

State of North Carolina, a revision to the State's regulation 15 NCAC 2D.0516 which relaxed the SO₂ limit for fuel-burning sources. The original version of 2D.0516 prescribed a stepdown in SO₂ emissions for all fuel-burning sources from 2.3 pounds per million BTU heat input (lb/MBTU) to 1.6 lb/MBTU by July 1, 1980. Air quality dispersion modeling submitted by the State in 1982 indicated that removal of the SO₂ stepdown requirement was approvable for all but 24 sources.

EPA indicated in the December 7, 1982, Federal Register notice that if future modeling could show that the relaxed SO₂ limit of 2.3 lb/MBTU was adequate to protect the NAAQS, then the stepdown requirement could be eliminated for other sources as well.

In its review of the State's submittal for two of these sources, EPA became aware of deficiencies in North Carolina's compliance test method for SO₂. The regulation, 15 NCAC 2D.0501(c)(4), gave fuel burning sources subject to compliance determinations for sulfur dioxide the option of determining compliance via stack sampling or fuel sulfur analysis. The method used for fuel sampling, however, did not assure compliance with the short-term SO₂ NAAQS.

Regulation 2D.0501, Compliance with Emission Control Standards, was originally federally approved on May 31, 1972 (37 FR 10884), and has since had 13 revisions federally approved. The ninth of these revisions, which added section (c)(4), was federally approved December 19, 1986 (51 FR 45468). Paragraph (c)(4) was then amended to specify the testing methods for fuel analysis. This amendment was federally approved on November 19, 1986 (51 FR 41786).

As a result of its review, EPA informed North Carolina that the regulation should require that any source choosing fuel analysis must do the analysis in such a manner that the NAAQS will be adequately protected. In response to EPA's findings, North Carolina amended their rule 15 NCAC 2D.0501(c)(4) and submitted it to EPA for approval on December 15, 1987. Also contained in this submittal were changes to the Part II Visibility Plan and requests for delegations of authority for NSPS and NESHAP revisions. The visibility portion will be covered in another notice while the NSPS and NESHAP revisions will go through the normal delegation process.

The revised rule has been reviewed by EPA and deemed acceptable because it assures that the short-term SO₂ standards will be protected. It specifies that the fuel sample to be tested is a composite of at least three or twenty-

four samples taken at equal time intervals from the fuel being burned over a three-hour or twenty-four-hour period, respectively, whichever is the time period for which the ambient standard is most likely to be exceeded. It specifies how the test is to be carried out for compliance purposes. The new rule does not require sources which are fuel testing as part of a continuous monitoring program to use the same procedure as those fuel testing for compliance purposes. The rule also requires that the compliance test be done at least once per year.

Final Action

EPA is approving revisions to North Carolina's regulation 15 NCAC 2D.0501(c)(4), which details procedures for demonstrating compliance with sulfur dioxide emission limits from fuel-burning sources. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective August 8, 1988, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective August 8, 1988.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of North Carolina was approved by the Director of the Federal Register on July 1, 1982.

Date: June 3, 1988.

Lee M. Thomas,
Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart II—North Carolina

2. Section 52.1770 is amended by adding paragraph (c)(57) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(57) Revisions to 15 NCAC 2D.0501(c)(4) were submitted by the North Carolina Department of Natural Resources and Community Development on December 15, 1987.

(i) Incorporation by reference.

(A) Letter of December 15, 1987, to the Environmental Protection Agency from the North Carolina Department of Natural Resources and Community Development and revised paragraph (c)(4) of 15 NCAC 2D.0501, adopted by the North Carolina Environmental Management Commission on December 10, 1987.

(ii) Additional material—none.

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40 CFR Part 261

[SW-FRL-3394-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of final rule denying petition and notice of policy determination.

