

emissions do not occur prior to the time that these remediation activities actually start.

We recognize that activities necessary to plan, arrange, and schedule the site remediation may take more than 30 days. Also, we recognize that there may be delays in starting the site remediation due to circumstances beyond the control of a site owner or operator such as waiting for necessary permit approvals from a State or local agency, or scheduling of personnel or equipment contracted to complete the cleanup work.

Furthermore, a site remediation does not occur until a source of actual or potential hazardous substance contamination is discovered. In many cases, when the contamination is discovered may not be the same time that the contamination occurs. For example, the new owner or operator of a site may discover a contaminated source requiring remediation that occurred years earlier due to improper practices of the previous site owner. We recognize that in many situations it is difficult, if not impossible, for facility owners and operators, as well as enforcement personnel, to verify whether a given site remediation is initiated within 7 days of the contamination occurring. Therefore, we decided to eliminate any conditional requirements for the exemption related to when the contamination occurred. Instead, it is more appropriate and practical to base the time limit for the short-term exemption on the period that the on site work is performed for those activities with the actual potential to emit HAP.

For the final Site Remediation NESHAP, we adopted the approach of exempting short-term site remediations that can be completed within a given number of consecutive calendar days as determined from the day that any action is first initiated that removes, destroys, degrades, transforms, immobilizes, or otherwise manages the remediation materials. In adopting this approach, we exclude those activities that need to be completed to perform a site remediation but are not responsible for the generation of HAP emissions from site remediations, namely: activities required to characterize the type and extent of the contamination by collecting and analyzing samples, to obtain any permits required by State or local authorities to conduct the site remediation, to schedule workers and necessary equipment, and to arrange for any contractor assistance in performing the site remediation.

Given our revised regulatory approach for the short-term site remediation

exemption, we re-evaluated the maximum time interval appropriate for the exemption. We proposed a maximum time interval of 30 days for the exemption. This proposed time interval included time to complete those sampling, planning, and scheduling activities that needed to perform a site remediation but are not part of the physical activities which cause HAP to be emitted at the cleanup site. Under the final rule, the exemption is based on the time interval required to complete only those remediation activities that actually emit or have a potential to emit HAP. We believe that the physical part of the site remediations we intend for this exemption to apply can reasonably be completed within a period much shorter than 30 days (e.g., 1 week, 14 days). However, there are situations where a remediation at a particular site which normally should be completed within these shorter periods cannot be due to factors beyond the control of the owner or operator that curtail or delay the remediation activities (such as severe weather or machinery breakdowns). Therefore, we decided that selecting a maximum time interval of 30 days for the exemption will allow a sufficient period to complete the types of cleanups we intend for this exemption to apply to and to provide a reasonable amount of leeway to account for any unforeseen circumstances that may develop at a site.

Finally, it is our intention that the short-term exemption only be applicable to those site remediations for which the cleanup of the entire contaminated area at the site can be completed within 30 consecutive days. The exemption is not intended to be used for longer term cleanups of contaminated areas whereby the remediation activities at the site are started, stopped, and then re-started in a series of intervals with durations less than 30 days per interval for which the total time of all of the intervals required to complete the site remediation exceeds a total of 30 days.

I. How Does the Final Rule Apply to Remediation Materials Sent Off-Site From Affected Facilities?

Comment: Commenters opposed the proposed rule requirements on the transfer of remediation material to another party or site. The commenters asserted that proposed requirements are unnecessarily burdensome on both the shipping and receiving parties. Furthermore, requiring owners and operators to submit a written certification of intent to comply with the final rule adds paperwork with little or no environmental or health benefit. The requirements also have the

potential to be an especially burdensome task for the off-site facility that are now an area source.

Response: The objective of a site remediation is to mitigate a detected risk to public health or the environment by successfully completing the cleanup of an area contaminated by a hazardous substance. At many remediation sites, the contaminated material is excavated or extracted and then shipped to another site for treatment or disposal. Simply moving contaminated material containing organic HAP from the cleanup site to another site across town or in another community does not address the potential for these HAP to be emitted to the air and, subsequently, pose a risk to public health or the environment. It merely transfers the risk to another locale. Nor does such a practice reflect the maximum emission reduction achievable, as required by CAA section 112(d)(2) and (3). Thus, there is a need to ensure that those remediation materials with the potential to emit organic HAP are managed and treated in units using appropriate air pollution controls regardless of where those units are located. To address this need, we are including in the final Site Remediation NESHAP the requirement that remediation material transferred to another party or shipped to another facility must be managed according to the air pollution control requirements specified in the final rule.

We believe that the transfer provision under the final Site Remediation NESHAP does not establish requirements that are burdensome on either the remediation material shipping or receiving parties. We expect that, for many of those situations where a remediation material is subject to the off-site transfer requirements under the final rule, the material will be sent to a facility that is already complying with subpart DD in 40 CFR part 63 or a hazardous waste TSDF already complying with the RCRA air standards under subparts AA, BB, and CC of 40 CFR part 264 or 265. The air pollution control requirements under subpart DD in 40 CFR part 63 and RCRA TSDF air rules are effectively the same as those required under the final Site Remediation NESHAP. Consequently, it is likely that many, if not all, of the sites receiving the types of remediation materials subject to the off-site transfer requirements will already be using the necessary air pollution controls to comply with these other CAA and RCRA air rules. Thus, the off-site transfer requirements in the final Site Remediation NESHAP should not impose a need for these sites to