludge before disposal and then estimated the number of generators potentially disposing of solvent-contaminated wipes or laundry sludge into a single MSWLF. Through our calculations, we derived estimated landfill loadings for the solvents. The full report, “Landfill Loadings Calculations For Disposed Solvent-Contaminated Wipes and Laundry Sludge Managed in Municipal Landfills” describes the assumptions made, methodologies used, and the results of the analysis. The Docket (EPA–HQ–RCRA–2003–0004) for this NODA contains this document.

#### *D. How were the Risk-Based Mass Loadings Calculated?*

We also developed a methodology to estimate the amount of hazardous spent solvents that could be disposed of in MSWLFs (unlined and composite lined), and be protective of human health and the environment at the point of exposure. These “allowable amounts” are risk-based mass loading rates expressed in kg of each spent solvent

the discussion on the solvents, see the “Landfill Loadings Calculations for Disposed Solvent-Contaminated Wipes and Laundry Sludge Managed in Municipal Landfills” Section 1.2.1 and 1.2.2.

<sup>3</sup> Acetone, benzene, butanol, chlorobenzene, cresols (total), cyclohexanone, dichlorobenzene, 1, 2-ethoxyethanol, 2-ethyl acetate, ethyl benzene, isobutanol, methanol, methyl ethyl ketone, methyl isobutyl ketone, methylene chloride, tetrachloroethylene, toluene, trichloroethane, 1,1,2-trichloroethylene, xylene (mixed isomers).

that can be added to a landfill in a given year. These risk-based mass loading rates were derived from modeling scenarios defined in terms of the solvent, landfill type (e.g., lined or unlined), exposure pathway (e.g., ambient air inhalation), contact media (e.g., groundwater), and receptor (e.g., child or adult). Mass loading rates were estimated for each solvent such that the exposure at the 50th and 90th percentiles of the risk distribution would not exceed the identified risk target criteria, if these materials were disposed of in a MSWLF. The 50th and 90th percentiles are typically used by the Agency to characterize risk. The 90th percentile represents a "high end" estimate of individual risk, while the 50th percentile results reflect the central tendency estimate of the risk distribution.<sup>4</sup> For this analysis, the risk criteria were selected so that either 50 or 90 percent of the hypothetical individuals living near a landfill will not be exposed to solvent releases resulting in an excess lifetime cancer risk above 1 chance in 10,000 ( $10^{-4}$ ) through 1 chance in 1,000,000 ( $10^{-6}$ ).<sup>5</sup> For noncancer health effects, we used a hazard quotient (HQ) of one as our risk criterion (the noncancer HQ is defined as the ratio of predicted intake levels to safe intake levels).

We identified the following exposure pathways based on the solubility and volatility of the 20 spent solvents included in the analysis, as well as the operating practices of nonhazardous waste landfills:

- (1) Inhalation of ambient air containing spent solvents emitted from the landfill at residential dwellings;
- (2) Ingestion of spent solvents that leach from the landfill and migrate through groundwater to residential drinking water wells;
- (3) Inhalation of spent solvents during showering and bathing with solvent-contaminated groundwater; and
- (4) Dermal contact of spent solvents during showering and bathing with solvent-contaminated groundwater.

A probabilistic approach was used to develop national mass loading rates because landfills that receive solvent-contaminated wipes and laundry sludge could be of varying geometry and located in many different parts of the

country. The approach primarily addresses the variability in waste management practices (that is, unlined and composite lined landfills), environmental settings, and exposure-related parameters. We also developed a landfill source model to simulate the solvent-specific air emissions and leachate releases from landfills. The quantity of solvent releases to the air and groundwater were then used as inputs to the air and groundwater fate and transport models.

For each solvent, we calculated risk estimates assuming a unitized mass loading rate (1 kg per year) for each liner type, exposure pathway, and receptor, as well as for the combined exposures associated with groundwater uses. The risk results provide insight into the relative nature of exposures and potential risks that could be associated with the solvent-contaminated wipes disposed of in MSWLFs.

For unlined landfills, the groundwater pathways were always associated with the highest predicted risks at the 50th and 90th percentiles of the distributions. For composite lined landfills, groundwater exposures were associated with the highest risks at the 90th percentile, except for methylene chloride and methyl ethyl ketone, which showed higher risks for the ambient air inhalation pathway. At the 50th percentile, the highest predicted risks were associated with the ambient air inhalation pathway for 16 of the 20 solvents; however, for unlined landfill disposal, the predicted risks were associated more with drinking water.

