ATTACHMENT 3-1

individual piece and the distance that the piece travels from origin to destination (i.e., the number of postal zones crossed). For the administration of the system of postal zones, the sphere of the earth is geometrically divided into units of area 30 minutes square, identical with a quarter of the area formed by the intersecting parallels of latitude and meridians of longitude. Postal zones are based on the distance between these units of area. The distance is measured from the center of the unit of area containing the sectional center facility (SCF) serving the origin post office to the SCF serving the destination post office. The SCF's serving the origin and destination post offices are determined by the appropriate SCF in L005, Column B.

Effective with the implementation of the Docket No. R2001–1 omnibus rate case, the longitude and latitude of 130 3-digit ZIP Code prefixes for SCF coordinates in L005, Column A, will be updated to reflect the parent SCF in L005, Column B. This update will align the 3-digit ZIP Code prefixes with current postal processing and distribution networks.

DMM G030.3.0 will be deleted because it repeats eligibility information for intra-BMC, inter-BMC, SCF, and delivery unit rates contained in other portions of the DMM.

The Postal Service Official National Zone Chart Data Program is administered from the National Customer Support Center (NCSC) in Memphis, TN. Single-page zone charts for originating mail are available online through Postal Explorer at *http://pe.usps.gov*. Zone chart data for the entire nation can be purchased in two formats: printed (about 500 pages) and electronic (3.5-inch diskettes). For more information, or to purchase zone charts, call the Zone Chart Program Administrator at 800–238–3150. The single-page zone chart program available online through Postal Explorer has been updated with a link to the updated zone chart data that would be effective, if this proposed rule is adopted, with the implementation date of the Docket No. R2001–1 omnibus rate case.

Comments are solicited on the proposed implementation date for this revision. The method of determining postal zones and the data coordinates for the SCFs are outside the scope of this rulemaking.

Although exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the DMM, incorporated by reference into the Code of Federal Regulations. (See 39 CFR part 111.)

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the Domestic Mail Manual (DMM) as set forth below:

G General Information

G000 The USPS and Mailing Standards

* * * * *

G030 Postal Zones

Summary

[Amend Summary text by removing the references to BMCs, SCF, and delivery unit zones to read as follows:]

G030 describes how postal zones are used to compute postage for zoned mail. It also defines local and nonlocal zones.

1.0 BASIC INFORMATION

[Amend 1.0 by removing the last sentence and adding the following two sentences to read as follows:]

* * * The distance is measured from the center of the unit of area containing the SCF serving the origin post office to the SCF serving the destination post office. The SCFs serving the origin and destination post offices are determined by using L005, Column B.

* * * * *

2.0 SPECIFIC ZONES

* * * * *

2.2 Nonlocal Zones

Nonlocal zones are defined as follows:

[Amend item 2.2a to read as follows:]

a. The zone 1 rate applies to pieces not eligible for the local zone in 2.1 that are mailed between two post offices with the same 3-digit ZIP Code prefix identified in L005, Column A. Zone 1 includes all units of area outside the local zone lying in whole or in part within a radius of about 50 miles from the center of a given unit of area.

[Remove 3.0 in its entirety.]

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–5486 Filed 3–6–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7153–3]

Hazardous Waste Management System; Proposed Exclusions for Identifying and Listing Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rules and request for comment.

SUMMARY: The EPA (also, "the Agency" or "we" in this preamble) is proposing to exclude (or "delist") wastewater treatment plant sludge (from conversion coating on aluminum) generated by 11 automobile assembly facilities in the State of Michigan from the lists of hazardous wastes. The facilities include three plants owned and operated by General Motors Corporation (GM)(Pontiac East-Pontiac, Hamtramck-Detroit, Flint Truck-Flint), one plant owned and operated by GM with an onsite wastewater treatment plant owned by the City of Lansing and operated by Trigen/Cinergy-USFOS of Lansing LLC (Lansing Grand River-Lansing), three plants owned and operated by Ford Motor Company (Wixom Assembly Plant-Wixom, Michigan Truck/Wayne Integrated Stamping and Assembly Plant-Wayne, Dearborn Assembly-Dearborn), one plant owned and operated by Auto Alliance International Inc. (AAI), a Ford/Mazda joint venture company (Auto Alliance International Inc.-Flat Rock), and three plants owned and operated by DaimlerChrysler Corporation (Sterling Heights Assembly Plant-Sterling Heights, Warren Truck Plant-Warren, Jefferson North Assembly Plant-Jefferson).

The Agency is proposing to use an expedited process to evaluate these wastes under a pilot project developed with the Michigan Department of Environmental Quality (MDEQ). EPA requests comments on the pilot project. Each of these 11 facilities voluntarily requested to participate in the pilot project. Based on its evaluation of historical data, the Agency has

tentatively decided to grant an exclusion for each of these facilities, conditioned in part upon the facility's demonstration that the waste is nonhazardous. These proposed decisions, if finalized, will conditionally exclude these wastes from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

DATES: We will accept public comments on these proposed decisions until April 22, 2002. We will stamp comments postmarked after the close of the comment period as "late." These "late" comments may not be considered in formulating a final decision. Comments which are meant to relate to a single facility or a subset of the 11 facilities must identify the facility(s) to which the comment applies.

Any person may request a hearing on any of these proposed decisions by filing a request with Robert Springer, Director, Waste, Pesticides and Toxics Division (D–8J), EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604. Your request for a hearing must reach EPA by March 22, 2002. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send two copies of your comments to Todd Ramaly, Waste Management Branch (DW–8J), EPA Region 5, 77 W. Jackson Blvd., Chicago, IL, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: The docket for these proposed rules is located at 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. The public may copy material from the docket at $0.15 per page. For technical information concerning this document or to make appointment to view the docket, contact Todd Ramaly at the address above or at 312–353–9317.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview

A. What Action Is EPA Proposing?

The EPA is tentatively proposing to grant petitions to exclude, or delist, from the definition of hazardous waste, wastewater treatment sludge generated at 11 automotive assembly facilities in Michigan. As a pilot project, the EPA proposes to exclude these wastes using an expedited process. Prior to finalizing our decision, we will compare constituent levels in the waste to maximum allowable concentration levels established by a fate and transport model.

B. Why Is EPA Proposing To Grant, on an Expedited Basis, These Delistings?

Automobile manufacturers are adding aluminum to automobiles, which may result in increased fuel economy. However, when aluminum is conversion coated in the automobile assembly process, the resulting wastewater treatment sludge must be managed as hazardous waste (listed as "F019"). Previously, EPA granted has petitions to delist F019 waste at automobile assembly plants. Based on available historical data and other information, EPA believes that a number of automotive assembly plants use a similar manufacturing process which generates a similar F019 waste likely to be nonhazardous. This similarity of manufacturing processes and the resultant wastes provides an opportunity for the automobile industry to be more efficient in submitting delisting petitions and EPA in evaluating them. Efficiency may be gained and time saved by using standardized approaches for gathering, submitting and evaluating data. Therefore, EPA, in conjunction with MDEQ, developed a pilot project to expedite the delisting process. EPA believes that the project will be a more efficient way of making delisting determinations for this group of facilities. At the same time, EPA believes that these delisting determinations will be consistent with current laws and regulations and will be protective of human health and the environment.

C. What Is Unique About Today's Proposals?

Today's proposals, while consistent with the delisting petition regulations at 40 CFR 260.20 and 260.22, are unique in several important ways. Specifically, we are taking a standardized approach for the evaluation of petitions from multiple automotive assembly plants. In addition, EPA is identifying constituents of concern based on available historical data from waste generated at automotive assembly plants. Once the petitioner submits the analytical results of demonstration samples under § 260.22, EPA will determine whether the waste meets the maximum allowable concentration levels set forth in this proposal. Generally, EPA identifies constituents of concern for a particular facility from an analysis of its waste rather than relying on industry-wide historical data. By participating in the project, facilities agree that, if their waste is excluded, it must be disposed in a Subtitle D landfill with a liner and a leachate collection system. Typically, EPA only requires that excluded waste be disposed in a Subtitle D landfill, which may include older facilities that are unlined and without a leachate collection system. Finally, while we usually propose delistings one at a time, today we are proposing to simultaneously grant delistings for multiple facilities.

In addition to the proposed delistings, EPA is requesting comment on the pilot

project to expedite these delistings, which is described in section III, below.

II. Background

A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (3).

Individual waste streams may vary depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility that meets the listing description may not be.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows a person to demonstrate that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does It Require of a Petitioner?

A delisting petition is a request from a facility to EPA or an authorized state to exclude wastes from the list of hazardous wastes. The petitioner must show that the waste generated at a particular facility does not meet any of the criteria for listed wastes. The criteria for which EPA lists a waste are in 40 CFR 261.11 and in the background documents for the listed wastes.

In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (40 CFR 260.22, 42 U.S.C. 6921(f) and the background documents for a listed waste.)

Once a waste has been delisted, a generator remains obligated under RCRA to confirm that its waste remains nonhazardous.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in 40 CFR 260.22(a), 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if these additional factors could cause the waste to be hazardous. (See The Hazardous and Solid Waste Amendments (HSWA) of 1984.)

EPA must also consider mixtures containing listed hazardous wastes and wastes derived from treatment of listed hazardous waste as hazardous wastes. See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion but remain hazardous wastes until excluded.

D. How Will These Actions Affect States?

Because EPA is proposing today's exclusions under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. These exclusions may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements, or in states which have received our authorization to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, we urge the petitioners to contact the state regulatory authority to establish the status of its waste under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If a facility transports the petitioned waste to or manages the waste in any state with delisting authorization, it must obtain a delisting from that state before the facility can manage the waste as nonhazardous in that state.

III. The Expedited Delisting Project

A. What Is the Expedited Delisting Project?

On December 21, 2001, EPA signed a Memorandum of Understanding with the MDEQ to implement the pilot project titled: "Expedited Delisting of Aluminum Phosphating Sludge for Automobile Assembly Operations" (hereinafter the "Expedited Delisting Project" or "project"). In February 2002, the Agencies amended the Memorandum of Understanding to modify the eligibility requirements. A copy of the Amended Memorandum of Understanding (MOU) is available in the docket for these proposed rules. The Agencies agreed to implement the terms of the MOU as a five-year project. The purpose of the project is to more efficiently process delisting petitions from automobile assembly plants that generate F109 waste without using the hazardous constituents for which F019 was originally listed. The similarity of waste at these automotive assembly plants gives EPA and industry an opportunity to be more efficient.

EPA and MDEQ developed the project under the "Joint EPA/State Agreement to Pursue Regulatory Innovation" which encourages states to propose innovative approaches to environmental regulation to "find new, better, and more efficient and effective ways to improve environmental protection." See, 63 FR 24785, May 5, 1998. Consistent with the joint agreement, the project was developed with the input of "stakeholders," i.e., representatives of the automobile industry (Ford Motor Company and General Motors Corporation) and an environmental organization (The Ecology Center). In December 2001, MDEQ notified the stakeholders that the agencies had signed the MOU.

As described in section I.C, above, the Expedited Delisting Project takes a new approach in the way EPA implements its delisting regulations for a group of similar facilities. Because of the availability of historical data and the similarities among these facilities, EPA and MDEQ developed, under the Expedited Delisting Project, a uniform approach for the submission and evaluation of petitions made by automotive assembly plants to delist F019 waste. First, EPA usually requires the petitioner to submit a manufacturing process description specific to its facility. However, under the Expedited Delisting Project, each facility must certify that it uses the standard automotive assembly manufacturing process that generates F019 waste. Second, EPA requires a petitioner to

submit analytical results of demonstration samples. Generally, petitioners work separately with EPA to develop a sampling and analysis plan to comply with this section. Under the project, each petitioner will use the same pre-approved sampling and analysis plan. Third, EPA identifies constituents of concern and sets maximum allowable concentrations for those constituents in the waste separately for each facility. Under the project, EPA is establishing a set constituents of concern and corresponding maximum allowable concentrations that are the same for a group of automotive assembly facilities.

Another significant innovation is that the facilities participating in the project will dispose of excluded waste in a lined landfill with a leachate collection system. Generally, under previous exclusions, wastes may be sent to any Subtitle D landfill, including older facilities that may not be lined or have a leachate collection system.

Finally, today EPA is simultaneously proposing multiple delistings. Typically, EPA proposes delistings one at a time.

EPA requests comments on the Expedited Delisting Project described in this section.

B. Does the Project Amend EPA's Delisting Petition Regulations?

The Expedited Delisting Project is not an amendment to the delisting petition regulations at 40 CFR 260.20 and 260.22. Rather, the project represents a new approach in EPA's implementation of these delisting petition regulations. Participation in the project is voluntary. Automobile assembly plants not participating may follow the usual process for delisting.

Today's description of the Expedited Delisting Project (apart from the proposed delistings themselves) provides guidance to EPA, facilities participating in the project, and the general public on how EPA intends to exercise its discretion in implementing the statutory and regulatory provisions that concern the delisting of F019 waste generated by automotive assembly plants in Michigan. The statutory provisions and EPA regulations described in this project contain legally binding requirements. This project does not substitute for those provisions or regulations, nor is it a regulation itself. However, the proposed delistings, if *finalized, will be rules imposing legally* binding requirements. EPA retains the discretion to adopt approaches on a case-by-case basis that differ from the project where appropriate. Any decisions regarding a particular facility's waste will be made based on the statute and regulations. EPA will consider whether or not the project is appropriate in a particular situation. The project will be subject to periodic evaluation and may be revised without public notice.

C. Who Is Eligible To Participate in the Project?

The MOU states the eligibility requirements for the project, which are summarized in this section. Subject to approval, Michigan automobile or light duty truck assembly facilities, which use, or intend to use, the zinc phosphating process on aluminum described in the MOU, are eligible to participate in the Expedited Delisting Project. Consistent with the MOU, the facility must submit to the EPA and the MDEQ a letter requesting to participate in the Expedited Delisting Project to delist its F019 wastewater treatment sludge.

In January 2002, a total of 14 facilities requested to participate in the project. In February of 2002, MDEQ, with EPA approval, notified 11 plants [1] that they are eligible to participate in the Expedited Delisting Project. Of the 11 participating facilities, the following are currently using aluminum and are generating F019 waste: Ford Motor Company—Michigan Truck Plant and Wayne Integrated Stamping and Assembly Plant, 38303 Michigan Avenue/37625 Michigan Avenue, Wayne, MI 48184, RCRA ID No. MID 000809228/MID 0005379706; Ford Motor Company—Wixom Assembly Plant, 28801 Wixom Road, Wixom, MI 48393, RCRA ID No. MID 005379714; General Motors—Flint Truck, G–3100 Van Slyke Road, Flint, MI 48551, RCRA ID No. MID005356951; General Motors—Hamtramck, 2500 E. General Motors Blvd., Detroit, MI 48211, RCRA ID No. MID980795488; General Motors—Pontiac East, 2100 S. Opdyke Road, Pontiac, MI 48341, RCRA ID No. MID0053546902; Trigen/Cinergy-USFOS of Lansing LLC at General Motors Corporation—Lansing Grand River, 920 Townsend Ave., Lansing, MI 48921, RCRA ID No. MIK211915624. The following participating facilities are not yet using aluminum and do not generate F019 at this time: Ford Motor Company—Dearborn Assembly Plant, 3001 Miller Road, Dearborn, MI 48121, RCRA ID No. MID 000809764; Auto Alliance International Inc. (Ford/Mazda Joint Venture Company), 1 International Drive, Flat Rock, MI 84134–9498, RCRA ID No. MID 981953912; DaimlerChrysler—Jefferson North Assembly Plant, 2101 Conner Avenue, Detroit, MI 84215, RCRA ID No. MID985569987; DaimlerChrysler—Warren Truck Assembly Plant, 21500 Mound Round, Warren, MI 48091, RCRA ID No. MID005358007; DaimlerChrysler—Sterling Heights Assembly Plant, 38111 Van Dyke, Sterling Heights, MI 48312, RCRA ID No. MID980896690.

[1] Three facilities withdrew their requests to participate at this time, but may request to participate in the future.

D. How Does the Project Address Wastes Not Yet Generated?

The project will include some facilities which do not yet perform the conversion coating on aluminum resulting in F019. We grant up-front delistings for wastes that have not yet been generated, but will be generated in the future, based on available data (e.g. pilot scale system data). Consistent with previous up-front delistings, the up-front delistings proposed today will be contingent upon verification testing of the waste water treatment sludge once the facility begins conversion coating on aluminum (see section V.A., Conditions for Exclusion).

E. What Is the Standard Automotive Assembly Plant Process That Generates F019 Waste?

F019 is a wastewater treatment sludge generated from rinses and overflows from the conversion coating of aluminum. Wastewaters from other automobile assembly operations, including electrocoating and spray booth operations, are commingled with the conversion coating wastewater prior to treatment. The conversion coating, electrocoating and spray booth operations which may contribute constituents of concern in the sludge are summarized in this section.

Prior to the zinc phosphating process, fully assembled metal car bodies, parts, and spaceframe assemblies are cleaned with various alkaline cleaners, surfactants, and/or organic detergents. Following cleaning, rinse conditioners are employed to create nucleation sites prior to conversion coating. In the conversion coating step, parts are sprayed with or immersed in a zinc phosphate solution to create a uniform surface for painting. A sealer may be applied after conversion coating and a buffer is sometimes added during this step. Rinses and overflows from the conversion coating process are likely to contain trivalent chromium, nickel, and zinc. The zinc phosphating process used at these facilities today does not use hexavalent chromium or cyanide, for which F019 was originally listed.

Following the phosphating process, the metal parts are immersed in a bath where an electrocoating of paint is applied. Any undeposited paint is rinsed and recovered in subsequent stages prior to oven baking.

After conversion coating and electrocoating, various paints and top coats are applied to the automobile bodies/parts in spray booths. Some facilities use a water curtain to control emissions which is discharged to the wastewater treatment plant.

Overflows and rinse water from the electrocoating process and wastewater from the paint booths can contain hazardous constituents such as metals, organic solvents or formaldehyde.

Typical wastewater treatment plant operations begin with separation of large particles. The wastewater is then sent to various thickeners and clarifiers where water and solids are further separated. The pH of the wastewater might be adjusted and flocculents and coagulants may be added to facilitate the thickening process. The sludge from the thickeners and clarifiers is dewatered in a filter press.

F. What Information Will Each Facility Submit Under the Project?

Each facility participating in the project must submit a brief written application, consistent with the MOU, demonstrating that its waste qualifies for exclusion or delisting (the "exclusion demonstration").[2] The exclusion demonstration must show the following on the basis of sampling data consistent with the approved sampling and analysis plan: (1) That the wastewater treatment sludge meets the criteria set forth in the Table of Maximum Allowable Concentrations; (2) that the wastewater treatment sludge is not characteristically hazardous waste under 40 CFR part 261, subpart C; and (3) that the wastewater treatment sludge does not contain other hazardous waste listed under part 261, subpart D.

