Recordkeeping requirements for owners or operators of hazardous waste facilities include record maintenance of all hazardous wastes handled; copies of waste disposal locations and quantities; operating methods; techniques and practices for treatment, storage, or disposal of hazardous waste; contingency plans; financial requirements; personnel training documents; and location, design, and construction of facilities.

Burden statement: The public reporting burden for this collection is estimated to average 73 hours per response and includes all aspects of the information collection, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The estimated annual recordkeeping burden is 18 hours per recordkeeper.

Respondents: Owners and operators of TSDFs.

Estimated Number of Respondents: 4,443.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 404,850 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460, and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: December 2, 1991.

Paul Lapsley, *Director,*

Regulatory Management Division.

[FR Doc. 91-29738 Filed 12-11-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4039-9]

Control Techniques Guideline Document: Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Release of a draft control techniques guideline (CTG) for public review.

SUMMARY: A draft CTG document for control of volatile organic compound (VOC) emissions from reactor processes and distillation operations in the synthetic organic chemical manufacturing industry (SOCMI) is available for public review and comment. This information document has been prepared to assist States in analyzing and determining reasonably available control technology (RACT) for stationary sources of VOC emissions located within certain ozone national ambient air quality standard nonattainment areas.

DATES: Comments must be received on or before February 10, 1991.

ADDRESSES: Comments. Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention: Docket No. A-91-38, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Control techniques guideline. Copies of the draft CTG may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosensteel, (919) 541-5608, Emissions Standards Division (MD-13), Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 mandate that State Implementation Plans (SIPs) for certain ozone nonattainment areas be revised to require the implementation of RACT to limit VOC emissions from sources for which EPA has already published a CTG or for which it will publish a CTG between the date the amendments are enacted and the date an area achieves attainment status. Section 172(c)(1) requires that nonattainment area SIPs provide for the adoption of RACT for existing sources. As a starting point for ensuring that these SIPs provide for the required emissions reduction, EPA has defined RACT as "* * * the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering considering technological and economic feasibility. For a particular industry, RACT is determined on a case-by-case basis, considering the technological and economic circumstances of the individual source category" (44 FR 53761).

The CTG documents are intended to provide State and local air pollution authorities with an information base for proceeding with their own analysis of RACT to meet statutory requirements. These documents review existing information and data concerning the technical capability and cost of various control techniques to reduce emissions. Each CTG document contains a recommended "presumptive norm" for RACT for a particular source category based on EPA's current evaluation of capabilities and problems general to the source category. However, the "presumptive norm" is only a recommendation. Where applicable, EPA recommends that regulatory authorities adopt requirements consistent with the presumptive norm level, but authorities may choose to develop their own RACT requirements on a case-by-case basis, considering the economic and technical circumstances of the individual source category.

This CTG addresses RACT for control of VOC emissions from reactor processes and distillation operation processes in the SOCMI. The SOCMI is a large and diversified industry that produces hundreds of major chemicals through a variety of chemical processes. Reactor processes are those in which one or more substances are chemically altered to form one or more new organic chemicals. (This definition excludes processes employing air oxidation or oxygen enriched air oxidation processes to produce an organic chemical.) Distillation processes separate one or more feed streams (i.e., materials going into the process unit) into two or more product streams (i.e., materials leaving the process unit). The chemicals produced via reactor processes and distillation operations are listed in the CTG.

Dated: December 5, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91-29736 Filed 12-11-91; 8:45 am]

BILLING CODE 6560-26-M

[FRL-4039-4]

EPA Policies Regarding the Role of Corporate Attitude, Policies, Practices, and Procedures, in Determining Whether to Remove a Facility From the EPA List of Violating Facilities Following a Criminal Conviction

AGENCY: Environmental Protection Agency.

ACTION: Policy statement.

SUMMARY: EPA clarifies its policy concerning the role of corporate attitude, policies, practices, and procedures in determining whether, in mandatory contractor listing cases, the condition giving rise to a criminal conviction has

been corrected. Section 306 of the Clean Air Act and section 508 of the Clean Water Act require correction of the condition giving rise to the conviction as a prerequisite for removal of a facility owned, operated, or supervised by a convicted person from the EPA List of Violating Facilities ("the List"). The purposes of this policy statement are to inform the public and the regulated community, thereby facilitating greater compliance with environmental standards; to formally restate criteria applied in EPA contractor listing cases over the past two years; and to provide EPA personnel with a readily available summary of EPA policies which will enable them to evaluate contractor listing cases.

FOR FURTHER INFORMATION CONTACT: Jonathan S. Cole, Chief, Contractor Listing Program, Office of Enforcement, United States Environmental Protection Agency, room 112 NE Mall (LE-133), 401 M St., SW., Washington, DC 20460. Telephone 202-260-8777.