From this information, we developed solvent-specific risk-based mass loading rates (in kg/yr) that could be disposed of in a MSWLF and meet specific risk criteria and be protective of human health and the environment. The risk-based mass loading rates do not provide direct insight into the potential impacts associated with current management practices. The full report, "Risk-Based Mass Loading Limits for Solvents in Disposed Wipes and Laundry Sludges Managed in Municipal Landfills" describes the assumptions made, methodologies used, and the results of the analysis. The Docket for this NODA (EPA-HQ-RCRA-2003-0004) contains this document.

#### *E. How were the Risk-Based Mass Loadings Compared to the Solvent-Quantity Loadings?*

To perform a comparison, EPA evaluated a 90th percentile risk criterion for the risk-based mass loading limit to be protective of 90 percent of hypothetically exposed individuals across all of the landfill sites in the

United States (Guidance for Risk Characterization, U.S. Environmental Protection Agency, 1995; accessible at <http://www.epa.gov/OSA/spc/pdfs/rcguide.pdf>, which states that "For the Agency's purposes, high end risk descriptors are plausible estimates of the individual risk for those persons at the upper end of the risk distribution," or conceptually, individuals with "exposure above about the 90th percentile of the population distribution"). As recommended in the Guidance, EPA also evaluated the 50th percentile results as the central tendency estimate of that risk distribution. Thus, we compared the 90th percentile estimate of landfill loading rates (ELLRs) to the 90th percentile of the risk-based mass loading levels (RB-MLLs) to determine whether the ELLRs in landfills that can be attributed to solvent-contaminated wipes and laundry sludge exceeds the RB-MLLs that correspond to selected health-based limits. A similar comparison was conducted at the 50th percentile.

#### *F. What are the Results for the Comparison of the Loading Estimates?*

The results for both the ELLR and the RB-MLL are generated from a probabilistic analysis. The results from these two separate calculations are given by a distribution of values. The theoretical risk distribution provides the basis for calculating risk-based mass loading rates for any percentile of that distribution. Based on the risk criteria that EPA evaluated for the wipes analysis, the RB-MLL was identified at the 50th and 90th percentiles of the distribution. These levels represent the allowable mass loading rate (in kg per year) for management of solvent-containing wipes and laundry sludges in a MSWLFs anywhere in the country in any given year.

The comparisons of the ELLRs and RB-MLLs are expressed as ratios, *i.e.*, the 90th percentile ELLRs (kg solvent per year) are divided by the 90th percentile RB-MLLs (kg solvent per year) for a specific solvent to yield ratios. The ELLR is an estimate of the mass loading into the landfill and the RB-MLL is an estimate of the mass loading that would correspond to an exposure equivalent to the chosen risk criterion, or risk "target." Therefore, if the ratio exceeds one, this indicates the degree to which the ELLR exceeds the evaluation criteria used to establish the RB-MLLs (*i.e.*, a cancer risk of  $1 \times 10^{-5}$  and an HQ of 1 for noncarcinogenic risk).

The comparison of the 90th percentile values of the ELLRs and the RB-MLLs

<sup>4</sup> *Guidance for Risk Characterization*, U.S. Environmental Protection Agency, 1995.

<sup>5</sup> These risk criteria are consistent with those discussed in EPA's hazardous waste listing determination policy (see December 22, 1994; 59 FR 66072). Also see 40 CFR 300.430(e)(2)(i)(A)(2), which establishes a cancer risk range of  $10^{-4}$  to  $10^{-6}$  in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) for responding to releases of hazardous substances under Superfund.

indicates that 8 of the 20 spent solvents could pose potential risks above EPA's evaluated criteria at some risk levels for unlined landfills. The 90th percentile risks for benzene (using the high end cancer risk value only), 1,1,2-trichloroethane, methylene chloride, tetrachloroethylene, and trichloroethylene exceeded the  $10^{-5}$  cancer risk criteria. The 90th percentile risks for chlorobenzene, toluene, and xylenes exceeded the criteria for non-cancer health effects (HQ = 1). As expected, the predicted risks for the unlined landfill analysis were always greater than those for the composite-lined landfill analysis. Using the comparison of the 90th percentile results, the potential risks from all solvents examined in the composite-liner scenario, except for tetrachloroethylene, were well below (generally <0.1) the health-based criteria used in this analysis. The value for tetrachloroethylene was 1.1 using the higher end cancer risk value and 0.9 using the lower end cancer risk value. For a more detailed explanation of how the ELLR and RB-MLL were compared, see the "F001-F005 Solvent-Contaminated Wipes and Laundry Sludge: Comparison of Landfill Loading Calculations and Risk Based Mass Loading Limits" document in the docket for this NODA.