Each exclusion demonstration shall also include the following: (1) All sampling data required by and consistent with the approved sampling and analysis plan; (2) a description of the waste, including, but not limited to, (i) any factors which may cause the waste to be a hazardous waste, and (ii) the maximum annual quantities of waste covered by the demonstration; (3) a statement that the facility is an automobile assembly facility using the standard manufacturing processes as stated in the MOU;[3] (4) an assertion that the F019 waste does not meet the criteria for which this type of waste was listed as a hazardous waste; (5) the certification as required by § 260.22(i)(12).

G. What Is Required by the Project's Sampling and Analysis Plan?

The sampling and analysis plan describes the sampling objectives, sampling strategy, collection procedures, and quality assurance/quality control (QA/QC) procedures in detail. The plan also discusses the procedures that all facilities participating in the project will use for sample labeling and documentation, equipment preparation and cleaning, and sample shipment. Each facility will collect composite samples from each of six roll-off boxes of wastewater treatment sludge over at least six weeks at each facility.

When aluminum is first conversion coated at a facility which does not currently use aluminum, the facility will collect initial verification samples from each of four roll-off boxes and will analyze them for the constituents of concern. When production using conversion coating on aluminum first reaches 50 units a day, additional samples from each of four roll-off boxes will be collected and analyzed for the constituents of concern.

Each facility will also conduct quarterly verification sampling.

All data collected must include the appropriate QA/QC information and be subject to data validation as described in the approved sampling and analysis plan. Each facility will submit the analytical methods and detection levels to be used prior to sampling.

The sampling and analysis plan is an appendix to the MOU for the Expedited Delisting Project and is available in the docket.

H. When Would EPA Finalize the Proposed Delistings?

HSWA specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not make a final decision or grant an exclusion until it has considered and addressed all timely public comments on today's proposal, including any comments made at public hearings. For those facilities named in today's proposal which submit their exclusion demonstrations in a timely manner, EPA Region 5 will decide whether or not to exclude their waste within 128 days after the close of the public comment period. The exclusions will become effective on the publication date of the final rule in the **Federal Register**.

Since these rules would reduce the existing requirements, the regulated community does not need a six-month period to come into compliance in accordance with section 3010 of RCRA as amended by HSWA.

I. What Support Is MDEQ Providing EPA in Implementing the Project?

MDEQ will be providing important assistance to EPA during the life of the project. MDEQ will provide technical support in reviewing exclusion demonstrations and all verification sampling data and will participate in periodic evaluations of the project.

IV. EPA's Evaluation of Waste Information and Data

A. What Information and Analyses Did EPA Consider in Developing These Proposed Delistings?

The EPA reviewed existing data submitted in support of five petitions to delist automotive assembly plant F019 sludge. Three were granted by EPA: GM in Lake Orion, Michigan (62 FR 55344, October 24, 1997); GM in Lansing, Michigan (65 FR 31096, May 16, 2000); and BMW Manufacturing Corporation in Greer, South Carolina (66 FR 21877, May 2, 2001). Petitions to exclude F019 at GM plants located in Lordstown, Ohio and Oklahoma City, Oklahoma have not been acted upon by EPA. The F019 waste from these facilities was sampled in accordance with approved sampling and analysis plans and analyzed for a comprehensive list of constituents. These analyses included total and Toxicity Characteristic Leaching Procedure (TCLP) analysis for volatile and semivolatile organic compounds and metals. These wastes were also analyzed for cyanide, sulfide, fluoride, formaldehyde, pH, and other parameters.

EPA also considered an industry database submitted jointly by the Aluminum Association and the Alliance of Automobile Manufacturers. This database contained waste data generated

[2] Trigen/Cinergy-USFOS of Lansing LLC (Trigen) must submit its exclusion demonstration jointly with GM. Trigen must also certify, in accordance with 40 CFR 260.22(i)(12), that (1) the Trigen wastewater treatment plant is located on the GM Lansing Grand River facility property and (2) the Trigen wastewater treatment plant does not receive any waste or wastewater from sources other than the GM Lansing Grand River facility.

[3] To the extent that a participating facility's process differs from the process set forth in the MOU, the facility shall describe any such differences that might result in a hazardous constituent being present in the wastewater treatment sludge that is not covered by the demonstration, i.e., not included in the Table of Maximum Allowable Concentrations. Facilities that identify differences that the EPA believes will not materially impact wastewater treatment sludge quality may still be considered for delisting consistent with the time frame set forth in section III.H, below.

over ten years and included a range of analyses of F019 and non-F019 wastewater treatment plant sludge generated at some automotive assembly plants. The analytes and number of samples collected varied by plant and the database did not include QA/QC information.

EPA used the available historical data in conjunction with a fate and transport model to define a list of approximately 70 constituents of concern for the exclusion demonstration analysis. Specifically, EPA compared the maximum observed concentration of any hazardous constituent detected at least once in any of the historical data to the most conservative delisting levels developed for the project. EPA identified a constituent for analysis if the observed value was within three orders of magnitude of this delisting level. The list of 70 constituents of concern also included the non-pesticide constituents in 40 CFR 261.24 and constituents associated with painting operations.

B. How Did EPA Establish Risk Levels for These Wastes?

In developing this proposal, we considered the original listing criteria and the additional factors required by the HSWA. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(2)–(4). We evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (3). These factors include: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the hazardous constituents to migrate and to bioaccumulate; (5) its persistence in the environment once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

Consistent with previous proposed delistings, EPA identified plausible exposure routes (ground water, surface water, air) for hazardous constituents present in the petitioned waste based on improper management of a Subtitle D landfill. To evaluate the waste, we used the Delisting Risk Assessment Software program (DRAS), a Windows based software tool, to estimate the potential release of hazardous constituents from the waste and to predict the risk associated with those releases. For a detailed description of the DRAS program and revisions see 65 FR 58015, September 27, 2000; 65 FR 59000, November 7, 2000; and 65 FR 75879, December 5, 2000.

Today's proposal contains one proposed revision to the DRAS program. Previously, the Henry's Law Constant used to estimate the volatilization rate of formaldehyde in groundwater for the shower-inhalation scenario was estimated using a relationship based on molecular weight, solubility, and pure vapor pressure taken from the *Handbook of Chemical Property Estimation Methods*, W.J. Lyman, W.F. Reehl, and D.H. Rosenblatt, 1982, McGraw-Hill Book Company, New York, New York. In 1988, Eric A. Betterton and Michael R. Hoffman published *Henry's Law Constants of Some Environmentally Important Aldehydes* in *Environmental Science and Technology*, Volume 22, Number 12, in which observed Henry's Law constants for low concentrations of aldehydes in water were lower than those expected using the earlier relationship. These empirical results reflect the increased affinity for water by formaldehyde. We believe these empirical results more accurately reflect the conditions modeled in the DRAS groundwater inhalation scenario and we are using the revised Henry's Law constant for this proposal. A technical support document for the DRAS program, as well as documentation of the formaldehyde references, are available in the docket.

C. What Are the Maximum Allowable Concentrations of Hazardous Constituents in the Waste?

The following table gives the maximum allowable concentration levels for the 70 constituents of concern based on a target cancer risk of 1×10^{-6} and a target hazard quotient of one. The levels are expressed both as total constituent concentrations and TCLP concentrations. Since the allowable levels are dependent on the annual volume generated, the table includes allowable levels at three different volumes which span the typical range of waste generated. The table also includes the maximum allowable groundwater concentration expected at the disposal site.

TABLE OF MAXIMUM ALLOWABLE CONCENTRATIONS EXPEDITED DELISTING PROJECT

Constituent	CAS #	Maximum allowable concentrations in the waste						Maximum allowable groundwater concentration (µg/L)
		1000 cubic yards		2000 cubic yards		3000 cubic yards		
		Total (mg/kg)	TCLP (mg/L)	Total (mg/kg)	TCLP (mg/L)	Total (mg/kg)	TCLP (mg/L)	
Volatile Organic Compounds								
acetone	67–64–1	NA	375	NA	228	NA	171	3,750
acetonitrile	75–05–8	NA	64.2	NA	39.2	NA	29.3	643
acrylonitrile	107–13–1	6,370	0.0128	4,120	0.0078	3,200	0.00584	0.135
allyl chloride	107–05–1	2,540	0.563	1,640	0.344	1,270	0.257	10.7
benzene	71–43–2	NA	0.238	NA	0.145	NA	0.109	2.50
carbon tetrachloride	56–23–5	NA	0.0738	NA	0.045	NA	0.0337	0.562
chlorobenzene	108–90–7	NA	9.98	NA	6.08	NA	4.56	100
chloroform	67–66–3	NA	0.128	6,530	0.0779	5,080	0.0583	1.35
1,1 dichloroethane	75–34–3	NA	19.7	NA	12	NA	9	3,750
1,2 dichloroethane	107–06–2	NA	0.00422	NA	0.00257	9,800	0.00193	0.800
1,1-dichloroethylene	75–35–4	1,340	0.015	867	0.00702	674	0.00526	0.122
cis-1,2 dichloroethylene	156–59–2	NA	6.98	NA	4.26	NA	3.19	70.0
trans-1,2 dichloroethylene	156–60–5	NA	9.98	NA	6.08	NA	4.56	100
ethylbenzene	100–41–4	NA	69.8	NA	42.6	NA	31.9	700
formaldehyde	50–00–0	1,070	138	689	84.2	535	63	1,380
methyl chloride (chloromethane)	74–87–3	5,760	0.295	3,720	0.180	2,890	0.135	5.63
methyl ethyl ketone	78–93–3	NA	200	NA	200	NA	200	22,600
methyl isobutyl ketone	108–10–1	NA	300	NA	183	NA	137	3,000

TABLE OF MAXIMUM ALLOWABLE CONCENTRATIONS EXPEDITED DELISTING PROJECT—Continued

Constituent	CAS #	Maximum allowable concentrations in the waste						Maximum allowable groundwater concentration (µg/L)
		1000 cubic yards		2000 cubic yards		3000 cubic yards		
		Total (mg/kg)	TCLP (mg/L)	Total (mg/kg)	TCLP (mg/L)	Total (mg/kg)	TCLP (mg/L)	
methyl methacrylate	80–62–6	NA	NA	NA	NA	NA	7,690	52,700
methylene chloride	75–09–2	NA	0.473	NA	0.288	NA	0.216	5
n-butyl alcohol	71–36–3	NA	375	NA	228	NA	171	3,750
styrene	100–42–5	NA	9.98	NA	6.08	NA	4.56	100
1,1,1,2-tetrachloroethane	630–20–6	NA	0.399	NA	0.243	NA	0.182	2.81
1,1,2,2-tetrachloroethane	79–34–5	274	0.720	152	0.439	108	0.329	0.366
tetrachloroethylene	127–18–4	NA	0.14	NA	0.0855	NA	0.064	1.40
toluene	108–88–3	NA	99.8	NA	60.8	NA	45.6	1,000
1,1,1-trichloroethane	71–55–6	NA	20	NA	12.2	NA	9.11	200
1,1,2-trichloroethane	79–00–5	NA	0.128	NA	0.078	NA	0.0584	1.28
trichloroethylene	79–01–6	NA	0.5	NA	0.304	NA	0.228	5.00
vinyl acetate	108–05–4	NA	1,440	NA	879	NA	658	15,200
vinyl chloride	75–01–4	178 0.00384	115	0.00234	89.4	0.00175	0.0384	
xylene	95–47–6 108–38–3 106–42–3	NA	998	NA	608	NA	456	10,000
Semivolatile Organic Compounds								
acrylamide	79–06–1	2,940	0.00196	2,710	0.0012	2,580	0.0009	0.0163
bis(2-ethylhexyl) phthalate	117–81–7	NA	0.147	NA	0.0896	NA	0.0671	1.47
butyl benzyl phthalate	85–68–7	NA	152	NA	92.9	NA	69.6	1,450
o-cresol	95–48–7	NA	187	NA	114	NA	85.5	1,875
m-cresol	108–39–4	NA	187	NA	114	NA	85.5	1,875
p-cresol	106–44–5	NA	18.7	NA	11.4	NA	8.55	188
1,4-dichlorobenzene	106–46–7	NA	0.227	NA	0.139	NA	0.104	2.40
2,4-dimethylphenol	105–67–9	NA	74.9	NA	45.7	NA	34.2	750
2,4-dinitrotoluene	121–14–2	NA	0.0107	NA	0.00654	NA	0.0049	0.107
di-n-octyl phthalate	117–84–0	NA	0.184	NA	0.112	NA	0.0839	1.30
hexachlorobenzene	118–74–1	2.84	0.000159	1.58	9.67×10^{-5}	1.12	7.24×10^{-5}	0.00168
hexachlorobutadiene	87–68–3	537	0.0158	299	0.00961	212	0.0072	0.167
hexachloroethane	67–72–1	NA	0.289	NA	0.176	NA	0.132	3.06
naphthalene	91–20–3	NA	24.5	NA	15	NA	11.2	246
nitrobenzene	98–95–3	NA	1.87	NA	1.14	NA	0.855	18.8
pentachlorophenol	87–86–5	4,980	0.00672	2,770	0.004	1,960	0.00307	0.0711
pyridine	110–86–1	NA	3.75	NA	2.28	NA	1.71	37.4
2,4,5-trichlorophenol	95–95–4	NA	150	NA	91.6	NA	68.6	1,500
2,4,6-trichlorophenol	88–06–2	NA	0.453	NA	0.276	NA	0.207	4.79
Metals								
antimony	7440–36–0	NA	1.08	NA	0.659	NA	0.494	6.00
arsenic	7440–38–2	8,820	0.492	8,140	0.3	7,740	0.224	4.87
barium	7440–39–3	NA	100	NA	100	NA	100	2,000
beryllium	7440–41–7	NA	2.18	NA	1.33	NA	0.998	4.00
cadmium	7440–43–9	NA	0.788	NA	0.48	NA	0.36	5.00
chromium	7440–47–3	NA	5	NA	4.95	NA	3.71	100
cobalt	7440–48–4	NA	118	NA	72.1	NA	54	2,250
lead	7439–92–1	NA	5	NA	5	NA	5	15.0
mercury	7439–97–6	16	0.2	8.92	0.2	6.34	0.2	2.00
nickel	7440–02–0	NA	148	NA	90.5	NA	67.8	750
selenium	7782–49–2	NA	1.0	NA	1.0	NA	1.0	50.0
silver	7440–22–4	NA	5.0	NA	5.0	NA	5.0	187
thallium	7440–28–0	NA	0.462	NA	0.282	NA	0.211	2.00
tin	7440–31–5	NA	1,180	NA	721	NA	540	22,500
vanadium	7440–62–2	NA	111	NA	67.6	NA	50.6	263
zinc	7440–66–6	NA	1,470	NA	898	NA	673	11,300
Miscellaneous								
corrosivity (pH)	NA	2.0 < pH < 12.5 See 40 CFR 261.22						NA
cyanide	57–12–5	18.9		11.5		8.63		200
ignitability	NA	flashpoint > 140°F See 40 CFR 261.21						NA
reactivity	NA	See 40 CFR 261.23						NA
sulfide	18496–25–8	See 40 CFR 261.23						NA

NA: The program did not calculate a delisting level for this constituent, or the delisting level was higher than those levels expected to be found in the waste. In the event high levels are discovered, the constituent will be evaluated and a delisting level set in accordance with the methodology used to set delisting levels for the other constituents.

Total cyanide and sulfide analysis will also be conducted, although delisting levels for total concentrations have not been established for cyanide and sulfide. The results will be used to support a qualitative statement by the petitioner that the waste is not reactive as defined in 40 CFR 261.23.

D. How Will EPA Evaluate the Exclusion Demonstration?

EPA will confirm that sample collection, data analysis, and elements of QA/QC analysis are in accordance with the approved sampling and analysis plan. EPA will compare the maximum value of each constituent detected at a given facility to the maximum allowable concentration levels set forth in this proposal.

The EPA will use the DRAS program to estimate the aggregate cancer risk and hazard index for each facility's waste. The aggregate cancer risk is the cumulative total of all individual constituent cancer risks. The hazard index is a similar cumulative total of non-cancer effects. The target aggregate cancer risk is 1×10^{-5} and the target hazard index is one.

In addition, EPA will review any process information which differs from the standard process described above.

V. Conditions for Exclusion

A. How Will the Petitioners Manage the Waste if It Is Delisted?

If the petitioned waste is delisted, the facility must dispose of it in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258 and certify to this annually.

The facilities granted an up-front exclusion must conduct initial verification testing. These facilities must handle the wastewater treatment sludge generated after aluminum parts are first subjected to conversion coating as hazardous until 15 calendar days after EPA receives the initial verification data. If EPA notifies the facility during the 15-day period that the data is unacceptable, the facility must continue the handle the waste as hazardous.

B. How Frequently Must Each Facility Test the Waste?

After the exclusion becomes effective, and any necessary inital verification testing has been completed, each facility shall collect and analyze a representative sample on a quarterly basis to verify that the waste continues to meet the requirements of this proposal. The sample must be collected in accordance with the approved sampling plan. The verification samples need to be analyzed for only those constituents which were originally detected in the exclusion demonstration.

Each facility must submit the verification data on an annual basis. The annual submittal of verification data and disposal certification must be made to both Region 5 Waste Management Branch, U.S. EPA, at 77 West Jackson Boulevard, Mail Code DW–8J, Chicago, Illinois 60604 and MDEQ, Waste Management Division, Hazardous Waste Program Section, at P.O. Box 30241, Lansing, Michigan 48909. The facility must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. The facility must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

C. What Must the Facility Do if the Process Changes?

If a facility significantly changes the manufacturing process, the treatment process, or the chemicals used, the facility may not handle the sludge generated from the new process under this exclusion until it has demonstrated to the EPA that the waste meets the criteria set in section IV.C and that no new hazardous constituents listed in appendix VIII of 40 CFR part 261 have been introduced. The facility must manage wastes generated after the process change as hazardous waste until it receives written approval for continuance of the exclusion from the Agency.

D. What Happens if a Facility's Waste Fails To Meet the Conditions of the Exclusion?

If a facility with sludge excluded under this project violates the terms and conditions established in the exclusion, the Agency may suspend the exclusion or may start procedures to withdraw the exclusion.

If the quarterly testing of the waste does not meet the delisting levels described in section IV.C above, the facility must notify the EPA and MDEQ immediately at the addresses listed in section V.B, above. The exclusion will be suspended and the waste managed as hazardous until the facility has received written approval for continuance of the exclusion from the Agency. The facility may provide any information and sampling results that support the continuation of the delisting exclusion.

The EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978) et seq. (APA), to reopen a delisting decision if we receive information indicating that the conditions of this exclusion have been violated.

VI. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from today's proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to eleven facilities. Accordingly, the Agency certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated

with this proposed rule have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2050–0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with federal mandates that may result in estimated costs to state, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any state, local, or tribal governments or the private sector estimated to cost $100 million or more in any one year. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

XI. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XII. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XIII. National Technology Transfer And Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where EPA does not use available and potentially applicable voluntary consensus standards, the Act requires the Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards, and thus the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: February 22, 2002.