SUPPLEMENTARY INFORMATION: Section 306 of the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Pub.L. 91-604 and Pub.L. 101-549), and section 508 of the Clean Water Act (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), and Executive Order 11738, authorized EPA to bar (after appropriate Agency procedures) facilities which have given rise to violations of the Clean Air Act (CAA) or the Clean Water Act (CWA) from being used in the performance of any federal contract, grant, or loan. On April 16, 1975, regulations implementing the requirements of the statutes and the Executive Order were promulgated in the **Federal Register** (see 40 CFR part 15, 40 FR 17124, April 16, 1975, as amended at 44 FR 6911, February 5, 1979). On September 5, 1985, revisions to those regulations were promulgated in the **Federal Register** (see 50 FR 36188, September 5, 1985). The regulations provide for the establishment of a List of Violating Facilities which reflects those facilities ineligible for use in nonexempt federal contracts, grants, loans, subcontracts, subgrants, or subloans.

Facilities which are placed on the EPA List of Violating Facilities are also listed by the General Services Administration (GSA) in its monthly publication, "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs," which is also updated daily by GSA.

This **Federal Register** Notice sets forth certain EPA policies which will be applied when facilities which have been placed on the List of Violating Facilities request to be removed from that List.

List of Subjects in 40 CFR Part 15

Administrative practice and procedure Air pollution control, Government contracts, Grant programs—environmental protection, Loan programs—environmental protection, Reporting and recordkeeping requirements, Water pollution control.

EPA Policy Regarding the Role of Corporate Attitude, Policies, Practices, and Procedures, in Determining Whether To Remove a Facility From the EPA List of Violating Facilities Following a Criminal Conviction

I. Introduction

This guidance memorandum clarifies EPA policy concerning the role of corporate attitude, [1] policies, practices, and procedures in determining whether, in mandatory contractor listing cases, [2] the condition giving rise to a criminal conviction has been corrected. Section 306 of the Clean Air Act ("CAA") and section 508 of the Clean Water Act ("CWA") require correction of the condition giving rise to the conviction as a prerequisite for removal of a facility owned, operated, or supervised by a convicted person from the EPA List of Violating Facilities ("the List").

II. Background

In 1990, EPA formally recognized that the condition leading to a conviction under section 309(c) of the CWA or section 113(c) of the CAA could include a convicted environmental violator's corporate attitude, policies, practices, and procedures regarding environmental compliance. In the Matter of Valmont Industries, Inc., (ML Docket No. 07-89-L068, Jan. 12, 1990) ("Valmont"). In Valmont, the decisions of both the Assistant Administrator for Enforcement (AA) and the EPA Case Examiner established the principle that the presence of a poor corporate attitude regarding compliance with environmental standards, thus creating a climate facilitating the likelihood of a violation, may be part of the condition giving rise to the conviction which must be corrected prior to removal of the facility from the List. 40 CFR 15.20.

Valmont was convicted of crimes of falsification and deception. The AA determined that not only was Valmont required to correct the physical conditions which led to its conviction, but that it also was required to demonstrate that it had implemented appropriate corporate policies, practices, and procedures, designed to ensure that the mere appearance of compliance with environmental standards was not put above actual compliance with those standards. The Case Examiner later affirmed the use of the corporate attitude standard in determining whether the condition leading to listing has been corrected.

Following Valmont, EPA has applied the corporate attitude test in other cases where facilities have requested removal from the List, including cases involving knowing or negligent conduct, not involving deliberate deception. See, Colorado River Sewage System Joint Venture, (ML Docket No. 09-89-L047, August 20, 1991); Zarcon Corp. (ML Docket No. 09-89-L058, Aug. 1, 1990); Sellen Construction Co. (ML Docket No. 10-89-L073, June 13, 1990). This memorandum clarifies the extent to which corporate attitude may be a relevant factor in cases involving knowing or negligent criminal conduct, which does not involve willful falsification or deception. It also clarifies the criteria which will be applied by EPA in determining whether the condition giving rise to a conviction has been corrected in a given case.

The purposes of this guidance are to inform the public and the regulated community, thereby facilitating greater compliance with environmental standards; to formally restate criteria applied in EPA contractor listing cases over the past two years; and to provide EPA personnel with a readily available summary of EPA policies which will enable them to evaluate contractor listing cases.

III. Scope of Application

The corporate attitude, policies, practices, and procedures of a listed facility's owner, operator, or supervisor will always be relevant when a facility that has been listed as the result of a criminal conviction requests removal from the List. How significant a factor the corporate attitude, policies, practices, and procedures will be depends upon the degree of intent involved in the violation at issue. The degree of intent shall be determined (for purposes of removal from the List) by the AA,[3] with reference to the facts of,

[1] The term "corporate attitude" refers to all organizational defendants, not only to incorporated entities.