A comparison of the ELLR and RB-MLL central tendency values (50th percentiles), showed that tetrachloroethylene is the only solvent in the unlined landfill scenario that produced a ratio of ELLR to RB-MLL greater than one (using a cancer risk of  $1 \times 10^{-5}$  and an HQ of 1) and this value was 1.4 using the higher end cancer risk value; using the lower end cancer risk value, the ratio was 1.2. For the composite liner scenario, all ratios of the 50th percentile ELLRs and RB-MLLs are well below one using these risk criteria.

The ratios from a comparison of the ELLRs and the RB-MLLs for the constituents with carcinogenic risk would change if the RB-MLLs were calculated using a risk criterion different from the  $1 \times 10^{-5}$  criterion. If a target risk level of  $1 \times 10^{-4}$  were used for calculating the RB-MLLs, the carcinogenic risk for the carcinogens (1,1,2-trichloroethane, benzene, methylene chloride, tetrachloroethylene, and trichloroethylene) would be lower by a factor of ten. Alternatively, if a target risk level of  $1 \times 10^{-6}$  were used, the cancer risks for these constituents would be higher by a factor of ten. A comparison of the ELLR and RB-MLL values using the  $10^{-4}$  risk criterion for

the no-liner scenario would have the effect of lowering the ratios; however, the ratios of 7 of the 8 solvents of potential concern would remain above one at the 90th percentile (the ratio for benzene would be less than one). Using the  $10^{-4}$  criterion at the 50th percentile, the ratios for all the solvents would be below one. Using the  $10^{-6}$  risk criterion would have the effect of raising the ratios in the unlined landfill scenario for carcinogens, such that the ratios for all these 8 solvents for the 90th percentile results would exceed one by a wider margin. Using the  $10^{-6}$  risk criterion, the ratios from the 50th percentile results would increase for the carcinogenic solvents, such that the ratios for tetrachloroethylene and trichloroethylene would exceed one at the 50th percentiles.

For the composite-liner scenario, the ratios for all solvents would be below one (including tetrachloroethylene) at both the 90th and 50th percentiles using the  $10^{-4}$  risk criterion. Using the  $10^{-6}$  criterion, the ratios for tetrachloroethylene and trichloroethylene at the 90th percentile are above one.

These results differ from our original risk screening analysis for the proposed rule in the following ways:

- The number of solvents that show a potential risk for disposal in an unlined landfill in our risk screening analysis increased by 2 in the revised analysis and the solvents indicating a potential risk also changed.<sup>6</sup>
  - In the original risk screening analysis, we did not consider risks from lined landfills. The revised risk analysis does consider risks from composite lined non-hazardous waste landfills.
  - In the original risk screening analysis, we did not identify any solvents of concern from laundry sludge. Our revised risk analysis indicates that tetrachloroethylene may be a concern in both solvent-contaminated wipes and laundry sludge disposed of in unlined and composite lined landfills.

#### G. Request for Comment

We are seeking comment on all aspects of the revised risk analysis (landfill loading calculations, risk based mass loading levels, comparison document). In particular, we are seeking comment on:

<sup>6</sup> Solvents in the proposal indicating a potential risk in unlined landfill scenario: Methyl ethyl ketone, methyl isobutyl ketone, nitrobenzene, pyridine, methylene chloride, 2-nitropropane. Solvents from revised risk analysis indicating a potential risk in unlined landfill scenario: benzene, 1,1,2-trichloroethane, chlorobenzene, methylene chloride, tetrachloroethylene, toluene, trichloroethylene, and xylene.

- The assumptions used;
- Whether the uncertainties are properly acknowledged and mitigated, as appropriate;
- The data used;
- The methodology used; and
- How the agency should consider using the results of the revised risk analysis in its decision-making.

### III. Discussion and Request for Comment on Management Approaches and Risk Analysis Findings

The Agency's November 2003 proposal allowed solvent-contaminated wipes and laundry sludge that met certain conditions to be sent either to a MSWLF or to another nonhazardous waste landfill that meets the standards under 40 CFR part 257, subpart B. We did not discuss the specific characteristics of MSWLFs receiving solvent-contaminated wipes or laundry sludge, specifically whether the landfill would be unlined or lined. Because our revised risk analysis indicates that a number of solvents show a potential for risk in unlined landfills (using the 90th percentile results and a risk criterion of  $1 \times 10^{-5}$  for cancer risk), we are considering two additional approaches for managing solvent-contaminated wipes and laundry sludge in landfills.

