

UNIFIED RESPONSE TO COMMENTS
KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
AND
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 7
HAZARDOUS WASTE STORAGE AND TREATMENT PERMIT

Ash Grove Cement Company
Chanute, Kansas
EPA I.D. Number KSD031203318

The Kansas Department of Health and Environment (KDHE) and the United States Environmental Protection Agency Region 7 (EPA) prepared a draft permit to issue a Resource Conservation and Recovery Act (RCRA) hazardous waste management permit to the Ash Grove Cement Company (Ash Grove) facility located at 1801 North Santa Fe Street Chanute, Kansas. The draft permit would replace the RCRA permit issued to Ash Grove August 15, 1996. The draft permit consisted of two parts. KDHE prepared Part I which includes requirements for acceptance of hazardous waste from off-site sources and subsequent storage and treatment (processing) in containers and tanks. EPA prepared Part II which includes authorization for the combustion of hazardous waste in an industrial furnace (a cement kiln), the investigation of solid waste management units (SWMUs) and areas of concern (AOC), and other requirements for which the KDHE is not yet authorized but are implemented by EPA under the Hazardous and Solid Waste Amendments (HSWA) of 1984 to the Resource Conservation and Recovery Act (1976) 42 U.S.C. § 6901 *et. seq.*

In accordance with the provisions of 40 CFR Part 124, KDHE and EPA provided the draft permit for public comment beginning on August 31, 2009. A public notice was issued in the *Chanute Tribune*, the *Kansas Register*, and broadcast on KKOY-AM and KINZ-FM announcing the availability of the draft permit and the start of a 45-day public comment period. KDHE and EPA received numerous requests for a public hearing on the permit during the public comment period. Due to the significant degree of public interest in the draft permit a public hearing was held in Chanute, Kansas, on December 3, 2009. Also on December 3, 2009, preceding the public hearing, representatives of KDHE and EPA held an availability session in order for interested parties to obtain information on and clarification of the draft permit. The public hearing and availability session were scheduled and publicly announced via the above sources in accordance with 40 CFR 124, and as part of this announcement the public comment period was extended to December 18, 2009. The Administrative Record for the draft permit was available for the duration of the comment period at the Chanute Public Library, 111 N. Lincoln Street; at KDHE, 1000 SW Jackson, Suite 320, Topeka, Kansas; and at EPA Region 7, 901 N. 5th Street, Kansas City, Kansas.

A public availability session was held from 2:00 pm to 5:00 pm on December 3, 2009 at the Neosho County Community College Student Union, Room 209. Following the public availability session, a public hearing was held at 6:30 pm in Sanders Hall Auditorium located on the Neosho County Community College campus at 800 W. 14th St., Chanute, Kansas. The public hearing was held jointly by KDHE and EPA. Oral testimony presented during the public hearing can be summed up as human health and ecological concerns regarding Ash Grove's hazardous

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waste management activities or as general support for the agencies' issuance of a RCRA permit to Ash Grove. A written transcript of the public hearing was made and will be included in the final administrative record. In addition, written comments were submitted to KDHE and EPA during the public comment period for and regarding the Ash Grove draft permit. All public comments received will be included in the final administrative record.

KDHE and EPA thank all persons who have participated by reviewing the administrative record and draft RCRA permit, attending the availability session, attending the public hearing, and who have provided witness testimony and written comments.

Separate responses in the form of separate letters to each commenter are not required and have not been prepared. This response to comments, prepared according to the requirements of 40 CFR 124.17, is the agencies' response to written and oral comments received during the public comment period. KDHE and EPA carefully reviewed the written and oral comments in preparing this response to comments. The response to comments groups like comments together, summarizes the comment and provides the agencies' response. Only one commenter submitted comments regarding specific permit language. Responses to this commenter regarding specific permit language are set apart at the end for clarity after responding to the other written and oral comments received.

WRITTEN COMMENTS FROM PUBLIC COMMENT PERIOD

Comment #1 (Submitted identical letters. The letter is reproduced verbatim below.)

As a concerned citizen of Southeast Kansas, I respectfully request a public hearing in regards to the permit which allows the burning of hazardous waste at Ash Grove Cement Company located at 1801 North Santa Fe in Chanute, Kansas. This permit allows the facility to receive, process and store hazardous waste in tanks and containers from off-site generators and other hazardous waste processors.

Under the existing permit, Ash Grove Cement Company has been allowed to burn an extraordinary amount of hazardous waste; approximately 40 million gallons per year. All the while incomplete and insufficient health and environmental studies have been performed by the Kansas Dept of Health & Environment &/or the Environmental Protection Agency.

Response to Comment #1

In response to the significant interest in the draft permit and numerous requests for a public hearing, the KDHE and EPA jointly held a public hearing December 3, 2009 at the Neosho County Community College. Witnesses presented oral testimony during the public hearing for which responses are provided below in the section titled *Oral Testimony From Public Hearing*. In addition to the public hearing, a public availability session was held prior to the hearing where

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the public was able to obtain information and clarification of the draft permit from both KDHE and EPA representatives.

The commenters assert that insufficient health and environmental studies have been performed by the Kansas Department of Health & Environment and/or the Environmental Protection Agency. It is clear from the comments received that commenters are concerned with the human health and ecological effects of the issuance of the permit on residents of Chanute, Kansas and neighboring communities. Based upon the availability session, the public hearing, and written comments, the commenters are particularly critical of the *Southeast Kansas Health Study* conducted by the University of Kansas (KU) Center for Environmental and Occupational Health and the KU Department of Civil and Environmental Engineering which was funded under a grant provided by EPA. The *Southeast Kansas Health Study* was completed with the final report dated June 30, 2003. (The final report is available at <http://www2.kumc.edu/ceoh/skhs/finalreport.htm>.)

The agencies recognize the commenters' concerns with the *Southeast Kansas Health Study* and the health of Chanute and surrounding communities' residents. Neither KDHE or EPA relied upon the *Southeast Kansas Health Study* to prepare the draft RCRA permit for Ash Grove, nor was it made part of the administrative record. The administrative record did include a specific evaluation of risks from combustion of hazardous waste by Ash Grove (Ash Grove Risk Assessment) in the cement kiln. The above commenters did not comment on the Ash Grove Risk Assessment.

However, in response to public interest regarding the health concerns in and around Chanute, Kansas, KDHE Division of Health (DOH), in coordination with the United States Agency for Toxic Substances and Disease Registry¹ (ATSDR), is currently reviewing available environmental and health data for the area of concern. An availability session was held on February 11, 2010, in Chanute, Kansas, by KDHE and ATSDR to better understand the community's environmental health concerns. KDHE and EPA will review any findings issued by KDHE Division of Health and/or ATSDR for possible future changes to the Ash Grove RCRA permit. KDHE and EPA have authority to modify a RCRA permit based upon new information received. KDHE and/or EPA will provide public notice and provide for public review of changes which may arise from the review of available environmental and health data for the area of concern.

The commenters did not comment on or request any changes specific to the language in the draft permit.

¹ The Agency for Toxic Substances and Disease Registry (ATSDR), based in Atlanta, Georgia, is a federal public health agency of the United States Department of Health and Human Services. ATSDR serves the public by using the best science, taking responsive public health actions, and providing trusted health information to prevent harmful exposures and diseases related to toxic substances.

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[Editorial note: the following responds to individual comment letters received]

Comment #2

In accordance with Title 40 of the Federal Code of Regulations, the city of Chanute, Kansas on behalf of interested residents and its elected official would like to request a Public Hearing related to the Hazardous Waste permit for Ash Grove Cement.

As we discussed via telephone, individuals have expressed concerns related to public health in conjunction with the use of permitted chemicals/materials as an "alternative fuel" in the company's manufacturing process. The consensus is that the public wants to know more about those chemicals, the measuring of environmental impact on the public health for those items, EPA regulatory requirements the company must adhere to and concerns about the transportation and handling of the materials.

Based upon my position as City Manager, I believe there is significant enough interest to have a public hearing or a public question and answer session in some fashion as a way to communicate the reality of the permitted uses of the material and in the interest of public disclosure.

Response to Comment #2

In response to this and other requests, a public hearing and an availability session was held on December 3, 2009 at the Neosho County Community College.

The commenter did not comment on or request any changes specific to the language in the draft permit. Possible health effects of the permitted use of alternative fuels is currently being evaluated by DOH and ATSDR.

Comment #3

As a citizen of region 7 I would like to request a hearing on Ash Grove's request for an additional hazardous waste permit.

Response to Comment #3

In response to this and other requests, a public hearing and an availability session was held on December 3, 2009 at the Neosho County Community College.

The commenter did not comment on or request any changes specific to the language in the draft permit.

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Comment #4

This letter is per the instruction given at the permit hearing for storage and waste burning in Chanute Kansas.

We were instructed to discuss the pros and cons of the permit but the speakers for Ash Grove Cement only talked about all the positive donations Ash Grove has done for the city, this was against the instruction at the beginning of the hearing. Had we have been instructed to talk about what has been done by donations by Ash Grove Cement we could have publicly told of the 30 to 40 million we have indebted our citizens for Ash Grove for the delivery of electricity, (at a reduced rate), plus all the infrastructure, fire protection, police protection, streets. etc.

In short, the hearing was not followed by the instruction given, however we agree that the permit should be allowed to Ash Grove but only after all the testing is completed, not wait to do testing after you have granted the permit, if there is a real danger to our citizens.

Why not do the testing and prove the safety before possibly putting the citizens at perilous life threatening dangers.

Response to Comment #4

Because of the large number of requests (about 140 requests) for the public hearing, both KDHE and EPA were concerned with providing sufficient time for each witness to testify at the public hearing². Witnesses were asked to limit their testimony to issues pertinent to the draft RCRA permit. However, once the public hearing began, it became clear that sufficient time was available for each witness present to testify and the hearing officer did not interrupt any witness's testimony or cut short any witness's testimony. As is borne out in the transcript, all available witnesses concluded their testimony by 7:45 p.m., the hearing was recessed and resumed at 8:45 p.m. where upon no other witnesses came forward to testify. The public hearing was therefore adjourned at 8:47 p.m. Furthermore, witnesses were advised to submit written comments in addition to their oral testimony for KDHE's and EPA's consideration. Both KDHE and EPA have carefully reviewed all the comments and oral testimony submitted during the public comment period for the Ash Grove draft RCRA permit. No changes to the draft permit are necessary to respond to the commenter's concern about the conduct of the public hearing.

KDHE and EPA would like to clarify that although testimony concerning donations made by Ash Grove to the community was allowed during the public hearing due to there being ample

² If only 5 minutes of testimony were allowed each of 140 witnesses, the hearing would have had to be scheduled to last 3 days. An instruction page and pre-registration was mailed to the Ash Grove facility mailing list and to each person who submitted a public hearing request to try to facilitate an orderly public hearing and to determine if the public hearing schedule would be adequate. On-site registration was provided for those who did not pre-register.

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time that information is irrelevant to the Draft RCRA permit and was not considered when making the permit decision.