Robert Springer,

Director, Waste, Pesticides and Toxics Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX of part 261 it is proposed to add the following waste streams in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility and address	Waste description
* * *	* * * *
Auto Alliance International Inc. (Ford/Mazda Joint Venture Company)—Flat Rock, Michigan.	Waste water treatment plant sludge, F019, that is generated by Auto Alliance International Inc., Flat Rock, Michigan at a maximum annual rate of (insert annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date). 1. *Delisting Levels:* The total constituent concentrations and TCLP concentrations measured in any sample may not exceed the following levels: (insert constituents and delisting levels from section IV.C of the preamble) 2. *Initial Verification Testing:* a. When aluminum parts are first subjected to conversion coating, the facility must collect 4 additional samples and analyze them for the constituents listed in paragraph (1) using the methodologies specified in an EPA-approved sampling plan. The facility must manage as hazardous all wastewater treatment sludge generated after aluminum parts are first subjected to conversion coating, until 15 calendar days after EPA receives valid data demonstrating that paragraph (1) is satisfied, unless EPA notifies the facility during the 15-day period that the data is unacceptable. b. When production using conversion coating on aluminum first reaches 50 units a day, the facility must collect 4 additional samples and analyze them for the constituents listed in paragraph (1) using the methodologies specified in an EPA-approved sampling plan. c. The verification data required in paragraphs (2.a) and (2.b) must be submitted as soon as the data becomes available. 3. *Quarterly Verification Testing:* After the facility satisfies the requirements of paragraph (2.a), it must, on a quarterly basis, collect and analyze one sample of the waste for the constituents detected in pre-aluminum sampling and the sampling required in paragraph (2) using the methodologies specified in an EPA-approved sampling plan. 4. *Changes in Operating Conditions:* The facility must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process significantly change. The facility must handle wastes generated after the process change as hazardous until it has demonstrated that the wastes continue to meet the delisting levels and that no new hazardous constituents listed in appendix VIII of part 261 have been introduced and it has received written approval from EPA. 5. *Data Submittals:* The facility must submit the data obtained through verification testing or as required by other conditions of this rule to both U.S. EPA Region 5, Waste Management Branch (DW–8J), 77 W. Jackson Blvd., Chicago, IL 60604 and MDEQ, Waste Management Division, Hazardous Waste Program Section, at P.O. Box 30241, Lansing, Michigan 48909. The quarterly verification data and certification of proper disposal must be submitted annually upon the anniversary of the effective date of this exclusion. The facility must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. The facility must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). 6. *Reopener Language*—(a) If, anytime after disposal of the delisted waste, the facility possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in paragraph (1) is at a level in the leachate higher than the delisting level established in paragraph (1), or is at a level in the groundwater higher than the point of exposure groundwater levels referenced by the model, then the facility must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility and address	Waste description
	(c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify the facility in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. The facility shall have 30 days from the date of the Regional Administrator's notice to present the information. (d) If after 30 days the facility presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.
DaimlerChrysler Corporation, Jefferson North Assembly Plant—Detroit, Michigan.	Waste water treatment plant sludge, F019, that is generated by DaimlerChrysler Corporation at the Jefferson North Assembly Plant, Detroit, Michigan at a maximum annual rate of (insert annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date). The conditions in paragraphs (1) through (6) for Auto Alliance International Inc., Flat Rock, Michigan apply.
DaimlerChrysler Corporation, Sterling Heights Assembly Plant—Sterling Heights, Michigan.	Waste water treatment plant sludge, F019, that is generated by DaimlerChrysler Corporation at the Sterling Heights Assembly Plant, Sterling Heights, Michigan at a maximum annual rate of (insert annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date). The conditions in paragraphs (1) through (6) for Auto Alliance International Inc., Flat Rock, Michigan apply.
DaimlerChrysler Corporation, Warren Truck Assembly Plant—Warren, Michigan.	Waste water treatment plant sludge, F019, that is generated by DaimlerChrysler Corporation at the Warren Truck Assembly Plant, Warren, Michigan at a maximum annual rate of (insert annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date). The conditions in paragraphs (1) through (6) for Auto Alliance International Inc., Flat Rock, Michigan apply.
Ford Motor Company, Dearborn Assembly Plant—Dearborn, Michigan.	Waste water treatment plant sludge, F019, that is generated by Ford Motor Company at the Dearborn Assembly Plant, Dearborn, Michigan at a maximum annual rate of (insert annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date). The conditions in paragraphs (1) through (6) for Auto Alliance International Inc., Flat Rock, Michigan apply.
Ford Motor Company, Michigan Truck Plant and Wayne Integrated Stamping and Assembly Plant—Wayne, Michigan.	Waste water treatment plant sludge, F019, that is generated by Ford Motor Company at the Wayne Integrated Stamping and Assembly Plant from wastewaters from both the Wayne Integrated Stamping and Assembly Plant and the Michigan Truck Plant, Wayne, Michigan at a maximum annual rate of (insert annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date). 1. *Delisting Levels:* The total constituent concentrations and TCLP concentrations measured in any sample may not exceed the following levels: (insert constituents of concern and delisting levels based on the annual volume of waste). 2. *Quarterly Verification Testing:* The facility must show that the waste does not contain constituents listed in paragraph (1) that exceed the delisting levels specified in paragraph (1) by collecting and analyzing one waste sample on a quarterly basis. The samples must be collected and analyzed in accordance with the approved sampling plan. 3. *Other Conditions:* The conditions in paragraphs (4) through (6) for Auto Alliance International Inc., Flat Rock, Michigan also apply.
Ford Motor Company, Wixom Assembly Plant—Wixom, Michigan.	Waste water treatment plant sludge, F019, that is generated by Ford Motor Company at the Wixom Assembly Plant, Wixom, Michigan at a maximum annual rate of (insert annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR Part 258. The exclusion becomes effective as of (insert final publication date).

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility and address	Waste description
	1. *Delisting Levels:* The total constituent concentrations and TCLP concentrations measured in any sample may not exceed the following levels: (insert constituents of concern and delisting levels based on the annual volume of waste). 2. *Quarterly Verification Testing:* The facility must show that the waste does not contain constituents listed in paragraph (1) that exceed the delisting levels specified in paragraph (1) by collecting and analyzing one waste sample on a quarterly basis. The samples must be collected and analyzed in accordance with the approved sampling plan. 3. *Other Conditions:* The conditions in paragraphs (4) through (6) for Auto Alliance International Inc., Flat Rock, Michigan also apply.
General Motors Corporation, Flint Truck—Flint, Michigan	Waste water treatment plant sludge, F019, that is generated by General Motors Corporation at Flint Truck, Flint, Michigan at a maximum annual rate of (insert annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date). 1. *Delisting Levels:* The total constituent concentrations and TCLP concentrations measured in any sample may not exceed the following levels: (insert constituents of concern and delisting levels based on the annual volume of waste). 2. *Quarterly Verification Testing:* The facility must show that the waste does not contain constituents listed in paragraph (1) that exceed the delisting levels specified in paragraph (1) by collecting and analyzing one waste sample on a quarterly basis. The samples must be collected and analyzed in accordance with the approved sampling plan. 3. *Other Conditions:* The conditions in paragraphs (4) through (6) for Auto Alliance International Inc., Flat Rock, Michigan also apply.
General Motors Corporation, Hamtramck—Detroit, Michigan.	Waste water treatment plant sludge, F019, that is generated by General Motors Corporation at Hamtramck, Detroit, Michigan at a maximum annual rate of (annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date). 1. *Delisting Levels:* The total constituent concentrations and TCLP concentrations measured in any sample may not exceed the following levels: (insert constituents of concern and delisting levels based on the annual volume of waste). 2. *Quarterly Verification Testing:* The facility must show that the waste does not contain constituents listed in paragraph (1) that exceed the delisting levels specified in paragraph (1) by collecting and analyzing one waste sample on a quarterly basis. The samples must be collected and analyzed in accordance with the approved sampling plan. 3. *Other Conditions:* The conditions in paragraphs (4) through (6) for Auto Alliance International Inc., Flat Rock, Michigan also apply.
General Motors Corporation, Pontiac East—Pontiac, Michigan.	Waste water treatment plant sludge, F019, that is generated by General Motors Corporation at Pontiac East, Pontiac, Michigan at a maximum annual rate of (insert annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date). 1. *Delisting Levels:* The total constituent concentrations and TCLP concentrations measured in any sample may not exceed the following levels: (insert constituents of concern and delisting levels based on the annual volume of waste). 2. *Quarterly Verification Testing:* The facility must show that the waste does not contain constituents listed in paragraph (1) that exceed the delisting levels specified in paragraph (1) by collecting and analyzing one waste sample on a quarterly basis. The samples must be collected and analyzed in accordance with the approved sampling plan. 3. *Other Conditions:* The conditions in paragraphs (4) through (6) for Auto Alliance International Inc., Flat Rock, Michigan also apply.
Trigen/Cinergy-USFOS of Lansing LLC at General Motors Corporation, Lansing Grand River—Lansing, Michigan.	Waste water treatment plant sludge, F019, that is generated at General Motors Corporation's Lansing Grand River (GM—Grand River) facility by Trigen/Cinergy-USFOS of Lansing LLC exclusively from wastewaters from GM—Grand River, Lansing, Michigan at a maximum annual rate of (insert annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR Part 258. The exclusion becomes effective as of (insert final publication date). 1. *Delisting Levels:* The total constituent concentrations and TCLP concentrations measured in any sample may not exceed the following levels: (insert constituents of concern and delisting levels based on the annual volume of waste).

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility and address	Waste description
	2. *Quarterly Verification Testing:* The facility must show that the waste does not contain constituents listed in paragraph (1) that exceed the delisting levels specified in paragraph (1) by collecting and analyzing one waste sample on a quarterly basis. The samples must be collected and analyzed in accordance with the approved sampling plan. 3. *Other Conditions:* The conditions in paragraphs (4) through (6) for Auto Alliance International Inc., Flat Rock, Michigan also apply.

* * * * * * *

[FR Doc. 02–5314 Filed 3–6–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–7154–2]

Nebraska: Tentative Approval of Nebraska Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; tentative determination on application of State of Nebraska for final approval; public comment period.

SUMMARY: Nebraska has applied to EPA for final approval of its underground storage tank (UST) program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). EPA has reviewed the Nebraska application and has made a tentative determination that Nebraska's UST program satisfies all of the requirements necessary to qualify for final approval. Thus, by this proposed rule, EPA is providing notice that EPA intends to grant final approval to Nebraska to operate its UST program in lieu of the Federal program. Nebraska's application for approval is available for public review and comment, and a public hearing will be held to solicit comments on the application, if there is significant public interest expressed.

DATES: A public hearing will be scheduled if there is sufficient public interest communicated to EPA by April 8, 2002. EPA will determine by April 22, 2002, whether there is significant interest to hold the public hearing. The State of Nebraska will participate in such public hearing held by EPA on this subject. Written comments on the Nebraska approval application, as well as requests to present oral testimony, must be received by the close of business on April 8, 2002.

ADDRESSES: Send written comments to Linda Garwood, EPA Region 7, ARTD/USTB, 901 North 5th Street, Kansas City, Kansas 66101. You can view and copy Nebraska's application during normal business hours at the following addresses: The Nebraska Department of Environmental Quality, Suite 400, The Atrium, 1200 N Street, Lincoln, Nebraska, 68509, telephone: (402) 471–3557; The U.S. EPA Docket Clerk, Office of Underground Storage Tanks, c/o RCRA Information Center, 1235 Jefferson Davis Highway, Arlington, Virginia 22202, telephone: (703) 603–9230, and EPA Region 7, Library, 901 N. 5th Street, Kansas City, KS 66101. If sufficient public interest is expressed, EPA will hold a public hearing on the State of Nebraska's application for program approval. Anyone wishing to learn the status of the public hearing on the State's application may telephone the following contacts after April 22, 2002: Linda Garwood, EPA Region 7, ARTD/USTB, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7268; David Chambers, Supervisor, Leaking Underground Storage Tanks Program, Nebraska Department of Environmental Quality, Suite 400, The Atrium, 1200 N Street, Lincoln, Nebraska 68509, (402) 471–4230.

FOR FURTHER INFORMATION CONTACT: Linda Garwood, EPA Region 7, ARTD/USTB, 901 North 5th Street, Kansas City, Kansas 66101.

SUPPLEMENTARY INFORMATION:

A. Background

Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, requires that the EPA develop standards for Underground Storage Tanks (UST) systems as may be necessary to protect human health and the environment, and procedures for approving State programs in lieu of the Federal program. EPA promulgated State program approval procedures at 40 CFR part 281. Program approval may be granted by EPA pursuant to RCRA section 9004(b), if the Agency finds that the State program: is "no less stringent" than the Federal program for the seven elements set forth at RCRA section 9004(a)(1) through (7); includes the notification requirements of RCRA section 9004(a)(8); and provides for adequate enforcement of compliance with UST standards of RCRA section 9004(a). Note that RCRA sections 9005 (information-gathering) and 9006 (Federal enforcement) by their terms apply even in states with programs approved by EPA under RCRA section 9004. Thus, the Agency retains its authority under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the state authorized analogues to these provisions.

B. Nebraska UST Program

The UST program in Nebraska is implemented jointly by the Nebraska Department of Environmental Quality (NDEQ) and the Nebraska State Fire Marshal (NSFM). Section 81–15, 118 of the Nebraska Revised Statutes (N.R.S.) designates NDEQ as the lead agency for the UST program, but specifies that NSFM will conduct preventative activities under an interagency agreement with NDEQ.

The State of Nebraska initially submitted a state program approval application to EPA by letter dated December 15, 2000. Additional information was provided by Nebraska on March 21, 2001. EPA evaluated that information as well as other issues and determined the application package met all requirements for a complete program application. On December 5, 2001, EPA notified Nebraska that the application package was complete.

Included in the State's Application is an Attorney General's statement. The Attorney General's statement provides an outline of the State's statutory and

the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practices and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Solid Waste Incinerators, Waste treatment and disposal.

Dated: March 27, 2007.

Robert W. Varney,

Regional Administrator, EPA New England.

■ 40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart OO—Rhode Island

■ 2. Subpart OO is amended by adding a new § 62.9995 and a new undesignated center heading to read as follows:

Air Emissions From Existing Other Solid Waste Incineration Units

§ 62. 9995 Identification of Plan-Negative Declaration.

On November 5, 2006, the Rhode Island Department of Environmental Management submitted a letter certifying that there are no existing other solid waste incineration units in the state subject to the emission guidelines under part 60, subpart EEEE of this chapter.

[FR Doc. E7–6460 Filed 4–5–07; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R05–RCRA–2007–0213; SW–FRL–8294–8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA (also, "the Agency" or "we" in this preamble) is granting a petition to exclude (or "delist") wastewater treatment plant sludges from conversion coating on aluminum generated by AutoAlliance International, Inc. (AAI), a Ford/Mazda joint venture company in Flat Rock, Michigan, from the list of hazardous wastes.

Today's action conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a lined Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste. The exclusion was proposed on March 7, 2002 as part of an expedited process to evaluate this waste under a pilot project developed with the Michigan Department of Environmental Quality (MDEQ). The rule also imposes testing conditions for waste generated in the future to ensure that this waste continues to qualify for delisting.

DATES: This rule is effective on April 6, 2007.

ADDRESSES: EPA has established an electronic docket for this action under Docket ID No. EPA–R05–RCRA–2007–0213. The electronic docket contains all relevant documents created after this action was proposed as well as a selection of pertinent documents from the original paper docket for the proposed rule, Docket ID No. R5–MIECOS–01. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. All documents in the electronic docket are listed on the *http://www.regulations.gov* Web site. Publicly available materials from Docket ID No. EPA–R05–RCRA–2007–0213 are available either electronically through *http://www.regulations.gov* or in hard copy. Materials from the original paper docket, Docket ID No. R5–MIECOS–01, are also available in hard copy. You can view and copy materials from both dockets at the Records Center, 7th floor, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. We recommend you telephone Todd Ramaly at (312) 353–9317 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Todd Ramaly, Waste, Pesticides, and Toxics Division, (Mail Code: DU–7J), EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604; *telephone number:* (312) 353–9317; *fax number:* (312) 353–4788; *e-mail address: ramaly.todd@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background

A. What is a delisting petition?

A delisting petition is a request from a generator to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in Title 40 Code of Federal Regulations (40 CFR) 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. See 40 CFR 260.22, 42 United States Code (U.S.C.) 6921(f) and the background documents for a listed waste.

Generators remain obligated under RCRA to confirm that their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the wastes and to ensure that future generated wastes meet the conditions set.

B. What regulations allow a waste to be delisted?

Under 40 CFR 260.20, 260.22, and 42 U.S.C. 6921(f), facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273 of 40 CFR. 40 CFR 260.22 provides a generator the opportunity to petition the Administrator to exclude a waste from the lists of hazardous wastes on a "generator specific" basis.

C. What waste did AAI petition to delist?

AAI petitioned to exclude wastewater treatment sludges resulting from a zinc phosphating conversion coating process on car and truck bodies, which have aluminum components. When treated, the wastewater from the conversion coating on aluminum results in a listed waste, F019. The wastewater from the phosphating process entering the wastewater treatment plant combines with wastewaters from other operations at the plant including cleaning and rinsing operations, electrocoating processes, vehicle leak testing, and floor scrubbing. Wastewaters include alkaline cleaners, surfactants, organic detergents, rinse conditioners from cleaning operations and overflows and rinse water from electrocoating. All sludge from the treatment of this wastewater is regulated as RCRA hazardous waste F019.

II. The Expedited Process for Delisting

A. Why was the expedited process developed for this waste?

Automobile manufacturers are adding aluminum components to automobile and light truck bodies. When aluminum is conversion coated in a zinc phosphating process in automobile assembly plants, the resulting wastewater treatment sludge must be managed as EPA hazardous waste F019. F019 wastes generated at other auto assembly plants using the same zinc phosphating and wastewater treatment processes have been shown to be nonhazardous.

This similarity of manufacturing processes and the resultant wastes provides an opportunity for the automobile industry to be more efficient in submitting delisting petitions and for EPA to be more efficient in evaluating them. Efficiency may be gained and time saved by using a standardized approach for gathering, submitting and evaluating data. Therefore, EPA, in conjunction with MDEQ, developed a pilot project to expedite the delisting process. This approach to making delisting determinations for this group of facilities is efficient while still being consistent with current laws and regulations and protective of human health and the environment.

By removing regulatory controls under RCRA, EPA is facilitating the use of aluminum in cars. EPA believes that incorporating aluminum in cars will be advantageous to the environment since lighter cars are capable of achieving better fuel economy.

B. What is the expedited process to delist F019?

The expedited process to delist F019 is an approach developed through a Memorandum of Understanding (MOU) with MDEQ for gathering and evaluating data in support of multiple petitions from automobile assembly plants. The expedited delisting process is applicable to wastes generated by automobile and light truck assembly plants in the State of Michigan which use a similar manufacturing process and generate similar F019 waste.

Based on available historical data and other information, the expedited process identified 70 constituents which might be of concern in the waste and provides that the F019 sludge generated by automobile assembly plants may be delisted if the levels of the 70 constituents do not exceed the allowable levels established for each constituent in this rulemaking. The maximum annual quantity of waste generated by any single facility that may be covered by an expedited delisting is 3,000 cubic yards. Delisting levels were also proposed for smaller quantities of 1,000 and 2,000 cubic yards.