SUMMARY: On February 5, 1988, a panel of the United States Court of Appeals for the District of Columbia Circuit unanimously remanded a final rule of the Environmental Protection Agency, determining that the Agency had failed to comply with the requirements of the Administrative Procedure Act, 5 U.S.C. 553 (1982). *McLouth Steel Products Corp. v. Thomas*, 838 F.2d 1317 (D.C. Cir. 1988). This notice withdraws the Agency's final rule appearing at 51 Federal Register 41624 (November 18, 1986) denying McLouth's petition and announces the Agency's policy

regarding application of certain models to petitions for exclusion of wastes under 40 CFR 260.20 and 260.22.

EFFECTIVE DATE: June 9, 1988.

ADDRESSES: The RCRA regulatory docket for this notice is located at the U.S. Environmental Protection Agency, 401 M Street SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The docket for this notice contains all materials included in the original docket compiled for the Agency's previously published proposed and final rules regarding McLouth Steel Products Corporation. The reference number for this docket is "F-86-CHDP-FFFFF". The public may copy material from any regulatory docket at a cost of \$0.15 per page.

FOR FURTHER INFORMATION CONTACT:

For general information, contact the RCRA/Superfund Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For information concerning the remand of the Agency's final decision, contact Josh Sarnoff, Office of General Counsel (LE-132S), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7706. For technical information concerning the Agency's review of McLouth Steel's delisting petition, contact Scott Maid, Office of Solid Waste (W11-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4783.

SUPPLEMENTARY INFORMATION:

I. Withdrawal of Final Rule

On November 18, 1986, the Environmental Protection Agency (EPA or Agency) denied a final exclusion, pursuant to the Resource Conservation and Recovery Act (RCRA) 3001(f), 42 U.S.C. 6921(f), and to 40 CFR 260.20 and 260.22, to McLouth Steel Product Corporation (McLouth) for its dust/sludge from the primary production of steel in electric furnaces (currently listed as EPA Hazardous Waste No. K061) generated at its Trenton, Michigan facility. 51 *Federal Register* 41624 (November 18, 1986). In reaching this decision, EPA applied a mathematical Vertical and Horizontal Spread (VHS) model to predict the concentrations of hazardous constituents that might escape from this waste into ground water. McLouth filed a petition for review of this rulemaking with the United States Court of Appeals for the District of Columbia Circuit challenging the Agency's action on numerous grounds.

On February 5, 1988, a unanimous panel of the Court of Appeals held for McLouth, finding that the Agency had given "the effect of a rule to its 'VHS model' * * * without having exposed the model to the comment opportunities required for rules by the Administrative Procedure Act, 5 U.S.C. 553 (1982)." 838 F.2d 1317, 1319 (D.C. Cir. 1988). The Court remanded the Agency's decision. Therefore, the Agency is today withdrawing its final decision to deny McLouth's petition for exclusion. As a result of the remand, the Agency will re-evaluate McLouth's delisting petition in a manner consistent with the court's opinion. However, in accordance with the Court's decision, McLouth must continue to treat its K061 waste as hazardous unless it is, in the future, granted an exclusion by the Agency for this waste.

II. Agency Policy Regarding Application of Models

In discussing the Agency's options after remand, the Court in *McLouth* stated that it "did not mean to imply that EPA must continue treating the VHS model as a binding rule. EPA may choose to treat the model in the future as a non-binding policy. If it does so, however, it must truly exercise discretion in individual delisting cases, remaining open to all challenges to the use of the VHS model as well as its application in each individual delisting petition." 838 F.2d at 1324. EPA intends to process McLouth's petition consistently with this guidance provided by the Court.

EPA also intends to process other petitions consistently with the Court's guidance. Until such time as EPA determines to promulgate the VHS model (or other models) as a rule, EPA will treat the model as non-binding policy, will propose to apply the model where appropriate, and will respond to comments challenging the use of the VHS model where proposed to be applied.

EPA notes that it has also announced the availability of the related Organic Leachate ("OLM") Model. 51 *Federal Register* 41082 (November 13, 1986). As with the VHS model, EPA will treat the OLM model as non-binding policy, will propose to apply the model where appropriate, and will respond to comments challenging the use of the OLM model where proposed to be applied.