The commenter believes a final permit decision should not be made until all testing to prove the safety of the facility has been completed. While the commenter is not specific with regards to specific testing or safety demonstrations, KDHE and EPA believe the testing the commenter is referring to is the comprehensive performance testing required by the Clean Air Act. EPA approved the comprehensive performance test plan on April 16, 2010. Ash Grove is required to provide public notice of the comprehensive performance test plan and a 60 day public comment period prior to initiating the comprehensive performance test.

Comprehensive testing of the emissions from Ash Grove's burning of hazardous waste in the cement kiln was completed in March 2002. These results are summarized in the administrative record (see in particular Section 15 of Ash Grove's permit application). The 2002 emission results were used by Ash Grove to complete a risk assessment. Ash Grove's risk assessment using the 2002 emissions testing results are found in Section 15 of the Ash Grove RCRA permit application.

The risk assessment evaluates locations outside of the Ash Grove facility where modeling predicts the pollutant concentrations to be the highest. Human exposure to pollutants is evaluated at these predicted locations. The risk assessment uses high exposure scenarios to evaluate potential risks to human health from pollutants. The high exposure scenarios evaluated included families (both adults and children separately) engaged in both subsistence farming and recreational fishing. The results of the risk assessment were below the criteria EPA uses to take action to reduce pollutant levels. The EPA has established when cancer risk is greater than 1 in 100,000 to include permit conditions under RCRA to reduce potential risks to exposure to emissions from a hazardous waste combustor to a level no greater than 1 in 100,000. Chemicals can also have toxic effects on human health. For example, mercury is a neurotoxin but is not known to be a cancer agent. The EPA uses a hazard quotient to determine health impacts of toxic chemicals. Simply stated, the hazard quotient is a chemicals toxicity divided by the amount of exposure to the chemical. The EPA has established when the hazard quotient is greater than 0.25 to include permit conditions under RCRA to reduce potential risks to exposure to emissions from a hazardous waste combustor to a level no greater than 0.25.

The 2002 emissions testing was conducted at operating conditions that would result in the highest (worst case) emissions. EPA does not require Ash Grove to repeat the emissions testing conducted in 2002 unless Ash Grove makes substantial changes to the cement kiln, the processes used to burn hazardous waste in the cement kiln or the wastes Ash Grove burns in the cement kiln. Testing of emissions from the combustion of hazardous waste is required periodically by

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the Clean Air Act³ and will occur again later this year. The community will be provided an opportunity to review the test plan submitted by Ash Grove in a separate review process. The commenter did not comment on or request any changes specific to the language in the draft permit.

Comment #5

I recently attended the December meeting of Ash Grove Cement hazardous waste permit. I asked the question, Has the E.P.A. updated Congressional executive order #12989 (February 11 1994) and titled "Federal Actions to Address Environmental Justice in Minority Population and Low-income Populations"? As per your legal counsel at this meeting it has not been updated. We have a high percentage increase in low income families and people receiving government assistance. Our population has decrease 2000 people since the 1990 census but an increase in government assisted families. This puts us in a defenseless position and we are counting on our government agencies to protect our health and environment.

Response to Comment #5

KDHE and EPA believe that the commenter is referring to Presidential Executive Order 12898 of February 11, 1994, titled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. At the time this response to comments was prepared, Executive Order 12898 of February 11, 1994, is still in effect for the Federal government un-amended.

Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. EPA has this goal for all communities and persons across this Nation. It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.⁴

The commenter has stated that his community's population has been decreasing while at the same time more families are receiving government assistance; and that, the community is counting on the government to protect their health and the environment. KDHE's mission is to protect human health and the environment of all Kansans. EPA's mission is to protect human

³ Hazardous combustors are required by the Clean Air Act (see 40 CFR Part 63, Subpart EEE) to conduct a "comprehensive performance test" to demonstrate compliance with National Emission Standards for Hazardous Air Pollutants (EPA has established specific emission standards under the Clean Air Act for organic chemical, particulate, hydrogen chloride, arsenic, beryllium and chromium, cadmium and lead, mercury and dioxin/furan emissions) every 5 years and are required to conduct a "confirmatory test" approximately midway between comprehensive performance tests for dioxin/furan emissions.

⁴ Statement from EPA website - <http://www.epa.gov/oecaerth/environmentaljustice/>

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health and the environment.⁵ KDHE and EPA are committed to the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Both KDHE and EPA take these tasks seriously. Recently, in testimony before the United States Senate, EPA Administrator Lisa Jackson again emphasized EPA's commitment to outreach and protection of communities historically underrepresented in environmental decision making.⁶ Likewise, KDHE Secretary Bremby has also taken appropriate steps to protect the health and the environment of Kansans in permit decisions made by the KDHE. The Chanute community has been provided opportunities for meaningful input into KDHE and EPA's final permit decision. The community will have additional and ongoing opportunities to review and have meaningful input on matters related to Ash Grove's hazardous waste management and other activities. Such future opportunities, in pertinent part, will include public notice and review of the Ash Grove Comprehensive Performance Test Plan and public notice and review of Ash Grove's operating permit required by the Clean Air Act.

The commenter did not comment on or request any changes specific to the language in the draft permit.

Comment #6

I am writing in regard to the hazardous waste permit to Ash Grove Cement in Chanute Kansas. I am strongly opposed to this permit we have had no outside testing, this is an injustice to the innocent citizens of Chanute. Our cancer rate is soaring without any investigation as to whether this plant is responsible for this. Recently I sat down and made a list of people that I know that have had cancer and there are 300 names on my list alone, this is a population of 8500 people. E.P.A. multi pathways risk assessments states, that acceptable cancer rate is 1 in 100,000, but in Neosho County, every three days someone is diagnosed with cancer. These are your records that state this!

Response to Comment #6

The commenter is opposed to the draft permit believing that not enough testing has been conducted and suspects that the Ash Grove facility may be responsible for (or at least contributing to) elevated rates of cancer in and around the city of Chanute.

As described above in the response to a similar comment, comprehensive testing of the emissions from Ash Grove's process of burning hazardous waste in the cement kiln was completed in March 2002 and those emissions were evaluated in the Ash Grove Risk Assessment (see Section 15 of Ash Grove's permit application). As a result, excess cancer risks were found

⁵ Statement from EPA website - <http://www.epa.gov/epahome/aboutepa.htm>

⁶ http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=4162333c-1efd-4adb-ae3c-ce3e822125d2

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to be about 2 to 3 in 1,000,000 (one million). KDHE and EPA do not have any information that would lead us to believe that Ash Grove's emissions today pose an excess cancer risk greater than EPA's criterion of 1 in 100,000. It is important to note that excess cancer risk is the risk of getting cancer over and above the risk of getting cancer from other environmental and lifestyle exposures to cancer causing chemicals. Based upon this information, EPA did not include additional permit conditions to further reduce emissions from Ash Grove's combustion of hazardous waste in the cement kiln.

KDHE and EPA do not intend to affirm or dispute in this response to comments the commenter's statements regarding disease (in particular the cancers reported by the commenter). However, in response to public interest regarding the health concerns in and around Chanute, Kansas, DOH, in coordination with ATSDR, is currently reviewing available environmental and health data for the community. KDHE and EPA will rely upon the learned opinions, research, investigations and determinations of the public health agencies in the matter of investigating the status of cancer and other health concerns in the community. An availability session was held on February 11, 2010, in Chanute, Kansas, by KDHE and ATSDR to better understand the community's environmental health concerns. The findings are expected in the early summer of 2010. KDHE and EPA will review any findings issued by KDHE Division of Health or ATSDR for possible future changes to the Ash Grove RCRA permit.

Therefore, KDHE and EPA again point out that the *Southeast Kansas Health Study* completed by the University of Kansas (an entity independent of both KDHE and EPA) was not relied upon in preparing the draft RCRA permit and was not included in the administrative record. KDHE and EPA are not including responses to the criticisms, comments and characterizations of that study made during the public comment period as part of the record for the RCRA permit. These comments will be reviewed should additional studies be undertaken resulting from review of environmental and public health data by DOH or ATSDR.

The commenter did not comment on or request any changes specific to the language in the draft permit.

Comment #7

I am concerned with the large quantities of waste we are disposing in our area without any studies being performed except for computer generated models with no actual testing.

Response to Comment #7

Based upon KDHE and EPA's review of the comment, the commenter is concerned with the methodology used to evaluate risks from Ash Grove's combustion of hazardous waste in the cement kiln. In response to the commenter's concern, KDHE and EPA will summarize the risk assessment methodology. Actual emission testing was conducted from samples collected from

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the cement kiln stack. This sampling location ensures that the samples collected are representative of the combustion emissions from Ash Grove. Both gases and particulate samples are collected for laboratory analysis. For the next step, five years of actual meteorological data is input into the appropriate EPA air dispersion model along with specific information on Ash Grove's facility.⁷ When conducting air dispersion modeling a grid pattern of receptor locations is established.⁸ The air dispersion modeling completed for the Ash Grove Risk Assessment provided concentration estimates at nearly 8,000 receptor locations spread over nearly 2,500 square miles.⁹ The final steps of the Ash Grove Risk Assessment used EPA methodology to calculate concentrations of chemicals in soil, water, sediment, and the food chain and from those calculations estimate risks to human health from 70 years of such exposure.¹⁰

The commenter also seems to assert that actual data of the effects of emissions could be obtained before such emissions occur or that environmental data which include past and ongoing impacts from other human activities in the community are suitable for use in KDHE and EPA's Ash Grove RCRA permit decision. KDHE and EPA did not conduct extensive environmental sampling or compile extensive environmental data of actual air, soil, water and food chain data. KDHE and EPA relied upon the predictive tools available to the agencies to estimate risk to human health and the environment from Ash Grove. Based upon the Ash Grove Risk Assessment, EPA did not include omnibus permit conditions to further limit hazardous waste combustion emissions from Ash Grove. The commenter did not raise any specific objections to the methodology utilized by KDHE and EPA other than to call for the use of actual data versus modeling.

The commenter did not comment on or request any changes specific to the language in the draft permit.

ORAL TESTIMONY FROM PUBLIC HEARING

For clarity and convenience the following section summarizes the witness testimony at the public hearing. KDHE and EPA have carefully reviewed the public hearing transcript (available in the administrative record) and have prepared and provided responses here in the order that testimony was received from witnesses. Witnesses were allowed latitude in their comments and no formal rules of evidence were applied to witness testimony. All witnesses were able to complete their testimony in full at the public hearing.

⁷ This information is specific to Ash Grove such as stack height, stack flow, gas temperature and building/structure information which affects air dispersion.

⁸ A receptor locations are the points where estimates of concentration are provided.

⁹ The grid used was based on 1,000 by 1,000 meter spacing of receptors.

¹⁰ The risk estimates used made for locations where concentrations were predicted to be highest and the highest possible exposure scenarios e.g., those attributable to subsistence farming families and recreational fishing.

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Witness #1

The witness provided summary information on the Ash Grove facility in Chanute and its hazardous waste management activities. Information was provided on the RCRA permit application and RCRA permit process. References were made to the Ash Grove Risk Assessment and the *Southeast Kansas Health Study* and the conclusions made in those documents. The witness supported the issuance of the Ash Grove RCRA permit.

Response to Witness #1

KDHE and EPA do not intend to affirm or dispute in this response to comments the witness' testimony. Nevertheless, KDHE and EPA herein re-emphasize that the Ash Grove Risk Assessment (found in Section 15 of the Ash Grove RCRA permit application) was used for the Ash Grove RCRA draft permit decision and that the *Southeast Kansas Health Study* was not relied upon and is not part of the administrative record.

