SUPPORTING STATEMENT FOR
EPA INFORMATION COLLECTION REQUEST # 1361.14
OMB CONTROL # 2050-0073

"REPORTING AND RECORDKEEPING REQUIREMENTS FOR WITHDRAWAL OF THE EXPANDED COMPARABLE FUEL EXCLUSION UNDER RCRA"

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1. IDENTIFICATION OF THE INFORMATION COLLECTION

1(a) TITLE OF THE INFORMATION COLLECTION

This ICR is entitled “Reporting and Recordkeeping Requirements for Withdrawal of the Expanded Comparable Fuels Exclusion under RCRA," EPA ICR # 1361.14, OMB Control # 2050-0073.

1(b) SHORT CHARACTERIZATION/ABSTRACT

The comparable fuels exclusion was promulgated by EPA on June 19, 1998, and is codified in 40 CFR 261.38 (See 63 FR 33782). The rule excludes certain waste fuels from the definition of solid wastes if they have levels of toxic constituents and physical properties similar to commercial (benchmark) fuels, in particular gasoline and fuel oils. Comparable fuels had to meet certain specifications for physical properties and constituents.

On December 19, 2008, EPA expanded the conditional exclusion from RCRA under 40 CFR 261.38 for fuels that are produced from a hazardous waste but which generate emissions when burned in an industrial boiler that are comparable to emissions from burning fuel oil. Such excluded fuel is called emission-comparable fuel (ECF). ECF is subject to the same specifications as of Table 1 of §261.38 that currently apply to comparable fuels, except that the specifications for certain hydrocarbons and oxygenates have been waived. The ECF exclusion is conditioned on several requirements including: (1) design and operating conditions for the ECF boiler that burns this ECF to ensure burning under the good combustion conditions typical to regulated under the MACT rule; and (2) ECF is stored in storage in tanks tailored for the hazards that ECF may pose.

The design and operating conditions as detailed in the promulgated regulation at 40 CFR 261.38(c)(2) include, a) ECF to be combusted in watertube boiler that is not a stoker, b) boiler had to fire at least 50% fossil fuel, c) as-fired heating value of ECF and fossil fuel had to exceed 8000 Btu/lb, d) carbon monoxide emissions had to be monitored by a continuous emissions monitoring system and e) boiler load had to exceed 40%.

ECF storage conditions include: (1) spill prevention, control and countermeasure (SPCC) requirements of §§112.7, 112.8, 112.20, and 112.21, except for secondary containment; (2) engineered secondary containment and leak detection to be provided by a liner, vault, or double-walled tank; and (3) applying the air emission controls for organic liquids distribution under subpart EEEE, Part 63, to RCRA oxygenates that are not CAA hazardous air pollutants.

EPA is now proposing to withdraw this conditional exclusion because ECF

appears to be better regarded as being a discarded material and regulated as a hazardous waste. This ICR estimates the reporting and recordkeeping burden of the proposed rule for the withdrawal of the expanded comparable fuel exclusion. This burden is exactly the same as the reduced burden due to the expanded comparable fuel exclusion calculated in ICR # 1361.12. This burden will be effective when the rule is promulgated and becomes effective sometime in 2011.

2. NEED FOR AND USE OF THE COLLECTION

2(a) NEED/AUTHORITY FOR THE COLLECTION

The information collection requirements of this ICR are required under the Paperwork Reduction Act, 44U.S.C. 3501 et seq. The information collected will help generators and burners of ECF as well as EPA to ensure that the ECF is no longer treated as an excluded waste, but is reported as hazardous waste, and the conditions for such wastes under RCRA are being met fully.

Until this rule is promulgated, the emissions comparable fuels will continue to be excluded fuels, and conditioned on requirements including design and operating conditions for the ECF boiler to ensure that ECF is burned under the good combustion conditions typical for oil-fired industrial boilers, and conditions for storage in tanks that are tailored for the hazards that ECF may pose.

2(b) PRACTICAL UTILITY/USERS OF THE DATA

Generators will use the analytical data collected to ascertain if their waste qualifies as ECF while maintenance of inspection records will ensure that required repairs are conducted promptly. Burners will use their operating record to verify if they are in compliance with all the conditions of the exclusion and if exceedance reporting is required. Under this proposal, the respondents are not required to conduct any statistical surveys for the purpose of complying with any conditions.

2. NONDUPLICATION, CONSULTATIONS, AND OTHER COLLECTION CRITERIA

3(a) NONDUPLICATION

The information collections covered in this ICR are not available from sources other than the respondents. EPA's Office of Solid Waste is the only office within the Agency collecting this information, and no other Federal agency or department collects this information. In addition, the Office of Solid Waste has systematically organized its ICR structure to eliminate gaps or duplication.

3(b) PUBLIC NOTICE

In compliance with the Paperwork Reduction Act of 1995, EPA issued a public notice in the Federal Register as a part of the proposed rule detailing the burden hours and costs associated with this proposed rule, and requested comments thereon.

3(c) CONSULTATIONS

EPA has made efforts to consult with the regulated community, stakeholders, the public, State and industry officials, and appropriate Federal agencies in the development of this rule. The stakeholders have been in constant touch regarding the provisions of the ECF, and have been submitting their input on various issues regularly. Details of such input and the various comments received have been placed in the Docket # EPA-HQ-RCRA-2005-0017.

3.d) EFFECTS OF LESS FREQUENT COLLECTION

This rule does not increase the paperwork burden on the facilities any more than that existed prior to the promulgation of the ECF exclusion rule on 12/19/2008. In the short intervening period, it relaxed some of the existing burden, as the ECF wastes earlier designated as hazardous waste exited the hazardous waste universe and were spared from more extensive reporting and recordkeeping requirements under RCRA. EPA has carefully considered the burden that has been imposed again upon the regulated community due to the withdrawal of the comparable fuel exclusion, and believes that the activities required of respondents have been minimized to the extent possible. EPA believes strongly that if these minimum requirements specified under the regulations are not met, EPA will be unable to fulfill its Congressional mandate to protect public health and the environment.

3(e) GENERAL GUIDELINES

This ICR adheres to the guidelines stated in the 1995 Paperwork Reduction Act as amended, OMB's implementing regulations, OMB's Information Collection Request Handbook (EPA, February 1999), and other applicable OMB guidances. As noted earlier, the net result of this rule that there is no increased burden on the private sector than that existed before the ECF exclusion rule promulgated on12/19.2008 Additionally, EPA has taken the following actions to minimize the burden:

(i) The records required under this proposed rule are to be maintained only for a 3 year period.
(ii) The reporting, where so specified, can also be done electronically using e-mail.
(iii) EPA believes that very few small businesses and small entities will be affected by this proposal.
(iv) EPA will consider any suggested methods to further minimize the burden on the entities.

3(f) CONFIDENTIALITY

EPA proposes to collect information only to the extent necessary for the implementation of the promulgated rule and does not intend to collect any information related to trade secrets of the stake-holders. Section 3007(b) of RCRA and 40 CFR Part 2, Subpart B define EPA's general policy on the public disclosure of information, and contain provisions for confidentiality of business information. EPA protects from public disclosure all Confidential Business Information (CBI) obtained under RCRA, and has provided businesses with procedures to claim confidentiality for such CBI. EPA makes extra efforts to protect the confidentiality of this CBI.

3(g) SENSITIVE QUESTIONS

No questions of a sensitive nature are included in any of the information collection requirements. This ICR complies with the Privacy Act of 1974 and OMB Circular A-130.

4.THE RESPONDENTS AND THE INFORMATION REQUESTED

4(a) RESPONDENTS SIC/NAICS CODES

The following is a list of Standard Industrial Classification (SIC) codes and corresponding North American Industrial Classification System (NAICS) codes associated with facilities most likely affected by the information requirements covered in this ICR.