III. Effective Date

This rule is effective immediately. Because withdrawal of the improperly promulgated final rule of November 18,

1986 is consistent with the decision of the DC Circuit in *McLouth*, providing an immediate effective date for this rule, which withdraws the November 18, 1986 rule, meets the requirements of RCRA 3010(b)(3), 42 U.S.C. 6930(b)(3), and of the Administrative Procedures Act 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The withdrawal of a previously published final denial decision will not impose an economic burden on this facility since it does not affect the manner in which the petitioned waste must be handled. Despite the withdrawal of a denial decision, this facility is to continue managing its waste as hazardous. There is no additional economic impact, therefore, due to today's rule. This notice is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This notice will not have an adverse economic impact on small entities. The facility included in this notice may be considered a small entity, however, this rule only affects one facility in one industrial segment and does not change existing requirements for the management of its waste. The overall economic impact, therefore, on small entities would be small. Accordingly, I hereby certify that this notice will not have a significant economic impact on a substantial number of small entities. This notice, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous Materials, Waste Treatment and Disposal, Recycling Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: June 1, 1988.

J. Winston Porter,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 88-12959 Filed 6-8-88; 8:45 am]

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40 CFR Parts 761 and 796

[OPTS 29000A; FRL-3394-6]

Polychlorinated Biphenyls and Chemical Fate Testing Guidelines; Incorporation by Reference; Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) has incorporated by reference certain American Society for Testing and Materials (ASTM) test methods in the Polychlorinated Biphenyls regulations, (40 CFR Part 761), and in the Chemical Fate Testing Guidelines, (40 CFR Part 796). Several of the incorporated test methods have been revised by ASTM. In this document, EPA is adding the revised test methods to the regulations and guidelines cited above so that the revised test methods can be used to meet the testing requirements found in those provisions.

EFFECTIVE DATE: June 9, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, Telephone: (202)-554-1404.

SUPPLEMENTARY INFORMATION: On April 5, 1988, EPA issued a proposed rule to update several ASTM test methods which are incorporated by reference, and which have been revised by ASTM. (53 FR 11104). The revised test methods will be used to meet the testing requirements found in the PCB regulations at 40 CFR Part 761 and the Chemical Fate Testing Guidelines found at 40 CFR Part 796.

In the proposed rule, the table of old and new designations for the test methods, showed the new designation for ASTM D 3178 as being "ASTM D 3178-86". This is incorrect. ASTM D 3178 was last revised in 1984, therefore, the correct, and current designation for this test method is "ASTM D 3178." The designation is corrected in this final rule.

EPA allowed interested persons 30 days to comment on the revised test methods. No comments were received, therefore, EPA is adopting the revised test methods as proposed, in accordance

with provisions in 1 CFR Part 51. Copies of the revised test methods may be obtained from the TSCA Public Docket Office, in Room NE-G004, at the address given above.

The designations of the old test methods and the equivalent designations of the new test methods (current versions of the same test methods) are as follows:

New designations	Old designations
ASTM D 93-85.....	ASTM D 93-80.
ASTM D 240-87.....	ASTM D 240-76 (Reapproved 1980).
ASTM D 923-86.....	ASTM D 923-81.
ASTM D 2158-85.....	ASTM D 2158-80.
ASTM D 2879-86.....	ASTM D 2879-75 (Reapproved 1980).
ASTM D 3178-84.....	ASTM D 3178-73 (Reapproved 1979).

A. Executive Order 12291

Under Executive Order 12291 (E.O. 12291), issued February 17, 1981, EPA must judge whether a rule is a major rule and therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this rule is not a major rule as that term is defined in section 1(b) of E.O. 12291. Therefore, EPA has not prepared a Regulatory Impact Analysis. This rule has not been submitted to the Office of Management and Budget for review.

B. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, the Administrator may certify that a rule will not, if promulgated, have a significant impact on a substantial number of small entities, and therefore, does not require a regulatory flexibility analysis. This rule merely updates certain American Society for Testing and Materials (ASTM) test methods, which are incorporated by reference in the PCB regulations and in the Chemical Fate Testing Guidelines, to the current version of the same test methods. Since no negative economic impact is expected upon any business entity from the promulgation of this rule, EPA hereby certifies that this rule will not have a significant economic impact on small entities.

C. Paperwork Reduction Act

EPA has determined that the Paperwork Reduction Act of 1980, 44 U.S.C. *et seq.*, does not apply to this rule since no information collection and recordkeeping are involved.

List of Subjects in 40 CFR Parts 761 and 796

Environmental protection, Chemicals, Hazardous substances, Health, Labeling, Laboratories, Polychlorinated Biphenyls, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: May 26, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

Therefore, 40 CFR Chapter I is amended as follows:

PART 761—[AMENDED]

1. In Part 761:

a. The authority citation for Part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, and 2611; Subpart G also issued under 15 U.S.C. 2614 and 2616.

§ 761.19 [Amended]

b. In § 761.19, paragraph (b), the entries "ASTM D 93-80," "ASTM D 240-76 (Reapproved 1980)," "ASTM D 923-81," "ASTM D 2158-80," and "ASTM D 3178-73 (Reapproved 1979)," are revised to read "ASTM D 93-85," "ASTM D 240-87," "ASTM D 923-86," "ASTM D 2158-85," and "ASTM 3178-84," respectively.

§ 761.60 [Amended]

c. In § 761.60 the following changes are made:

i. In paragraph (a)(3)(iii)(B)(6), the references "ASTM D 93-80," "ASTM D 240-76 (reapproved 1980)," "ASTM D 2158-80," and "ASTM D 3178-73 (reapproved 1979)," are revised to read "ASTM D 93-85," "ASTM D 240-87," "ASTM D 2158-85," and "ASTM D 3178-84," respectively.

ii. In paragraph (g)(1)(ii), the phrase "American Society for Testing and Materials method D-923," is revised to read "ASTM D 923-86."

iii. In paragraph (g)(2)(ii), the phrase "American Society for Testing and Materials method D 923-81," is revised to read "ASTM D 923-86."

§ 761.75 [Amended]

d. In § 761.75, paragraph (b)(8)(iii), the phrase "ASTM Standard D 93-80," is revised to read "ASTM D 93-85."

PART 796—[AMENDED]

2. In Part 796:

a. The authority citation for Part 796 continues to read as follows:

Authority: 15 U.S.C. 2603.

§ 796.1950 [Amended]

b. In § 796.1950, paragraph (b)(2)(i), the phrase "ASTM Method D 2879-75

(Reapproved 1980)," and the phrase "ASTM D 2879-75 (Reapproved 1980)" are both revised to read "ASTM D 2879-86."

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 302 and 303

Child Support Enforcement Program; Disregard of Child Support Payments

AGENCY: Office of Child Support Enforcement (OCSE).

ACTION: Final rules.

SUMMARY: These final rules implement section 2640 of the Deficit Reduction Act of 1984 (DRA) which amends the Social Security Act to require that the first \$50 collected on a monthly support obligation be paid to the Aid to Families with Dependent Children (AFDC) family. This amount does not affect the family's AFDC eligibility or the amount of assistance to which they are entitled. In addition, this final rule revises current requirements which result in AFDC families not receiving the \$50 pass-through when support payments are made to a State IV-D agency or a legal entity of the State or political subdivision on time but are not received on time by the agency responsible for final distribution of the collection.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Carol Jordan, (202) 245-1979.

SUPPLEMENTARY INFORMATION:

Statutory Authority

Section 2640 of the DRA (Pub. L. 98-369) amended section 457(b) of the Social Security Act (the Act) to require States to pay the first \$50 of support collected on the monthly support obligation to the AFDC family. This statute also amended section 402(a)(8)(A) of the Act to require States to disregard "the first \$50 of any child support payments received in such month" when determining AFDC eligibility and the amount of the AFDC payment. The result of these changes is that AFDC families affected by this statute will have up to \$50 of additional disposable income each month.

