

incentive to reduce loadings of certain toxic constituents into the wastewater treatment system to prevent the sludge from exhibiting the TC.

The Agency considers hazardous substance release reporting under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9603 as an additional regulatory backstop to both of the proposed expansions to the headworks exemption. A release of a hazardous substance in a quantity equal to or greater than the Reportable Quantity (RQs) established for that hazardous substance triggers a requirement to notify the National Response Center of that release. *See* CERCLA section 103 (42 U.S.C. 9603(a)). Congress established an initial RQ for all hazardous substances of one pound (unless a higher RQ already had been established under CWA section 311(b)(4)) until EPA establishes an RQ for the substance by regulation. CERCLA section 102(b) (42 U.S.C. 9602(b)).

In setting RQ's, EPA takes into account the potential hazards posed by the chemicals of concern. The methodology for setting RQs is discussed in the May 25, 1983, **Federal Register** (48 FR 23552). RQs for hazardous substances are found in 40 CFR 302.4.

Similar to the CWA permits, the RQ acts as a protective mechanism discouraging releases of hazardous wastes to the environment by requiring facilities to report chemical releases above a certain threshold. In general, facilities must report releases of hazardous substances immediately to the National Response Center and State or Local Emergency Planning Center, depending on the type of release. While this reporting does not prevent releases, it requires facilities to be accountable for excess releases of hazardous substances when they occur. Because all hazardous wastes also are listed as hazardous substances, discharge of hazardous wastes in a facility's wastewater treatment system that cause a release to the environment above reporting thresholds must be reported to the appropriate authorities. While excess releases of hazardous wastes, such as in an upset or pass-through situation, do not qualify for the *de minimis* exemption, the RQ program, by its reporting requirements, provides an additional tool for minimizing hazardous waste discharges through a wastewater treatment system.

It is important to note that the Agency is not increasing the amount of waste that can be described as a *de minimis* release in this proposal. Moreover, these

proposed expansions to the types of waste and facilities eligible for the *de minimis* exemption should not be construed as reducing the scope or application of any hazardous waste listing under 40 CFR 261.31 and 261.32. For example, the F006 listing covers wastewater treatment sludges from electroplating operations. For facilities that normally generate F006 wastes, a release of electroplating wastewaters to the treatment system would *still* result in the generation of F006 wastes. A facility could not use the *de minimis* exemption to claim that it is not generating F006 listed hazardous wastes. Finally, as stated previously, this revised *de minimis* exemption only applies to those wastes not specifically addressed under some other provision of the headworks rule.

As with any exemption from the definition of solid or hazardous waste under §§ 261.2–261.6 (including this *de minimis* exemption), 40 CFR 268.7(a)(7) requires a facility to place a one-time notice concerning waste generation, subsequent exclusion from the definition of hazardous waste or solid waste or exemption from RCRA Subtitle C regulation, and the disposition of the waste, in the facility's on-site files. Generally, such notification, as well as certifications, waste analysis data, and other documentation must be kept for a period of three years unless an enforcement action by the Agency extends the record retention period (§ 268.7(a)(8)).

In light of the limiting conditions and protective regulatory mechanisms we have discussed above, the Agency is proposing to expand the *de minimis* exemption (1) to non-manufacturing facilities, and (2) to wastes listed in 40 CFR 261.31 and 261.32 (F- and K-listed wastes) released in *de minimis* quantities when they meet certain conditions. Specifically, facilities discharging wastewaters (whether manufacturing or non-manufacturing) that are attempting to qualify for this expanded eligibility must have CWA permits under sections 307(b) or 402 that contain limits for the specific chemicals for which each waste was listed (in 40 CFR part 261, appendix VII) as well as hazardous constituents in 40 CFR 268.40 for which each listed waste has a treatment standard under Land Disposal Restrictions or must have eliminated the discharge of wastewaters altogether. The two proposed expansions will be considered independently; the Agency seeks comment as to the adequacy of the limiting conditions in ensuring protection of human health and the environment, the prevalence of facilities

meeting the conditions (*e.g.*, having CWA permits that limit the constituents associated with the listed waste), and on the advisability of expanding each part of the exemption.

G. State Authority

Under section 3006 of RCRA, EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State in lieu of the federal program, and to issue and enforce permits in the State. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally-enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law.

A state may receive authorization by following the approval process described in 40 CFR part 271. Part 271 of 40 CFR also describes the overall standards and requirements for authorization. After a state receives initial authorization, new Federal regulatory requirements promulgated under the authority in the RCRA statute which existed prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. The state must adopt such requirements to maintain authorization. In contrast, under RCRA section 3006(g), (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized States. Although authorized states still are required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so. Authorized states are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements.

RCRA section 3009 allows the states to impose standards more stringent than those in the Federal program. *See also* 40 CFR 271.1(i). Therefore, authorized states are not required to adopt Federal regulations, either HSWA or non-HSWA, that are considered less stringent.