Category	NAICS code	SIC code	Examples of potentially regulated entities
Any industry that generates or combusts hazardous waste as defined in the proposed rule	562	49	Waste Management and Remediation Services
	327	32	Non-metallic Mineral Products Manufacturing
	325	28	Chemical Manufacturing
	324	29	Petroleum and Coal Products Manufacturing
	331	33	Primary Metals Manufacturing
	333	38	Machinery Manufacturing
	326	306	Plastic and Rubber Products Manufacturing
	488, 561	49	Administration and Support Services
	421	50	Scrap and waste materials
	422	51	Wholesale Trade, Non-durable Goods, N.E.C
			Business Services, N.E.C.
	512, 541, 812	73	Services, N.E.C.
	512, 514, 541, 711	89	Air, Water and Solid Waste Management
	924	95	Transportation Equipment Manufacturing
			National Security
	336	37	Computer and Electronic Products
	928	97	Air, water and solid waste management
	334	35	Manufacturing
	339	38	Miscellaneous Manufacturing

4(b) INFORMATION REQUESTED

The information requested in this paragraph is the same as was provided under ICR 1361.12 for the purpose of excluding ECF from being treated as hazardous waste. Since the ECF will no longer be excluded, the requirements (or exclusion from the requirements) will now be reversed.

Requirements for Generators and Burners

Under section 3006 of RCRA, EPA has authorized several qualified States to administer the hazardous waste program in lieu of the federal program. We estimate

that 1/3rd of the responses under this ICR, designated below as Agency tasks, will be to the State authorities while 2/3rd will be to federal (i.e. regional EPA) authorities.

Reading the Regulations

Data Items

There are no data items associated with reading the regulations. However, all respondents had to first read the regulations in order to comply with the requirements of the comparable fuel exclusion rule.

Respondent Activities

Read the regulations in 40 CFR 261.38

Notices

Data Items

Under proposed §261.38 b(2)(i) the generator had to submit a one-time notice to the Regional or State RCRA and CAA Directors, in whose jurisdiction the exclusion is being claimed and where the excluded fuel will be burned, certifying compliance with the conditions of the exclusion and providing the following documentation:

(A) The name, address, and RCRA ID number of the person/facility claiming the exclusion;

(B) The applicable EPA Hazardous Waste Codes for the hazardous waste;

(C) The name and address of the units meeting the requirements of paragraphs (b)(3) and (c) of this section, that will burn the excluded fuel;

(D) An estimate of the average and maximum monthly and annual quantity of waste for which an exclusion would be claimed; and

(E) The following statement, which shall be signed and submitted by the person claiming the exclusion or his authorized representative:

"*Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of 40 CFR 261.38 have been met for all emission-comparable fuel/comparable fuel (specify which) identified in this notification. Copies of the records and information required at 40 CFR 261.38 are available at the l generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

ECF generators had to also provide:

(1) An estimate of the annual quantity of each material for which an emission-comparable fuel exclusion would be claimed; and

(2) An estimate of the maximum concentration of each compound in Table 2 to §261.38 in each emission-comparable fuel stream for which the fuel exceeds the comparable fuel specifications for those compounds in Table 1 to §261.38.

Additionally, under proposed §261.38 b(2)(ii) prior to burning an excluded fuel, the burner had to publish in a major newspaper of general circulation local to the site where the fuel will be burned, a notice entitled "Notification of Burning a Fuel Excluded Under the Resource Conservation and Recovery Act" and containing the following information:

(A) Name, address, and RCRA ID number of the generating facility(ies);

(B) Name of the unit(s) that will burn the excluded fuel;

(C) A brief, general description of the manufacturing, treatment, or other process generating the excluded fuel;

(D) An estimate of the average and maximum monthly and annual quantity of the

excluded waste to be burned; and

(E) Name and mailing address of the Regional or State Directors to whom the generator submitted a claim for exclusion.

Respondent Tasks

- Generators-Prepare and submit one-time notice to Regional/State RCRA or CAA director with info noted above.
- Burners - Prepare and publish in a major newspaper, a notification of burning a fuel excluded under RCRA.

Agency Tasks

Review notice by generator certifying compliance with the exclusion

Fuel analysis plan for generators

Data Items

As per proposed §261.38 (b)(4) the generator of an excluded fuel shall develop and follow a written waste analysis plan which describes the procedures for sampling and analysis of the hazardous waste to be excluded. The plan shall be followed and retained at the facility excluding the waste.

(i) At a minimum, the plan had to specify:

(A) The parameters for which each hazardous waste will be analyzed and the rationale for the selection of those parameters;

(B) The test methods which will be used to test for these parameters;

(C) The sampling method which will be used to obtain a representative sample of the waste to be analyzed;

(D) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

(E) If process knowledge is used in the waste determination, any information prepared by the generator in making such determination.

Respondent Tasks

- Generators had to develop and follow a waste analysis plan for their ECF streams specifying parameters to be analyzed, test methods to be used, description of sampling method, and frequency of analysis. However, EPA estimates that the burden of this collection is offset by the waste analysis plans that would have been required had the ECF been handled as a hazardous waste.

Agency Tasks

None

Analysis plans for burners of ECF

Data Items

Under proposed §261.38(b)(5) an emission-comparable fuel burner is subject to the fuel analysis plan requirements under paragraph (b)(4) of this section to determine, for each fuel fed to the boiler when burning emission-comparable fuel, the as-fired heating value and the as-fired concentration of each compound listed in paragraph (a)(2)(ii)(B) of this section, except for fuels under the situations described below:

(i) Coal or fuel oil used as primary fuels, when the burner uses the heating values

and compound concentrations for these fuels provided in paragraph (c)(2)(ii)(C) of this section and Tables 3 and 4 to §261.38;

(ii) Emission-comparable fuel, when the burner receives documentation of this information from the generator for each shipment of emission-comparable fuel, provided that the emission-comparable fuel is not blended with other fuels before firing to the burner.

(iii) Emission-comparable fuel, when the burner receives documentation of this information from the generator for each shipment of emission-comparable fuel, and the emission-comparable fuel is blended with other fuels before firing to the burner, provided that:

(A) The burner has determined the heating value of the other fuels and the concentration of each compound listed in paragraph (A)(2)(ii)(B) of this section for the other fuels; and;

(B) The burner determines by calculation the as-fired heating value of the blended emission-comparable fuel and the as-fired concentration of each compound listed in paragraph (A)(2)(ii)(B) of this section of the blended emission-comparable fuel.

Respondent Tasks

Burners that do not meet the criteria above had to analyze their ECF and primary fuel streams for heating value and constituent composition

Agency Tasks

None

ECF fuel sampling and analysis

Data Items

Under proposed §261.38(b)(4)(ii) for each analysis of ECF, the generator shall document the following:

(A) The dates and times that samples were obtained, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any clean-up and sample preparation methods;

(F) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and the description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;

(G) All laboratory results demonstrating whether the exclusion specifications have been met for the waste; and

(H) All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in paragraph (b)(7) of

this section and also provides for the availability of the documentation to the claimant upon request.

Under proposed § 261.38(b)(6), for each waste for which an exclusion is claimed, the generator of the hazardous waste had to test for all the constituents in appendix VIII of Part 261, except those that the generator determines, based on testing or knowledge, should not be present in the waste, and except for the compounds listed in paragraph § 261.38 (a)(2)(ii)(B). The generator is required to document the basis of each determination that a constituent with an applicable specification should not be present. The generator may not use process knowledge to determine that any of the following categories of constituents with an applicable specification should not be present:

(A) A constituent that triggered the toxicity characteristic for the waste constituents that were the basis of the listing of the waste stream, or constituents for which there is a treatment standard for the waste code in 40 CFR 268.40;

(B) A constituent detected in previous analysis of the waste

(C) Constituents introduced into the process that generates the waste; or

(D) Constituents that are byproducts or side reactions to the process that generates the waste

For each waste for which the exclusion is claimed where the generator of the excluded fuel is not the original generator of the hazardous waste, the generator of the excluded fuel may not use process knowledge and had to test to determine that all of the constituent specifications have been met.

The excluded fuel generator may use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. For the waste to be eligible for exclusion, a generator had to demonstrate that:

(A) The 95% upper confidence limit of the mean concentration for each constituent of concern is not above the specification level; and

(B) The analyses could have detected the presence of the constituent at or below the specification level.

The generator had to conduct sampling and analysis in accordance with the waste analysis plan developed under proposed 261.38(b)(4).

Excluded fuel that has not been blended to meet the kinematic viscosity specification shall be analyzed as generated.

If excluded fuel is blended to meet the kinematic viscosity specification, the generator shall:

(A) Analyze the waste as generated to ensure that it meets the constituent and heating value specifications, except that emission comparable fuel need not meet the 8,000 Btu/lb, as-fired, heating value criterion of paragraph (a)(2)(i)(A); and

(B) After blending, analyze the fuel again to ensure that the blended fuel continues to meet all excluded fuel specifications.

Excluded fuel had to be re-tested, at a minimum, annually and also after a process change that could change the chemical or physical properties of the waste.