III. EPA's Evaluation of This Petition

A. What information was submitted in support of this petition?

AAI submitted certification that its process was the same as the process described in the MOU between Region 5 and MDEQ. See 67 FR 10341, March 7, 2002. The facility also asserted that its waste does not meet the criteria for which F019 waste was listed and there are no other factors that might cause the waste to be hazardous.

To support its exclusion demonstration, AAI collected six samples representing waste generated over six discreet one-week periods. AAI stored six roll-off boxes of sludge generated weekly from May 6 through June 16, 2005. Composite and grab samples were collected from each of the six roll-off boxes on June 25, 2005. Each sample was analyzed for: (1) Total analyses of 69 constituents of concern; (2) Toxicity Characteristic Leaching Procedure (TCLP), SW–846 Method 1311, analyses of 69 constituents of concern; (3) oil and grease; and (4) leachable metals using the Extraction Procedure for Oily Wastes (OWEP), SW–846 Method 1330A, in lieu of Method 1311 if a sample contained more than 1% oil and grease. In addition, the pH of each sample was measured and a determination was made that the waste was not ignitable, corrosive or reactive (see 40 CFR 261.21–261.23). Although the expedited delisting project originally required analysis of 70 constituents, analysis of acrylamide required extreme methods to achieve a detection level at the level of concern and no acrylamide was detected in any sample analyzed by the original facilities participating in the expedited delisting project. Thus, the Agency decided it would not be appropriate to require analysis for acrylamide. Also, AAI was not required to analyze for total sulfide and total cyanide as long as they provided the narrative determination of reactivity required in 40 CFR Part 261.23. With the exception of the minor changes described above, all sampling and analyses were done in accordance with the sampling and analysis plan, which is an appendix to the MOU and is available in the docket for this rule.

The maximum values of constituents detected in any sample of the waste (in milligrams per kilogram—mg/kg) and in a TCLP or OWEP analysis of that waste (in milligrams per liter—mg/L) are summarized in the following table. The data submitted included the appropriate quality assurance and quality control (QA/QC) information validated by a third party.

Constituent detected	Maximum observed concentration		Maximum allowable concentration		GW (µg/L)
	Total (mg/kg)	TCLP (mg/L)	Total (mg/kg)	TCLP*(mg/L)	
Volatile Organic Compounds					
acetone	8.6	0.43	NA	228	3,750
formaldehyde	4.6	0.23	689	84.2	1,380
Semivolatile Organic Compounds					
bis(2-ethylhexyl)phthalate	4.9	<0.005	NA	0.0896	1.47
di-n-octyl phthalate	3.3	<0.002	NA	0.112	1.3
o-cresol	<1.5	0.0011	NA	114	1,875
p-cresol	<1.5	0.005	NA	11.4	188
Metals					
barium	208	<0.35	NA	100	2,000
chromium	58	<0.17	NA	4.95	100
lead	9.7	<0.2	NA	5	15
mercury	<0.1	0.0007	8.92	0.2	2
nickel	1,850	12.8	NA	90.5	750
tin	184	19.6	NA	721	22,500
zinc	13,300	0.45	NA	898	11,300

* Or OWEP as applicable.
< Not detected at the specified concentration.
NA not applicable.

B. How did EPA evaluate the information submitted?

EPA compared the analytical results submitted by AAI to the maximum allowable levels set forth in the proposed rule (67 FR 10341, March 7, 2002). The maximum allowable levels for constituents detected in the waste or a TCLP extract of the waste are summarized in the table above, along with the observed levels. The table also includes the maximum allowable levels in groundwater at a potential receptor well (in micrograms per liter—µg/L), as evaluated by the Delisting Risk Assessment Software (DRAS). These levels are the more conservative of either the Safe Drinking Water Act Maximum Contaminant Level (MCL) or the health-based value calculated by DRAS based on the target cancer risk level of 10^{-6}. For arsenic, the target cancer risk was set at 10^{-4} in consideration of the MCL and the potential for natural occurrence. The maximum allowable groundwater concentration and delisting level for arsenic correspond to a drinking water concentration less than one half the current MCL of 10 µg/L.

EPA also used the DRAS program to estimate the aggregate cancer risk and hazard index for constituents detected in the waste. The aggregate cancer risk is the cumulative total of all individual constituent cancer risks. The hazard index is a similar cumulative total of non-cancer effects. The target aggregate cancer risk is 1×10^{-5} and the target hazard index is one. The wastewater treatment plant sludge at AAI met both of these criteria based on maximum observed values.

IV. Public Comments Received on the Proposed Exclusion

A. Who submitted comments on the proposed rule?

The EPA received public comments on the proposed notice published on March 7, 2002 from Alliance of Automobile Manufacturers, Honda of America Mfg., Inc., Alcoa Inc., and The Aluminum Association. All commenters were supportive of the proposal and suggested expanding the project and revising the listing.

B. Comments Received and Responses From EPA

(1) *Comment:* EPA should revise the F019 listing to specify that wastewater treatment sludges from zinc phosphating operations are not within the scope of the listing. Data gathered as a result of the Expedited Delisting Project, together with the available historical data, should provide enough data to fully characterize this waste and to justify a revision of the listing.

EPA Response: On January 18, 2007 (72 FR 2219), the Agency proposed to amend the F019 listing to exempt the wastewater treatment sludge generated from zinc phosphating, when zinc phosphating is used in the automobile assembly process and provided the waste is disposed in a landfill unit subject to certain liner design criteria.

(2) *Comment:* EPA should issue an interpretive rule clarifying that zinc phosphating operations are outside the scope of the F019 listing.

EPA Response: See response to comment (1) above.

(3) *Comment:* Automobile assembly facilities outside of Michigan would like to take advantage of the precedent set by this expedited delisting project to delist F019 generated by similar operations in other states and regions.

EPA Response: The Agency believes that the expedited delisting procedures and requirements set forth in this proposal are appropriate for similar automotive assembly facilities outside the State of Michigan, subject to the discretion of the regulatory agency (state or region).

(4) *Comment:* Alternatives to landfilling like recycling should be allowed within the petition process.

EPA Response: The risk assessment model currently used by the Agency cannot predict the risks from exposure to waste that are managed through recycling. EPA's conditional delisting policy is that in order to reduce the uncertainty caused by potential unrestricted use or management of delisted waste, delistings apply only to wastes managed in the type of unit (*e.g.*, "a landfill") modeled in the delisting risk assessment. EPA recognizes that several recent rulemakings related to RCRA-listed hazardous wastes have proposed conditional exemptions from the regulatory definition of "solid waste" when such wastes, by *virtue of* their being recycled, are treated more as commodities than as wastes. For example, see 68 FR 61588, October 28,

2005. The Agency is not aware of any recycling or reclamation of F019 sludges; therefore, EPA believes that current market conditions do not support the recycling of F019 waste for the purposes of recovering the metal content of such waste. EPA has requested comment on whether this understanding is accurate and whether recycling of F019 waste is economically feasible under today's market conditions. See 72 FR 2224, January 18, 2007. If recycling of F019 wastes becomes economically feasible or beneficial in the future, the Agency will consider its options for how to address this, including through a subsequent rulemaking, such as the ongoing rulemaking related to the definition of solid waste.

(5) *Comment:* Analytical methods should be specified in the pre-approved common sampling plan instead of requiring each participant to submit a site-specific list of methods.

EPA Response: Allowing the petitioner to choose an analytical method which meets the data quality objectives specific to the delisting petition provides flexibility. Data quality objectives will vary depending on the allowable levels that are a function of the volume of petitioned waste. The Agency believes that the flexibility of performance based methods results in better data.

(6) *Comment:* Detection limits should not be required prior to sampling since they cannot be adequately predicted without a way to estimate matrix effects.

EPA Response: Although matrix effects cannot be assessed in advance of laboratory analysis, a laboratory should be able to provide estimated detection levels and reporting levels which are lower than, or at least equal to, the allowable delisting level for each constituent.

(7) *Comment:* Since the process generating the sludge is extremely stable, verification sampling should be conducted on an annual, instead of quarterly, basis. The requirement that any process change is promptly reported and the exclusion suspended until EPA gives written approval that the delisting can continue is an adequate safeguard justifying the decrease in sample event frequency.

EPA Response: Verification data submitted in conjunction with past delistings of this waste have shown significant variation on a quarterly basis over longer periods of time. Annual sampling would not detect such variations. Once enough verification data are collected to support a statistical analysis, a change in the frequency of verification sampling and/or sampling parameters may be considered.

(8) *Comment:* The final **Federal Register** should make it clear that assembly plants that manufacture light trucks are also eligible for the project.

EPA Response: Today's notice specifically defines eligible facilities as inclusive of manufacturers of light trucks.

(9) *Comment:* The table of maximum allowable levels in the March 7, 2002 proposed rule contains errors in the columns for vinyl chloride.

EPA Response: A missing space or tab in the table caused the error. The maximum allowable concentrations proposed for 2,000 cubic yards of waste should have been 115 mg/kg total and 0.00234 mg/L TCLP.

V. Final Rule Granting This Petition

A. What decision is EPA finalizing?

Today the EPA is finalizing an exclusion to conditionally delist an annual volume of 2,000 cubic yards of wastewater treatment plant sludges generated at AAI from conversion coating on aluminum.

On March 7, 2002, EPA proposed to exclude or delist this wastewater treatment sludge from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (67 FR 10341). EPA considered all comments received, and we believe that this waste should be excluded from hazardous waste control.

After EPA proposed the exclusion for AAI in 2002, the Agency promulgated the Methods Innovation Rule (MIR)(70 FR 34538, June 14, 2005). The MIR reformed RCRA-related testing and monitoring by restricting requirements to use the methods found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," also known as "SW–846," to those situations where the method is the only one capable of measuring the property (*i.e.*, it is used to measure a method-defined parameter). In addition, the MIR revised several conditional delistings to specifically mention method-defined parameters incorporated by reference at § 260.11 consistent with the Office of Federal Register's revised format for incorporation by reference. Therefore, EPA is including a specific reference to SW–846 Methods 1311, 1330A, and 9071B (method-defined parameters) for the generation of the leachate extract in the quarterly verification testing requirement for the AAI delisting. SW–846 Method 1311 must be used for generation of the leachate extract used in the testing of the delisting levels if oil and grease comprise less than 1% of the waste. SW–846 Method 1330A must be used for generation of the leaching extract if oil and grease comprise 1% or more of the waste. SW–846 Method 9071B must be used for determination of oil and grease. SW–846 Methods 1311, 1330A, and 9071B are incorporated by reference in 40 CFR 260.11.

B. What are the terms of this exclusion?

AAI must dispose of the waste in a lined Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial solid waste. AAI must obtain and analyze on a quarterly basis a representative sample of the waste. AAI must verify that the concentrations of the constituents of concern do not exceed the allowable levels set forth in this exclusion. The list of constituents for verification is a subset of those initially tested for and is based on the occurrence of constituents at the majority of facilities participating in the expedited process to delist F019 and the concentrations detected relative to the allowable levels.

This exclusion applies only to a maximum annual volume of 2,000 cubic yards and is effective only if all conditions contained in this rule are satisfied.

C. When is the delisting effective?

This rule is effective April 6, 2007. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How does this action affect the states?

Today's exclusion is being issued under the federal RCRA delisting program. Therefore, only states subject to federal RCRA delisting provisions would be affected. This exclusion is not effective in states that have received authorization to make their own delisting decisions. Also, the exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements. EPA allows states to impose their own regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued

exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the state regulatory authority to establish the status of their wastes under the state law. If a participating facility transports the petitioned waste to or manages the waste in any state with delisting authorization, it must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA.

Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism," (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this final rule does not have tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule.

This rule also is not subject to Executive Order 13045,"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule.

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: March 19, 2007.

Margaret M. Guerriero,

Director, Waste, Pesticides and Toxics Division.

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Table 1 of Appendix IX of part 261 the following wastestream is added in alphabetical order to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility/address	Waste description
* * * * * * *	
AutoAlliance International Inc., Flat Rock, Michigan.	Wastewater treatment sludges, F019, that are generated by AutoAlliance International, Inc. (AAI) at Flat Rock, Michigan at a maximum annual rate of 2,000 cubic yards per year. The sludges must be disposed of in a lined landfill with leachate collection which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludges in accordance with 40 CFR part 258. The exclusion becomes effective as of April 6, 2007. 1. Delisting Levels: (A) The concentrations in a leachate extract of the waste measured in any sample must not exceed the following levels (mg/L): arsenic—0.3; cadmium—0.5; chromium—4.95; lead—5; nickel—90.5; selenium—1; tin—721; zinc—898; p-cresol—11.4; and formaldehyde—84.2. (B) The total concentration measured in any sample must not exceed the following levels (mg/kg): mercury—8.92; and formaldehyde—689.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility/address	Waste description
	2. Quarterly Verification Testing: To verify that the waste does not exceed the specified delisting levels, AAI must collect and analyze one representative sample of the waste on a quarterly basis. Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. SW–846 Method 1311 must be used for generation of the leachate extract used in the testing of the delisting levels if oil and grease comprise less than 1% of the waste. SW–846 Method 1330A must be used for generation of the leaching extract if oil and grease comprise 1% or more of the waste. SW–846 Method 9071B must be used for determination of oil and grease. SW–846 Methods 1311, 1330A, and 9071B are incorporated by reference in 40 CFR 260.11. 3. Changes in Operating Conditions: AAI must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process change significantly. AAI must handle wastes generated after the process change as hazardous until it has demonstrated that the wastes continue to meet the delisting levels and that no new hazardous constituents listed in Appendix VIII of part 261 have been introduced and it has received written approval from EPA. 4. Data Submittals: AAI must submit the data obtained through verification testing or as required by other conditions of this rule to both U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604 and MDEQ, Waste and Hazardous Materials Division, Hazardous Waste Section, at P.O. Box 30241, Lansing, Michigan 48909. The quarterly verification data and certification of proper disposal must be submitted annually upon the anniversary of the effective date of this exclusion. AAI must compile, summarize and maintain on site for a minimum of five years records of operating conditions and analytical data. AAI must make these records available for inspection. A signed copy of the certification statement in 40 CFR 260.22(i)(12) must accompany all data. 5. Reopener Language: (a) If, anytime after disposal of the delisted waste AAI possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent is at a level in the leachate higher than the specified delisting level, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration in paragraph (e), then AAI must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will inform AAI in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing AAI with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. AAI shall have 30 days from the date of the Regional Administrator's notice to present the information. (d) If after 30 days AAI presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. (e) Maximum Allowable Groundwater Concentrations (µg/L): arsenic—5; cadmium—5; chromium—100; lead—15; nickel—750; selenium—50; tin—22,500; zinc—11,300; p-cresol—188; and formaldehyde—1,380.

* * * * * * *

[FR Doc. 07–1650 Filed 4–5–07; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1002

[STB Ex Parte No. 542 (Sub-No. 14)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—2007 Update

AGENCY: Surface Transportation Board.

ACTION: Final Rule.

SUMMARY: The Board adopts its 2007 User Fee Update and revises its fee schedule to recover the costs associated with the January 2007 Government salary increases and to reflect changes in overhead costs to the Board.

EFFECTIVE DATE: These rules are effective May 6, 2007.

FOR FURTHER INFORMATION CONTACT: David T. Groves, (202) 245–0327, or Anne Quinlan, (202) 245–0309. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Board's regulations at 49 CFR 1002.3 require that the Board's user fee schedule be updated annually. The regulation at 49 CFR 1002.3(a) provides that the entire fee schedule or selected fees can be modified more than once a year, if necessary. Fees are revised based on the cost study formula set forth at 49 CFR 1002.3(d).

Because Board employees received a salary increase of 2.64% in January 2007, the Board is updating its user fees to recover the increased personnel costs. With certain exceptions, all fees, including those adopted or amended in *Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—2002 New Fees,* STB Ex Parte No. 542 (Sub-No. 4) (STB served Mar. 29, 2004) will also be updated based on the cost formula contained in 49 CFR 1002.3(d). In addition, changes to the overhead costs borne by the Board are reflected in the revised fee schedule.

The fee increases adopted here result from the mechanical application of the update formula in 49 CFR 1002.3(d), which was adopted through notice and comment procedures in *Regulations Governing Fees for Services—1987 Update,* 4 I.C.C.2d 137 (1987). No new fees are being proposed in this proceeding. Therefore, the Board finds

ATTACHMENT 3-2

"Rules and Regulations" section of this **Federal Register** publication.

Dated: December 14, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04–28196 Filed 12–27–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME R03–OAR–2004–DC–0001; FRL–7855–4]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Amendments to the Size Thresholds for Defining Major Sources and to the NSR Offset Ratios for Sources of VOC and NO_x

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the District of Columbia (the District) State Implementation Plan (SIP). The revisions reduce the size thresholds for defining major sources and increase the new source review (NSR) offset ratio requirements for sources of ozone precursors to meet the Clean Air Act (CAA) requirements for 1-hour ozone nonattainment areas classified as severe. These amendments to the District's SIP are required pursuant to the reclassification of the Metropolitan Washington, DC 1-hour ozone nonattainment area from serious to severe. In the Final Rules section of this **Federal Register**, EPA is approving the District's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 27, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–DC–0001 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *morris.makeba@epa.gov*.

D. Mail: R03–OAR02004–DC–0001, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2004–DC–0001. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the District submittal are available at the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, or by e-mail at *miller.linda@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information on this proposed approval of revisions to 20 DCMR Chapters 1, 2, 7 and 8 which reduce the major source size thresholds and increase the offset ratio requirements in order to satisfy the mandatory CAA requirements pursuant to the reclassification of the Metropolitan Washington DC 1-hour ozone nonattainment area from serious to severe, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: December 14, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04–28198 Filed 12–27–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7855–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: EPA is proposing to grant a petition submitted by Shell Oil Company (Shell Oil Company) to exclude (or delist) a certain liquid waste generated by its Houston, TX Deer Park

facility from the lists of hazardous wastes.

EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment.

EPA bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, EPA would conclude that Shell Oil Company's petitioned waste is nonhazardous with respect to the original listing criteria. EPA would also conclude that Shell Oil Company's process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: EPA will accept comments until February 11, 2005. EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by January 12, 2005. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send three copies of your comments. You should send two copies to the Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. You should send a third copy to Nicole Bealle, Waste Team Leader, Texas Commission on Environmental Quality, 5425 Polk Avenue, Suite A, Houston, TX 77023. Identify your comments at the top with this regulatory docket number: "F–04–TEXDEL–Shell Oil."

You should address requests for a hearing to Ben Banipal, Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Comments may also be submitted electronically to Michelle Peace at *peace.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

A. What Action Is EPA Proposing?

EPA is proposing:

(1) To grant Shell Oil Company's delisting petition to have its multisource landfill leachate underlying the Minimum Technology Requirements (MTR) hazardous waste landfill excluded, or delisted, from the definition of a hazardous waste; and subject to certain verification and monitoring conditions.