The witness did not comment on or request any changes specific to the language in the draft permit with this testimony.

Witness #2

The witness is concerned with the quantity of waste being stored and the possible dangers associated with the mixing of different waste and questions if KDHE and EPA have fully reviewed this activity (particularly whether mixing of hazardous waste will cause a reaction within the plant).

The witness states their belief that Ash Grove has complied with all EPA and KDHE regulations. However, the witness believes that the possible health risk to the surrounding community associated with the plant's hazardous waste management activities have not been adequately addressed. The witness asserts that the Southeast Kansas Health Study, conducted by the KU Center for Environmental and Occupational Health and the KU Department of Civil and Environmental Engineering, is flawed and the witness generally does not accept the studies' methodology or conclusions, stating that the study is all theoretically driven and that not enough physical testing was conducted. The witness asserts that the Southeast Kansas Health Study concludes that further studies are needed, and the witness believes that more studies should be conducted due to the high concentration of hazardous waste burners in the region. In addition, the witness stated that data obtained from the cancer registry website indicates that cancer rates for the area are 20 to 30 percent higher than the state average, and that his family has been affected by cancer.

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Response to Witness #2

Hazardous waste regulations promulgated by KDHE and EPA do not cap the number of individual hazardous waste storage units or total hazardous waste volumes. Because hazardous waste storage units (and any other supporting processing facilities) are costly to design, construct, operate, maintain and close, facilities have no incentive to have unnecessary units or overly large units. Based upon the experience of KDHE and EPA, the hazardous waste storage and blending activities proposed by Ash Grove in the RCRA permit application are not extraordinary in size or scope.

KDHE and EPA share the witness' concern that hazardous waste be managed safely. The mixing together of hazardous wastes is of particular concern due to the potential for fire, explosion, or the release of poisonous gas. The RCRA permit does not allow mixing of incompatible hazardous waste to occur at Ash Grove. Before any hazardous wastes can be mixed together, actual test data is obtained showing the various wastes being mixed together can be done so safely. The incompatibility testing is conducted in a carefully controlled laboratory prior to any mixing taking place. The witness did not comment on or request any changes specific to the language in the draft permit with this testimony.

With regards to the witness' testimony regarding the *Southeast Kansas Health Study*, as described above in more detail, neither KDHE or EPA relied upon the *Southeast Kansas Health Study* in making a determination to prepare the draft RCRA permit for Ash Grove nor was it made part of the administrative record. In response to public interest regarding the health concerns in and around Chanute, Kansas, KDHE Division of Health in coordination with ATSDR is currently reviewing available environmental and health data for the community. KDHE and EPA will review any findings issued by KDHE Division of Health or ATSDR for possible future changes to the Ash Grove RCRA permit.

One final note that is relevant to the witness' testimony that four hazardous waste combustors¹¹ were operating in close proximity in southeast Kansas: Today only two of these facilities continue to combust hazardous waste -- Lafarge Cement in Fredonia, Kansas and Ash Grove in Chanute, Kansas. The Aptus incinerator in Coffeyville, Kansas, operated intermittently beginning in 1998 and ceased the incineration of hazardous waste and PCBs altogether in 2001. Aptus completed closure and removal of the incinerator in 2003. The Heartland Cement facility in Independence, Kansas, ceased the burning of hazardous waste in their cement kilns and completed closure of all hazardous waste management units in 2001. Heartland Cement later ceased all cement clinker production in Independence, Kansas.

The witness did not comment on or request any changes specific to the language in the draft permit with this testimony.

¹¹ Heartland Cement in Independence, Kansas; Lafarge Cement in Fredonia, Kansas; Ash Grove Cement in Chanute, Kansas; and Aptus in Coffeyville, Kansas.

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Witness #3

The witness provided summary information on the Ash Grove facility in Chanute and particularly its hazardous waste management and other environmental activities. Information was provided on the RCRA permit application and RCRA permit process. References were made to the Ash Grove Risk Assessment and the *Southeast Kansas Health Study* and the conclusions made in those documents. The witness stated additional detailed written comments would be submitted on specific draft permit language. The witness supported the issuance of the Ash Grove RCRA permit.

Response to Witness #3

KDHE and EPA herein re-emphasize that the Ash Grove Risk Assessment (found in Section 15 of the Ash Grove RCRA permit application) was used for the Ash Grove RCRA draft permit decision and that the *Southeast Kansas Health Study* was not relied upon and is not part of the administrative record.

The witness did not comment on or request any changes specific to the language in the draft permit with this testimony.

Witness #4

The witness is specifically concerned about mercury emissions from the Ash Grove Cement Company, and references the web site Scorecard.org as a source of information that Ash Grove is one of the largest polluters of mercury in the country.

The witness states that something is causing the areas residents to experience unusually high rates of cancer and respiratory [asthma] problems.

The witness is generally concerned about the transportation of hazardous waste by both rail and truck through the community to Ash Grove. The witness is particularly concerned with the number of rail cars parked on the tracks in and around Chanute and especially those near downtown Chanute. The witness is worried about what might happen if a natural disaster or accident occurs while the tank cars are parked there, and who will respond and pay for a response to such an incident. The witness states that schools and homes are near this rail yard. The witness wants something done to ensure that an incident involving the rail cars does not occur and generally does not want the risk associated with the rail cars being parked near downtown Chanute. He is concerned that there are no trained HAZMAT people to respond to an accident should one occur. The witness showed pictures of the rail cars parked near downtown Chanute.

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The witness also provided testimony that something in the air causing metal shed roofs to rust at an accelerated pace, and would like to know what it is and have it stopped. The witness specifically referred to a resident about one mile north of Ash Grove where the roof on a new shed began to corrode [pitting] and rust soon after the shed was constructed. The witness stated a roof on another of the same resident's shed also had to have the roof replaced for the same reason.

Response to Witness #4

The Clean Air Act limits mercury emissions from Ash Grove's combustion of hazardous waste to emit a maximum of 0.7 grams per minute of mercury (using Ash Grove's maximum stack gas flow). Based upon actual test data from the Ash Grove comprehensive performance testing completed in March 2002, Ash Grove's maximum emissions are approximately 0.35 grams per minute. Mercury emissions may vary up to the maximum allowed under the Clean Air Act due to variations in mercury concentrations in feed streams and production schedules. Ash Grove's annual emission of mercury was found to be within EPA's toxicity criteria when evaluated in the Risk Assessment (Section 15 of Ash Grove's RCRA permit application). EPA notes that mercury emissions will again be measured in the upcoming Comprehensive Performance Test scheduled for this summer.

In response to public interest regarding the health concerns in and around Chanute, Kansas, KDHE Division of Health in coordination with ATSDR is currently reviewing available environmental and health data for the community. KDHE and EPA will rely upon the learned opinions, research, investigations and determinations of the public health agencies in the matter of determining the status of cancer and other health concerns in the community. An availability session was held on February 11, 2010, in Chanute, Kansas, by KDHE and ATSDR to better understand the community's environmental health concerns. The findings are expected in the early summer of 2010. KDHE and EPA will review any findings issued by KDHE Division of Health or ATSDR for possible future changes to the Ash Grove RCRA permit.

Regulation of hazardous materials transportation is not under the direct purview of the KDHE or EPA; hazardous materials transportation is regulated by the United States Department of Transportation. KDHE and EPA do have certain regulations regarding hazardous waste transportation dealing with hazardous waste manifests to track shipments of hazardous waste to ensure that they have reached their proper destination.

The draft RCRA permit requires Ash Grove to have adequate emergency response equipment, training and materials to respond to incidents involving hazardous waste which may occur at the Ash Grove facility. Ash Grove may call upon local emergency responders to assist the facility's response to onsite incidents and, if necessary, evacuations of people. Ash Grove has made arrangements with local emergency responders to provide such assistance if called upon to do so.

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Responding to hazardous material transportation incidents that occur outside of the Ash Grove facility is beyond the scope of RCRA.

The witness did not provide detailed information on the location and specifics of the corroded metal roof. KDHE and EPA note that the witness brought in a piece of corroded roof to illustrate the testimony. KDHE and EPA thank the commenter for the information.

The witness did not comment on or request any changes specific to the language in the draft permit with this testimony.

Witness #5

This witness also stated similar health concerns as those of previous witnesses. The witness called for [KDHE and EPA] to do additional work to determine if emissions from Ash Grove's hazardous waste combustion are a health hazard. The witness was also concerned about the presence of large amounts of hazardous materials in the community particularly those stored in the rail yard near downtown Chanute. The witness was concerned about the possible impact of other sources [producers] of mercury in and around Chanute and the possible cumulative effect of this.

Response to Witness #5

In response to public interest regarding the health concerns in and around Chanute, Kansas, KDHE Division of Health in coordination with ATSDR is currently reviewing available environmental and health data for the community. KDHE and EPA will rely upon the learned opinions, research, investigations and determinations of the public health agencies in the matter of determining the status of cancer and other health concerns in the community. An availability session was held on February 11, 2010, in Chanute, Kansas, by KDHE and ATSDR to better understand the community's environmental health concerns. The findings are expected in the early summer of 2010. KDHE and EPA will review any findings issued by KDHE Division of Health or ATSDR for possible future changes to the Ash Grove RCRA permit.

Nevertheless, KDHE and EPA will continue reviewing emissions and other information regarding Ash Grove which may affect the health of the community. Ash Grove will be conducting a Comprehensive Performance Test scheduled for this summer. If new information shows that additional permit conditions are necessary to control risks from Ash Grove's hazardous waste management, KDHE and EPA will propose such changes to the RCRA permit.

The amount of mercury in the community from sources other than Ash Grove is outside of the scope of the Ash Grove RCRA permit. However, as described earlier in response to this witness's testimony, KDHE Division of Health in coordination with ATSDR are currently involved in reviewing public health issues in Chanute. KDHE and EPA will review any findings

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issued by KDHE Division of Health or ATSDR for possible future changes to the Ash Grove RCRA permit. If mercury emissions from sources other than Ash Grove are having an adverse impact on the community, KDHE and EPA commit to exploring all available means to reduce mercury emissions.

The witness did not comment on or request any changes specific to the language in the draft permit with this testimony.

Witness #6

The witness provided summary information on Ash Grove's social and economic impact to the community of Chanute. The witness supported the issuance of the Ash Grove RCRA permit.

Response to Witness #6

The witness did not comment on or request any changes specific to the language in the draft permit with this testimony.

Witness #7

The witness provided summary information on Cadence Environmental Company (Cadence). Cadence supplies and manages certain aspects of Ash Grove's storage, processing and combustion of hazardous waste. The witness supported the issuance of the Ash Grove RCRA permit.

Response to Witness #7

The witness did not comment on or request any changes specific to the language in the draft permit with this testimony.

Witness #8

The witness is concerned about hazardous materials transportation. The witness believes that it is not a case of if there will be an accident, but when the accident will occur and provided certain data on hazardous materials transportation incidents.