Interim Final Regulatory Provisions

Interim final regulations published on September 10, 1984 (49 FR 35604) amended paragraphs (b)(1) and (b)(2) of 45 CFR 302.51 to conform Child Support

Enforcement program regulations with amended section 457(b) of the Act. The resultant distribution policy is that the first \$50 of a current support collection is paid to the AFDC family. If the current support collection is less than \$50, that amount is paid to the family.

These regulations apply to collections of current support only, not to collections of arrearages and provide that, if an AFDC family receives support from more than one absent parent, only the first \$50 of the total amount collected shall be paid to the family.

45 CFR 302.32(b) of current regulations requires the IV-D agency to inform the IV-A agency of the amount collected on the monthly support obligation as determined under § 302.51(a). State IV-D agencies and State IV-A agencies should consult on the best means of transmitting information on amounts collected and monthly support obligations to facilitate the payments by the IV-A agencies to AFDC families and the related disregard in determining AFDC eligibility and payments.

Related interim final regulations were published in the *Federal Register* (49 FR 35586) on September 10, 1984 by the Office of Family Assistance (OFA) to address AFDC program requirements concerning the \$50 disregard.

Changes in Response to Comments

In addition to changes made in response to comments, this final regulation includes a technical change to the fourth sentence in paragraph (b)(1) of § 302.51. The word "represents" is changed to "represent".

In response to comments from an advocacy group, this final regulation revises the definition of "date of collection" contained in paragraph (a) of § 302.51. This final regulation defines the "date of collection" as the date a payment is received by the IV-D agency or the legal entity of the State or political subdivision actually making the collection, whichever is earliest. It deletes the separate definition of date of collection in interstate cases and makes a conforming change to § 303.7(c)(7)(iv).

Response to Comments

We received eleven comments on the interim final regulation. Ten were from State and local government agencies and one was from an advocacy group. A discussion of these comments and our responses follows:

Comment: One State agency and two local jurisdictions requested clarification regarding whether incentives are paid on the \$50 payment made to the family under these regulations.

Response: The State is eligible for incentives on the \$50 payment to the family. Prior to enactment of the Child Support Enforcement Amendments of 1984 (Pub. L. 98-378), only amounts collected which were used to reimburse assistance payments were eligible for incentive payments under section 458 of the Act. Section 5 of Pub. L. 98-378 amended section 458 of the Act effective October 1, 1985 to provide incentives on all AFDC and non-AFDC collections, regardless of whether they are retained by the State or paid to the family. Section 5 of Pub. L. 98-378 also amended section 458(a) of the Act through September 30, 1985 to provide incentives on the \$50 payment prior to the October 1, 1985 effective date of the expanded incentive payments system. Therefore, incentives will be paid on the \$50 payments beginning with the effective date of October 1, 1984 and will continue to be paid on such payments thereafter.

Comment: One State agency recommended that a \$50 increase in the AFDC payment standard for all AFDC recipients be substituted for the \$50 payment.

Response: These regulations merely implement the requirements in the amended statute. This recommendation cannot be implemented under current law.

Comment: One State commented that the October 1, 1984 effective date does not permit States to plan for program changes.

Response: The effective date is statutory and cannot be changed by regulation. The program changes required by these regulations should not be substantial, since both IV-A and IV-D agencies are already involved in distributing money to families and therefore have mechanisms in place for distribution.

Comment: Two State agencies asked if the \$50 disregard includes spousal support.

Response: The \$50 payment applies to both child and spousal support. This conforms to section 12 of Pub. L. 98-378 which requires State IV-D agencies to collect spousal support if a support obligation has been established with respect to the spouse and the IV-D agency is enforcing the child support order.

Comment: One State commented on the administrative difficulty of disregarding the \$50 payment for purposes of AFDC benefits while ensuring that this amount is considered in the computation of Food Stamp benefits.