(2) To use the Delisting Risk Assessment Software (DRAS) to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency used this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

B. Why Is EPA Proposing To Approve This Delisting?

Shell Oil Company's petition requests an exclusion from the F039 waste listing pursuant to 40 CFR 260.20 and 260.22. Shell Oil Company does not believe that the petitioned waste meets the criteria for which EPA listed it. Shell Oil Company also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's proposed decision to delist waste from Shell Oil Company's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Deer Park, TX facility.

C. How Will Shell Oil Company Manage the Waste if it Is Delisted?

If the leachate is delisted, Shell will make piping modifications to allow the leachate to be routed to the North Effluent Treater (NET) for treatment. The treated effluent will be discharged through an Texas Pollutant Discharge Elimination System (TPDES) permitted outfall.

D. When Would the Proposed Delisting Exclusion be Finalized?

RCRA section 3001(f) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1) at 42 USCA 6930(b)(1), allows rules to become effective in less than six months when the regulated facility does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How Would This Action Affect the States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from EPA to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

EPA has also authorized some states (for example, Louisiana, Oklahoma, Georgia, Illinois) to administer an RCRA delisting program in place of the Federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states unless that state makes the rule part of its authorized program. If Shell Oil Company transports the petitioned waste to or manages the waste in any state with delisting authorization, Shell Oil Company must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the state.

II. Background

A. What Is the History of the Delisting Program?

EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. EPA has amended this list several times and published it in §§ 261.31 and 261.32.

EPA lists these wastes as hazardous because: (1) The wastes typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity), (2) the wastes meet the criteria for listing contained in §§ 261.11(a)(2) or (a)(3), or (3) the wastes are mixed with or derived from the treatment, storage or disposal of such characteristic and listed wastes and which therefore become hazardous under §§ 261.3(a)(2)(iv) or (c)(2)(i), known as the "mixture" or "derived-from" rules, respectively.

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations or resulting from the operation of the mixture or derived-from rules generally is hazardous, a specific waste from an individual facility may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does it Require of a Petitioner?

A delisting petition is a request from a facility to EPA or an authorized state to exclude wastes from the list of hazardous wastes. The facility petitions EPA because it does not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which EPA lists a waste are in part 261 and further explained in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (*See* part 261 and the background documents for the listed waste.)

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the waste.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in § 260.22(a) and section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which EPA listed the waste, if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See § 261.3(a)(2)(iii) and (iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

III. EPA's Evaluation of the Waste Information and Data

A. What Waste Did Shell Oil Company Petition EPA To Delist?

On January 29, 2003, Shell Oil Company petitioned EPA to exclude from the lists of hazardous wastes contained in § 261.31, multisource landfill leachate (F039) generated from its facility located in Deer Park, Texas. The waste falls under the classification of listed waste pursuant to § 261.31. Specifically, in its petition, Shell Oil Company requested that EPA grant a standard exclusion for 3.36 million gallons (16,619 cu. yards) per year of the multisource landfill leachate.

B. Who Is Shell Oil Company and What Process Does it Use To Generate the Petitioned Waste?

Shell Oil Company refines high sulfur crude oil from Mexico into products including gasoline, kerosene, jet fuel, fuel oil, lube oil and others. The hazardous wastes included incinerator ash, spent catalysts and filters,

Chloronated Plate Interceptor (CPI) sludge from the refinery wastewater treatment plant, NET and primary solids from Shell Chemical and the South Effluent Treater (SET). The wastes disposed of in the minimum technological requirements (MTR) landfill for the past four years have been Class 1 and Class 2 nonhazardous wastes. The landfill is designed to meet the minimum technological requirements specified in 40 CFR § 264.301. The design includes a primary leachate collection system and liner (underlying the deposited waste) followed by a secondary leachate collection system. Leachate from this landfill requires offsite disposal as an F039 (multisource leachate) listed waste. However, analytical data collected monthly for this aqueous stream shows that it is not a characteristic waste and contains little to no detectable concentrations of organic constituents.

C. How Did Shell Oil Company Sample and Analyze the Data in This Petition?

To support its petition, Shell Oil Company submitted:

(1) Historical information on past waste generation and management practices;

(2) Results of the total constituent list for 40 CFR part 264 Appendix IX volatiles, semivolatiles, metals, pesticides, herbicides, dioxins and PCBs;

(3) Results of the constituent list for 40 CFR part 264 Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

(4) Analytical constituents of concern for F039;

(5) Results from total oil and grease analyses;

(6) Multiple pH testing for the petitioned waste.

D. What Were the Results of Shell Oil Company's Analyses?

EPA believes that the descriptions of the Shell Oil Company analytical characterization provide a reasonable basis to grant Shell Oil Company's petition for an exclusion of the multisource landfill leachate. EPA believes the data submitted in support of the petition show the multisource landfill leachate is non-hazardous. Analytical data for the multisource landfill leachate samples were used in the DRAS to develop delisting levels. The data summaries for detected constituents are presented in Table I. EPA has reviewed the sampling procedures used by Shell Oil Company and has determined that it satisfies EPA criteria for collecting representative samples of the variations in constituent concentrations in the multisource landfill leachate. In addition, the data submitted in support of the petition show that constituents in Shell Oil Company's waste are presently below health-based levels used in the delisting decision-making. EPA believes that Shell Oil Company has successfully demonstrated that the multisource landfill leachate is non-hazardous.

TABLE I.—MAXIMUM TCLP CONCENTRATIONS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATION OF THE MULTISOURCE LANDFILL LEACHATE AT THE SHELL OIL COMPANY DEER PARK, TX FACILITY [1]

Constituent	TCLP analyses (mg/l)	Maximum allowable delisting concentration levels (mg/l)
Antimony	0.0092	0.0204
Arsenic	0.011	[2] 0.385
Barium	0.252	2.92
Copper	0.00553	418.00
Chromium	0.0122	5.0
Cobalt	0.0126	2.25
Nickel	0.0368	1.13
Selenium	0.0128	0.0863
Acetone	0.033	1.46
Acetophenone	0.0031	1.58
Benzene	0.013	0.022
Dichloroethane, 1,2	0.0014	0.0803
Ethylbenzene	0.00098	4.51
Napthalene	0.0061	1.05
Phenanthrene [3]	0.0014	1.39
Phenol	0.056	9.46
TCDD,2,3,7,8	0.00000000325	0.0000926
Trichloropropane	0.00025	0.000574
Xylenes (total)	0.0016	97.60

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

[2] EPA defers to the maximum allowable delisting concentration based on the MCL. As a result, Shell Oil Company's analytical sampling results and consequent DRAS analysis meet the criteria for the proposed delisting petition approval.

[3] The DRAS program does not have a delisting concentration for phenanthrene. Consequently EPA substituted anthracene into the DRAS program to set a delisting level for phenanthrene. Anthracene has similar toxicological and health based properties as phenanthrene. The DRAS program contains a complete risk-based dataset for anthracene. Shell Oil Company's phenanthrene analytical sampling results and consequent DRAS analysis using anthracene input parameters meet the criteria for the proposed phenanthrene delisting level.

[4] Shell ran TCLP analysis only for the liquid wastes, total analysis were excluding because similar analytical results would be provided.

E. How Did EPA Evaluate the Risk of Delisting This Waste?

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (*i.e.*, groundwater, surface water, air) for hazardous constituents present in the petitioned waste. EPA determined that disposal in a surface impoundment is the most reasonable, worst-case disposal scenario for Shell Oil Company's petitioned waste. EPA applied the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000) and 65 FR 75637

(December 4, 2000), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of Shell Oil Company's petitioned waste on human health and the environment. A copy of this software can be found on the world wide web at *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm.* In assessing potential risks to groundwater, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the groundwater at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and EPA health-based numbers. Using the maximum compliance-point concentrations and EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in groundwater.

EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible groundwater contamination resulting from disposal of the petitioned waste in a surface impoundment, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.*, volatilization from the surface impoundment). As in the above groundwater analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or "delisting levels").

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. EPA does control the type of unit where the waste is disposed. The waste must be disposed in the type of unit the fate and transport model evaluates.

EPA also considers the applicability of groundwater monitoring data during the evaluation of delisting petitions. In this case, Shell Oil Company will dispose of its wastewater in its TPDES permitted NET unit, with existing groundwater contamination sources. The groundwater contamination is currently being addressed and managed through a RCRA Corrective Actions Program. Consequently the groundwater data would not be relevant to this exclusion. Therefore, EPA has determined that it would be unnecessary to request groundwater monitoring data.

EPA believes that the descriptions of Shell Oil Company hazardous waste process and analytical characterization provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized.

The DRAS results which calculate the maximum allowable concentration of chemical constituents in the waste are presented in Table I. Based on the comparison of results from the DRAS and maximum TCLP concentrations found in Table I, the petitioned waste should be delisted because no constituents of concern tested are likely to be present or formed as reaction products or by-products in Shell Oil Company's waste.

F. What Did EPA Conclude About Shell Oil Company's Analysis?

EPA concluded, after reviewing Shell Oil Company's processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by-products in the waste. In addition, on the basis of explanations and analytical data provided by Shell Oil Company, pursuant to § 260.22, EPA concludes that the petitioned waste do not exhibit any of the characteristics of ignitability, corrosivity, reactivity or toxicity. See §§ 261.21, 261.22 261.23 and 261.24, respectively.

G. What Other Factors Did EPA Consider in Its Evaluation?

During the evaluation of Shell Oil Company's petition, EPA also considered the potential impact of the petitioned waste via non-groundwater routes (*i.e.*, air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from Shell Oil Company's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from Shell Oil Company waste under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Shell Oil Company's waste in an open surface impoundment. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from Shell Oil Company's multisource landfill leachate.

H. What Is EPA's Evaluation of This Delisting Petition?

The descriptions of Shell Oil Company's hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (*see* Table I). EPA believes Shell Oil Company's process will substantially reduce the likelihood of migration of hazardous constituents from the petitioned waste. Shell Oil Company's process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes Shell Oil Company should be granted an exclusion for the multisource landfill leachate. EPA believes the data submitted in support of the petition show Shell Oil Company's multisource landfill leachate is non-hazardous. EPA has reviewed the sampling procedures used by Shell Oil Company and has determined that it satisfies EPA criteria for collecting representative samples of variable constituent concentrations in the multisource landfill leachate. The data submitted in support of the petition

show that constituents in Shell Oil Company's waste are presently below the compliance point concentrations used in the delisting decision and would not pose a substantial hazard to the environment. EPA believes that Shell Oil Company has successfully demonstrated that the multisource landfill leachate is non-hazardous.

EPA therefore, proposes to grant an exclusion to Shell Oil Company, in Deer Park, Texas, for the multisource landfill leachate described in its petition. EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the multisource landfill leachate.

If EPA finalizes the proposed rule, EPA will no longer regulate the petitioned waste under Parts 262 through 268 and the permitting standards of Part 270.

IV. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, Shell Oil Company, must comply with the requirements in 40 CFR part 261, Appendix IX, Table 1. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituents for which Shell Oil Company must test the multisource landfill leachate, below which these wastes would be considered non-hazardous.

EPA selected the set of inorganic and organic constituents specified in Paragraph (1) of 40 CFR part 261, Appendix IX, Table 1, (the exclusion language) based on information in the petition. EPA compiled the inorganic and organic constituents list from the composition of the waste, descriptions of Shell Oil Company's treatment process, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the total concentrations. The limits described here do not relieve Shell Oil Company of its duty to comply with discharge limits in its TPDES permit.

(2) Waste Holding and Handling

The purpose of this paragraph is to ensure that Shell Oil Company manages and disposes of any multisource landfill leachate that contains hazardous levels of inorganic and organic constituents according to Subtitle C of RCRA. Managing the multisource landfill leachate as a hazardous waste until initial verification testing is performed will protect against improper handling of hazardous material. If EPA determines that the data collected under this Paragraph do not support the data provided for in the petition, the exclusion will not cover the petitioned waste. The exclusion is effective upon publication in the **Federal Register** but the disposal as non-hazardous cannot begin until the verification sampling is completed.

(3) Verification Testing Requirements

Shell Oil Company must complete a rigorous verification testing program on the multisource landfill leachate to assure that the treated multisource landfill leachate does not exceed the maximum levels specified in Paragraph (1) of the exclusion language. This verification program operates on two levels.

The first part of the verification testing program consists of testing the multisource landfill leachate for specified indicator parameters as per Paragraph (1) of the exclusion language.

If EPA determines that the data collected under this Paragraph do not support the data provided for the petition, the exclusion will not cover the generated wastes. If the data from the initial verification testing program demonstrate that the leachate meets the delisting levels, Shell Oil Company may request quarterly testing. EPA will notify Shell Oil Company, in writing, if and when it may replace the testing conditions in paragraph (3)(A) with the testing conditions in (3)(B) of the exclusion language.

The second part of the verification testing program is the quarterly testing of representative samples of multisource landfill leachate for all constituents specified in Paragraph (1) of the exclusion language. EPA believes that the concentrations of the constituents of concern in the multisource landfill leachate may vary over time. Consequently this program will ensure that the leachate is evaluated in terms of variation in constituent concentrations in the waste over time.

The proposed subsequent testing would verify that Shell Oil Company operates a landfill where the constituent concentrations of the multisource landfill leachate do not exhibit unacceptable temporal and spatial levels of toxic constituents.

EPA is proposing to require Shell Oil Company to analyze representative samples of the multisource landfill leachate quarterly during the first year of waste generation. Shell Oil Company would begin quarterly sampling 60 days after the final exclusion as described in Paragraph (3)(B) of the exclusion language.

EPA, per Paragraph 3(C) of the exclusion language, is proposing to end the subsequent testing conditions after the first year, if Shell Oil Company has demonstrated that the waste consistently meets the delisting levels. To confirm that the characteristics of the waste do not change significantly over time, Shell Oil Company must continue to analyze a representative sample of the waste on an annual basis. Annual testing requires analyzing the full list of components in Paragraph (1) of the exclusion language. If operating conditions change as described in Paragraph (4) of the exclusion language; Shell Oil Company must reinstate all testing in Paragraph (1) of the exclusion language. Shell Oil Company must prove through a new demonstration that their waste meets the conditions of the exclusion.

If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, Shell Oil Company must notify EPA according to the requirements in Paragraph 6 of the exclusion language. The facility must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

(4) Changes in Operating Conditions

Paragraph (4) of the exclusion language would allow Shell Oil Company the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment process. However, Shell Oil Company must prove the effectiveness of the modified process and request approval from EPA. Shell Oil Company must manage wastes generated during the new process demonstration as hazardous waste until it has obtained written approval and Paragraph (3) of the exclusion language is satisfied.

(5) Data Submittals

To provide appropriate documentation that Shell Oil Company's multisource landfill leachate is meeting the delisting levels, Shell Oil Company must compile, summarize, and keep delisting records on-site for a minimum of five years. It should keep all analytical data obtained through Paragraph (3) of the exclusion language including quality control information for five years. Paragraph (5) of the exclusion language requires that Shell Oil Company furnish these data upon request for inspection by any employee or representative of EPA or the state of Texas.

If the proposed exclusion is made final, it will apply only to 3.36 million gallons (16,619 cu. yards) per year of multisource landfill leachate, generated at the Shell Oil Company facility after successful verification testing.

EPA would require Shell Oil Company to file a new delisting petition under any of the following circumstances:

(a) If it significantly alters the manufacturing process treatment system except as described in Paragraph (4) of the exclusion language;

(b) If it uses any new manufacturing or production process(es), or significantly changes from the current process(es) described in their petition; or

(c) If it makes any changes that could affect the composition or type of waste generated.

Shell Oil Company must manage waste volumes greater than 3.36 million gallons (16,619 cu. yards) per year of multisource landfill leachate as hazardous until EPA grants a new exclusion.

When this exclusion becomes final, Shell Oil Company's management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction. Shell Oil Company must either treat, store, or dispose of the waste in an on-site facility. If not, Shell Oil Company must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a state permit, license, or register to manage municipal or industrial solid waste.

(6) Reopener

The purpose of Paragraph (6) of the exclusion language is to require Shell Oil Company to disclose new or different information related to a condition at the facility or disposal of the waste, if it is pertinent to the delisting. Shell Oil Company must also use this procedure if the waste sample in the annual testing fails to meet the levels found in Paragraph 1. This provision will allow EPA to reevaluate the exclusion, if a source provides new or additional information to EPA. EPA will evaluate the information on which EPA based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented.

This provision expressly requires Shell Oil Company to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

EPA believes that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. § 551 (1978) *et seq.*, to reopen a delisting decision. EPA may reopen a delisting decision when it receives new information that calls into question the assumptions underlying the delisting.

EPA believes a clear statement of its authority in delistings is merited in light of EPA's experience. See Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations on a case by case basis. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. See APA § 553 (b).

(7) Notification Requirements

In order to adequately track wastes that have been delisted, EPA is requiring that Shell Oil Company provide a one-time notification to any state regulatory agency through which or to which the delisted waste is being carried. Shell Oil Company must provide this notification 60 days before commencing this activity.

B. What Happens if Shell Oil Company Violates the Terms and Conditions?

If Shell Oil Company violates the terms and conditions established in the exclusion, EPA will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, EPA will evaluate the need for enforcement activities on a case-by-case basis. EPA expects Shell Oil Company to conduct the appropriate waste analysis and comply with the criteria explained above in Paragraph (1) of the exclusion.

V. Public Comments

A. How Can I as an Interested Party Submit Comments?

EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to Section Chief of the Corrective Action and Waste Minimization Section (6PD–C), Multimedia Planning and Permitting Division, Environmental Protection Agency (EPA), 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to Nicole Bealle, Waste Team Leader, Texas Commission on Environmental Quality, 5425 Polk Avenue Suite A, Houston, TX 77023. Identify your comments at the top with this regulatory docket number: "F–04–TEXDEL–Shell Oil." You may submit your comments electronically to Michelle Peace at *peace.michelle@epa.gov*.

You should submit requests for a hearing to Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section (6PD–C), Multimedia Planning and Permitting Division, U. S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in EPA Freedom of Information Act Review Room from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory

flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on a small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, EPA hereby certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to state, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

EPA finds that this delisting decision is deregulatory in nature and does not impose any enforceable duty on any state, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This proposed rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to have "meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act, EPA is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, *etc.*) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that EPA to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, EPA has no need to consider the use of voluntary consensus standards in developing this final rule.

XIII. Executive Order 13132 Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with

state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless EPA consults with state and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous Waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f)

Dated: November 9, 2004.