The witness believes that the companies and businesses that generate the hazardous waste which is burned in the Ash Grove cement kiln should bear more of the responsibility for funding the protection of the community. The witness states that there is a \$10 per ton fee at the state level for hazardous waste burned, and that the total fee required is capped at \$60,000. The witness believes that the fee cap should be lifted, and that the additional funds collected should then be used by KDHE to conduct more local testing so that decisions concerning risk associated with

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burning hazardous waste can be based on absolute testing as opposed to theoretical models. The witness repeated what other witness have said; that they would like to see more environmental testing to help alleviate local fears of what could or could not be happening in the community due to the burning of hazardous waste. The witness wants the local government to be more proactive when it comes to funding for the safety, health and well-being of the areas residents. The witness requested that all government bodies look into the possibility of redirecting some of the fee money collected to the local community to help them respond in the case of an unforeseen event.

Response to Witness #8

Regulation of hazardous materials transportation is not under the direct purview of the KDHE or EPA; hazardous materials transportation is regulated by the United States Department of Transportation. KDHE and EPA do have certain regulations regarding hazardous waste transportation dealing with hazardous waste manifests to track shipments of hazardous waste to ensure that they have reached their proper destination.

The draft RCRA permit requires Ash Grove to have adequate emergency response equipment, training and materials to respond to incidents involving hazardous waste which may occur at the Ash Grove facility. Ash Grove may call upon local emergency responders to assist the facility's response to onsite incidents and, if necessary, evacuations of people. Ash Grove has made arrangements with local emergency responders to provide such assistance if called upon to do so. Responding to hazardous material transportation incidents that occur outside of the Ash Grove facility is beyond the scope of RCRA.

As stated by the witness, KDHE does collect fees from hazardous waste generators and treatment, storage and disposal facilities. Such fees are utilized by KDHE's Bureau of Waste Management to implement the hazardous waste program in Kansas. KDHE and EPA cannot address changes to fees, fee structures and fee usage as part of a final decision on Ash Grove's RCRA permit., however; those fees and the cap set on those fees are a matter of state law KSA 65-3431(w)(1) and can only be changed by legislative action at the state level. KDHE and EPA do not have the authority to change those fees or the cap applied on those fees and are thus forced to make evaluations of risk associated with the burning of hazardous waste utilizing available resources. A summary of the methodology used to evaluate risk associated with Ash Grove's combustion of hazardous waste is provided in the *Response to Comment #7* on page 9 of this document.

The witness did not comment on or request any changes specific to the language in the draft permit with this testimony.

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Witness #9

The witness provided summary information on Ash Grove's day to day activities and compliance with hazardous waste management requirements. The witness supported the issuance of the Ash Grove RCRA permit.

Response to Witness #9

The witness did not comment on or request any changes specific to the language in the draft permit with this testimony.

Witness #10

The witness provided summary information on pending state legislation on transportation and Ash Grove's social and economic impact to the community of Chanute. The witness supported the issuance of the Ash Grove RCRA permit.

Response to Witness #10

The witness did not comment on or request any changes specific to the language in the draft permit with this testimony.

Witness #11

The witness testified of waking up to suffering from choking, burning eyes, burning nose, and hurting lungs. The witness states that choking, burning eyes, burning nose, and hurting lungs occurs whether in the house, yard or vehicle. The witness described smelling something like creosote and ether late at night and early in the morning. Once the smell is no longer outside, the witness is able to air out the house. The frequency of all of this occurring is approximately three times per week. Improvements to the witness' residence have not alleviated the waking up to suffering from choking, burning eyes, burning nose, and hurting lungs. The witness also reports that Chanute's public drinking water supply has a chemical smell when the tap in the residence is opened.

Response to Witness #11

KDHE Division of Health in coordination with ATSDR are currently involved in reviewing public health issues in Chanute. KDHE and EPA will review any findings issued by KDHE Division of Health or ATSDR for possible future changes to the Ash Grove RCRA permit

The witness did not comment on or request any changes specific to the language in the draft permit with this testimony.

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Witness #12

The witness provided summary information on Ash Grove's social and economic impact to the community of Chanute and in particular to the schools. The witness supported the issuance of the Ash Grove RCRA permit.

Response to Witness #12

The witness did not comment on or request any changes specific to the language in the draft permit with this testimony.

Witness #13

The witness provided summary information on Ash Grove's social and economic impact to the community of Chanute. The witness supported the issuance of the Ash Grove RCRA permit.

Response to Witness #13

The witness did not comment on or request any changes specific to the language in the draft permit with this testimony.

Witness #14

The witness provided summary information on Ash Grove and regulation of hazardous waste. The witness supported the issuance of the Ash Grove RCRA permit.

Response to Witness #14

The witness did not comment on or request any changes specific to the language in the draft permit with this testimony.

COMMENTS REFERENCING SPECIFIC PART I PERMIT LANGUAGE

The following comments were provided by one commenter and are specific to language in the draft Part I permit. Each comment has been provided below in italics and numbered to correspond to the numbering provided in the commenter's letter, followed by KDHE's response.

Comment #1

Pg. 16 of 56; Section II.C - The section includes the statement that "the permittee shall verify the analysis of each waste stream at least once every two (2) years as part of its quality assurance program," The regulation at 40 CFR 264.13(a)(3)(i) states that "the analysis must be

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repeated as necessary to ensure that it is accurate and up to date" but does not specify a particular frequency for re-analysis. Ash Grove requests that the cited frequency in the Part I of the permit be retained (at least once every two years), but that the remainder of the sentence be modified to reflect the language of the Ash Grove Waste Analysis Plan, Section 3.2. Please also see comments below regarding modifying language of the WAP to be consistent with this position. The proposed, modified language of Section II.C of Part I of the permit is shown below:

II.C – GENERAL WASTE ANALYSIS

The Permittee shall follow the waste analysis procedures required by 40 CFR 264.13, as described in the Waste Analysis Plan, Section 3 of the Part B Application. The Permittee shall requalify each waste stream per the procedures in the Waste Analysis Plan. Analytical test methods shall be in accordance with Test Methods for Evaluating Solid Waste: Physical/Chemical Methods, EPA Publication SW-846, or equivalent methods approved by the Secretary. At a minimum, the Permittee shall maintain proper functioning instruments, use approved sampling and analytical methods, verify the validity of sampling and analytical procedures, and perform correct calculations. If the Permittee uses a contract laboratory to perform the analyses, then the Permittee shall inform the laboratory in writing that it must operate under the waste analysis conditions set forth in this Permit. A copy of the written notification between the Permittee and its contract laboratory must be maintained at the facility for at least three (3) years from the date of such notification.

KDHE Response to Comment #1

Although the pertinent regulations do not specify a specific frequency for the re-analysis of previously qualified waste streams, KDHE has taken the position that qualification analyses need to be repeated at least once every 2 years to ensure that the analyses are accurate and up to date.

The request by Ash Grove to modify the proposed Part 1 permit condition II.C to reflect the language of the Ash Grove Waste Analysis Plan can not be granted. Ash Groves Waste Analysis Plan does not require that waste streams be re-analyzed at least once every two years as required by KDHE, and therefore the permit condition is needed and will remain unchanged.

Comment #2

Pg. 28 of 56; Section IV.B.2 - This item needs to be clarified that waste that exhibits the characteristic of corrosivity will not be unloaded into the tank systems. This then allows wastes exhibiting the D002 characteristic to be received and stored in the original containers and then re-manifested to an alternate TSDF, consistent with the language of the WAP. Ash Grove requests that Section IV.B.2 be modified as shown below:

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IV.B.2. The Permittee is prohibited from offloading liquid waste-derived fuel (LWDF) that exhibits a pH of less than or equal to 2, and those wastes that are not identified in Attachment I of this permit.

KDHE Response to Comment #2

KDHE disagrees that clarification of the permit language in Section IV.B.2 is necessary to allow waste exhibiting the D002 characteristic to be received and stored in the original container and then to be re-manifested to an alternate TSDF. Permit condition III.B explicitly permits the storage of all attachment I waste codes, of which D002 is included, in all approved container storage areas. The draft permit condition IV.B.2 does not in anyway restrict Ash Groves ability to process waste through the tank system that may carry the D002 waste code for corrosivity due to waste code carry through but does not exhibit the characteristic, it merely restricts those waste that exhibit the characteristic of corrosivity from being processed.

Comment #3

Pg. 34 of 56; Section V.B.4 - This item should be clarified to indicate that the vacuum truck will only be operated to assist in emptying containers of RCRA hazardous waste when it is located within the North or South LWDF Unloading Areas. The current language is too broad and could be interpreted to also apply to operations involving other materials that are not RCRA hazardous wastes. Ash Grove requests that the language be modified as shown below:

V.B.4. The Permittee shall only operate the vacuum truck within the secondary containment structure of the North or South L WDF Unloading Area when managing RCRA hazardous waste. [40 CFR 264.175]

KDHE Response to Comment #3

KHDE agrees that the Part 1 permit condition V.B.4. should be clarified to prevent unnecessary restrictions on the use of the facilities vacuum truck when managing non-RCRA waste, and has modified the permit condition as proposed. However, KDHE would like to further clarify that all residues and heel materials removed from railcars and tanker trucks that have been determined to be "RCRA Empty", are presumed to be hazardous waste regardless of the containers previous RCRA Empty classification. In accordance with EPA's current position on the status of residues and rinsates resulting from the cleaning of RCRA empty containers, which was published in the October 4, 2005 federal register and states in part that: "...when the residue is removed from an 'empty' container, the residue is subject to full regulation under Subtitle C if the removal or subsequent management of the residue generates a new hazardous waste that exhibits any of the characteristics identified in Part 261, Subpart C..." It's KDHE's position that all rinsates and residues removed from rail cars and tanker trucks are presumed to be characteristically hazardous and must be managed as such; and therefore when the vacuum

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truck is used to remove residues and rinsates from rail cars and tanker trucks the vacuum truck is subject to permit condition V.B.4.

KDHE's presumption that residues and rinsates removed from RCRA Empty bulk containers are characteristically hazardous does not alter the status of the container being classified as RCRA empty, and thus does not alter the ability of Ash Grove to hold railcars on site for greater than 10 days as described in section 4.2.5.5 of the Part B application.