[2] Although discretionary listing is outside the scope of this guidance, evaluation of corporate attitude, policies, practices, and procedures may be applied appropriately in discretionary listing cases as well.

[3] The Assistant Administrator will, as in all contractor listing removal cases, give considerable weight to the recommendations of the EPA Region in which the listed facility is located.

and the nature of the conduct involved in, each case. This shall not be determined solely by the nature or title of the crime,[4] or by the terms or language contained in any plea agreement.

In every case involving fraud, concealment, falsification, or deliberate deception, proof of change of corporate attitude must be demonstrated over an appropriate and generally substantial period of time, commensurate with the seriousness of the facts involved in the violation(s) (see section IV).

In most cases involving knowing misconduct, proof of change of corporate attitude must also be demonstrated over an appropriate period of time, commensurate with the seriousness of the facts involved in violation(s) (even if there was not affirmative fraud or concealment). There may be some extremely rare cases in which knowing conduct (not involving affirmative fraud or concealment) may be deemed to be relatively minor. In such rare cases, proof of change of corporate attitude may not be a significant factor.

In cases involving criminal negligence, proof of change in corporate attitude may be significant as it relates to ensuring prevention of further negligent violations. (E.g., in a negligent discharge case, proof of change of corporate attitude may be demonstrated by educating and training employees on proper treatment and disposal requirements and practices). In cases of serious negligence,[5] more significance may be placed on demonstrating proof of change of corporate attitude, before a facility will be removed from the List. In other cases of negligent violations,[6] a limited set of minor violations may exist which constitute criminal conduct resulting in conviction, but in which minimal significance will be placed on demonstrating proof of change of corporate attitude, policies, practices, and procedures.

In addition, a case may arise in which the violations which gave rise to listing occurred considerably before the request for removal. Nevertheless, as set forth at section IV., *infra*, to warrant removal, proof of change of corporate attitude for an appropriate continuing period of time, until the removal request is granted, is required if the crime involved fraud, or deliberate falsification or concealment, knowing misconduct (unless minor), or serious negligent violations.

If a listed facility is sold (after the conduct which gave rise to the conviction or listing), the new owner of that facility is obligated to demonstrate that appropriate and effective corporate policies, practices, and procedures are in place, in accordance with the criteria and factors outlined in this guidance, before the facility will be removed from the List.

IV. Criteria for Demonstrating Proof of Change in Corporate Attitude

In cases where proof of change of corporate attitude is relevant to determining whether the condition giving rise to a criminal conviction has been corrected, factors to which EPA will look include, but are not limited to, the following:[7]

A. Whether the owner, operator, or supervisor of the [listed facility] has put in place an effective program to prevent and detect environmental problems and violations of the law. An "effective program to prevent and detect environmental problems and violations of the law" means a program that has been reasonably designed, implemented, and enforced so that it will be effective in preventing and detecting environmental problems or violations, and criminal conduct.

The hallmark of an effective program is that the organization exercises due diligence in seeking to prevent and detect environmental problems or violations, or criminal conduct. Due diligence requires, at a minimum, that the organization has taken at least the following types of steps to assure compliance with environmental requirements.

1. The organization must have written policies defining the standards and procedures to be followed by its agents or employees.[8]

2. The organization must have specific high-level persons, not reporting to production managers, who have authority to ensure compliance with those standards and procedures.

3. The organization must have effectively communicated its standards and procedures to agents and employees, e.g., by requiring participation in training programs and by the dissemination of publications.

4. The organization must establish or have established an effective program for enforcing its standards, e.g., monitoring and auditing system designed to prevent or detect noncompliance; and a well-publicized system, under which agents and employees are encouraged to report, without fear of retaliation, evidence of environmental problems or violations, or criminal conduct within the organization.

5. The standards referred to in paragraph 1, above, must have been consistently enforced through appropriate disciplinary mechanisms.

6. After an offense or a violation has been detected, the organization must immediately take appropriate steps to correct the condition giving rise to the listing (even prior to the conviction or listing). The organization must also take all reasonable steps to prevent further similar offenses or violations, including notifying appropriate authorities of such offenses or violations, making any necessary modifications to the organization's program to prevent and detect environmental problems or violations of law, and discipline of individuals responsible for the offense or violation. This may include conducting an independent environmental audit to ensure that there are no other environmental problems or violations at the facility.

B. The precise actions necessary for an effective program to prevent and detect environmental problems or violations of law will depend upon a number of factors. Among the relevant factors are:

1. Size of organization: The requisite degree of formality of a program to prevent and detect violations of law or environmental problems will vary with the size of the organization; the larger the organization, the more formal the program should typically be.