Carl E. Edlund,

Director, Multimedia Planning and Permitting Division, Region 6.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste Description
*	*	* * * * *
Shell Oil Company	Deer Park, TX	Multisource landfill leachate (EPA Hazardous Waste No. F039) generated at a maximum annual rate of 3.36 million gallons (16,619 cu. yards) per calendar year after [insert publication date of the final rule] and disposed in accordance with the TPDES permit. The Delisting Levels set do not relieve Shell Oil Company of its duty to comply with the limits set in its TPDES permit. For the exclusion to be valid, Shell Oil Company must implement a verification testing program that meets the following Paragraphs: (1) *Delisting Levels*: All total concentrations for those constituents must not exceed the following levels (mg/l). The petitioner must analyze the aqueous waste on a total basis to measure constituents in the multisource landfill leachate. Multisource landfill leachate (i) Inorganic Constituents Antimony-0.0204; Arsenic-0.385; Barium-2.92; Copper-418.00; Chromium-5.0; Cobalt-2.25; Nickel-1.13; Selenium-0.0863; Thallium-0.005 (ii) Organic Constituents Acetone-1.46; Acrylonitrile-0.00745; Acetophenone-1.58; Benzene-0.0222; Cresol, p-0.0788; Bis(2-chlorethyl)ether-0.00583; Bis(2-ethylhexyl)phthlate-15800.00; Dichlorobenzene, 1,3–0.00478; Dichloroethane, 1,2–0.0803; Dimethoate-3.15; Dimethyphenol, 2,4–0.405; Dinitrophenol-0.0293; Dinitrotoluene, 2,4–0.00451; Dinitrololuene, 2,6–0.00451; Diphenylthydrazine-0.00484; Dichloroethylene, 1,1–0.00719; Ethylbenzene-4.51; Kepone-0.00407; Methacrylonitrile-0.00146; Methanol-7.32; Napthalene-1.05; Nitrobenzene 0.00788; Nitrosodiethylamine-0.000258; Nitrosodimethylamine-0.000076; Nitrosodi-n-butylamine-0.000826; N-Nitrosodi-n-propylamine-0.000553; N-Nitrosopiperdine-0.000102; N-Nitrosopyrrolidine-0.000841; N-Nitrosomethylethylamine-0.000176; PCB's-0.000841; Pentachlorophenol-1.58; Phenol-9.46; Pyridine-0.0146; 2,3,7,8-TCDD equivalents as TEQ–0.0000926; Trichloropropane-0.000574; Vinyl Chloride-0.0019; Xylenes (total)-97.60 (2) *Waste Management*: (A) Shell Oil Company must manage as hazardous all multisource landfill leachate generated, until it has completed initial verification testing described in Paragraph (3)(A) and (B), as appropriate, and valid analyses show that Paragraph(1) is satisfied. (B) Levels of constituents measured in the samples of the multisource landfill leachate that do not exceed the levels set forth in Paragraph (1) are non-hazardous. Shell Oil Company can manage and dispose of the non-hazardous multisource landfill leachate according to all applicable solid waste regulations. (C) If constituent levels in a sample exceed any of the Delisting Levels set in Paragraph (1), Shell Oil Company can collect one additional sample and perform expedited analyses to verify if the constituent exceeds the delisting level. If this sample confirms the exceedance, Shell Oil Company must, from that point forward, treat the waste as hazardous until it is demonstrated that the waste again meets the levels in Paragraph (1). (D) If the facility has not treated the waste, Shell Oil Company must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance. (E) Upon completion of the Verification Testing described in Paragraph 3(A) and (B) as appropriate and the transmittal of the results to EPA, and if the testing results meet the requirements of Paragraph (1), Shell Oil Company may proceed to manage its multisource landfill leachate as non-hazardous waste. If Subsequent Verification Testing indicates an exceedance of the Delisting Levels in Paragraph (1), Shell Oil Company must manage the multisource landfill leachate as a hazardous waste until two consecutive quarterly testing samples show levels below the Delisting Levels in Table I.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste Description
		(3) *Verification Testing Requirements*: Shell Oil Company must perform sample collection and analyses, including quality control procedures, according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). If EPA judges the process to be effective under the operating conditions used during the initial verification testing, Shell Oil Company may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). Shell Oil Company must continue to test as specified in Paragraph (3)(A) until and unless notified by EPA in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B). (A) *Initial Verification Testing*: After EPA grants the final exclusion, Shell Oil Company must do the following: (i) Within 60 days of this exclusion becoming final, collect eight samples, before disposal, of the multisource landfill leachate. (ii) The samples are to be analyzed and compared against the Delisting Levels in Paragraph (1) (iii) Within sixty (60) days after this exclusion becomes final, Shell Oil Company will report initial verification analytical test data for the multisource landfill leachate, including analytical quality control information for the first thirty (30) days of operation after this exclusion becomes final. If levels of constituents measured in the samples of the multisource landfill leachate that do not exceed the levels set forth in Paragraph (1) are also non-hazardous in two consecutive quarters after the first thirty (30) days of operation after this exclusion become effective, Shell Oil Company can manage and dispose of the multisource landfill leachate according to all applicable solid waste regulations. (B) *Subsequent Verification Testing*: Following written notification by EPA, Shell Oil Company may substitute the testing conditions in (3)(B) for (3)(A). Shell Oil Company must continue to monitor operating conditions, and analyze two representative samples of the multisource landfill leachate for each quarter of operation during the first year of waste generation. The samples must represent the waste generated during the quarter. After the first year of analytical sampling verification sampling can be performed on a single annual sample of the multisource landfill leachate. The results are to be compared to the Delisting Levels in Condition (1). (C) *Termination of Testing*: (i) After the first year of quarterly testing, if the Delisting Levels in Paragraph (1) are being met, Shell Oil Company may then request that EPA not require quarterly testing. After EPA notifies Shell Oil Company in writing, the company may end quarterly testing. (ii) Following cancellation of the quarterly testing, Shell Oil Company must continue to test a representative sample for all constituents listed in Paragraph (1) annually. (4) *Changes in Operating Conditions*: If Shell Oil Company significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could significantly affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing; it may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the Delisting Levels set in Paragraph (1) and it has received written approval to do so from EPA. (5) *Data Submittals*: Shell Oil Company must submit the information described below. If Shell Oil Company fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. Shell Oil Company must: (A) Submit the data obtained through Paragraph 3 to the Section Chief, Region 6 Corrective Action and Waste Minimization Section, EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD-C) within the time specified. (B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the state of Texas request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. § 1001 and 42 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) *Reopener:*

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste Description
		(A) If, anytime after disposal of the delisted waste, Shell Oil Company possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, Shell Oil Company must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If Shell Oil Company fails to submit the information described in Paragraphs (5),(6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Division Director determines that the reported information does require action, EPA's Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed action by EPA is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in Paragraph (6)(D) or (if no information is presented under Paragraph (6)(D)) the initial receipt of information described in Paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA's actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (7) *Notification Requirements:* Shell Oil Company must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
*	*	* * * * *

[FR Doc. 04–28199 Filed 12–27–04; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU06

Endangered and Threatened Wildlife and Plants; Proposed Critical Habitat Designation for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that we are soliciting additional comments on certain areas included in our September 24, 2002, proposed rule (hereinafter referred to as the September 2002 proposal) to designate critical habitat for 4 vernal pool crustaceans and 11 vernal pool plants in California and southern Oregon (67 FR 59884). We issued a final rule based on the September 2002 proposal on August 6, 2003 (68 FR 46684). In the final rule we excluded certain specific lands that had been included in the September 2002 proposal. We excluded these lands pursuant to section 4(b)(2) of the Act based on either policy or economic reasons. On October 28, 2004, a court remanded the final designation to the Service in part, ordering the Service to make a new determination as to whether to designate the excluded areas (*Butte Environmental Council* v. *Norton*, NO. CIV. S–04–0096 (E.D. Cal. Oct. 28, 2004). The August 6, 2003, final rule is still in effect while we reconsider the exclusions from the proposed rule and make a new final determination. Pursuant to the court order, we will evaluate the exclusions made to our proposal in two separate actions: (1) A re-evaluation of exclusions based on policy or non-economic reasons addressed herein; and (2) a re-evaluation of exclusions based on economic concerns in a subsequent **Federal Register** notice. Comments previously submitted on the September 2002 proposal need not be resubmitted because we will incorporate them into the public record as part of this reopening of the comment period and will fully consider them in development of a new final rule.

DATES: We will accept public comments on the policy (non-economic) exclusions to our September 2002 proposal and any new information concerning the 15 vernal pool species addressed in this critical habitat designation until January 27, 2005.

ADDRESSES: If you wish to comment, you may submit your comments and materials by any one of several methods:

ANE MA D Worcester, MA [Revised]

Worcester Regional Airport, MA
(Lat. 42°16'02" N, long. 71°52'32" W)
Spencer Airport, MA
(Lat. 42°17'26" N, long. 71°57'53" W)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4.2-mile radius of Worcester Regional Airport, excluding that airspace from the surface up to but not including 1,900 feet MSL within a 1-mile radius of the Spencer Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York, on August 17, 2005.

John G. McCartney,

Acting Area Director, Eastern Terminal Operations.

[FR Doc. 05–16740 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21226; Airspace Docket No. 05–ASO–8]

Establishment of Class E Airspace; Marion, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Marion, KY. Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) Runway (RWY) 7 and RWY 25 have been developed for Marion-Crittenden County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAPs and for Instrument Flight Rules (IFR) operations at Marion-Crittenden County Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, October 27, 2005.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, Airspace and *Operations* Branch, Eastern En Route and Oceanic Service Area, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On June 8, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Marion, KY, (70 FR 33403). This action provides adequate Class E airspace for IFR operations at Marion-Crittenden County Airport. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in this Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Marion, KY.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO KY E5 Marion, KY [NEW]

Marion-Crittenden County Airport, KY
(Lat. 37°20'04" N, long. 88°06'54" W)

That airspace extending upward from 700 feet above the surface within a 6.7—radius of Marion-Crittenden County Airport; excluding that airspace within the Sturgis, KY, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on July 29, 2005.

Mark D. Ward,

Acting Area Director, Air Traffic Division, Southern Region.

[FR Doc. 05–16746 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7957–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is granting petitions submitted by Shell Oil Company (Shell Oil Company) to exclude (or delist) certain wastes generated by its Houston, TX Deer Park facility from the lists of hazardous wastes. This final rule responds to petitions submitted by Shell Oil Company to delist F039 and F037 wastes. The F039 waste is generated from the refinery wastewater treatment plant, North Effluent Treater (NET) and

primary solids from Shell Chemical and the South Effluent Treatment (SET). The F037 waste North Pond Sludge is generated from the process wastewater, gravel and road base that has settled from storm water flow to the pond.

After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded the petitioned wastes are not hazardous waste. The F039 exclusion applies to 3.36 million gallons per year (16,619 cubic yards) of multi-source landfill leachate. The F037 exclusion is a one time exclusion for 15,000 cubic yards of the sludge. Accordingly, this final rule excludes the petitioned wastes from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

EFFECTIVE DATE: August 23, 2005.

ADDRESSES: The public docket for this final rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in EPA Freedom of Information Act review room on the 7th floor from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is F–04–TEXDEL–Shell Oil. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. For technical information concerning this notice, contact Michelle Peace, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, at (214) 665–7430, or *peace.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

A. What Action Is EPA Finalizing?

After evaluating the petitions for Shell Oil Company, EPA proposed, on December 28, 2004 and February 9, 2005, respectively, to exclude the wastes from the lists of hazardous waste under § 261.31. EPA is finalizing:

(1) The decision to grant Shell Oil Company's delisting petition to have its F039 multi-source landfill leachate underlying the Minimum Technology Requirements (MTR) hazardous waste landfill excluded, or delisted, from the definition of a hazardous waste; and subject to certain verification and monitoring conditions; and

(2) The decision to grant Shell Oil Company's delisting petition to have its North Pond F037 sludge excluded, or delisted, from the definition of a hazardous waste, once it is disposed in a Subtitle D landfill.

B. Why Is EPA Approving This Action?

Shell Oil Company's petitions request a delisting from the F039 and F037 wastes listing under 40 CFR 260.20 and 260.22. Shell Oil Company does not believe that the petitioned waste meets the criteria for which EPA listed it. Shell Oil Company also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of these petitions included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA evaluated the petitioned wastes against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the wastes are nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA evaluated the wastes with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the wastes to be hazardous. EPA considered whether the wastes are acutely toxic, the concentrations of the constituents in the wastes, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned wastes do not meet the listing criteria and thus should not be listed wastes. EPA's final decision to delist wastes from Shell Oil Company's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Deer Park, TX facility.

C. What Are the Limits of This Exclusion?

This exclusion applies to the waste described in the Shell Oil Company petitions only if the requirements described in 40 CFR part 261, Appendix IX, Table 1 and the conditions contained herein are satisfied.

D. How Will Shell Oil Company Manage the Wastes, If They Are Delisted?

If the multi-source landfill leachate is delisted, Shell Oil Company will make piping modifications to allow the leachate to be routed to the North Effluent Treater (NET) for treatment. After its treatment, the multi-source landfill leachate will be discharged through a TPDES-permitted outfall in compliance with its TPDES permit. If F037 North Pond Sludge is delisted, Shell Oil Company will dispose of it in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste.

E. When Is the Final Delisting Exclusion Effective?

This rule is effective August 23, 2005. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA, 42 U.S.C. 6930(b)(1), allow rules to become effective in less than six months after the rule is published when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous waste. This reduction in existing requirements also provides a

basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How Does This Final Rule Affect States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from EPA to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some states (for example, Louisiana, Oklahoma, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states unless that state makes the rule part of its authorized program. If Shell Oil Company transports the petitioned waste to or manages the waste in any state with delisting authorization, Shell Oil Company must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the state.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude or delist, from the RCRA list of hazardous waste, waste the generator believes should not be considered hazardous under RCRA.

B. What Regulations Allow Facilities To Delist a Waste?

Under 40 CFR 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 265 and 268. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

C. What Information Must the Generator Supply?

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste and that such factors do not warrant retaining the waste as a hazardous waste.

III. EPA's Evaluation of the Waste Information and Data

A. What Wastes Did Shell Oil Company Petition EPA To Delist?

On January 29, 2003, Shell Oil Company petitioned EPA to exclude from the lists of hazardous waste contained in § 261.31, multi-source landfill leachate (F039) generated from its facility located in Deer Park, TX. Then on December 30, 2003, Shell Oil Company petitioned EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, F037 North Pond Sludge.

B. How Much Waste Did Shell Oil Company Propose To Delist?

Shell Oil Company requested that EPA grant an exclusion for 3.36 million gallons (16,619 cu. yards) per year of the multi-source landfill leachate in its January 29, 2003 petition. In the December 30, 2003 petition, Shell Oil Company requested that EPA grant a one time exclusion for 15,000 cubic yards of the F037 North Pond Sludge.

C. How Did Shell Oil Company Sample and Analyze the Waste Data in These Petitions?

To support its petitions, Shell Oil Company submitted:

(1) Historical information on past waste generation and management practices including analytical data from eleven samples collected in September 2003 for the F037 North Pond Sludge and four samples of combined leachate data for the F039 multi-source landfill leachate;

(2) Results of the total constituent list for 40 CFR part 264, Appendix IX volatiles, semivolatiles, metals, pesticides, herbicides, dioxins and PCBs for the F037 North Pond Sludge and the F039 multi-source landfill leachate;

(3) Results of the constituent list for 40 CFR part 264, Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals for the F037 North Pond Sludge and the F039 multi-source landfill leachate;

(4) Analytical constituents of concern for F037 and F039;

(5) Results from total oil and grease analyses;

(6) Multiple pH testing for the petitioned wastes.

IV. Public Comments Received on the Proposed Exclusions

A. Who Submitted Comments on the Proposed Rules?

No comments were received on the proposed rule for the F037 wastes. Comments were submitted by Shell Deer Park Refining Company (Shell) to correct information contained in the proposed rule for F039.

B. What Were the Comments and What Are EPA's Responses to Them?

Shell noted that *Chloronated* Plate Interceptor should be *Corrugated* Plate Interceptor. EPA has noted this and made appropriate changes in the final rule and exclusion language to reflect this change.

Shell noted that: (1) the compound p-cresol (4-methlyphenol) should be added to Table I; and (2) the compound trichloropropane should be deleted from Table I as this constituent was not detected in any of the samples above the reporting level.

The compound p-cresol (4-methlyphenol) appears in Table 1.—Waste Excluded From the Non-Specific Sources as "Cresol, p." EPA has made the appropriate change to read p-Cresol. The compound trichloropropane estimated value of 0.00025 mg/l was reported in the revised analyses on October 11, 2004, Combined Leachate Data, and thus it will not be deleted.

Shell requested: (1) that the following constituents be deleted from Table 1—Wastes Excluded from Non-Specific Sources in the exclusion language to be consistent with Table I in Section III. D in the preamble of the proposed rule: Thallium, Acrylonitrile, Bis (2-chlorethyl) ether, Bis (2-ethylhexyl) phthlate, Dichlorobenzene 1,3, Dimethoate, Dimethylphenol 2,4, Dinitrophenol, Dinitrotoluene 2,6, Diphenylhydrazine, Dichloroethylene 1,1, Kepone, Methacrylonitrile, Methanol, Nitrobenzene, Nitrosodiethylamine, Nitrosodimethylamine, Nitrosodi-n-butylamine, N-Nitrodi-n-propylamine, N-Nitrosopiperdine, N-

Nitrosopyrrolidine, N-Nitrosomethylethylamine, PCBs, Pentachlorophenol, Pyridine, Trichloropropane, Vinyl Chloride; and (2) that the compound phenanthrene should be added with a delisting level of 1.36 mg/L to be consistent with Table I in Section III. D.

EPA has made the deletions as prescribed. EPA has added the compound phenanthrene with a delisting level of 1.36 mg/L to Table 1.—Waste Excluded From Non-Specific Sources. EPA also added compounds toluene, fluorene, and vanadium because they were inadvertently left off of Table 1—Wastes Excluded from Non-Specific Sources.

Shell noted that in the exclusion language paragraph (3)(A)(i) of Table 1—Waste Excluded from Non-Specific Sources, the number of samples to be collected within the first 60 days should be changed from eight to four. Also in paragraph (3)(B) for subsequent verification sampling, Shell Oil Company requested that the number of samples per quarter be changed from two to one. Previous discussions between EPA and Shell Oil Company were based on two different waste streams. Since this is one stream, EPA will allow the changes in the number of samples collected and the number of samples taken per quarter.

In addition, on October 30, 2002, (67 FR 66251), EPA proposed the Methods Innovation Rule to remove from the regulations unnecessary requirements other than those considered to be Method Defined Parameters (MDP). An MDP is a method that, by definition or design, is the only one capable of measuring the particular property (*e.g.* Method 1311–TCLP). Therefore, EPA is no longer generally requiring the use of only SW–846 methods for regulatory applications other than those involving MDPs. The general purpose of this rule is to allow more flexibility when conducting RCRA-related sampling and analysis activities. We retained only those methods considered to be MDPs in the regulations and incorporate them by reference in 40 CFR 260.11. EPA is changing Shell's delisting exclusion language found in paragraph (3) of the F039 exclusion language to reflect the generic language placed in all delisting exclusions as a result of the Methods Innovation Rule (70 FR 34537) which was finalized on June 14, 2005.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism," (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this final rule does not have tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, "Civil Justice Reform," (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f)

Dated: August 10, 2005.

Carl E. Edlund,

Director, Multimedia Planning and Permitting Division, Region 6.