Comment #4

Pg. 34 of 56; Section V.B.5 -The last phrase "or when it is used to clean the inside of bulk containers" should be removed from this sentence. The discussion of using a vacuum truck to clean out containers (Section 4.2.5.4 of the permit application) discusses the use of a closed vent system and control device with regard to using solvent as a suspension media. However, this last phrase is too broad and appears to imply that the control device is to be used when cleaning out the inside of a bulk container when the suspension media in the vacuum truck will be water. Ash Grove requests that Section V.B.5 be revised as follows:

V.B.5. The Permittee shall ensure that the vacuum truck is equipped and operated with a closed-vent system and control device in accordance with the requirements of Section VI. of this permit when waste derived fuel or other organic solvent is used as a suspension medium in the vacuum truck. [40 CFR 264.601(c)]

KDHE Response to Comment #4

The intent of the phrase "or when it is used to clean the inside of bulk containers" is not meant to mean or imply that a closed vent system and control device is required when water is used as the suspension medium in the vacuum truck and is the sole solvent used to clean out the inside of bulk containers; it was included to clarify that in addition to requiring the closed vent system and control device when waste derived fuel or other organic solvent is used as a suspension medium during the cleaning of bulk containers, the closed vent system and control device is also required if waste derived fuel or other organic solvent is used during the cleaning process of the inside of the bulk container. The only time a closed vent system and control device is not required to be used on the vacuum truck is when water is the sole solvent used to clean the inside of bulk containers and as the suspension medium in the vacuum truck. Whenever a waste derived fuel or other organic solvent is used in any part of the bulk container cleaning process which utilizes the vacuum truck a closed vent system and control device is required. Permit condition V.B.5. has been modified to clarify this point as follows:

The Permittee shall ensure that the vacuum truck is equipped and operated with a closed-vent system and control device in accordance with the requirements of Section VI. of this permit when waste derived fuel or other organic solvent is used as a suspension medium in the vacuum truck,

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or when waste derived fuel or other organic solvent is used to dislodge and clean solids from the inside of bulk containers. [40 CFR 264.601(c)]

Comment #5

*Pg. 40 of 56; Section VI.B.2.a - This sentence is confusing since it appears to indicate that a reading of less than 500 ppm could be considered to be a detectable emission and thus a leaking pressure relief device. Ash Grove requests that Section VI.B.2 be revised as follows:
VI.B.2.a. Except during pressure releases, no pressure relief device shall release detectable emissions. A detectable emission is indicated by an instrument reading of 500 ppm or greater above background levels.*

KDHE Response to Comment #5

KDHE agrees that the wording of permit condition VI.B.2.a. could be misinterpreted. KDHE has modified the permit condition VI.B.2.a. as proposed by the commenter.

Comment #6

Pg. 37 of 56; Section V.I - This description of training requirements associated with bulk container manual cleanout should be modified to indicate that the Permittee shall conduct personnel training or ensure that that personnel have received the required training to conduct the container cleanout. The sentence should be modified as follows:

V.I. The Permittee shall conduct, or ensure that required training has been conducted, personnel training for those persons responsible for the daily operation of the bulk container manual cleanout operations as required by 40 CFR 264.16. This training program shall be conducted and the records of the training kept in accordance with Section 8 of the Part B application.

KDHE Response to Comment #6

Further review of Ash Grove's application revealed that the personnel training plan, Section 8 of the facility's Part B application, does not adequately address the confined space training needs of individuals who conduct the bulk container cleaning operations at the facility. Therefore KDHE has modified the Part 1 permit condition V.I. to address Ash Grove's concern related to training received from sources other than Ash Grove as follows:

The Permittee shall require all persons who enter bulk containers, as part of the bulk container manual cleanout operations, to be trained in confined space entry before conducting such operations as required by 40 CFR 264.16. This training shall be documented and the records of the training kept in accordance with Section 8 of the Part B application.

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Comment #7

Pg. 33 of 56; Section V.A - The description of the miscellaneous unit (hydraulic agitator) includes numeric dimensions of the unit. Ash Grove requests that the 24-inch dimension be removed from the permit, revising the applicable sentence as follows. If a dimension is required, the dimension should read "18 to 24-inches."

"The agitators have a collapsed diameter small enough so that they will fit through the hatch of railcars and tanker trucks, and an over all length of approximately 12 foot.

KDHE Response to Comment #7

KDHE has modified Section V.A of the Part 1 permit as requested.

Comment #8

Pg. 39 of 56; Section VI.B - The concentration stated in this section should read "10 percent by weight" rather than "10 parts per million (ppm) by weight" since the Subpart BB threshold is 10%, not 10 ppm, as specified at 40 CFR 264.1050(b).

KDHE Response to Comment #8

KDHE agrees that the concentration reference of "10 parts per million (ppm) by weight" is incorrect and has corrected the phrase to read "10 percent by weight".

[Note: Comments 9 thru 33 are specific to the Part II permit and are addressed in the section
COMMENTS REFERENCING SPECIFIC PART 2 PERMIT LANGUAGE]

Comment #34

The first sentence of Section 3.2 of the Waste Analysis Plan is requested to be modified to be consistent with the language of the Draft Part I Permit, Section II.C. The sentence is requested to be modified as follows:

WDF is requalified at least every two years on a calendar year basis.

KDHE Response to Comment #34:

The requested change is not approved. Permit condition II.C of the draft part 1 permit does not require requalification "at least ever two years" as asserted by Ash Grove, it requires the analysis of each waste stream be verified at least once every two years, which is not the same as requalification as it is described in the Waste Analysis Plan (WAP). The requirement of permit condition II.C to verify the analysis of a previously qualified waste stream at least once every

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two years is an additional requirement to the requalification procedure described in the facility's WAP.

Comment #35

Section 3.2 of the WAP states that "If a WDF stream has not been sent to the facility in over one year, the requalification will take place before acceptance of the next shipment of the WDF stream." To make this language consistent with similar language in the Waste Analysis Plan, Ash Grove requests that this sentence be changed as follows:

"If a WDF stream has exceeded the biennial calendar year requalification requirements, the requalification will take place with acceptance of the next shipment of the WDF stream."

KDHE Response to Comment #35:

The requested change is not approved. Requalification of waste streams is required annually as described in the facility's WAP; however, verification of a previously qualified waste streams analysis is required at least once every two years (see KDHE Response #34).

Comment #36

Section 3.2, third paragraph, of the WAP requests that this sentence be modified to reflect that the requalification process will include additional reviews only if a sample analysis is required as part of the requalification process. The sentence is proposed to be modified as follows:

If sample analysis is required, the requalification procedure includes a waste code comparison, RMP review, historical database review and corrosion potential review as described in subsections 3.1.3, 3.1.4, 3.1.5, and 3.1.6.

KDHE Response to Comment #36

The requested change is not approved at this time; however, Ash Grove may submit a class 1 modification to replace the second paragraph of Section 3.2 of the WAP once the permit becomes effective with the language:

"When waste stream verification analyses are required, or when requalification procedures require a waste stream to be analyzed, a waste code comparison, RMP review, historical database review and corrosion potential review as described in subsections 3.1.3, 3.1.4, 3.1.5, and 3.1.6. will be conducted."

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Comment #37

Section 3.3, first paragraph, is proposed to be modified to reflect that each shipment of WDF received at the facility is sampled and analyzed before determining if the waste meet's the Chanute facility's criteria. The slight change in language reflects the proposed changes in Section 3.6.5 which allows BWDF samples to be collected by the generator during the container filling operation, consistent with the WAP modifications approved in 2006 associated with the addition of the BWDF operation. The first sentence of this section is proposed to read as follows:

Each shipment of WDF received at the facility is sampled and analyzed before determining, among other things, whether it meets the Chanute facility's criteria for WDF.

KDHE Response to Comment #37

The requested change to language in first paragraph of Section 3.3 of the facility WAP is approved. Ash Grove will need to submit a class 1 modification after the permit becomes effective to implement the approved WAP language change.

Comment #38

Figure 3-1 is proposed to be modified to reflect the facility will gather the receipt sample to allow for the situation where the BWDF samples may be provided by the generator, as described in Section 3.6.5.

KDHE Response to Comment #38

The requested change to Figure 3-1 of the facility WAP is approved. Ash Grove will need to submit a class 1 modification after the permit becomes effective to implement the approved WAP change.

Comment #39

Section 3.3.3 is proposed to be modified to reflect that the description of the sampling methodologies for each type of Waste Derived Fuel is described in its respective section of the WAP. The sentence should read:

Each WDF shipment that has not been rejected based on shipment documentation is sampled as described in Section 3.4,3.5, or 3.6 of this WAP.

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KDHE Response to Comment #39

The requested change to language in Section 3.3.3 of the facility WAP is approved. Ash Grove will need to submit a class 1 modification after the permit becomes effective to implement the approved WAP language change.

Comment #40

Ash Grove requests that the last sentence of Section 3.4.3.3 be modified as follows to clarify that LWDF exhibiting the characteristic of corrosivity will not be stored in the tank system:

LWDF exhibiting the characteristic of corrosivity ($pH \leq 2$ or ≥ 12.5), as defined in 40 CFR 261.22 and KAR 28-31-3(a), is not accepted for storage in the L WDF tank system at the facility, but rather is managed separately and shipped to the generator or an alternate TSDf.

KDHE Response to Comment #40

The requested change to language in Section 3.4.3.3 of the facility WAP is approved. Ash Grove will need to submit a class 1 modification after the permit becomes effective to implement the approved WAP language change.

Comment #41

Ash Grove requests that Section 3.4.3.6 be modified to be consistent with the language of Comment 1 above, and the wording be modified as follows:

Screening for sulfides and cyanides is conducted during the qualification and re-qualification process (if required).

KDHE Response to Comment #41

The requested change to language in Section 3.4.3.6, to be consistent with the language of Comment 1 above, is not approved because the requested language changes in Comment 1 are not approved.

Comment #42

Ash Grove requests that the third sentence of Section 3.4.3.7 be modified to be consistent with the language of Comment 1 above, and the wording be modified as follows:

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Volatile and semi-volatile organic compounds detected in requalification samples that may be conducted are also added to the database if the analysis indicates shipment compounds are acceptable at the facility.

KDHE Response to Comment #42

The requested change to language in Section 3.4.3.7, to be consistent with the language of Comment 1 above, is not approved because the requested language changes in Comment 1 are not approved.

Comment #43

Ash Grove requests that the heading of the third column of Table 3-3 in Section 3.4.5 be modified to be consistent with the language of Comment 1 above, and the wording be modified as follows:

Re-qualification Analyses (as required)

KDHE Response to Comment #43

The request to modify Table 3-3 in Section 3.4.5, to be consistent with the language of Comment 1 above, is not approved because the requested language changes in Comment 1 are not approved.

Comment #44

Ash Grove requests that Section 3.5.3.5 be modified to be consistent with the language of Comment 1 above, and the wording be modified as follows:

Screening for sulfides and cyanides is conducted during the qualification and re-qualification process (if required).

KDHE Response to Comment #44

The request to modify Section 3.5.3.5, to be consistent with the language of Comment 1 above, is not approved because the requested language changes in Comment 1 are not approved.

Comment #45

Ash Grove requests that the third sentence of Section 3.5.3.6 be modified to be consistent with the language of Comment 1 above, and the wording be modified as follows:

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Volatile and semi-volatile organic compounds detected in requalification samples that may be conducted are also added to the database if the analysis indicates shipment compounds are acceptable at the facility.

KDHE Response to Comment #45

The request to modify Section 3.5.3.6, to be consistent with the language of Comment 1 above, is not approved because the requested language changes in Comment 1 are not approved.

Comment #46

Ash Grove requests that the heading of the third column of Table 3-5 in Section 3.5.5 be modified to be consistent with the language of Comment 1 above, and the wording be modified as follows:

Re-qualification Analyses (as required)

KDHE Response to Comment #46

The request to modify Table 3-5 in Section 3.5.5, to be consistent with the language of Comment 1 above, is not approved because the requested language changes in Comment 1 are not approved.