Respondent Tasks

- Analyze waste for hazardous constituents according to waste analysis plan and determine if constituents are levels are within specifications.
- Original generators of excluded fuel may use process knowledge to verify that certain constituents are not present in the fuel.
- Generators blending to meet viscosity specification had to re-analyze waste after blending.

Agency Tasks
None

Operating Record
Data Items

Under proposed § 261.38(b)(8) &(9), the generator had to maintain-for three years- records of the following information on-site:

(i) All information required to be submitted to the implementing authority as part of the notification of the claim:

(A) The owner/operator name, address, and RCRA facility ID number of the person claiming the exclusion;

(B) The applicable EPA Hazardous Waste Codes for each hazardous waste excluded as a fuel; and

(C) The certification signed by the person claiming the exclusion or his authorized representative.

(ii) A brief description of the process that generated the hazardous waste and process that generated the excluded fuel, if not the same;

(iii) The monthly and annual quantities of each waste claimed to be excluded;

(iv) Documentation for any claim that a constituent is not present in the hazardous waste as required under paragraph (b)(6) of this section;

(v) The results of all analyses and all detection limits achieved as required under paragraph (b)(4) of this section;

(vi) If the excluded waste was generated through treatment or blending, documentation as required under proposed paragraph §261.38 (a)(4) or (5);

(vii) If the waste is to be shipped off-site, a certification from the burner as required under proposed paragraph 261.38(b)(10);

(viii) The waste analysis plan and documentation of all sampling and analysis results as required by paragraph 261.38(b)(4) of this section; and

(ix) If the generator ships excluded fuel off-site for burning, the generator had to retain for each shipment the following information on-site:

(A) The name and address of the facility receiving the excluded fuel for burning;

(B) The quantity of excluded fuel shipped and delivered;

(C) The date of shipment or delivery;

(D) A cross-reference to the record of excluded fuel analysis or other information used to make the determination that the excluded fuel meets the specifications as required under paragraph (b)(4) of this section; and

(E) A one-time certification by the burner as required under paragraph (b)(10) of

this section.

Respondent Tasks

All ECF Generators had to maintain records of,

1. Information to be submitted to the implementing authority (facility info, EPA hazardous waste codes, certification)
2. Description of process.
3. Excluded quantities
4. Documentation for process knowledge based certification
5. Analytical results and waste analysis plan
6. Documentation required for treated/blended ECF

Generators who ship the waste off-site for burning had to maintain records of

- For each shipment: Date of shipment, quantity of ECF shipped, info on receiving facility
- One time certification by burner

Agency Tasks

None

Burner Certification

Data Items

Under proposed § 261.38 (b) (10), prior to submitting a notification to the State and Regional Directors, a generator of emission-comparable fuel who intends to ship the excluded fuel off-site for burning had to obtain a one-time written, signed statement from the burner:

(A) Certifying that the excluded fuel will be stored under the conditions of paragraph §261.38(c)(1) and burned in a boiler under the conditions of paragraph §261.38(c)(2), and that the burner will comply with the notification, reporting, and recordkeeping conditions of paragraph §261.38 (c)(4;

(B) Identifying the name and address of the facility that will burn the excluded fuel; and

(C) Certifying that the state in which the burner is located is authorized to exclude wastes as excluded fuel under the provisions of this section.

Respondent Tasks

ECF generators who ship the excluded fuel offsite had to obtain from the burners a certification that the fuel will be stored under conditions of §261.38(c)(1) will be burned under conditions of proposed §261.38(c)(2) and that the burner is located in an authorized state.

Agency Tasks

None

Special Conditions for Emission-Comparable Fuel

Storage : SPCC requirements

Data Items

Under §261.38 (c)(iii)(A) Emission-comparable fuel tanks and containers greater than 26 gallons are subject to the following requirements under 40 CFR Part 112 as though emission-comparable fuel meets the definition of oil under §112.2

(A) Section 112.2, Definitions. These definitions apply to the adopted SPCC requirements under paragraph (c)(1)(iii)(B) through (c)(1)(iii)(D) of this section.

(B) Sections 112.3(d) and 112.3(e) of this chapter, Requirement to Prepare and Implement a Spill Prevention, Control, and Countermeasure Plan. (*1*) You had to prepare a Spill Prevention, Control, and Countermeasure Plan in writing, and in accordance with the adopted provisions of §§112.7 and 112.8 of this chapter;

(*2*) The SPCC Plan had to be reviewed and certified according to the provisions of §112.3(d) of this chapter and had to be made available to the Regional Administrator according to the provisions of §112.3(e) of this chapter;

(*3*) You had to amend your SPCC Plan as directed by the Regional Administrator upon a finding that amendment is necessary to prevent and contain releases of emission-comparable fuel from your facility. You had to implement the amended SPCC Plan as soon as possible, but not later than six months after you amend your SPCC Plan, unless the Regional Administrator specifies another date.;

(C) Sections 112.5(a) and 112.5(b) of this chapter, Amendment of Spill Prevention, Control, and Countermeasures Plan by Owners or Operators. (*1*) You must comply with the provisions of §§112.5(a) and 112.5(b) of this chapter by substituting the term "release of emission-comparable fuel to the environment" for the term "discharge as described in §112.1(b);"

(*2*) You must have a Professional Engineer certify any technical amendment to your Plan in accordance with §112.3(d) of this chapter.

(D) Section 112.7 of this chapter, General Requirements for Spill Prevention, Control, and Countermeasure Plans. (*1*) You must comply with the requirements of §112.7, except for paragraphs (a)(2),(c),(d), and (k) of that section.

(*2*) Your Plan may deviate from the requirements §§112.7 (g),(h)(2),(h)(3)and (i), and the adopted provisions of §112.8, where applicable to a specific facility, if you provide equivalent protection by some other means of spill prevention, control, or countermeasure. Where your Plan does not conform to the applicable requirements in §§112.7 (g),(h)(2),(h)(3)and (i) and the adopted provisions of §112.8 of this chapter, you must state the reasons for nonconformance in your Plan and describe in detail alternate methods and how you will achieve equivalent environmental protection. If the Regional Administrator determines that the measures described in your Plan do not provide equivalent environmental protection, he may require that you amend your Plan.

(E) Section 112.8 of this chapter, Spill Prevention, Control, and Countermeasure Plan Requirements for Onshore Facilities, except for paragraph (b) of this section (facility drainage), paragraph (c)(2) of this section (secondary containment for bulk storage containers), and paragraph (c)(11) of this section (secondary containment for mobile containers), with the following revisions:

(*1*) You must inspect at least weekly areas where portable containers are stored to look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

(*2*) Section 112.8(d)(1) of this chapter applies to all buried piping irrespective of the installation or replacement date.

Respondent Tasks

- Renew existing SPCC plans as needed to incorporate storage of ECF and have plan certified by a professional engineer.
- Generators -replace storage tanks and containers as needed. However, this is not an additional burden since generators would incur this cost if the ECF had continued to have been handled as a hazardous waste.
- Burners- Install new storage tanks for ECF.

Agency Tasks
None

Secondary Containment

Data Items

Per 261,38 (c)(1)(iv) In order to prevent the release of emission comparable fuel or hazardous constituents to the environment, secondary containment that meets the following requirements adopted from 264.193 or 264.175 (b) substituting “ECF” for “waste” in the regulatory language.

TANKS-
(*1*) Section 264.193(b) of this chapter, which prescribes general performance standards for secondary containment systems;
(*2*) Section 264.193(c) of this chapter, which prescribes minimum requirements for secondary containment systems;
(*3*) Section 264.193(d)(1) through (3), which prescribe permissible secondary containment devices;
(*4*) Section 264.193(e) of this chapter, which prescribes design and operating requirements for the permissible secondary containment devices; and
(*5*) Section 264.193(f) of this chapter, which prescribes secondary containment requirements for ancillary equipment.
(B) *Portable containers*.
§264.175(b) of this chapter

Respondent Tasks

- Generators and burners provide containment and detection of releases according to the above regulations for all tanks and portable containers containing ECF

  Note the above is not an added burden for generators because the requirements are equivalent to those required for hazardous waste generator tanks under 40 CFR 264/265, subpart J.