■ For the reasons set out in the preamble, 40 CFR part 261 is to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Table 1 of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Shell Oil Company	Deer Park, TX ..	North Pond Sludge (EPA Hazardous Waste No. F037) generated one time at a volume of 15,000 cubic yards August 23, 2005 and disposed in a Subtitle D landfill. This is a one time exclusion and applies to 15,000 cubic yards of North Pond Sludge. (1) Reopener: (A) If, anytime after disposal of the delisted waste, Shell possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If Shell fails to submit the information described in paragraph (A) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Division Director determines that the reported information does require EPA action, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (D) Following the receipt of information from the facility described in paragraph (C) or if no information is presented under paragraph (C), the Division Director will issue a final written determination describing the actions that are *necessary* to protect human health or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (2) Notification Requirements: Shell must do the following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any state regulatory agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification, if they ship the delisted waste to a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
Shell Oil Company	Deer Park, TX ..	Multi-source landfill leachate (EPA Hazardous Waste No. F039) generated at a maximum annual rate of 3.36 million gallons (16,619 cu. yards) per calendar year after August 23, 2005 and disposed in accordance with the TPDES permit. The delisting levels set do not relieve Shell Oil Company of its duty to comply with the limits set in its TPDES permit. For the exclusion to be valid, Shell Oil Company must implement a verification testing program that meets the following paragraphs: (1) Delisting Levels: All total concentrations for those constituents must not exceed the following levels (mg/l). The petitioner must analyze the aqueous waste on a total basis to measure constituents in the multi-source landfill leachate. Multi-source landfill leachate (i) Inorganic Constituents Antimony-0.0204; Arsenic-0.385; Barium-2.92; *Copper*-418.00; *Chromium*-5.0; *Cobalt*-2.25; Nickel-1.13; Selenium-0.0863; Thallium-0.005; Vanadium-0.838 (ii) Organic Constituents Acetone-1.46; Acetophenone-1.58; Benzene-0.0222; p-Cresol-0.0788; Bis(2-ethylhexyl)phthlate-15800.00; Dichloroethane, 1,2–0.0803; Ethylbenzene-4.51; Fluorene-1.87; Napthalene-1.05; Phenol-9.46; Phenanthrene-1.36; Pyridine-0.0146; 2,3,7,8-TCDD equivalents as TEQ–0.0000926; Toluene-4.43; Trichloropropane-0.000574; Xylenes (total)-97.60 (2) Waste Management: (A) Shell Oil *Company* must manage as hazardous all multi-source landfill leachate generated, until it has completed initial verification testing described in paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied. (B) Levels of constituents measured in the samples of the multi-source landfill leachate that do not exceed the levels set forth in paragraph (1) are non-hazardous. Shell Oil Company can manage and dispose of the non-hazardous multi-source landfill leachate according to all applicable solid waste regulations. (C) If constituent levels in a sample exceed any of the delisting levels set in paragraph (1), Shell Oil Company can collect one additional sample and perform expedited analyses to verify if the constituent exceeds the delisting level. If this sample confirms the exceedance, Shell Oil Company must, from that point forward, treat the waste as hazardous until it is demonstrated that the waste again meets the levels in paragraph (1). (D) If the facility has not treated the waste, Shell Oil Company must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(E) Upon completion of the Verification Testing described in paragraph 3(A) and (B) as appropriate and the transmittal of the results to EPA, and if the testing results meet the requirements of paragraph (1), Shell Oil Company may proceed to manage its multi-source landfill leachate as non-hazardous waste. If Subsequent Verification Testing indicates an exceedance of the delisting levels in paragraph (1), Shell Oil Company must manage the multi-source landfill leachate as a hazardous waste until two consecutive quarterly testing samples show levels below the delisting levels in Table I. (3) Verification Testing Requirements: Shell Oil Company must perform sample collection and analyses, including quality control procedures, using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods used must meet Performance Based Measurement System Criteria in which the Data Quality Objectives demonstrate that representative samples of the Shell-Deer Park multi-source landfill leachate are collected and meet the delisting levels in paragraph (1). (A) Initial Verification Testing: After EPA grants the final exclusion, Shell Oil Company must do the following: (i) Within 60 days of this exclusions becoming final, collect four samples, before disposal, of the multi-source landfill leachate. (ii) The samples are to be analyzed and compared against the delisting levels in paragraph (1). (iii) Within sixty (60) days after this exclusion becomes final, Shell Oil Company will report initial verification analytical test data for the multi-source landfill leachate, including analytical quality control information for the first thirty (30) days of operation after this exclusion becomes final. If levels of constituents measured in the samples of the multi-source landfill leachate that do not exceed the levels set forth in paragraph (1) are also non-hazardous in two consecutive quarters after the first thirty (30) days of operation after this exclusion become effective, Shell Oil Company can manage and dispose of the multi-source landfill leachate according to all applicable solid waste regulations. (B) Subsequent Verification Testing: Following written notification by EPA, Shell Oil Company may substitute the testing conditions in (3)(B) for (3)(A). Shell Oil Company must continue to monitor operating conditions, and analyze one representative sample of the multi-source landfill leachate for each quarter of operation during the first year of waste generation. The sample must represent the waste generated during the quarter. After the first year of analytical sampling verification sampling can be performed on a single annual sample of the multi-source landfill leachate. The results are to be compared to the delisting levels in paragraph (1). (C) Termination of Testing: (i) After the first year of quarterly testing, if the delisting levels in paragraph (1) are being met, Shell Oil Company may then request that EPA not require quarterly testing. After EPA notifies Shell Oil Company in writing, the company may end quarterly testing. (ii) Following cancellation of the quarterly testing, Shell Oil Company must continue to test a representative sample for all constituents listed in paragraph (1) annually. (4) Changes in Operating Conditions: If Shell Oil Company significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could significantly affect the composition or type of waste generated as established under paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing; it may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA. (5) Data Submittals: Shell Oil Company must submit the information described below. If Shell Oil Company fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph 6. Shell Oil Company must: (A) Submit the data obtained through paragraph 3 to the Section Chief, Region 6 Corrective Action and Waste Minimization Section, EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–C) within the time specified. (B) Compile records of operating conditions and analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the state of Texas request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) Reopener: (A) If, anytime after disposal of the delisted waste, Shell Oil Company possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at a level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in paragraph 1, Shell Oil Company must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If Shell Oil Company fails to submit the information described in paragraphs (5),(6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Division Director determines that the reported information does require action, he will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed action by EPA is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or if no information is presented under paragraph (6)(D), the Division Director will issue a final written determination describing the actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (7) Notification Requirements: Shell Oil Company must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any state regulatory agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting exclusion and a possible revocation of the decision.

* * * * * * *

[FR Doc. 05–16688 Filed 8–22–05; 8:45 am]
BILLING CODE 6560–50–P

COMMISSION OF FINE ARTS

45 CFR Part 2102

Procedures and Policies Amendment

AGENCY: The Commission of Fine Arts.

ACTION: Final rule.

SUMMARY: This document amends the procedures and policies governing the administration of the U.S. Commission of Fine Arts. This document serves to establish a Consent Calendar and to clarify the functions and requirements of a Consent Calendar and Appendices for the review of projects submitted to the Commission in order to address more efficiently the needs of the Federal government and the public.

DATES: Effective September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas Luebke, Secretary, (202) 504–2200.

SUPPLEMENTARY INFORMATION: As established by Congress in 1910, the Commission of Fine Arts is a small independent advisory body made up of seven Presidentially appointed "well qualified judges of the arts" whose primary role is architectural review of designs for buildings, parks, monuments and memorials erected by the Federal or District of Columbia governments in Washington, DC. In addition to architectural review, the Commission considers and advises on the designs for coins, medals and U.S. memorials on foreign soil. The Commission also advises the District of Columbia government on private building projects within the Georgetown Historic District, the Rock Creek Park perimeter and the Monumental Core area. The Commission advises Congress, the President, Federal agencies, and the District of Columbia government on the general subjects of design, historic preservation and on orderly planning on matters within its jurisdiction.

The regulations amended with this rule were last published in the **Federal Register** on January 31, 1997 (45 CFR Parts 2101, 2102, 2103). Specific items this document amends include providing the current address and telephone number of the agency, and clarifying a series of procedural functions. Therefore, as these changes clarify established and new procedures, and are minor in nature, the Commission determines that notice and comment are unnecessary and that, in accordance with 5 U.S.C. 553(b)(B), good cause to waive notice and comment is established.

ATTACHMENT 3-3

Inert ingredients	Limits	Uses
Isopropyl myristate, CAS Reg. No. 110-27-0		Solvent

(e) * * *

Inert ingredients	Limits	Uses
Isopropyl myristate, CAS Reg. No. 110-27-0		Solvent

[FR Doc. 95-2442 Filed 1-31-95; 8:45 am]
BILLING CODE 6560-60-F

40 CFR Part 261

[SW-FRL-5148-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing to grant a petition submitted by the U.S. Department of Energy (DOE), Richland, Washington, to exclude certain wastes to be generated by a treatment process at its Hanford facility from being listed hazardous wastes. The Agency has concluded that the disposal of these wastes, after treatment, will not adversely affect human health or the environment. This action responds to a delisting petition submitted under § 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. This proposed decision is based on an evaluation of the treatment process and waste-specific information provided by the petitioner. If this proposed decision is finalized, the petitioned wastes will be conditionally excluded from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

The exclusion will allow DOE to proceed with critical cleanup at the Hanford site. The primary goal of cleanup is to protect human health and the environment by reducing risks from unintended releases of hazardous wastes that are currently stored at the site.

The Agency is also proposing the use of a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment, based on the waste-specific information provided by the petitioner. This model has been used to predict the concentration of hazardous constituents that may be released from the petitioned waste, at the time of disposal, which will not harm human health or the environment.

DATES: EPA is requesting public comments on today's proposed decision, the applicability of the fate and transport model used to evaluate the petitioned wastes, and on the verification testing conditions which will ensure that petitioned wastes are non-hazardous. Comments must be submitted by March 3, 1995. Because of an existing settlement agreement (consent order) on remediation of the Hanford site that requires DOE to have a final delisting in place by June 1995 or before, no extension to the comment period will be granted. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision by filing a request with the Director, Characterization and Assessment Division, Office of Solid Waste, whose address appears below, by February 16, 1995. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (Mail Code 5305), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. A third copy should be sent to Jim Kent, Waste Identification Branch, CAD/OSW (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Identify your comments at the top with this regulatory docket number: "F-95-HNEP-FFFFF"

Requests for a hearing should be addressed to the Director, Characterization and Assessment Division, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, and is available for viewing (Room M2616) from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260-9327 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (703) 412-9810. For technical information concerning this notice, contact Narendra Chaudhari, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C 20460, (202) 260-4787.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Disposition of Delisting Petition

U.S. Department of Energy's Hanford Facility, Richland, Washington

A. Site History

In 1943, the U.S. Army Corps of Engineers selected the U.S. Department of Energy's (DOE) Hanford site located in Richland, Washington, as the location for reactor, chemical seperation, and related activities in the production and purification of special nuclear materials. The site is situated on approximately 560 square miles (1,450 square kilometers), which is owned by the U.S. Government and managed by DOE. By the 1980s, environmental impacts resulting from operations at this site were acknowledged, and DOE initiated cleanup efforts. In May of 1989, DOE entered into a Tri-Party Agreement ("The Hanford Federal Facility Agreement & Consent Order"), with the State of Washington and the U.S. Environmental Protection Agency to initiate environmental restoration efforts over a 30-year period. As such, the current mission for DOE's Hanford facility is focused on waste management and environmental restoration and remediation. In order to carry out this mission (and allow for possible future use of the site after cleanup), it is critical for DOE's Hanford facility to obtain a delisting for certain wastes generated on-site. (See the public docket for the final report on *The Future for Hanford: Uses and Cleanup*, December 1992.)

B. Petition for Exclusion

On October 30, 1992, DOE petitioned the Agency to exclude treated wastes generated from its proposed 200 Area Effluent Treatment Facility (ETF). DOE subsequently provided additional information to complete its petition and also submitted an addendum to the petition. The ETF is designed to treat process condensate (PC) from the 242–A Evaporator. The untreated PC is a low-level radioactive waste as defined in DOE Order 5820.2A and a RCRA listed hazardous waste (EPA Hazardous Waste Nos. F001 through F005 and F039 derived from F001 through F005) as defined in 40 CFR § 261.31(a). DOE intends to discharge the treated effluents from the ETF to a Washington State Department of Ecology-approved land disposal site. (See DOE's delisting petition and addendum, which are included in the public docket for this notice, for details regarding wastes being treated and treatment process.)

While the constituents of concern in listed wastes F001, through F005 wastes include a variety of solvents (see Part 261, Appendix VII), the constituents (based on PC sampling data and process knowledge) that serve as the basis for characterizing DOE's petitioned wastes as hazardous were limited to 1,1,1-trichloroethane (F001), methylene chloride (F002), acetone and methyl isobutyl ketone (F003), cresylic acid (F004), and methyl ethyl ketone (F005).

DOE petitioned the Agency to exclude its ETF generated liquid effluent because it does not believe that these wastes, once generated, will meet the listing criteria. DOE claims that its treatment process will generate non-hazardous wastes because the constituents of concern in the wastes are no longer present or will be present in insignificant concentrations. DOE also believes that the wastes will not contain any other constituents that would render it hazardous. Review of the petitioned wastes, except for the radioactive component which are regulated under the Atomic Energy Act (see Part II. Section B. below for details), included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See Section 222 of HSWA, 42 U.S.C. 6921(f), and § 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of DOE's petition.

II. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in § 261.31 and § 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, § 260.20 and § 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See §§ 261.3(a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to the Agency on procedural grounds (*Shell Oil Co.* v. *EPA*, 950 F.2d 741 (D.C. Cir. 1991)). On March 3, 1992, EPA reinstated the mixture and derived-from rules on an interim basis, and solicited comments on other ways to regulate waste mixtures and residues (see 57 *FR* 7628). The Agency is going to address issues related to waste mixtures and residues in a future rulemaking.

B. Regulatory Status of Mixed Wastes

The petitioned wastes that are subject to today's notice are "mixed wastes." Mixed wastes are defined as a mixture of hazardous wastes regulated under Subtitle C of RCRA and radioactive

wastes regulated under the Atomic Energy Act (AEA). Because section 1004 of RCRA excludes "source," "special nuclear," and "byproduct materials," as defined under the AEA, from the definition of RCRA "solid waste," there has been some confusion in the past as to the scope of EPA's authority over mixed waste under RCRA. EPA clarified this question in a **Federal Register** notice of July 3, 1986 (51 FR 24504).

EPA's clarification stated that the section 1004 exclusion applies only to the radioactive portion of mixed waste, not to the hazardous constituents. Therefore, a mixture of "source," "special nuclear," or "byproduct materials" and a RCRA hazardous waste must be managed as a hazardous waste, subject to the requirements of RCRA Subtitle C (that is, RCRA standards for the management of hazardous waste). EPA's oversight under RCRA, however, extends only to the hazardous waste components of the mixed waste, not to the source, special nuclear, or byproduct materials themselves. The exempted radionuclides are instead addressed under the AEA. DOE subsequently confirmed and clarified this interpretation in the **Federal Register** on May 1, 1987 (52 FR 15937).

III. Proposed Exclusion

A. Background

1. Approach Used to Evaluate This Petition

This petition requests a delisting for listed hazardous wastes. In making the initial delisting determination, the Agency evaluated the petitioned wastes against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, the Agency agreed with the petitioner that the wastes are non-hazardous with respect to the original listing criteria. (If the Agency had found that the wastes remained hazardous based on the factors for which the wastes were originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the wastes with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the wastes to be hazardous. The Agency considered whether the wastes are acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the wastes, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the wastes, plausible and specific types of management of the petitioned wastes, the quantities of wastes generated, and variability of the wastes.

For this delisting determination, the Agency used such information to identify plausible exposure routes (i.e., ground water, surface water, air) for hazardous constituents present in the petitioned wastes. The Agency determined that disposal in a land-based waste management unit is the most reasonable, worst-case scenario for DOE's wastes, and that the major exposure route of concern would be ingestion of contaminated ground water. The Agency notes that future land use on this site could change to private use and thus require protection of ground water resources (see the public docket for the final report on *The Future for Hanford: Uses and Cleanup*, December 1992). Therefore, the Agency is proposing to use a particular fate and transport model to establish maximum allowable concentrations of hazardous constituents for DOE's petitioned wastes. Specifically, the Agency used the model to estimate a dilution and attenuation factor (DAF) associated with the disposal of DOE's petitioned wastes in a land-based waste management unit, based on the estimated maximum annual volume of the wastes. The Agency used this DAF to back-calculate maximum allowable levels from the health-based levels for the constituents of concern.

EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned wastes in a land-based waste management unit, and that a reasonable worst-case scenario is appropriate when evaluating whether wastes should be relieved of the protective management constraints of RCRA Subtitle C. The use of a reasonable worst case scenario results ensures that the wastes, once removed from hazardous waste regulation, will not pose a threat to human health or the environment.

As an additional measure for evaluating this petition, the Agency believed that it should also consider the most likely disposal scenario for the petitioned wastes because these petitioned wastes are mixed wastes with limited disposal options. Therefore, EPA also evaluated the risks associated with the on-site disposal option selected by DOE, and accepted by the State of Washington, for the petitioned wastes. The preferred scenario is to pipe the treated waste effluents underground and discharge the effluents into a covered structure with an open bottom to the ground (i.e., a crib disposal system). DOE performed a ground water modeling study to assess the impacts of this disposal option. The results of DOE's ground water modeling study are discussed in Part III, Section C (Agency Evaluation).

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that, because DOE is seeking an upfront delisting (i.e., an exclusion based on data from wastes generated from pilot-scale treatment processes), ground-water monitoring data collected from the areas where the petitioner plans to dispose of the waste in the future are not necessary. Because the petitioned wastes are not currently generated or disposed of, ground-water monitoring data would not characterize the effects of the petitioned wastes on the underlying aquifer at the disposal sites and, thus, would serve no purpose. Therefore, the Agency did not request ground-water monitoring data.

DOE petitioned the Agency for an upfront exclusion (for wastes that have not yet been generated) based on descriptions of pilot-plant treatment processes used to treat samples comparable in composition to dilute aqueous hazardous waste streams at the Hanford facility, information about the sources of the dilute aqueous wastes that will be treated in the future, available characterization data for these wastes, and results from the analysis of treated effluent generated during studies of pilot-scale treatment processes.

Similar to other facilities seeking upfront exclusions, this upfront exclusion (i.e., an exclusion based on information characterizing the process and wastes) would be contingent upon DOE conducting analytical testing of representative samples of the petitioned wastes once the treatment unit is on-line at the Hanford site. Specifically, DOE will be required to collect representative samples from its full-scale 200 Area Effluent Treatment Facility (ETF), once it is operational, to verify that the treatment system is on-line and operating as described in the petition. The verification testing requires DOE to demonstrate that the ETF, once constructed and on-line, will generate non-hazardous wastes (i.e., wastes that meet the Agency's verification testing conditions).

From the evaluation of DOE's delisting petition, a list of constituents was developed for the verification testing conditions. Maximum allowable total constituent concentrations for these constituents were derived by back calculating from the delisting health-based levels through the proposed fate and transport model for a land-based management scenario. These concentrations (i.e., "delisting levels");

are the proposed verification testing conditions of the exclusion.