Comment #47

Section 3.6.2 is proposed to be modified to reflect changes in language that was approved as part of the 2006 BWDF Supplement (See Section C.2 of that document). The following language is proposed to be added to the fourth paragraph of 3.6.2:

The BWDF management unit has been designed to eliminate the possibility of SPL coming into contact with water. A lean phase pneumatic system will transfer the material from the pneumatic trailer to the storage tank. The material will then be transferred pneumatically from the storage tank to the DOC. SPL will not come into contact with water. Potential formation of a corrosive mixture is therefore eliminated.

KDHE Response to Comment #47

The requested language modification to Section 3.6.2 of the Part 1 application is approved. Ash Grove will need to submit a class 1 modification after the permit becomes effective to implement the approved WAP language change.

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Comment #48

Table 3-6 of Section 3.6.2 of the WAP is proposed to be modified to make it read as was approved with the 2006 BWDF Supplement by adding footnotes to the entries for Compatibility and Heat of Combustion analytical tests. The following Footnotes are added for compatibility and heat of combustion, respectively:

** Compatibility testing is not required if the BWDF is shown to be generated from a single source or process. BWDF that is uniform in composition between deliveries will be compatible by definition.*

** * For SPL (a single source, uniform waste), the heat of combustion testing will be conducted on a minimum of 1 sample per month.*

KDHE Response to Comment #48

The requested language changes to Table 3-6 of the WAP that were previously approved as part of the 2006 BWDF Supplement, were approved under a different set of operating parameters in which SPL would be the only waste stored in the BWDF storage tank, and under those conditions KDHE agreed that compatibility testing of every delivery of SPL was not necessary since all the SPL waste being received was from the same generator and Ash Grove demonstrated that the composition of the waste was consistent. The new permit will not restrict the waste being stored in the BWDF storage tank so the compatibility footnote, as proposed, is not appropriate and is not approved. If Ash Grove will in practice only be storing SPL from a single source in the BWDF storage tank, they may submit a class 1a modification after the permit becomes effective that contains specific language on how they will track and document the waste stored in the tank as being compatible and from a single source.

The footnote concerning the heat of combustion of SPL is approved. Ash Grove will need to submit a class 1 modification after the permit becomes effective to implement the approved WAP language change.

Comment #49

Section 3.6.3.2 of the WAP is proposed to be modified to make it consistent with the approved 2006 BWDF Supplement (Section C.3.3). The last paragraph of this section will be removed and replaced with the following paragraphs:

The precautions needed in order to prevent undesirable chemical reactions at the BWDF storage unit include not allowing the processing of BWDF containing the waste code 0003 (Reactive) or with the characteristic of reactivity, as defined in 40 CFR 261.23 and KAR 28-31-3(a).

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Based on operational information from generator and processor of the SPL waste, Alcoa, the basic components of the SPL are the same (i.e., carbon, refractory, fluorides, etc.) even though SPL is delivered to them from multiple generators. The level of each component may vary between smelters. Commingling of SPL from the various smelters at the Alcoa facility has not presented a compatibility issue. Data from Alcoa on monthly samples of SPL between October, 2000 and September, 2002 showed the cyanide content ranged from 0.108 to 0.675% with a standard deviation of 0.11. The fluoride content for the same sampling period ranged from 5.95 to 7.69% with a standard deviation of 0.481. Given the consistency in the range of cyanide and fluoride concentrations identified, compatibility testing is not necessary to assure safe management of SPL.

KDHE Response to #49

The requested changes to Section 3.6.3.2 of the WAP are not approved, for the reasons stated in response #48 above. If Ash Grove would like to limit the waste stored in the BWDF storage tank to SPL, as was done when the system was approved, Ash Grove may submit a permit modification to that effect after the permit becomes effective and KDHE will reconsider the request.

Comment #50

The section numbering for Section 3.6.3.4 is proposed to be added to the "Heat of Combustion" paragraph that mistakenly was not included. No other numbering changes are required by the change.

KDHE Response to Comment #50

The previously omitted section numbering is approved. Ash Grove will need to submit a class 1 modification after the permit becomes effective to implement the approved WAP language change.

Comment #51

Section 3.6.3.4 is proposed to be modified by adding a paragraph to the end of this section that clarifies that for the BWDF subcategory of spent pot liner (SPL), the heat of combustion analyses will be conducted on one (1) sample per month because the waste is from only 1 generator. This language was included in the 2006 BWDF Supplement as Section C.3.3. The new paragraph is shown below:

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For SPL, Ash Grove will perform the heat of combustion analysis on a minimum of one (1) shipment per month. SPL is generated from a single source and is of uniform composition and properties.

KDHE Response to Comment #51

The requested changes to Section 3.6.3.4 are approved. Ash Grove will need to submit a class 1 modification after the permit becomes effective to implement the approved WAP language change.

Comment #52

Ash Grove requests that Section 3.6.3.5 be modified to be consistent with the language of Comment 1 above, and the wording be modified as follows:

Screening for sulfides and cyanides is conducted during the qualification and re-qualification process (if required).

KDHE Response to Comment #52

The request to modify Section 3.6.3.5, to be consistent with the language of Comment 1 above, is not approved because the requested language changes in Comment 1 are not approved.

Comment #53

Ash Grove requests that the third sentence of Section 3.6.3.6 be modified to be consistent with the language of Comment 1 above, and the wording be modified as follows:

Volatile and semi-volatile organic compounds detected in requalification samples that may be conducted are also added to the database if the analysis indicates shipment compounds are acceptable at the facility.

KDHE Response to Comment #53

The request to modify Section 3.6.3.6, to be consistent with the language of Comment 1 above, is not approved because the requested language changes in Comment 1 are not approved.

Comment #54

Ash Grove requests to modify the language of the first paragraph of Section 3.6.5 to reflect the language that is currently in the approved WAP (see Section C.4 of the BWDF Supplement

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submitted September 2006) to allow BWDF receipt samples to be taken at the plant, or to be provided by the generator. In addition a second paragraph is proposed to be added which has been previously approved as part of the 2006 BWDF Supplement (See C.3.5 of that document). The new language is as follows:

A representative sample of each BWDF shipment is obtained upon arrival at the facility or is collected by the generator while filling the pneumatic trailer, and the sample is tested and analyzed for the parameters shown in Table 3-7.

Acceptance criteria have been established for hydrogen cyanide and hydrogen sulfide based on the documented IDLH for each compound. The acceptance criteria and screening approach has been established to provide Ash Grove the information necessary to determine the PPE requirements for BWDF sampling and handling. For waste streams that have been identified with having the possibility of cyanides or sulfides above de minimis levels, individual shipments will be monitored for hydrogen cyanide or hydrogen sulfide, and appropriate PPE will be worn during sampling and handling.

KDHE Response to Comment #54

The requested modified language is approved. Ash Grove will need to submit a class 1 modification after the permit becomes effective to implement the approved WAP language change.

Comment #55

Ash Grove requests that the heading of the third column of Table 3-7 in Section 3.6.5 be modified to be consistent with the language of Comment 1 above, and the wording be modified as follows:

Re-qualification Analyses (as required)

KDHE Response to Comment #55

The request to modify Table 3-7 in Section 3.6.5, to be consistent with the language of Comment 1 above, is not approved because the requested language changes in Comment 1 are not approved.

Comment #56

Table 3-7 is proposed to be modified to be consistent with the language in sections 3.6.3.2 and 3.6.3.4 dealing with SPL, and is consistent with language in the approved 2006 BWDP

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Supplement. The following footnotes are proposed to be added to the compatibility and heat of combustion entries, respectively:

*****Compatibility testing is not required for spent pot liner (SPL) samples per Section 3.6.3.2.*

******For SPL (a single source uniform waste), the heat of combustion will be conducted on a minimum of one (1) sample per month. See Section 3.6.3.4.*

KDHE Response to Comment #56

The request to modify Table 3-7 with the footnote concerning compatibility testing is not approved. Please see the KDHE response #48 and #49. However, the requested footnote related to heat of combustion is approved. Ash Grove will need to submit a class 1 modification after the permit becomes effective to implement the approved WAP language change.

Comment #57

The first paragraph of Section 3.6.6 is proposed to be modified by adding the option of the generator providing a sample of the SPL taken while loading the container, and is consistent with the proposed Section 3.6.5 and the approved 2006 BWDP Supplement Section C.4. The first sentence will read as follows:

A representative sample of each container of BWDP is obtained by either compositing a number of samples from the shipment or may be collected by the generator while filling the pneumatic trailer.

KDHE Response to Comment #57

The proposed modified language to section 3.6.6 is approved, however; Ash Grove will need to submit a class 1 modification after the permit becomes effective to implement the approved WAP language change.

Comment #58

Ash Grove requests that the third sentence of the second paragraph of Section 3.10 be modified to be consistent with the language of Comment 1 above, and the wording be modified as follows:

These off-site laboratories measure some or all parameters for the qualification samples, and help the WDP laboratory with required analyses from time to time.

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KDHE Response to Comment #58

Although the language request of Comment 1 has not been approved, the requested modified language to the second paragraph of Section 3.10 is approved and continues to be consistent with the WAP and all permit conditions. Ash Grove will need to submit a class 1 modification after the permit becomes effective to implement the approved WAP language change.

Comment #59

Ash Grove requests that the first sentence of Section 3.11 be modified to be consistent with the language of Comment 1 above, and the wording be modified as follows:

Re-qualification testing is performed at Ash Grove's Foreman, Arkansas facility.

KDHE Response to Comment #59

Although the language request of Comment 1 has not been approved, the requested modified language to the first sentence of Section 3.11 is approved and continues to be consistent with the WAP and all permit conditions. Ash Grove will need to submit a class 1 modification after the permit becomes effective to implement the approved WAP language change.

Comment #60

Section 3.12.1 of the Waste Analysis Plan was modified during the June 2009 NOD Response to limit solid wastes that may be processed in the pyroprocessing unit to only those that are permitted under Ash Grove's solid waste processing permit number 868. Ash Grove does not believe that on-site generated waste is subject to this permit, and that it counts as double-regulation for the requirement to be stated within this permit and permit application. Rather, Ash Grove requests that the third paragraph of this section be modified to indicate that on-site generated solid wastes will be managed per the KDHE regulations. The proposed language is as follows:

Solid wastes that are not listed or characteristic hazardous wastes, or are excluded from the definition of hazardous waste, are not hazardous wastes. These non-hazardous solid wastes may be accumulated, stored, and disposed on-site or off-site, as appropriate, consistent with KDHE regulations.

KDHE Response to Comment #60

KDHE does not intend to affirm or dispute in this response to comments the commenter's assertion that on-site generated waste is not subject to Ash Grove's solid waste processing permit number 868. Nevertheless, KDHE does agree that the referencing of permit 868 within the RCRA Part B permit application is not appropriate and is approving the proposed language

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modification to Section 3.12.1 of Ash Grove's Waste Analysis Plan. Ash Grove will need to submit a class 1 modification after the permit becomes effective to implement the approved WAP language change.

Comment #61

Ash Grove requests that Section 2.2 (page 3-A1-2) of Attachment 3-1 (Regulation of Residues) be modified by adding a new bullet at the end of the section. The proposed change would make clear that Reasonably Expected Analytes (REAs) may not be detected if Ash Grove documents good-faith effort by achieving a detection limit for the constituent that does not exceed an order of magnitude above the level provided by 40 CFR 268.43 for F039 nonwastewaters, consistent with the provisions of 40 CFR 266.112(b)(2)(i). The proposed language to be added is as follows:

The REAs identified in Table 1 will be identified unless the laboratory is unable to detect a constituent despite documenting the use of best good-faith efforts as defined by applicable USEPA guidance or standards. Until new guidance or standards are developed, Ash Grove will demonstrate such good faith efforts by achieving a detection limit for the constituent that does not exceed an order of magnitude above the level provided by 40 CFR 268.43 for F039 non-wastewaters.