Agency Tasks
None

Cessation and Containment of Leaks, Reporting
Data Items

Under §264.196 a tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, had to remove from service immediately, and the owner or operator had to satisfy the following requirements:

(a) *Cessation of use; prevent flow or addition of wastes.* The owner or operator had to immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) *Removal of waste from tank system or secondary containment system.* (1) If the

release was from the tank system, the owner/operator had to, within 24 hours after detection of the leak or, if the owner/operator demonstrates that it is not possible, at the earliest practicable time, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(2) If the material released was to a secondary containment system, all released materials had to be removed within 24 hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) *Containment of visible releases to the environment.* The owner/operator had to immediately conduct a visual inspection of the release and, based upon that inspection:

(1) Prevent further migration of the leak or spill to soils or surface water; and

(2) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) *Notifications, reports.* (1) Any release to the environment, except as provided in paragraph (d)(2) of this section, had to be reported to the Regional Administrator within 24 hours of its detection. If the release had been reported pursuant to 40 CFR part 302, that report satisfied this requirement.

(2) A leak or spill of hazardous waste was exempted from the requirements of this paragraph if it is:

(i) Less than or equal to a quantity of one (1) pound, and

(ii) Immediately contained and cleaned up.

(3) Within 30 days of detection of a release to the environment, a report containing the following information had to be submitted to the Regional Administrator:

(i) Likely route of migration of the release;

(ii) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);

(iii) Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release was not available within 30 days, these data had to be submitted to the Regional Administrator as soon as they become available.

(iv) Proximity to downgradient drinking water, surface water, and populated areas; and

(v) Description of response actions taken or planned.

Respondent Tasks
Clean up leaks from tanks, valves, piping and other equipment containing ECF. Unless amount of material released is less than 1 lb, and leak is immediately contained and cleaned up:

a) Notify RA of leak within 24 hours
b) Provide written report within 30 days

Note this is a new requirement for burners of ECF, but the requirement is identical to what's required for generators of hazardous waste under §264.196

Agency Tasks
Review the report of leaks from generators or burners and ensure proper procedures were followed.

Testing and Maintenance of Equipment
Data Items
Under 40 CFR 261.38 (c)(v)(A)(2) the testing and maintenance is necessary to assure proper operation in times of emergency all communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment required for the emission-comparable fuel tank systems.

Respondent Tasks
Test and maintain equipment

Agency Tasks
None

Emergency Procedures
Data Items
Under 40 CFR 261.38 (c)(v)(B), generators and burners of had to follow emergency procedures:

(*i*) Whenever there is an imminent or actual emergency situation relating the emission-comparable fuel tank system, the emergency coordinator (or his designee when the emergency coordinator is on call) had to immediately activate internal facility alarms or communication systems, where applicable, to notify all facility personnel and notify appropriate State or local agencies with designated response roles if their help is needed.

(*ii*) Whenever there is a release, fire, or explosion relating to the emission-comparable fuel tank system, the emergency coordinator had to immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records, and, if necessary, by chemical analysis.

(*iii*) Concurrently, the emergency coordinator had to assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment had to consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-off from water or chemical

agents used to control fire and heat-induced explosions).

(*iv*) If the emergency coordinator determines that the facility has had a release, fire, or explosion associated with the emission-comparable fuel tank system which could threaten human health, or the environment outside the facility, he had to report his findings as provided by paragraph 261.38 (c)(1)(v)(B)(*2*)(*v*).

(*v*) If the emergency coordinator's assessment indicated that evacuation of local areas may be advisable, he had to immediately notify appropriate local authorities. He had to be available to help appropriate officials decide whether local areas should be evacuated, and he had to immediately notify either the government official designated as the on-scene coordinator for that geographical area, (in the applicable regional contingency plan under part 1510 of this title) or the National Response Center (using their 24-hour toll free number 800/424–8802). The report had to include: the name and telephone number of reporter; the name and address of facility; the time and type of incident (e.g., release, fire); the name and quantity of material(s) involved, to the extent known; the extent of injuries, if any; and the possible hazards to human health, or the environment, outside the facility.

(*vi*) During an emergency, the emergency coordinator had to take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other materials at the facility. These measures had to include, where applicable, stopping processes and operations and collecting and containing released emission-comparable fuel.

(*vii*) If the emission-comparable fuel tank system stops operations in response to a fire, explosion, or release, the emergency coordinator had to monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(*viii*) Immediately after an emergency, the emergency coordinator had to provide for treating, storing, or disposing of recovered emission-comparable fuel, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

[Note: Emission-comparable fuel that is released from the tank system had to generally be managed as hazardous waste. See §261.38(b)(15).]

(*ix*) The emergency coordinator had to ensure that, in the affected area(s) of the facility: materials that may be incompatible with the released emission-comparable fuel is treated, stored, or disposed of until cleanup procedures are completed; and all emergency equipment listed in the SPCC plan is cleaned and fit for its intended use before operations are resumed.

(*x*) Note in the record the time, date, and details of any incident that requires implementing the SPCC plan for the emission-comparable fuel tank system. Within 15 days after the incident, submit a written report on the incident to the Regional Administrator. The report had to include: the name, address, and telephone number of the owner or operator; the name, address, and telephone number of the facility; the date, time, and type of incident (e.g., fire, explosion); the name and quantity of material(s) involved; the extent of injuries, if any; an assessment of actual or potential hazards to human health or the environment, where this is applicable; and the estimated quantity and disposition of recovered material that resulted from the incident.

Respondent Tasks
Ensure that there always is an emergency coordinator onsite or on-call that is familiar with all aspects of the facility's Emergency Procedures

In the event of an actual or imminent emergency, take immediate action that protects human health and the environment

Prepare and submit incident report to RA.

Agency Tasks
Review incident reports

Testing and Maintenance of Equipment

Data Items
Under 40 CFR 261.38 (c)(v)(A)(2) testing and maintenance is necessary to assure proper operation in times of emergency all communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment required for emission-comparable fuel tank systems.

Respondent Tasks
Test and maintain the communication/fire protection/spill control and decontamination equipment.

Agency Tasks
None

Air emissions

Data Items
Under §261.38(c)(1)(C) emission-comparable fuel storage tank systems are subject to the applicable air emission controls for Organic Liquids Distribution under subpart EEEE, Part 63, of this chapter, except that the following compounds had to be considered in addition to the organic hazardous air pollutants in Table 1 to subpart EEEE when considering the applicability of that subpart and the organic compounds that had to be controlled:

(*1*) Allyl alcohol (CAS No. 107-18-6)
(*2*) Bis(2-ethylhexyl)phthalate [Di-2-e thylhexyl phthalate] (CAS No.117-81-7)
(*3*) Butyl benzyl phthalate (CAS No. 85-68-7)
(*4*) Diethyl phthalate (CAS No. 84-66-2)
(*5*) 2,4-Dimethylphenol (CAS No. 105-67-9)
(*6*) Dimethyl phthalate (CAS No. 131-11-3)
(*7*) Di-n-octyl phthalate (CAS No. 117-84-0)
(*8*) Endothall (CAS No. 145-73-3)
(*9*) Ethyl methacrylate (CAS No. 97-63-2)
(*10*) 2-Ethoxyethanol [Ethylene glycol monoethyl ether] (CAS No. 110-80-5)

(*11*) Isobutyl alcohol (CAS No. 78-83-1)
(*12*) Isosafrole (CAS No. 120-58-1)
(*13*) Methyl ethyl ketone [2-Butanone] (CAS No. 78-93-3)
(*14*) 1,4-Naphthoquinone (CAS No. 130-15-4)
(*15*) Propargyl alcohol [2-Propyn-1-ol] (CAS No. 107-19-7)
(*16*) Safrole (CAS No. 94-59-7);

Respondent Tasks
According to 40 CFR part 63 Subpart EEEE, generators and burners had to ensure that certain ECF storage tanks would be equipped with level 2 storage controls based on their size and vapor pressure. However, generators face similar requirements for hazardous waste storage tanks and thus saw no change in burden due to this item.

Agency Tasks
None

Management of incompatible waste fuels and other materials

Data Items

(A) The generator had to document in the waste analysis plan under paragraph 261.38(b)(4) how precautions will be taken to prevent mixing of waste fuels and other materials which could result in reactions which:
(*1*) Generate extreme heat or pressure, fire or explosions, or violent reactions;
(*2*) Produce uncontrolled toxic mists, fumes, dusts, or gases;
(*3*) Produce uncontrolled flammable fumes or gases; or
(*4*) Damage the structural integrity of the storage unit or facility.