2. Likelihood that certain offenses may occur because of the nature of its business: If, because of the nature of an organization's business, there is a

[4] E.g., a conviction for "negligent discharge" of pollutants under Clean Water Act section 309(c) may be a minor violation requiring minimal proof of change of corporate attitude, or it may be a significant violation reflecting knowing or deliberate conduct, requiring more substantial proof of such change. The determination will be made on the facts of each case. Criminal defendants and prosecutors frequently agree to enter a plea to a misdemeanor, rather than go to trial on more serious felony charges which may be supported by the facts.

[5] Cases involving convictions for criminal negligence may include a wide range of conduct, from relatively minor, e.g., accidental spillage of a can of paint, up to potentially disastrous, e.g., failure to train employees properly and to respond to oil leak detection systems, which results in a massive oil spill. The label of "negligence" alone does not adequately describe the nature and severity of the criminal conduct in a given case.

[6] E.g., accidental spillage of paint into a storm sewer.

[7] These criteria are adapted from the proposed U.S. sentencing guidelines for organizational defendants.

[8] Although specifics will be determined on a case-by-case basis, with reference to the conduct underlying the violation, examples include, but are not limited to, training on company rules, EPA requirements, ethical standards and considerations, and standards of criminal liability.

substantial risk that certain types of offenses or violations may occur, management must have taken steps to prevent and detect those types of offenses or violations. For example, if an organization handles toxic substances, it must have established standards and procedures designed to ensure that those substances are handled properly at all times.

3. Prior history of the organization: An organization's prior history may indicate types of offenses or violations that it should have taken actions to prevent. Recurrence of misconduct similar to that which an organization has previously committed casts doubt on whether it took all reasonable steps to prevent such misconduct.

An organization's failure to incorporate and follow applicable industry practice or the standards called for by an applicable governmental regulation weighs against a finding of an effective program to prevent and detect violations of law or environmental problems.

C. EPA will also consider additional voluntary environmental cleanup, or pollution prevention or reduction measures performed, above and beyond those required by environmental statutes or regulations, and voluntary compliance with pending environmental requirements significantly before such compliance is actually required.

In cases where probation is imposed by the sentencing court, the term of probation will be presumed to be an appropriate period of time for demonstrating a change of corporate attitude, policies, practices, and procedures.[9] This presumption may be rebutted by either the owner, operator, or supervisor of the listed facility, or by the government, upon a demonstration that the probation terms is not an appropriate time in which to demonstrate such change. If probation is not imposed in the criminal case, the AA shall determine, after a request for removal from the List is filed, what is an appropriate period of time in which to demonstrate that the condition leading to conviction has been corrected. This determination shall be based upon the facts of each case.

The time required to demonstrate a change of corporate attitude, policies, practices, and procedures shall be presumed to be an appropriate period, as determined by the AA, commensurate with (a) the nature, extent, and severity of the violations (including the length of time during which the violations occurred), and (b) the complexity and extent of remedial action necessary to ensure that appropriate policies, practices, and procedures (including, but not limit to, any necessary employee education or training programs) have been completed. At a minimum, the period of time shall be sufficient to demonstrate successful performance, consistent with those policies, practices, and procedures, including consideration of steps which were taken prior to conviction or listing.

The policies and procedures set out in this document are intended for the guidance of government personnel and to inform the public. They are not intended, and cannot be relied upon, to create any rights, substantive or procedural, enforceable by any party in litigation with the United States.

Dated: November 13, 1991.

Scott C. Fulton,

Acting Assistant Administrator for Enforcement.

[FR Doc. 91-29606 Filed 12-11-91; 8:45 am]

BILLING CODE 6560-50-M

[9] The presumption is derived from the determination, which will already have been made by the sentencing court, that the convicted person's criminal conduct justifies a period of supervision and oversight by the court, i.e., probation.

[FRL-4040-5]

Public Water Supply Supervision Program Revision for the State of Florida

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Florida is revising its approved State Public Water Supply Supervision Primacy Program. Florida has adopted drinking water regulations for treatment of volatile organic chemicals and issuance of public notification. EPA has determined that these sets of State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted by January 13, 1992 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by January 13, 1992, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on January 13, 1992.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Drinking Water Section, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Wayne Aronson, EPA, Region IV Drinking Water Section at the Atlanta address given above (telephone (404) 347-2913; (FTS) 257-2913.

(Sec. 1413 of the Safe Drinking Water Act, as amended (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Patrick M. Tobin,

Acting Regional Administrator EPA, Region IV.

[FR Doc. 91-29739 Filed 12-11-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4040-6]

Public Water Supply Supervision Program Revision for the State of Kentucky

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Kentucky is revising its approved State Public Water Supply Supervision Primacy Program. Kentucky has adopted drinking water regulations for treatment of volatile organic chemicals and issuance of public notification. EPA has determined that these sets of State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has