KDHE Response to Comment #61

The requested modified language to Section 2.2 of Attachment 3-1 of the Part B application is approved. Ash Grove will need to submit a class 1 modification after the permit becomes effective to implement the approved WAP language change.

Comment #62

Ash Grove requests Test Method 4, "Method for Determination of pH of WDF," in Attachment 3-2 be modified to make this method specific to testing samples of LWDF. Sections 3.5 and 3.6 of the WAP do not require pH testing of the SWDF or the BWDF, so making this method specific to LWDF is consistent with the other sections of the WAP. References to WDF will be changed to LWDF.

KDHE Response to Comment #62

The requested language change to Test Method 4, "Method for Determination of pH of WDF," in Attachment 3-2 to make this method specific to testing samples of LWDF, is approved. Ash Grove will need to submit a class 1 modification after the permit becomes effective to implement the approved WAP language change.

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Comment #63

Ash Grove requests that Test Method 8, "Method for Determination of Compatibility of BWDF," be modified to state that the compatibility test will be conducted on BWDF samples "as required by the Waste Analysis Plan." This makes the language consistent with text of section 3.5 of the WAP which does not require compatibility testing of the SPL.

KDHE Response to Comment #63

The assertion by Ash Grove that the facility's WAP does not require compatibility testing of SPL is not true at this time; the requested language change of comment number 49, which appears to be Ash Groves basis for the assertion that compatibility testing of SPL is not required, has not been approved for the reasons stated in the KDHE response to comment number 48. However, despite the fact that KDHE is not approving the current language request of comment 49, KDHE is approving the requested language change to Test Method 8, and believes the reference to the facilities Waste Analysis Plan describing when the test will be conducted is appropriate. Ash Grove will need to submit a class 1 modification after the permit becomes effective to implement the approved WAP language change.

COMMENTS REFERENCING SPECIFIC PART 2 PERMIT LANGUAGE

The following comments were provided by one commenter and are specific to language in the draft Part II permit. Each comment has been provided below in italics and numbered to correspond to the numbering provided in the commenter's letter, followed by EPA's response.

Comment #9

Pg. 61 of 74; Section IV.B - This section includes the statement that "the permittee shall verify the analysis of each waste stream annually as part of its quality assurance program." The regulation at 40 CFR 264.13(a)(3)(i) states that "the analysis must be repeated as necessary to ensure that it is accurate and up to date," but does not specify a particular frequency for re-analysis. Ash Grove requests that the cited language in the permit be modified to reflect the language of the Ash Grove Waste Analysis Plan, Section 3.2, which proposes an annual requalification process. The proposed, modified language of Section IV.B of Part II of the permit is shown below:

The Permittee shall obtain analysis of hazardous wastes in accordance with 40 C.F.R. §264.13 and as described in the Waste Analysis Plan, Part II Attachment 4, that ensures the facility's compliance with the requirements of Part II. The Permittee shall requalify each waste stream per the procedures in the Waste Analysis Plan and in accordance with the Quality Assurance Project Plan developed as part of the Waste Analysis Plan. At a minimum, the Permittee shall maintain proper functional instruments, use approved sampling and analytical

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methods, verify the validity of sampling and analytical procedures, and perform correct calculations. If the Permittee uses a contract laboratory to perform analyses, then the Permittee shall inform the laboratory in writing that it must operate under the waste analysis conditions set forth in Part II.

EPA Response to Comment #9

The EPA has reviewed Part II Condition IV.B and the information provided by the commenter, the commenter's similar comment made on Part I and RCRA. Based upon our review, EPA agrees with KDHE and has determined to require verification of the analysis of each waste stream no more than every two (2) years. Ash Grove is required to repeat or conduct new analysis of a hazardous waste more frequently than every two (2) years if any of the factors in 40 CFR 264.13 exist. Section IV.B of Part II will be modified accordingly in the final Part II.

Comment #10

Page 24 of 74, Section II.I - This section of the Part II of the Draft Permit appears to duplicate requirements of Part I without making the document retention requirements of this section specific to the issues covered by Part II of the permit. Ash Grove requests that Section II.I be modified as shown below:

The Permittee shall maintain at the facility, through the term of Part II or for a minimum of three (3) years, whichever is longer, the following documents and all amendments, revisions and modifications to these documents as they are applicable to issues addressed in Part II of this Permit:

EPA Response to Comment #10

EPA has reviewed the language in Part II Condition II.I. Part I and Part II are separate permits issued by separate agencies. The language in Part II only pertains to Part II. EPA properly included the requirements for documents to be maintained at the facility in Part II Condition II.I as Part II would be incomplete without such requirements. EPA has determined that no changes are necessary in response to this comment.

Comment #11

Page 25 of 74, Section II.J - This section and its subparts (General Closure Requirements) appears to duplicate the requirements of Section II.L. of Part I. Ash Grove requests that Section II.J be removed from the permit, in addition to Attachment 1 (Closure Plan) to Part II of the Permit.

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EPA Response to Comment #11

EPA has reviewed the language in Part II Condition II.J. Ash Grove is required to complete closure of the cement kiln and associated equipment used to burn hazardous waste. Part I and Part II are separate permits issued by separate agencies. The language in Part II only pertains to Part II. EPA properly included the requirements for closure in Part II Condition II.J as closure requirements are applicable to the hazardous waste burning industrial furnace authorized in Part II Condition VIII. Exclusion of provisions for closure from Part II would make Part II incomplete. EPA has determined that no changes are necessary in response to this comment.

Comment #12

Page 26 of 74, Section II.K - This section (Cost Estimate for Closure) of Part II of the Draft Permit appears to duplicate requirements of Section II.M.1 of Part I without making the requirements specific to potential issues covered by Part II. Ash Grove requests that Section II.K be removed, in addition to Attachments 2 and 3 to Part II of the permit. Although Ash Grove has not had an opportunity to see the attachments, it appears that Attachment 3 (Estimated Cost of Work) may be a duplicate of Attachment 2 (Closure Cost Estimate).

EPA Response to Comment #12

EPA has reviewed Part II Condition II.K and Part II Attachment 2. Part I and Part II are separate permits issued by separate agencies. The language in Part II only pertains to Part II. EPA properly included the requirements for closure in Part II Condition II.K as closure cost estimate requirements are applicable to the hazardous waste burning industrial furnace authorized in Part II Condition VIII. Part II properly included the closure cost estimate prepared by Ash Grove as Permit Attachment 2. Exclusion of the closure cost estimate from Part II would make Part II incomplete. EPA has determined that no changes are necessary in response to this comment.

The commenter is incorrect that Part II Attachment 3 is duplicative Part II Attachment 2. Part II Attachment 3 is referenced by Part II Condition III.Q.1 dealing with the estimated cost of performing the work required by Part II Condition III. Exclusion of provisions to include the estimated cost of corrective action from Part II would make Part II incomplete. EPA has determined that no changes are necessary in response to this comment.

The commenter's statement regarding not having the opportunity to review the draft permit is not true. A complete draft Part II permit was available for public review from August 31, 2009 until December 18, 2009.

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Comment #13

Page 26 of 74, Section II.L - This section (Financial Assurance Requirements) of Part II of the Draft Permit appears to duplicate requirements of Sections II.M.2, II.M.3, and II.M. 4 of Part I Ash Grove requests that Section II.L of Part II be removed.

EPA Response to Comment #13

EPA has reviewed Part II Condition II.L. Part I and Part II are separate permits issued by separate agencies. The language in Part II only pertains to Part II. EPA properly included the requirements for financial assurance in Part II Condition II.L as financial assurance requirements are applicable to the hazardous waste burning industrial furnace authorized in Part II Condition VIII. Exclusion of financial assurance requirements from Part II would make Part II incomplete. EPA has determined that no changes are necessary in response to this comment.

Comment #14

Page 59 of 74, Section IV.A - This section (Required Notices) of Part II of the Draft Permit appears to duplicate requirements of Section II.B of Part I Ash Grove requests that Section IV.A of Part II be removed.

EPA Response to Comment #14

EPA has reviewed Part II Condition IV.A. Part I and Part II are separate permits issued by separate agencies. The language in Part II only pertains to Part II. EPA properly included the requirements for required notices in Part II Condition IV.A as Part II would be incomplete without such requirements. EPA has determined that no changes are necessary in response to this comment.

Comment #15

Page 60 of 74, Section IV.B - This section (General Waste Analysis) of the Part II of the Draft Permit appears to duplicate requirements of Section II.C of Part I Ash Grove requests that Section IV.B be removed in addition to Attachment 4 (Waste Analysis Plan) of Part II of the permit.

EPA Response to Comment #15

EPA has reviewed Part II Condition IV.B. Part I and Part II are separate permits issued by separate agencies. The language in Part II only pertains to Part II. EPA properly included the requirements for waste analysis in Part II Condition IV.B as Part II would be incomplete without such requirements. Furthermore, it is necessary for EPA to include the Waste Analysis Plan as

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Part II Attachment 4 to ensure compliance with 40 CFR 264. 13. EPA has determined that no changes are necessary in response to this comment.

Comment #16

Page 60 of 74, Section IV.C - This section (General Inspection requirements) of Part II of the Draft Permit appears to duplicate requirements of Section II.E of Part I without making the inspection requirements of this section specific to the issues covered by Part II of the permit (e.g., Subpart CC inspection requirements). Ash Grove requests that Section II.E be modified as shown below:

II.E. GENERAL INSPECTION REQUIREMENTS

The Permittee shall follow the inspection schedules set out in Section 6.2 (Inspection Schedules), Attachments 6-1 through 6-8 of the Part B Permit Application as they apply to issues regulated under Part II of this permit. The Permittee shall remedy any deterioration or malfunction discovered by an inspection, as required by 40 CFR 264.15(c). Records of inspection shall be kept, as required by 40 CFR 264.15(d).

II.E.1. Inspection for Malfunctions and Deterioration

The Permittee shall inspect the facility as required by 40 CFR 264.15 and the Inspection Schedules, Section 6.2 Attachments 6-1 through 6-8 of the Part B Permit Application as they apply to issues regulated under Part II of this permit for malfunctions and deterioration, operator errors and discharges which may be causing or may lead to (1) release of hazardous waste constituents to the environment, or (2) a threat to human health.

II.E.2. Schedule of Inspections

The Permittee shall follow the written schedule in the Inspection Schedules, Section 6.2 Attachments 6-1 through 6-8 of the Part B Permit Application as they apply to issues regulated under Part II of this permit for the inspection of monitoring and remediation equipment, safety and emergency equipment, security devices, and operating, remediation, and structural equipment that are for the purpose of preventing, detecting, or responding to environmental or human health hazards. The Permittee shall keep this schedule at the facility.