Respondent Tasks
The generator had to document in the waste analysis plan how precautions will be taken to prevent mixing of incompatible waste fuels and other materials. Given that this is a status quo requirement no additional burden arises from this requirement.

Agency Tasks
None

Burner Operating conditions

Data Items
ECF burners had to meet the following operating requirements under proposed 261.38(c)(2)(ii)

--(A) *Primary fuels*. A minimum of 50 percent of fuel fired to the boiler shall be fossil fuel, fuels derived from fossil fuel, tall oil, or comparable fuel meeting the specifications provided by paragraph (a)(1) of this section. Such fuels are termed "primary fuel" for purposes of this section. (Tall oil is a fuel derived from vegetable and rosin fatty acids.) The 50 percent primary fuel firing rate shall be determined on a total heat or mass input basis, whichever results in the greater mass feedrate of primary fuel fired;

(B) *Fuel heating value*. Primary fuels shall have a minimum as-fired heating value of 8,000 Btu/lb, and each material fired in a firing nozzle where emission-comparable fuel is fired had to have a heating value of at least 8,000 Btu/lb, as-fired;

(C) *Feedrate limits for emission-comparable fuel constituents*. The total feedrate, considering all combustor feedsteams, of each emission-comparable fuel constituent listed under paragraph (a)(2)(ii)(B) of this section shall not exceed the limit provided by Table 2 to this section.

(*1*) The feedrate limits are expressed as gas flowrate-normalized feedrates in the units "ug/dscm."

(*2*) The feedrate limit for total combustor feedstreams expressed as mass/unit time (kg/hr) for each emission-comparable fuel constituent is determined by multiplying the gas flowrate-normalized feedrate limit provided by Table 2 to this section times the combustor gas flowrate.

(*3*) The maximum constituent feedrate (kg/hr) attributable to emission-comparable fuel is the total combustor constituent feedrate (kg/hr) minus the constituent feedrate (kg/hr) for all other combustor feedstreams.

(*4*) To account for emission-comparable fuel constituents in primary fuels, burners may use measured concentrations of the constituents, or:

(*i*) If natural gas is used as a primary fuel, burners may assume that natural gas does not contain emission-comparable fuel constituents and that natural gas has a heating value of 22,000 Btu/lb;

(*ii*) If fuel oil is used as a primary fuel, burners may use the default concentrations for emission-comparable fuel constituents provided in Table 3 to this section, and assume that fuel oil has a heating value of 19,200 Btu/lb; and

(*iii*) If coal used as a primary fuel, burners may use the default concentrations for emission-comparable fuel constituents provided in Table 4 to this section, and assume that coal has a heating value of 11,100 Btu/lb.

(D) *CO CEMS*. When burning emission-comparable fuel, carbon monoxide emissions must not exceed 100 parts per million by volume, over an hourly rolling average (monitored with a continuous emissions monitoring system (CEMS)), dry basis and corrected to 7 percent oxygen. You must use an oxygen CEMS to continuously correct the carbon monoxide level to 7 percent oxygen. You must install, calibrate, maintain, and continuously operate the CEMS in compliance with the quality assurance procedures provided in the appendix to subpart EEE of part 63 of this chapter (Quality Assurance Procedures for Continuous Emissions Monitors Used for Hazardous Waste Combustors) and Performance Specification 4B (carbon monoxide and oxygen) in appendix B, part 60 of this chapter.

(E) *Dioxin/furan control*--(*1*) If the boiler is equipped with a dry particulate matter control device and the primary fuel is not coal, you must monitor the combustion gas temperature at the inlet to the dry particulate matter control device, and the gas temperature must not exceed 400°F on an hourly rolling average.

(*2*) *Calibration of thermocouples*. The calibration of thermocouples must be verified at a frequency and in a manner consistent with manufacturer specifications, but no less frequently than once per year.

(F) *Calculation of rolling averages*--(*1*) *Calculation of rolling averages upon intermittent operations*. You must ignore periods of time when one-minute values are not available for calculating the hourly rolling average. When one-minute values become available again, the first one-minute value is added to the previous 59 values to calculate the hourly rolling average.

(*2*) *Calculation of rolling averages when the emission-comparable fuel feed is cutoff*. You must continue monitoring carbon monoxide and combustion gas temperature at the inlet to the dry particulate matter emission control device when the emission-comparable fuel feed is cutoff, but the source continues operating on other fuels. You must not resume feeding emission-comparable fuel if the emission levels exceed the limits provided in paragraphs (c)(2)(ii)(C) and (D) of this section.

(G) *Automatic fuel cutoff system*--(*1*) *General*. You must operate the boiler with a functioning system that immediately and automatically cuts off the emission-comparable fuel feed, except as provided by paragraph (c)(2)(ii)(G)(*6*) of this section:

(*i*) When the hourly rolling average carbon monoxide level exceeds 100 ppmv or the combustion gas temperature at the inlet to the initial dry particulate matter control device exceeds 400°F on an hourly rolling average.

(ii) When the emission-comparable fuel feedrate limit for a constituent exceeds the limit provided by Table 2 to this section.

(iii) When the primary fuel firing rate is below 50 percent on a heat input or mass input basis, whichever results in a lower mass input of primary fuel;

(iv) When the steam production rate (or other indicator of boiler load) indicates that the boiler load is below 40 percent;

(*v*) When the span value of the combustion gas temperature detector is exceeded;

(v*i*) Upon malfunction of the carbon monoxide CEMS or the gas temperature detector; or

(*iv*) When any component of the automatic fuel cutoff system fails.

(*2*) *Failure of the automatic fuel cutoff system*. If the automatic emission-comparable fuel cutoff system fails to automatically and immediately cut off the flow of emission-comparable fuel (except as provided by

paragraph (c)(2)(ii)(G)(*6*) of this section) upon an occurrence of an event linked to the cutoff system as required under paragraph (c)(2)(ii)(G)(*1*) of this section, you have failed to comply with the emission-comparable fuel cutoff requirements of this section. If an equipment failure prevents immediate and automatic cutoff of the emission-comparable fuel feed, however, you must cease feeding emission-comparable fuel as quickly as possible.

(*3) Corrective measures*. If, after any automatic emission-comparable fuel feed cutoff, a limit linked to the cutoff system under paragraphs (c)(2)(ii)(G)(*1*)(*i*) through *iv*) of this section was exceeded while emission-comparable fuel remained in the combustion chamber, you must investigate the cause of the automatic emission-comparable fuel feed cutoff, take appropriate corrective measures to minimize future automatic cutoffs, and record the findings and corrective measures in the operating record.

(*4*) *Excessive exceedance reporting*. (*i*) For each set of 10 exceedances of a limit linked to the cutoff system under paragraphs (c)(2)(ii)(G)(*1*)(*i*) through *iv*) of this section, while emission-comparable fuel remains in the combustion chamber (i.e., when the emission-comparable fuel residence time has not transpired since the emission-comparable fuel feed was cutoff) during a 60-day block period, you must submit to the Administrator a written report within 5 calendar days of the 10th exceedance documenting the exceedances and results of the investigation and corrective measures taken.

(*ii*) On a case-by-case basis, the Administrator may require excessive exceedance reporting when fewer than 10 exceedances occur during a 60-day block period.

(*5*) *Testing*. The automatic emission-comparable fuel feed cutoff system and associated alarms must be tested at least weekly to verify operability, unless you document in the operating record that weekly inspections will unduly restrict or upset operations and that less frequent inspection will be adequate. At a minimum, you must conduct operability testing at least monthly. You must document and record in the operating record automatic emission-comparable fuel feed cutoff system operability test procedures and results.

(*6*) *Ramping down emission-comparable fuel feed*. You may ramp down the emission-comparable fuel feedrate over a period not to exceed one minute. If you elect to ramp down the emission-comparable fuel feed, you must document ramp down procedures in the operating record. The procedures must specify that the ramp down begins immediately upon initiation of automatic emission-comparable fuel feed cutoff and the procedures must prescribe a bona fide ramping down. If a limit linked to the cutoff system under paragraphs (c)(2)(ii)(G)(*1*)(*i*) through *iv*) of this section is exceeded during the ramp down, you have failed to comply with those limits.

(H) *Boiler load*. Boiler load shall not be less than 40 percent. Boiler load is the ratio at any time of the total heat input to the maximum design heat input.

