

- C. Regulatory Flexibility Analysis
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I. Background

On March 7, 1990, we issued the national emission standard for benzene waste operations (40 CFR part 61, subpart FF). Subpart FF applies to equipment and processes at certain chemical manufacturing plants, coke by-product recovery plants, petroleum refineries, and facilities that treat, store, or dispose of waste generated by those facilities.

On November 12, 2002, we issued a direct final rule (67 FR 68528) and a parallel proposed rule (67 FR 68546) to amend the national emission standard for benzene waste operations. We stated in the preamble to the direct final rule and parallel proposal that if we received adverse comments by December 12, 2002 (or February 18, 2003, if a public hearing was requested), on one or more distinct provisions of the direct final rule, we would publish a timely notice in the **Federal Register** specifying which provisions will become effective and which provisions will be withdrawn due to adverse comment.

We subsequently received an adverse comment from one commenter on the provisions related to control devices in a new compliance option for tanks equipped with an enclosure.

Accordingly, we withdrew 40 CFR 61.343(e) introductory text and withdrew and reserved paragraph (e)(2) in § 61.343 (68 FR 6082, February 6, 2003). The remaining provisions, for which we did not receive any adverse comments, became effective on February 10, 2002. After full and careful consideration of the comment, we are promulgating the amendments previously withdrawn based on the parallel proposal published on November 12, 2002.

II. Response to Comment on Amendments to the National Emission Standard for Benzene Waste Operations

The direct final rule published on November 12, 2002, included amendments to 40 CFR 61.343 of the benzene waste final rule that add a new compliance option for tanks located

inside a permanent total enclosure. The new compliance option was adopted from similar standards established under the Resource Conservation and Recovery Act (RCRA) for hazardous waste treatment, storage, and disposal facilities (40 CFR parts 264 and 265, subparts CC). This change was first requested as an alternative emission limitation by a company subject to both the benzene waste final rule and the RCRA subparts CC rules. Under 40 CFR 264.1082(c)(5) and 265.1083(c)(5) of the RCRA rules, tanks are specifically exempted from the standards provided that, among other conditions, the tank is located inside an enclosure, and the enclosure is vented to a control device designed and operated in accordance with the requirements in the benzene waste national emission standard.

Prior to development of the direct final rule amendments and parallel proposal, we reviewed the information submitted by the company and determined that their control system (a tank located inside a permanent total enclosure with emissions vented through a closed vent system to an enclosed combustion device) provided a level of control of benzene equivalent to that required by the national emission standard for benzene waste operations. Based on this equivalency determination, we issued direct final rule amendments to the national emission standard by adding a new compliance option that allowed tanks to be located inside a permanent total enclosure that routes organic vapors to an "enclosed combustion control device." This is the most common type of control device used for tanks located inside a total enclosure.

The commenter objected to provisions that restricted applicable emission controls for the compliance option (*i.e.* the controls on the emissions from the tank in the enclosure) to an "enclosed combustion control device." He correctly pointed out that the national emission standard allows a wide range of control devices to be used to comply with the requirements. In fact, a "control device" is defined in 40 CFR 61.341 of the rule to mean an enclosed combustion device (vapor incinerator, boiler, or process heater); a vapor recovery system (carbon canister or condenser); or flare.

The commenter also stated that the amendments were inconsistent with the spirit of 40 CFR 264.1082(c)(5) and 265.1083(c)(5) of the RCRA rules, in that they would lead to situations where the RCRA rules would continue to apply but were not, in fact, intended to be applicable any longer. The anomalous situation put forward by the commenter

would be where a tank is located inside an enclosure, and the enclosure is vented to a vapor recovery system designed and operated in accordance with the requirements in the benzene waste national emission standard. The commenter stated that their tanks meet all the requirements for the exemption from the RCRA rules. In this case, however, the control device applied to the emissions from the permanent total enclosure is not an enclosed combustion control device. Consequently, the facility would not qualify for the RCRA exemption, an unintended outcome.

It was not our intention to restrict the new compliance option for tanks to enclosed combustion control devices. Any of the control devices allowed under the benzene waste national emission standard can be used under the new compliance option provided it meets the control device performance standards in 40 CFR 61.349 of subpart FF. The benzene waste national emission standard also contains procedures and requirements for requesting approval of a control device other than an enclosed combustion system, vapor recovery system, or flare.

We agree with the issue raised by the commenter and are issuing final amendments to the new compliance option, based on the parallel proposal, that refer simply to the use of a "control device." This change allows a tank meeting all of the conditions for exemption under 40 CFR 264.1082(c)(5) and 265.1083(c)(5) of the RCRA rules to comply with the new compliance option using a "control device" as defined in 40 CFR 61.341 of the benzene waste national emission standard (meaning an enclosed combustion device, vapor recovery system, or flare). This change is effective immediately. No risk, environmental, energy, cost, or economic impacts are associated with this action.

III. Editorial Correction to the Amendments

Since publication of the direct final rule amendments and parallel proposal, we identified one cross-reference error. As proposed, paragraph (a)(3)(iii) of 40 CFR 61.345 allowed the use of safety devices on any container, enclosure, closed-vent system, or control device used to comply with the requirements of "paragraph (e)(1) of this section," which does not exist. We have corrected this citation in today's final rule amendments by referencing the control requirements in 40 CFR 61.345(a)(3)(i).