II.E.3. Records of Inspections

The Permittee shall record inspections required by Permit Condition II.E.2. in an inspection log or summary. The log or summary shall be kept for at least three (3) years from the date of inspection. At a minimum, the

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items to be inspected must include those identified in the inspection plan contained in Section 6.2 Attachments 6-1 through 6-8 of the Part B Permit Application. The logs must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

II.E.4. Remedial Action Resulting from Inspections

The Permittee shall remedy any observed deterioration or malfunction of equipment or structures regulated under Part II of this permit to ensure that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

EPA Response to Comment #16

EPA has reviewed Part II Condition IV.C. Part I and Part II are separate permits issued by separate agencies. The language in Part II only pertains to Part II. EPA properly included the requirements for inspections in Part II Condition IV.C as Part II would be incomplete without such requirements. Furthermore, it is necessary for EPA to include the inspection requirements as Part II Attachment 5 to ensure compliance with 40 CFR 264.15. EPA has determined that no changes are necessary in response to this comment. If Ash Grove wishes to differentiate the inspection requirements of Part II from those of Part I, Ash Grove may submit new inspection schedules for Part II requirements. EPA will approve those new inspection schedules and include them in Part II as a Class 1 permit modification with prior approval.

Comment #17

Page 61 of 74, Section IV.D - This section (Personnel Training) of Part II of the Draft Permit appears to duplicate requirements of Section II.F of Part I Ash Grove requests that this section be removed from Part II of the Permit.

EPA Response to Comment #17

EPA has reviewed Part II Condition IV.D. Part I and Part II are separate permits issued by separate agencies. The language in Part II only pertains to Part II. EPA properly included the requirements for personnel training in Part II Condition IV.D as Part II would be incomplete without such requirements. EPA has determined that no changes are necessary in response to this comment.

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Comment #18

Page 62 of 74, Section IV.E - This section (Contingency Plan) of Part II of the Draft Permit appears to duplicate requirements of Section II.J of Part I Ash Grove requests that this section be removed from Part II of the permit.

EPA Response to Comment #18

EPA has reviewed Part II Condition IV.E. Part I and Part II are separate permits issued by separate agencies. The language in Part II only pertains to Part II. EPA properly included the requirements for the contingency plan in Part II Condition IV.E as Part II would be incomplete without such requirements. EPA has determined that no changes are necessary in response to this comment.

Comment #19

Page 64 of 74, Section IV.F - This section (Special Provisions for Ignitable, Reactive or Incompatible Waste Management) of Part II of the Draft Permit appears to duplicate requirements of Section II.H of Part I Ash Grove requests that this section be removed from Part II of the permit.

EPA Response to Comment #19

EPA has reviewed Part II Condition IV.F. Part I and Part II are separate permits issued by separate agencies. The language in Part II only pertains to Part II. EPA properly included the requirements for ignitable, reactive or incompatible waste management in Part II Condition IV.F as Part II would be incomplete without such requirements. EPA has determined that no changes are necessary in response to this comment.

Comment #20

Page 64 of 74, Section IV.H - This section (Operating Record) of Part II of the Draft Permit appears to duplicate requirements of Section II.K of Part I of the Draft Permit. Ash Grove requests that this section be removed from Part II of the permit.

EPA Response to Comment #20

EPA has reviewed Part II Condition IV.H. Part I and Part II are separate permits issued by separate agencies. The language in Part II only pertains to Part II. EPA properly included the requirements for an operating record in Part II Condition IV.H as Part II would be incomplete without such requirements. EPA has determined that no changes are necessary in response to this comment.

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Comment #21

Page 65 of 74, Section V.A - This section (Container Air Emission Requirements) includes a table listing the permitted container storage areas, the permitted storage capacity, and the level of air emission controls used in that area. The storage capacity information is duplicated from Section III.D of Part I of the Draft Permit. Ash Grove requests that this column of the table be removed from Part II of the Permit.

EPA Response to Comment #21

EPA has reviewed Part II Condition V.A. Part I and Part II are separate permits issued by separate agencies. The language in Part II only pertains to Part II. The inclusion of container storage area capacities was only included for informational purposes to differentiate between the various container storage areas. EPA does not believe that inclusion of storage capacities in Part II places any additional burden on Ash Grove. EPA has determined that no changes are necessary in response to this comment.

Comment #22

Page 66 of 74, Section VI.A - This section (Tank Air Emission Requirements) includes a table listing the permitted tank systems, the tank numbers, the permitted storage capacities of each tank, and the level of air emission controls used on that tank. The storage capacity information is duplicated from Section IV.D of Part I of the Draft Permit. Ash Grove requests that this column of the table be removed from Part II of the Permit.

EPA Response to Comment #22

EPA has reviewed Part II Condition VI.A. Part I and Part II are separate permits issued by separate agencies. The language in Part II only pertains to Part II. The inclusion of tank capacities was included as tank capacity impacts the required air emission controls. EPA does not believe that inclusion of tank capacities in Part II places any additional burden on Ash Grove. EPA has determined that no changes are necessary in response to this comment.

Comment #23

Pg. 28 of 74; Section III.C.1 - The section defines "discovery" as visually observed or other information as being triggers to notifying EPA of a newly-identified SWMU. Ash Grove suggests that this definition be revised to indicate that the notification will be made within 15 days of receiving analytical results which confirm a newly identified SWMU or if sampling is not conducted upon visual indication of a newly identified SWMU.

UNIFIED RESPONSE TO COMMENTS
HAZARDOUS WASTE STORAGE AND TREATMENT PERMIT

Ash Grove Cement Company
Chanute, Kansas
EPA I.D. Number KSD031203318

EPA Response to Comment #23

EPA has reviewed the suggested revision to Part II Condition III.C.1. EPA does not believe that sampling is required in all cases to identify a solid waste management unit (SWMU) or area of concern (AOC). The identification of a SWMU or AOC is not dependent on identification of an actual release. However, there may be instances where a suspect area, such as a “stained” area of soil, is identified during facility operations. When the suspect area has no discernable nexus to solid waste management or other activities which may release hazardous constituents with which to make a SWMU or AOC determination, sampling is appropriate to determine if a release has occurred. The permittee should work closely in such instances to ensure that proper investigation and SWMU/AOC notifications are provided. EPA has determined that no changes are necessary in response to this comment.

Comment #24

Pg. 30 of 74; Section III.D.1.h.- This section states that the Permittee shall provide written notice to the Director 30 days prior to conducting field sampling. Historically, this notice has been either a 7 or 10 day advance notice. It seems like an unnecessarily long period of time for notice since the EPA rarely collects split samples. Ash Grove requests that this pre-notification period be modified to a 7-day notification requirement.

EPA Response to Comment #24

EPA does not agree that the frequency of EPA’s collection of split samples is determinative of the length of time for prior notice of field sampling. EPA will change the required advance notice requirement of Part II Condition III.D.1.h to a ten (10) day advance notice requirement.

Comment #25

Pg. 18 of 74; Section II.E.10 - This section states that the Permittee shall give thirty (30) days advance notice to EPA of any planned physical alterations or additions which may affect any hazardous waste management units, solid waste management units, areas of concern, contaminated media or debris, or existing institutional or engineering controls. Ash Grove requests that this pre-notification period be modified to a 7-day notification requirement.

EPA Response to Comment #25

EPA does not believe that 30 days advance notice of planned changes is unreasonable since these changes are planned. Nevertheless, EPA will change the required advance notice requirement of Part II Condition II.E.10 to a twenty (20) day advance notice requirement.

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Comment #26

Pg. 18 of 74; Section II.E11 - This section states that the Permittee shall give thirty (30) days advance notice to EPA of anticipated noncompliance. Ash Grove requests that this pre-notification period be modified to a 7-day notification requirement.

EPA Response to Comment #26

EPA does not believe that 30 days advance notice of anticipated noncompliance is unreasonable. If the anticipated non-compliance is to occur within the 30 days advance notice period, the Permittee should make its anticipated non-compliance notice as soon as the anticipated non-compliance is determined. Nevertheless, EPA will change the required advance notice requirement of Part II Condition II.E.11 to a twenty (20) day advance notice requirement.

Comment #27

Pg. 34 of 74; Section III.G.1 - This section states that the Permittee shall give thirty (30) days advance notice to the Director of any sampling, testing, or monitoring activity required by the RFI Workplan. It seems like an unnecessarily long period of time for notice. Ash Grove requests that this pre-notification period be modified to a 7-day notification requirement.

EPA Response to Comment #27

Consistent with the other advance notice timeframes for field activities, EPA will change the required advance notice requirement of Part II Condition III.G.1 to a ten (10) day advance notice requirement.

Comment #28

Pg. 39 of 74; Section III.I.4.o - This section states that the Permittee shall give thirty (30) days advance notice to the Director of conducting field sampling associated with the CMS Workplan. Ash Grove requests that this pre-notification period be modified to a 7 day notification requirement.

EPA Response to Comment #28

Consistent with the other advance notice timeframes for field activities, EPA will change the required advance notice requirement of Part II Condition III.I.4.o to a ten (10) day advance notice requirement.

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Comment #29

Pg. 39 of 74; Section III.J.1 - This section states that the Permittee shall give thirty (30) days advance notice to the Director of any sampling, testing, or monitoring activity required by the CMS Workplan. Ash Grove request that this inspection period be modified to a 7-day notification requirement.

EPA Response to Comment #29

Consistent with the other advance notice timeframes for field activities, EPA will change the required advance notice requirement of Part II Condition III.J.1 to a ten (10) day advance notice requirement.

Comment #30

Pg. 67 of 74; Section VIII.A - The description of the industrial furnace includes the phrase that the "alkali by-pass system installed on the rotary kiln section of the industrial furnace." The alkali by-pass system handles gases associated with the rotary kiln, but it is not physically installed on the rotary kiln. Ash Grove suggests that the words "installed on" should be replaced with "associated with."

EPA Response to Comment #30

EPA will make the requested clarification in Part II.

Comment #31

Pg. 60 of 74; Section IV.B - This sections includes a reference to the "Quality Assurance Project Plan." The correct title of this plan as incorporated in the Waste Analysis Plan is the "Quality Assurance/Quality Control Plan." And Ash Grove requests that this section be modified to reflect that.

EPA Response to Comment #31

EPA will make the requested clarification in Part II.

Comment #32

Pg. 64 of 74; Section IV.G - A typographical error in the spelling of "Reserved."

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EPA Response to Comment #32

EPA will make the requested clarification in Part II.

Comment #33

Pg. 69 of 74, Add a new Section VIII.I - Testing - Ash Grove requests that a new section be added to the permit which makes clear that additional stack testing of the pyroprocessing unit is not required beyond that required by the 40 CFR Part 63 Subpart EEE regulations. Ash Groves suggests the following language be added to the permit:

VIII.I - Testing

Additional stack testing of the pyroprocessing unit for organic constituents will not be required beyond the testing required by the 40 CFR Part 63 Subpart EEE regulations.

EPA Response to Comment #32

EPA does not agree that EPA's authority to require stack testing at Ash Grove is limited by 40 CFR Part 63, Subpart EEE. Besides inappropriately limiting EPA's RCRA authority, such a permit condition could only cause confusion regarding Ash Grove's requirements to conduct emissions testing under federal and state statutes. EPA has determined that no changes are necessary in response to this comment.