(I) *Fuel atomization*. The emission-comparable fuel shall be fired directly into the primary fuel flame zone of the combustion chamber with an air or steam atomization firing system, mechanical atomization system, or a rotary cup atomization system under the following conditions:

(*1*) *Particle size*. The emission-comparable fuel must pass through a 200 mesh (74 micron) screen, or equivalent;

(*2*) *Mechanical atomization systems*. Fuel pressure within a mechanical atomization system and fuel flow rate shall be maintained within the design range taking into account the viscosity and volatility of the fuel;

(*3*) *Rotary cup atomization systems*. Fuel flow rate through a rotary cup atomization system must be maintained within the design range taking into account the viscosity and volatility of the fuel.

Respondent Tasks

ECF burners:

a) ECF Burners had to ensure that,

1. A minimum of 50% percent of fuel fired to the device shall be fossil fuel, fuels derived from fossil fuel tall oil, or comparable fuels.
2. Primary fuels and emission-comparable fuel shall have a minimum as-fired heating value of 8,000 Btu/lb, and each material fired in a firing nozzle where ECF is fired had to have a heating value of at least 8,000 Btu/lb, as-fired;
3. Feedrate limits in Table 2 of Part 261.38 is complied with
4. Boiler load is not less than 40 percent.
5. Burners had to install a functioning AWFCO system that immediately and automatically cuts off the emission-comparable fuel feed when: (1) the emissions limit for CO or the APCD inlet temperature limit is exceeded; (2) if the CO CEMS or the gas temperature detector malfunctions; and (3) when any

component of the automatic fuel cutoff system malfunctions.

b) Investigate occurrences of automatic feed cutoffs, take corrective measures, and record findings.
c) Report excessive exceedances to the Administrator as required under proposed § 261.38(c)(2)(F)
d) Install a CO CEMS and when burning emission-comparable fuel, ensure that CO not exceed 100 parts per million by volume, over an hourly rolling average dry basis and corrected to 7 percent oxygen.
e) Burners equipped with a dry air pollution control device, monitor the combustion gas temperature at the inlet to the initial dry particulate matter control device, and the gas temperature could not exceed 400°F on an hourly rolling average.
f) Burners had to install an atomization system such that the ECF shall be fired directly into the primary fuel flame zone of the combustion chamber with an air or steam atomization firing system, mechanical atomization system, or a rotary cup atomization.

Agency Tasks
None

EPA Identification Number.

Data Items
Under §261.38(c)(4) a burner that receives emission-comparable fuel from an offsite generator had to obtain an EPA identification number from the Administrator. A burner who has not received an EPA identification number may obtain one by applying to the Administrator using EPA form 8700-12.

Respondent Tasks

Obtain EPA identification number

Agency Tasks
Review information from burner and provide EPA identification number.

Notification, reporting, and recordkeeping
Data Items
Under 261.38 (c)(5) burners of ECF are subject to the following notification, reporting and recordkeeping requirements.
(i) *Initial Notification*. A burner that receives emission-comparable fuel from an offsite generator had to submit an initial notification to the Regional or State RCRA and CAA Directors prior to receiving the first shipment:

(A) Providing the name, address, and EPA identification number of the burner

(B) Certifying that the excluded fuel will be stored under the conditions of paragraph (c)(1) of this section and burned in a boiler under the conditions of paragraph (c)(2) of this section, and that the burner will comply with the notification, reporting, and recordkeeping conditions of paragraph (c)(3) of this section;

(C) Identifying the specific units that will burn the excluded fuel; and

(D) Certifying that the state in which the burner is located is authorized to exclude wastes as excluded fuel under the provisions of this section.

(ii) *Reporting*. The burner had to submit to the Administrator excessive CO exceedance reports required under paragraph (c)(2)(ii)(F)(*5*) of this section.

(iii) *Recordkeeping*. (A) *Records of shipments*. If the burner receives a shipment of emission-comparable fuel from an offsite generator, the burner had to retain for each shipment the following information on-site:

(*1*) The name, address, and RCRA ID number of the generator shipping the excluded fuel;

(*2*) The quantity of excluded fuel delivered; and

(*3*) The date of delivery;

(B) *Boiler operating data*. The burner had to retain records of information required to comply with the operating requirements of paragraph (c)(2) of this section.

(C) *Records retention*. The burner had to retain records at the facility for three years.

Respondent Tasks

Burners receiving ECF had to,

- Submit one-time notification to state /regional implementing authority
- If necessary excessive CO exceedance reports to the administrator.

Agency Tasks

- Review one-time notice from burner
- Review excessive CO exceedance reports

ECF Burned in offsite- Unaffiliated Boiler

Per 261.38 (d) (2) generators who ship their ECF to unaffiliated off-site boilers had to document that reasonable efforts have been made to ensure that the burner complies with the conditions of the exclusion.

(i) In making these reasonable efforts, the generator had to, at a minimum, affirmatively answer the following questions prior to shipping emission-comparable fuel to the burner:

(A) Has the burner submitted the notification to the RCRA and CAA Directors required under paragraph (c)(5)(i) of this section, and has the burner published the public notice of burning activities required under paragraph (b)(2)(ii) of this section?

(B) Are there any unresolved significant violations of environmental regulations at the burner facility, or any formal enforcement actions taken against the facility in the previous three years for violations of environmental regulations? If yes, does the generator nonetheless have credible evidence that the burner will manage the emission-comparable fuel under the conditions of this section?

(C) Does the burner have the equipment and trained personnel to manage the emission-comparable fuel under the conditions of this section?

(ii) In making these reasonable efforts, the generator may use any credible evidence available, including information obtained from the burner and information obtained from a third party;

(iii) The generator had to maintain for a minimum of three years documentation and certification that reasonable efforts were made for each burner facility to which emission-comparable fuel is shipped.

(A) Documentation and certification had to be made available upon request by a regulatory authority within 72 hours, or within a longer period of time as specified by the regulatory authority.

(B) The certification statement had to:

(*1*) Be signed and dated by an authorized representative of the generator company; and

(*2*) Incorporate the following language: "I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of emission-comparable fuel to [insert name(s) of burner facility], reasonable

efforts were made to ensure that the emission-comparable fuel would be stored and burned under the conditions prescribed by §261.38, and that such efforts were based on current and accurate information."

(iv) Reasonable efforts had to be repeated at a minimum of every three years.

(v) An unaffiliated burner is a boiler or hazardous waste combustor located at a facility that is not owned by the same parent company that generated the emission-comparable fuel.

Respondent Tasks

- Ascertain if burner has submitted required notifications and published public notice, and ascertain if the burner has equipment and personnel to the manage ECF under conditions of the exclusion

- Document and certify that reasonable efforts have been made to ensure burner complies with the conditions of the exclusion.

Agency Tasks
-None

5. INFORMATION COLLECTED -- AGENCY ACTIVITIES, COLLECTION METHODOLOGY, AND INFORMATION MANAGEMENT

5(a) AGENCY ACTIVITIES

Agency activities include reviewing one-time notice provided by generators (facility information, excluded waste quantities, and signed statement), reviewing facility response plans, providing EPA identification numbers to ECF burners, and reviewing information provided by burners in the initial notification.

5(b) COLLECTION METHODOLOGY AND MANAGEMENT

In collecting and analyzing information under this regulation pertaining to the expansion of the comparable fuel expansion, EPA promotes and uses state-of-the-art equipment and reporting methodology, including the processing of information in a manner which shall enhance the utility of the information to agencies and the public.

5(c) SMALL ENTITY FLEXIBILITY

There are very few small entities that are affected by this rule. A regulatory impact analysis (RIA) [1] has been prepared for this rule and a copy thereof has also been placed in the Docket for this rule. No significant adverse impact has been found on any small entity. Since this rule is deregulatory, there is an overall burden reduction – not an increase.

5.d) COLLECTION SCHEDULE

Records of shipments of ECF had to be maintained at the generator and the burner. The generator had to also maintain records of ECF analyses, and both

[1] USEPA, "Assessment of the Potential Costs, Benefits, and other Impacts of the Expansion of the RCRA Comparable Fuels Exclusion- Proposed Rule," Dec 2006. p.42

the generator and burner had to keep records of inspections of tanks, secondary containment systems, air emissions controls, pumps, valves and other ancillary equipment. Additionally, the burner had to maintain a boiler operating record indicating compliance with the special boiler conditions for combustion of ECF. Discussion of collection schedule of these items is not applicable.

