

enforceable by the EPA, and the programs may not specifically address site remediation air emissions. For these reasons, we cannot view these activities as the functional equivalent of MACT, and, therefore, we cannot justify extending the same exemption we provide for CERCLA Superfund or RCRA corrective action cleanups to site remediations conducted for State regulatory and voluntary cleanup programs. Therefore, we are maintaining the applicability of the final rule to those site remediations conducted for State regulatory and voluntary cleanup programs where the site remediation meets the applicability conditions specified in the final rule.

*F. How Does the Final Rule Apply to Cleanups of Leaking Underground Storage Tanks?*

*Comment:* Many commenters agreed with the decision to modify the site remediation source category listing to exclude remediation activities at leaking underground storage tanks (UST) located at gasoline service stations. However, commenters argued that because the types, sizes and purpose of UST used for the storage of motor fuels or heating oils at all types of commercial and industrial properties are comparable to those located at gasoline service stations, then remediation activities associated with any UST contamination cleanups regardless of location also should not be subject to the Site Remediation NESHAP.

*Response:* The rationale for our decision to modify description for the site remediation source category to exclude remediation activities from leaking UST located at gasoline service stations is based on our estimates of the total HAP emissions from a typical cleanup of contamination from the size and types of underground tanks commonly used at gasoline service station sites. These estimates indicate that the level of HAP emissions from these sites would be significantly below the major source threshold levels (*i.e.*, less than 10 tpy of a single HAP or 25 tpy of all HAP) (see 67 FR 49400). Gasoline service station sites are area sources. Site remediation was listed as a source category for MACT standard development to address HAP emissions at major sources where remediation technologies and practices also are used at the site to clean up contaminated environmental media (*e.g.*, soils, groundwaters, or surface waters) or other materials that pose a reasonable potential threat to contaminate environmental media. Our decision was not based on a determination that UST contamination cleanups regardless of

location should not be included in the site remediation source category. Therefore, we believe that if a leaking UST cleanup is conducted at a major source site then it is appropriate (and indeed mandated) to require the cleanup activities comply with the final Site Remediation NESHAP requirements.

*G. How Does the Final Rule Apply to Cleanups of Radioactive Mixed Waste?*

*Comment:* Six commenters opposed the proposal that any site remediation involving the cleanup of radioactive mixed waste not be subject to the Site Remediation NESHAP. These commenters argued that the existing Federal regulations for mixed waste are not adequately addressing the HAP emissions from remediation activities at existing facilities managing these types of wastes. Two commenters expressed support for the proposal because they believe that mixed wastes are already appropriately and protectively managed under the Atomic Energy Act and Nuclear Waste Policy Act.

*Response:* Radioactive mixed wastes (RMW) are wastes that contain radioactive materials as well as wastes listed or identified as hazardous under RCRA. Radioactive mixed wastes must be managed according to RCRA subtitle C regulations. In addition, these wastes are subject to standards administered by the Nuclear Regulatory Commission (NRC) under the Atomic Energy Act (AEA) and Nuclear Waste Policy Act (NWPA) of 1982 that address the safe handling and disposal of radioactive waste.

In developing the air standards under CAA authority for stationary sources that potentially may manage wastes also subject to requirements under other legislative authorities, we consider the management practices required for these wastes to avoid inconsistencies between any CAA requirements that might be established and existing requirements under the other applicable authorities. We reviewed the special nature of existing requirements for managing radioactive mixed wastes with respect to requirements for the control of organic HAP emissions we proposed to establish under the final Site Remediation NESHAP. In certain cases, the air pollution controls used as the basis for the standards under the final Site Remediation NESHAP are not compatible with the NRC requirements for safe handling of radioactive mixed wastes. For example, drums used to store radioactive mixed waste cannot be sealed with vapor leak-tight covers because of unacceptable pressure buildup of hydrogen gas to levels that

can potentially cause rupture of the drum or create a potentially serious explosion hazard (a hazard which, by any commonsense measure, exceeds risk posed by emission of organic HAP). (See Air Docket ID No. OAR-2002-0021; see also S. Rep. No 228, 101st Cong. 1st sess. at 168 (“\* \* \* In cases where control strategies for two or more different pollutants are in actual conflict, the Administrator shall apply the same principle—maximum protection of human health shall be the objective test. \* \* \*”).)

The generation of hydrogen gas is a result of the radiolytic decomposition of organic compounds (*i.e.*, plastics) and/or aqueous solutions within the container. Plastics are commonly used as a barrier to alpha radiation both in handling operations and in waste packaging. Over time, the alpha particle causes the hydrolysis of chemical bonds within the plastic material which results in the release of hydrogen gas. Likewise, hydrolysis of aqueous solutions will yield hydrogen. Additionally, radiation-induced degradation and biodegradation of organic low-exchange resin waste, which are also RMW, generated during water treatment at nuclear facilities, can result in the production of gaseous products (*i.e.*, hydrogen and carbon dioxide) which in turn can result in pressure buildup and failure of the container. Consequently, a drum used for storage of radioactive mixed wastes must be continuously vented through special filters in accordance with technical guidance issued by the NRC to prevent the hydrogen concentration in the drum from reaching dangerous levels. Because of pressure build-up inside the container, a vent for gaseous compounds is necessary to prevent failure of a high-integrity container (*i.e.*, vent designs incorporated into high integrity containers restrict the release of radionuclides from the container into the environment while allowing the gas to be vented). (See RCRA Docket Items F-91-CESP-00046 and F-94-CESF-S0001, which are part of the administrative record for the final rule.)

In accordance with the Waste Isolation Pilot Plant (WIPP), Carlsbad, New Mexico, Waste Acceptance Plan (WAP), wastes that are to be shipped to the WIPP must be in containers that are vented to prevent the buildup of pressure. The container vents must be filtered to ensure that no radioactive waste components are released. For example, the Hazardous Waste Permit for the WIPP, dated November 25, 2002, in section M1-1d describing container management practices states on page M1-8 “\* \* \* Because containers at the WIPP will contain radioactive waste,