The first approach would allow the disposal of solvents not showing a risk in any municipal landfill or nonhazardous waste landfill whether lined or unlined. The solvents that indicated a potential risk if disposed of in an unlined landfill<sup>7</sup> could only be disposed in a lined municipal landfill or lined non-hazardous waste landfill. This could be accomplished by requiring disposal in a Subtitle D municipal or industrial landfill unit subject to, or otherwise meeting, the landfill requirements in 40 CFR 258.40(a)(2) and (b).<sup>8</sup> The second approach would be to

<sup>7</sup> Benzene, 1,1,2-trichloroethane, chlorobenzene, methylene chloride, toluene, trichloroethylene, and xylene.

<sup>8</sup> 40 CFR 258.40(a)(2) states: "With a composite liner, as defined in paragraph (b) of this section and a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner. 40 CFR 258.40(b) states "For purposes of this section, composite liner means a system consisting of two components; the upper component must consist of a minimum 30-mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60-mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component."

<sup>9</sup> Solvent-contaminated wipes, while not required, could also be disposed of in a hazardous waste landfill meeting the landfill requirements in 40 CFR 264.301 or 265.301.

establish conditions that allow all solvent-contaminated wipes, no matter which solvent they contain, except perhaps tetrachloroethylene, to be sent to a Subtitle D municipal or industrial landfill unit subject to, or otherwise meeting, the landfill requirements in § 258.40(a)(2) and (b). This approach could be simpler since the generator would not need to separate his wipes and send them to separate disposal locations. We are requesting comment on these two approaches.

The risk analysis using 90th percentile results also indicates that tetrachloroethylene has a risk potential in both unlined landfills and composite lined landfills for both solvent-contaminated wipes and laundry sludge (using a cancer risk criterion of  $1 \times 10^{-5}$ ). Using the higher end cancer risk value in our analysis, the ratio of the ELLR to the RB-MLL for tetrachloroethylene was 1.1, while using the lower end cancer risk value the ratio was 0.9. If we rounded the numbers, the ratios would both be 1.0. Since we generally used a conservative approach in the risk analysis, we are asking for comment on whether our results represent a risk of concern.

Even though the risk may be borderline, we are considering alternative management conditions for tetrachloroethylene to address this potential risk. One approach is to prohibit disposal of tetrachloroethylene, either on solvent-contaminated wipes or in laundry sludge that exhibits the tetrachloroethylene toxicity characteristic (TC) in nonhazardous waste landfills. Another approach could be eliminating wipes contaminated with tetrachloroethylene from the scope of the final exclusions for solvent-contaminated wipes, or eliminating wipes contaminated with tetrachloroethylene that exhibit the TC in the scope of the final exclusions for solvent-contaminated wipes. We are requesting comment on these approaches or other possible alternatives.

#### IV. Conclusion

We will consider comments received on the revised risk analysis and then modify the analysis as appropriate. The final risk analysis, comments submitted in response to Section III of this notice, and comments submitted in response to the November 2003 proposed rule will be considered as we develop a final rule for the management of solvent-contaminated wipes.

Readers should note that other than the specific issues identified in this NODA, no other issues discussed in or related to the November 20, 2003,

proposed rule are open for further comment and the Agency will not respond to any comments received on any issues not identified in this NODA.

Dated: October 15, 2009.

**Mathy Stanislaus,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. E9-25812 Filed 10-26-09; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 67

[Docket ID FEMA-2008-0020; Internal Agency Docket No. FEMA-B-1075]

#### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

**DATES:** Comments are to be submitted on or before January 25, 2010.

**ADDRESSES:** The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1075, to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW.,

Washington, DC 20472, (202) 646-2820, or (e-mail) [kevin.long@dhs.gov](mailto:kevin.long@dhs.gov).

#### FOR FURTHER INFORMATION CONTACT:

Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) [kevin.long@dhs.gov](mailto:kevin.long@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

*National Environmental Policy Act.*

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

*Executive Order 12866, Regulatory Planning and Review.* This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

*Executive Order 13132, Federalism.* This proposed rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This proposed rule meets the