The ECF generators had to obtain a certification from a potential offsite burner (if the ECF is to be combusted offsite) and submit a one time notification to the implementing authority and receive an approval of the exclusion prior to managing an excluded hazardous waste as ECF

The ECF burners had to publish a notice in a major newspaper and provide notification to implementing authorities prior to receiving and burning ECF.

6. ESTIMATING THE BURDEN AND COST OF THE COLLECTION

6(a) ESTIMATING RESPONDENT BURDEN

EPA had estimated respondent burden hours associated with all of the information collection requirements for ECF exclusion in Exhibit 2 of ICR # 1361.12. This exhibit shows the average number of hours required to conduct the information collection activity and the average cost associated with each requirement. This Exhibit 2 is attached and shows savings associated with no longer managing the excluded fuel as a hazardous waste.[2] These savings and burden will now be reversed since the ECF exclusion is being withdrawn.

The estimated burden and cost represents the average burden and cost incurred by a generator and/or burner of ECF. In developing these estimates, EPA recognizes that the burden for each facility will vary, depending on the number, capacity, and complexity of the units at the facility. Consequently, the burden estimates included in this ICR neither supersede existing technical guidance nor constitute new guidance on the frequency or cost of complying with the information collection requirements associated with RCRA regulations.

6(b) ESTIMATING RESPONDENT COSTS

Labor Costs

For the purposes of this ICR, labor costs have been taken from the ICR for the BIF rule[3] and adjusted to March 2008 levels by increasing the labor rates based on the increase in consumer price index.[4] EPA estimates the burdened labor rates to be $35.11/hour for clerical support, $72.92/hour for technical support, $94.78/hour for a manager and $124.59/hour for legal/consultant support.

[2] Note savings are shown in red font as negative numbers.
[3] USEPA, "Supporting Statement for EPA ICR 1361.10," October 2005.
[4] ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.tx

Annual Capital and Operation & Maintenance Costs

Capital costs include any produced physical goods needed to provide the needed information, such as machinery, computers, and other equipment. Capital costs incurred by respondents in this ICR include the cost to install/replace storage tanks, and for the secondary containment of the ECF.

Operation and maintenance (O&M) costs include costs associated with a paperwork requirement incurred continually over the life of the ICR. They are defined by the PRA as "the recurring dollar amount of costs associated with O&M or purchasing services." O&M costs covered in this ICR include the following:

- Mailing costs or long-distance phone call costs
- Photocopying and document storage overhead and
- Laboratory analysis (For example, EPA estimates that a complete analysis of the constituents and properties of ECF fuel sample costs $8100).

One Time Costs

Some costs that are incurred by generators and burners of ECF occur only one time while others occur infrequently. For example, obtaining an EPA ID number is a one-time cost and replacement of ECF storage tanks and associated equipment is scheduled to occur once every 15 years which is the estimated lifetime of a storage tank.

These costs are annualized using a capital recovery factor (CRF). The CRF is given by:

$$CRF = \{R*(1+R)^N\} / \{(1+R)^N - 1\}$$

Where R is the annual interest rate and N is the number of years. We assumed an interest rate of 7%. Therefore the CRF is 0.244 for 5 years, 0.142 for 10 years, 0.110 for 15 years and 0.094 for 20 years. Note that we assumed a boiler facility life of 20 years, thus their one time costs were annualized over 20 years.

6(c) ESTIMATING AGENCY BURDEN AND COST

EPA estimates the annual Agency burden hours and costs associated with all the requirements covered in this ICR in Exhibit 4.

Hourly wage rates for the Agency are estimated at $73.14 for legal staff, $68.38 for managerial staff, $50.14 for technical staff, $23.49 and for clerical staff. Rates are based on the Federal employee labor rates "Salary Table 2006-GS," available at http://www.opm.gov/oca/08tables/pdf/gs_h.pdf, and a standard government overhead rate of 1.6 EPA OSW Headquarters, Regional, and State offices will be involved in these activities. For purposes of this ICR, we assume the assigned staff at the following government services levels:

- Legal Staff GS-15, Step1
- Managerial Staff GS-14, Step 4
- Technical Staff GS-12, Step 5
- Clerical Staff GS-5, Step 6

The agency and authorized states' burden is due to review of plans, petitions, notifications, and requests. As stated in para 4 (b) above, some of this burden will be shared by the the States authorized to administer their own RCRA program (under section 3006 of RCRA)

6(d) ESTIMATING THE RESPONDENT UNIVERSE AND TOTAL BURDEN AND COSTS

The respondent savings and costs estimated earlier in ICR # 1361.12 will still apply for withdrawal of ECF exclusion, but will only be reversed.

EPA estimated that 34 generators would make use of the ECF exclusion.[5] It also estimated that there would be a total of 62 boilers combusting ECF comprised of 32 onsite and 30 offsite boilers.

Thus the 34 generators of ECF and the 30 offsite burners of ECF constituted the 64 respondents to the expanded comparable fuels exclusion.

EPA estimated that 118,500 tons/yr of ECF will be excluded based on qualifying waste quantities and a cost benefit analysis. Of this quantity 98,600 was estimated to be burned offsite.

The 34 generators belong to three broad categories. It was estimated that approximately 29 of these generators are facilities that currently incur hazardous waste disposal costs for qualifying ECF also known as Type 1 facilities.[6] . As a result of the savings, Type 1 generators will save on hazardous waste disposal costs.

Type 2 and Type 3 facilities do not currently pay disposal fees for their ECF, i.e. they are burning the "to be excluded" ECF as a hazardous waste onsite or at an affiliated unit offsite. Type 2 facilities are those that will take the exclusion but will continue to burn ECF in a boiler that remains a hazardous waste boiler. We estimated that there are approximately 3 generators that can be classified as type 2. Although these generators will see very little measurable benefits from the exclusion, they will nonetheless take the exclusion because of intangibles.[7]

Type 3 facilities are those that will exit the BIF/MACT universe as a result of the comparable fuel expansion. We estimated that 2 generators qualify for this category. They burned the waste onsite in a hazardous waste boiler and exited the BIF/MACT regulatory system because all the generated and burned hazardous waste qualified as

[5] USEPA, "Assessment of Potential Costs, Benefits, and other Impacts of the Expansion of the RCRA Comparable Fuels Exclusion-Final Rule," Draft April 2008, Appendix E-1

[6] These facilities are paying disposal fees to incinerators, kilns or other entities.

[7] For example, facilities may consider it beneficial to reduce the quantity of hazardous waste they are handling.

ECF. Exhibit 1 shows the respondent universe by type of generator.

EXHIBIT 1:Respondent Universe

	Type 1	Type 2	Type 3	TOTAL
# Generators using Exclusion	29	3	2	34
Total # of ECF Burners	52	6	4	62
# of Offsite ECF burners	30	0	0	30

The following sections detail costs and savings that will be incurred by respondents. Note only costs incremental to those currently incurred are discussed.

COSTS

Reading the Regulations

EPA estimates that all 64 respondents will read the regulations

Notices

EPA estimates that all 34 generators will prepare and submit a one-time notice to Regional/State RCRA or CAA director certifying compliance with the conditions of the exclusion. Additionally, 56 burners (Type I and Type III) will prepare and publish in a major newspaper, a notification of burning a fuel excluded under RCRA.

Analysis plans for burners of ECF

Burners that do not receive information on constituent concentration or heating value of ECF from the generator and burners that blend waste to meet the specifications had to re-analyze the ECF. EPA estimated that 5% of all burners fit this category and will re-analyze their ECF.

Excluded fuel sampling and analysis

EPA estimated that all generators will perform annual analysis on ECF for hazardous constituents according to the waste analysis plan and determine if constituents are within specifications levels. We assumed three ECF streams per generator and that 50% of streams will be analyzed annually while 50% will be analyzed semi-annually.

Records

EPA estimated that all ECF generators will maintain records of analysis on their ECF streams. We estimated an average of 176 ECF shipments will occur per generator annually.

Burner Certification

EPA estimated that the ECF generators who ship the excluded fuel to an offsite boiler had to obtain from the burners a certification that the fuel will be stored under conditions of proposed §261.38(c)(1) will be burned under conditions of §261.38(c)(2)

Above ground tank systems

SPCC requirements

EPA estimated that all 34 generators and 30 offsite burners had to renew existing SPCC plans as needed to incorporate storage of ECF and have plan certified by a professional engineer and submit response plan to RA. We assumed that SPCC plans will be revised every 10 years.

Secondary Containment

EPA estimated that all burners will install engineered secondary containment for all storage tanks as the tanks are replaced at the end of its useful life.

EPA estimated that all ECF burners will perform daily inspection of tanks, weekly inspections of piping and equipment and monthly VOC monitoring.

Cessation and Containment of Leaks, Notification, Reporting

EPA estimated that 30 offsite burners will need to clean-up equipment leaks and will report leaks to the RA on average 3 times a year.

Air emissions

EPA estimated that 75% of type 1 ECF burners will equip their tanks with level 2 storage controls based on size and vapor pressure as the tanks are replaced at the end of their useful life.

EPA estimated that all type 1 ECF burners had to maintain records of inspections, performance tests (on air emissions controls) and defective equipment.
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Burner Operating Conditions

EPA estimated that the 52 ECF burners will install an automatic feed cutoff system (AWFCO) for their ECF. We estimated 50% of ECF burners will have a waste feed cutoff and investigate reason for AWFCO and take corrective action and 1% of ECF burners will submit a written report for 10 exceedances of the CO emission limit.

EPA estimated that 62 ECF burners had to perform weekly test (52 weeks/year) the automatic ECF feed cutoff system.

EPA estimated that 52 type 1 ECF burners had to install CO CEMS to ensure that CO not exceed 100 parts per million by volume, over an hourly rolling average dry basis and corrected to 7 percent oxygen. All ECF burners had to maintain and calibrate the CO CEMS.

For dioxin control, EPA estimated that only 10% of 62 ECF burners need to install the temperature monitoring and 50% of ECF burners will install an atomization system for firing ECF.

EPA Identification Number

EPA estimated that the 30 offsite ECF Burners will obtain an EPA identification number. This is a one time cost.

Notification, reporting, and recordkeeping

EPA estimated that all 30 offsite ECF burners receiving ECF had to submit one-time notification to state /regional implementing authority.

EPA estimated that 20% of generators will ship ECF to offsite non-affiliated burners. These generators had to make reasonable efforts to ensure that the burner is complying with the conditions of the exclusion.

SAVINGS

- EPA estimated the 29 type 1 generators will save on hazardous waste management/disposal costs at an average of $176 per ton of ECF. We assumed that type I generators currently send out ECF shipments weekly (on average) for disposal. It is estimated that 15% of these savings can be attributed to labor related to recordkeeping and reporting and 15% is an O&M cost that could be considered “paperwork” savings.
- EPA estimated that generators who ship their ECF offsite will save on manifest preparation and retention costs for an average of 176 shipments per generator annually.
- EPA estimated 2 hazardous waste burning boilers will exit the BIF/MACT regulatory system and save on compliance costs (including comprehensive performance testing, and site specific risk assessments)

6(e) BOTTOM LINE BURDEN HOURS AND COST TABLES

(i) Respondent Tally

Exhibit 2 details the net annual burden to respondents that were generating and burning ECF under the expanded comparable fuels exclusion. The generators of ECF also had a reduction in burden due to these wastes exiting the hazardous waste universe, and being spared from paperwork, reporting, and recordkeeping requirements

needed for hazardous wastes under RCRA[8].

As shown in exhibit 2, there are a total of 2920 more responses/activities per year. Thus the 64 respondents will average 45 fewer responses annually. The rule will result in an increase of 32,900 labor hours and increase of $1.29 million in capital and O&M costs. Dividing the net burden reduction and cost savings by the number of responses provides the "per response" values for these items. Exhibit 2 further breaks down all data items into reporting (RP) and recordkeeping (RK) costs noted in column Q of the exhibit.[9] Tables 1A and 1B summarize separately the hour and cost burden for the respondents needed to comply with this rule, and the costs occurring upon complying with the proposed withdrawal of ECF exclusion. Table 1C shows the net overall effect of complying with the rule.

Table 1A - Private Sector Saving

	Hours pre response	Total Annual Burden	Cost per response (Capital/ Start-up and O&M costs only)	Total Annual Cost Burden (Capital /Start-up and O&M costs only)
Reporting (560 responses)	49.20	(27,547)	$ 50.90	($ 28,477)
Recordkeeping (3145 responses)	3.12	(9,827)	$ 460	($ 1,446242)
Third Party Disclosure				
Total (3705 responses)	10.09	(37,373)	$ 398	($1,474,719)

Table 1 B- Private Sector Burden

	Hours pre response	Total Annual Burden	Cost per response (Capital/ Start-up and O&M costs only)	Total Annual Cost Burden (Capital /Start-up and O&M costs only)
Reporting (764 responses)	42.70	32,599	$ 1,860	$ 1,421,045
Recordkeeping (5860 responses)	6.4	37,673	$ 229	$ 1,339,274
Third Party Disclosure				
Total (6624 responses)	10.6	70,272	$ 417	$ 2,760,320

Table 1 C- Private Sector Net Burden

	Hours pre response	Total Annual Burden	Cost per response (Capital/ Start-up and O&M costs only)	Total Annual Cost Burden (Capital /Start-up and O&M costs only)
Reporting (204 responses)	24.75	5,053	$ 6,822	$ 1,392,569
Recordkeeping (2715 responses)	10.26	27,846	$ 39	($ 106,968)
Third Party Disclosure				
Total (2919 responses)	11.27	32,899	$ 440	$ 1,285,601

[8] Burden reductions are shown as negative numbers or as ( ) in exhibit 2.

[9] On occasion some items are listed as RP/RK. Here the 50% of the costs/savings are assigned to reporting and 50% is assigned to recordkeeping.

(ii) Agency Tally

The annual burden to the EPA and the States under the under the proposed rule is estimated to be reduced by 141 hours, while the capital and O&M cost to the agency are estimated to be reduced by $444. The previous increases are being reversed. The hour and cost was due to processing 232 responses from the 64 respondents, which will no longer be received. As stated in paragraph 4 (b) above, some of this burden will be shared by the States authorized to administer their own RCRA program (under section 3006 of RCRA). We estimate that 2/3rd of this burden and costs will be incurred by the federal government (i.e., EPA regional offices) while 1/3rd will be incurred by the authorized States. Exhibits 3a and 3b list these hours and costs for the States and the federal government. Tables 2 and 3 summarize this information of Exhibits 3a and 3b.

Table 2: HOURS AND COST BURDEN : STATES

	Hours per response	Total Hour Burden	Cost Per Response (Capital Start-up and O&M costs only	Total Annual Cost Burden (Capital Start-up and O&M Costs only)
Reporting	(1.24)	(18)	3	($ 43)
Recordkeeping	(0.46)	(29)	1.67	($ 105)
Third Party Disclosure				
Total	(0.61)	(47)	1.91	($148)

Table 3: HOURS AND COST BURDEN : EPA.

	Hours per response	Total Hour Burden	Cost Per Response (Capital Start-up and O&M costs only	Total Annual Cost Burden (Capital Start-up and O&M Costs only)
Reporting	(1.24)	(36)	3	($ 86)
Recordkeeping	(0.46)	(59)	1.67	($ 210)
Third Party Disclosure				
Total	(0.61)	(94)	1.91	($296)

6(f) REASONS FOR CHANGE IN BURDEN

This ICR has been prepared to show the paperwork burden as a result of withdrawing the comparable fuels rule. There was a negative burden associated with the expanded excluded comparable fuel rule, since the rule was deregulatory. The excluded comparable fuel is not a part of the hazardous waste universe, and so is not required to comply with the paperwork, reporting and recordkeeping requirements for hazardous wastes under RCRA. The paperwork burden associated with the withdrawal of the ECF exclusion will become effective when the rule is promulgated and becomes effective.

6(g) BURDEN STATEMENT

As described in section 6(e) and Exhibit 2, the respondents generating and burning ECF under the proposed withdrawal of the expanded comparable fuels exclusion will incur some savings of both capital and operating and maintenance costs since they will not have to comply with the conditions of the exclusion. However, generators of ECF will incur increased burden due to these wastes entering the hazardous waste universe, and so will be required to comply with the paperwork, reporting, and recordkeeping requirements needed for hazardous wastes under RCRA. This proposed rule will result in a paperwork burden of 514 hours per respondent annually for a total of 32,900 hours and a cost of $1.29 million in capital and O&M costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA-HQ-RCRA-2005-0017. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See ‘Addresses’ section at the beginning of the Federal Register notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Officer for EPA. within 30 days after the publication in the FEDERAL REGISTER. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.