The Agency encourages the use of upfront delisting petitions because they have the advantage of allowing the applicant to know what treatment levels for constituents will be sufficient to render specific wastes non-hazardous, before investing in new or modified waste treatment systems. Therefore, upfront delistings will allow new facilities to receive exclusions prior to generating wastes, which, without upfront exclusions, would unnecessarily have been considered hazardous. Upfront delistings for existing facilities can be processed concurrently during construction or permitting activities; therefore, new or modified treatment systems should be capable of producing wastes that are considered non-hazardous sooner than otherwise would be possible. At the same time, conditional testing requirements to verify that the delisting levels are achieved by the fully operational treatment systems will maintain the integrity of the delisting program and will ensure that only non-hazardous wastes are removed from Subtitle C control.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments on today's proposal are addressed.

2. Overview of Treatment Process

DOE's proposed treatment process for 242–A Evaporator PC consists of ten primary steps which are: (1) pH adjustment, (2) coarse filtration, (3) ultraviolet/oxidation (UV/OX), (4) pH adjustment, (5) hydrogen peroxide destruction, (6) fine filtration, (7) degasification, (8) reverse osmosis (RO), (9) ion exchange (IX), and (10) pH adjustment. DOE believes that efficient removals can be achieved through the proposed ETF for the remediation of 242–A Evaporator PC, and other liquid waste streams.

DOE chose to perform 242–A Evaporator PC treatability studies using pilot-scale treatment equipment configured similarly to the ETF design. The pilot-scale treatability studies included ultraviolet/oxidation (UV/OX), reverse osmosis (RO), and ion exchange (IX) treatment steps in addition to several intermediate steps such as pH adjustment, hydrogen peroxide destruction, and fine filtration. In addition, since the 242–A Evaporator was not scheduled to be on-line until late 1993 or later, process condensate was not available for treatability studies in the pilot-scale treatment processes in sufficient time to meet the August 1993 delisting submittal deadline. Therefore, DOE developed four surrogate test solutions (STSs) to characterize 242–A Evaporator PC, as well as other liquid wastes generated at the facility. DOE developed these four surrogate test solutions (i.e., STS–1 through STS–4) to evaluate the treatment capabilities of the ETF, in particular, the UV oxidation rate of organic compounds, and the removal efficiency of inorganic compounds using reverse osmosis and ion exchange. The STS constituents were selected from the 242–A Evaporator PC characterization data (obtained from 34 samples taken between August 1985 and March 1989), a Hanford site chemical inventory, and additional organic compounds representing a variety of chemicals of regulatory concern. DOE believes that the 200 gallons of each batch of STS treated using the three main treatment processes (*i.e.*, UV/OX, RO, and IX) in sequential steps provides pilot study capabilities with minimal infield scale-up issues. DOE's proposed full-scale ETF is designed to allow treatment of a wide range of constituents, in addition to those potentially present in the 242–A Evaporator PC.

B. Agency Analysis

DOE provided information quantifying concentrations of hazardous constituents in 34 samples of untreated process condensate effluent collected between August 1985 and March 1989. These samples were analyzed for metals and other inorganic constituents, organic constituents, and radioactive constituents. DOE used Methods SW–846 6010 to quantify concentrations of the TC metals and other inorganic constituents. DOE used Methods 8240 and 8270 to quantify concentrations of the volatile and semi-volatile organic constituents, and Method 9010 to quantify the total constituent concentrations of cyanide in the 242–A Evaporator PC. Radioactive constituents were analyzed using Method 9310. Table 1 presents 90th percentile upper confidence limit (90%CI) and maximum concentrations of hazardous constituents of concern detected in the 34 samples of 242–A Evaporator PC collected between August 1985 and March 1989.

Table 1 includes all hazardous constituents (listed in App. VIII, § 261) found in the condensate, as well as other detected constituents of concern that have health-based levels. Other constituents detected without health-based levels included inorganic salts (e.g., sodium, calcium) and organic compounds (e.g., alcohols, hydrocarbons, glycols) of relatively low toxicity. (See the public docket for this notice for a summary of constituents detected and health-based levels.)

TABLE 1.—HAZARDOUS CONSTITUENTS OF CONCERN DETECTED IN UNTREATED 242–A EVAPORATOR PC (PPM)

Parameter	Constituent concentrations	
	90% CI	Maximum
Barium	0.0072	0.008
Cadmium	SD	0.005
Chromium	0.066	0.156
Fluoride	0.971	12.27
Mercury	0.0003	0.0007
Nickel	0.015	0.017
Vanadium	0.0067	0.007
Zinc	0.017	0.044
Acetone	1.0	5.1
Benzaldehyde	SD	0.023
Benzyl alcohol	0.014	0.018
1-Butanol	11.0	88.0
Chloroform	0.014	0.027
Methyl ethyl ketone	0.053	0.12
Methylene chloride*	0.14	0.18
Methyl isobutyl ketone	0.014	0.068
N-Nitrosodimethylamine	SD	0.057
Phenol	SD	0.033
Pyridine	SD	0.55
1,1,1-Trichloroethane*	SD	0.005

SD Denotes a single detect.
* Constituent confirmed to be in blank samples only.

For the ETF treatability studies, DOE used SW–846 methods 8015 and 8240 for analysis of STS protocol characterization samples, with one exception. The semivolatile organic compound analysis was performed using a Contract Laboratory Program (CLP) analysis method, a method similar to SW–846 Method 8270. DOE used SW–846 Method 9010 to quantify the total constituent concentrations of cyanide in samples of the untreated and treated STSs.

Tables 2 through 5 present concentrations of inorganic and organic compounds in samples of untreated and treated STS–1 through STS–4 and percent removals. Nearly all of the 29 inorganic constituents were treated to below their detection levels based on the inorganic data for the STSs from the IX process; only inorganic constituents above detection limits are included in the tables. Treated values for organic constituents are based on the organic data for the STSs from the UV/OX process only. To fully illustrate the capabilities of the UV/OX system, all meaningful data for organic constituents are given in the tables.

TABLE 2.—TOTAL CONSTITUENT CONCENTRATIONS (PPM) STS–1, UNTREATED AND TREATED

Parameter	Constituent concentrations		
	Untreated	Treated	% removal
Aluminum	5.63	0.20	96
Ammonium	2,175.6	0.079	100
Barium	0.22	0.0075	97
Chloride	0.014	0.00024	98
Fluoride	0.02	0.0002	99
Mercury	0.095	0.00033	100
Nitrate	1.11	0.00022	100
Selenium	1.24	0.0048	100
Acetone	14.0	<0.01	100
Benzene	1.7	0.001	100
1-Butanol	120.0	<0.1	100
Carbon tetrachloride	0.480	0.002	100
Chloroform	1.9	0.029	98
Methyl ethyl ketone	5.3	<0.01	100
Methyl isobutyl ketone	5.8	<0.01	100
Naphthalene	1.9	<0.01	>99
Toluene	1.0	<0.005	100
1,1,1-Trichloroethane	1.3	0.0016	99
Phenol	2.7	<0.01	100
Tributyl Phosphate	15.0	<0.02	100
Tridecane	0.78	0.023	97

<Constituent below detection limit; % minimum removal calculated by assuming constituent is at the detection limit.

TABLE 3.—TOTAL CONSTITUENT CONCENTRATIONS (PPM) STS–2, UNTREATED AND TREATED

Parameter	Constituent concentrations		
	Untreated	Treated	% removal
Ammonium	2,351.0	1.94	100
Arsenic	2.66	0.008	100
Chloride	0.014	0.00079	94
Cyanide	0.002	0.000036	94
Fluoride	0.02	0.0013	94
Mercury	0.095	0.00084	99
Nitrate	1.05	0.00031	100
Acetone	3.9	0.034	99
Benzene	0.21	<0.005	98
1-Butanol	36.0	<0.1	100
Carbon tetrachloride	0.12	0.009	93
Chloroform	0.26	0.025	90
Methyl ethyl ketone	0.82	<0.01	>99
Methyl isobutyl ketone	0.47	<0.01	>98
Naphthalene	0.17	0.016	91
Toluene	0.16	<0.01	>94
1,1,1-Trichloroethane	0.15	<0.005	>97
Phenol	0.21	<0.01	>95
Tributyl Phosphate	8.0	<0.02	100
Tridecane	0.53	0.072	86

< Constituent below detection limit; % minimum removal calculated by assuming constituent is at the detection limit.

TABLE 4.—TOTAL CONSTITUENT CONCENTRATIONS (PPM) STS–3, UNTREATED AND TREATED

Parameter	Constituent Concentrations		
	Untreated	Treated	% removal
Ammonium	35.9	0.15	100
Chloride	0.00065	0.000078	88
Fluoride	0.0052	0.000069	99
Nitrate	0.048	0.0004	99
Selenium	0.94	0.0057	99
Acetone	1.8	<0.01	>99
Benzene	0.016	0.013	99
1-Butanol	7.1	<0.1	>99
Carbon tetrachloride	0.15	0.019	87
Chloroform	0.29	0.006	98
Methyl ethyl ketone	0.078	<0.01	>87
Methyl isobutyl ketone	0.39	0.01	97

TABLE 4.—TOTAL CONSTITUENT CONCENTRATIONS (PPM) STS–3, UNTREATED AND TREATED—Continued

Parameter	Constituent Concentrations		
	Untreated	Treated	% removal
Naphthalene	0.13	<0.01	>92
Toluene	0.18	<0.005	>97
1,1,1-Trichloroethane	0.24	0.005	98
Phenol	0.18	<0.01	>94
Tributyl Phosphate	4.9	<0.02	100
Tridecane	0.13	0.15	NM

< Constituent below detection limit; % minimum removal calculated by assuming constituent is at the detection limit.
NM Data for tridecane not meaningful due to solubility problems.

TABLE 5.—TOTAL CONSTITUENT CONCENTRATIONS (PPM) STS–4, Untreated and Treated

Parameter	Constituent concentrations		
	Untreated	Treated	% removal
Ammonium	2,047.0	0.74	100
Chloride	0.017	0.00042	98
Fluoride	0.024	0.0003	99
Mercury	0.075	0.0012	98
Nitrate	1.06	0.00064	100
Acrolein	2.4	0.02	99
Aniline	2.7	<0.02	>99
Bis (2-chloroethyl) ether	1.7	<0.01	>99
Bis(2-ethylhexyl)phthalate	0.059	0.014	76
1–Butanol	8.9	<0.1	>99
1, 4-Dichlorobenzene	1.9	<0.01	99
gamma-BHC	1.4	0.19	86
Hexachloroethane	0.93	0.57	39
Nitrobenzene	3.3	<0.01	100
N-Nitroso-di-n-propylamine	1.45	<0.01	99
Pentachlorophenol	1.5	<0.02	99
Tetrachloroethylene	1.2	0.24	80
Tetrahydrofuran	5.3	<0.005	100
Tributyl phosphate	4.8	<0.02	100
1,1, 2-Trichloroethane	2.4	1.0	58
Tridecane	0.36	0.14	61

<Constituent below detection limit; % Removal calculated by assuming constituent is at the detection limit.

DOE provided information, pursuant to § 260.22, indicating that the ETF effluent is not expected to demonstrate the characteristics of ignitability, corrosivity, or reactivity. According to DOE, the 242–A Evaporator PC is a dilute aqueous waste with low levels of volatile organic compounds which, when passed through the ETF, are expected to be destroyed or present at very low concentrations. Therefore, the ETF effluents are not likely to be ignitable wastes. The wastes are not expected to be corrosive because measured pH for the 242–A Evaporator PC ranged from 9.72 to 10.83 standard units. Also, the pH of the ETF effluents will be adjusted to be between 6.5 and 8.5 before disposal. To be designated corrosive, pH must be less than 2, or greater than or equal to 12.5 standard units. The wastes are not expected to be reactive because the 242–A evaporator PC (a dilute aqueous waste) does not readily undergo violent chemical change, react violently or form potentially explosive mixtures with water, explode when subject to a strong initiating force, explode at normal temperatures and pressures, or fit the definition of a class A or Class B explosive. The 242–A Evaporator PC also does not contain sufficient quantities of sulfide or cyanide to generate toxic fumes when mixed with water or acid. See § 261.21, § 261.22, and § 261.23 respectively.

DOE estimated that a maximum of 19 million gallons of liquid effluents will be generated annually from treating the petitioned wastes in the ETF. The Agency may review a petitioner's

estimates and, on occasion, has requested a petitioner to re evaluate the estimated waste generation rate. EPA accepts DOE's certified estimate of 19 million gallons per year (approximately 95,000 cubic yards) of ETF effluents to be generated at its Hanford facility.

EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting an exclusion.

C. Agency Evaluation

Review of this petition included consideration of the original listing criteria as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See Section 222 of HSWA, 42 U.S.C. 6921(f), and 260.22(d)(2)-(4).

The Agency considers characterization information and data for the untreated liquid waste to be sufficient to evaluate the potential constituents of concern in the untreated wastes. The Agency believes that DOE's inventory of chemicals used in production plants and supporting operations provides an understanding of the hazardous constituents that are potentially present in the DSTs. In addition, the Agency believes that the analytical data characterizing the untreated 242–A Evaporator PC represents the types of liquid waste that will be treated in the ETF. Furthermore, the Agency believes that DOE has conducted sufficient studies of its pilot-scale treatment processes to demonstrate that the system, once on-line, will be able to treat dilute aqueous wastes containing hazardous constituents of concern to levels below the level of concern for human health and the environment.

The results of the treatability studies were used by DOE to estimate maximum concentrations of hazardous constituents in the untreated wastes once treated by the ETF. The data from this evaluation clearly demonstrated that the ETF would have the capability of treating hazardous constituents in the PC to below delisting levels.

DOE estimated the maximum concentrations of hazardous constituents that can be treated by the ETF based on one pass of the STSs (waste waters) through the ETF. (If necessary, the ETF design provides for recycle of the treated waters.) The maximum concentrations of constituents that the ETF is capable of treating are also low. This is because many inorganic constituents were treated to below detection limits by the RO process so that the ability of the IX to remove inorganic constituents was not considered. In addition, the ability of RO and IX processes to further remove organic constituents after the UV/OX process was not considered.

The treatment data showed ETF to be extremely effective for all classes of inorganic species (i.e., monovalent and divalent cations and anions). Furthermore, the levels of inorganic constituents in the PC are expected to be relatively low in any case because it is a condensate derived from an evaporation process. The non-volatile inorganic metals are not expected from such a waste generating process. The existing PC data confirms that only trace levels of the non-volatile metals are present, while salts generated from dissolved ammonia are present at levels above 500 ppm. Because removal efficiencies for ammonia in the treatment studies were demonstrated to be 99–100%, this indicates that ETF should be able to effectively remove any inorganic constituents of concern in the PC.

The treatability studies also demonstrated that organic constituents can be effectively treated by the UV/OX process. In the UV/OX process, the oxidation (destruction) of organic constituents was shown to follow first order kinetics. This means that the organic constituent concentration decreased logarithmically with time. Under the conditions used for the process (large excess of oxidant), the rate of destruction typically will not depend on the concentration of the constituent.

The constituent concentrations in the STSs were varied to span the concentrations of constituents observed in the PC and to evaluate the treatment capabilities of the ETF. STS–1 and STS–4 contained relatively high levels of organics in comparison to STS–2 and STS–3. The pilot-scale UV/OX unit was able to decrease the concentrations of most organic constituents by greater than 90 percent (long before testing times had expired). The organic compounds that were somewhat more difficult to destroy were the chlorinated compounds (i.e., hexachloroethane and 1,1,2-trichloroethane) contained in STS–4 and tridecane contained in STS–3 and STS–4.

STS–4 contained high concentrations of inorganic constituents and additional organic constituents (which are not expected to be in the PC) representing various chemical groups. The organic constituents were generally the easier to oxidize compounds at a concentration of greater than 25 times the quantitation level (exception being the chlorinated compounds listed above and tridecane). The purpose of the organic constituents contained in STS–4 was to demonstrate the versatility of the ETF to treat a variety of constituents representing various chemical groups.

The testing of STSs performed with the UV/OX process was primarily designed to determine the oxidation rate for a wide range of organic groups. The testing was not intended to show 100 percent destruction of each of the organic constituents in the STSs. The destruction efficiency is a function of the oxidation rate and exposure time in the UV/OX unit. The exposure time for each of the STSs was based on the type of organic and inorganic constituents they contained and their respective concentrations. The exposure time in the UV/OX unit for STS–4 (5 minutes) was kept the shortest of the four STSs because the test solution generally did not contain the difficult to oxidize organic constituents. This exposure time did not prove to be sufficient for several organic compounds which were difficult to oxidize (i.e., the chlorinated compounds referred to above and tridecane). However, STS–1, which also contained relatively high levels of inorganics and organics (including difficult to oxidize chlorinated compounds similar to STS–4), demonstrated more complete oxidation of the organic constituents based on longer exposure time in the UV/OX unit (46 minutes).

The organic constituent levels in the STSs, particularly STS–1 and STS–4, are worst-case levels. In addition, most of the organic constituents in STS–4 have never been detected in the PC. The Agency believes that the ETF should be able to effectively remove the organic constituents found in the PC. If necessary, it is also possible to increase the amount of UV/OX exposure (and thus treatment) provided for organic compounds in the ETF by either recycling the treated PC or by reducing the flow rate through the UV/OX unit.

As discussed previously in this notice, the Agency is proposing to include monitoring and testing requirements in DOE's exclusion in order to ensure that the ETF is capable of treating dilute aqueous wastes such that concentrations of hazardous constituents are below delisting levels of concern. As part of these testing requirements, EPA established

maximum allowable waste concentrations for hazardous inorganic and organic constituents of concern. To set these levels, the Agency identified a fate and transport model that would provide some estimate of the dilution afforded to a constituent once the petitioned wastes were disposed of, based on the reasonable, worst-case management scenario for the wastes. The Agency considered the appropriateness of alternative waste management scenarios for DOE's liquid wastes and decided that disposal in a land-based waste management unit, such as a surface impoundment, is a reasonable, worst-case scenario. Under a surface impoundment disposal scenario, the major exposure route of concern for hazardous constituents would be ingestion of contaminated ground water.

The Agency, therefore, used the modified EPACML, which predicts the potential for ground-water contamination from wastes that are disposed of in a surface impoundment, to establish maximum allowable waste concentrations for DOE's petitioned wastes. See 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991) (and the RCRA public docket for these notices) for a detailed description of the EPACML model and the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, estimates the dilution and attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from ground-water recharge for a specific volume of waste. Using this model, the Agency obtained a DAF of 10 for the maximum annual volume of petitioned wastes expected to be generated (i.e., 95,000 cubic yards or 19 million gallons). The Agency used this DAF to back-calculate maximum allowable levels (from the health-based levels) for the constituents of concern in ground water at a compliance point (i.e., a receptor well serving as a drinking-water supply). The Agency requests comments on the use of the modified EPACML to set maximum allowable waste concentrations (see also Section F—Verification Testing Conditions).

Because the petitioned wastes are mixed wastes, the disposal options for the petitioned wastes are realistically limited to disposal on-site in a State-approved land disposal facility. The preferred disposal system is an infiltration crib, which is described as a grid of diffuser pipes placed in a trench and covered by 6 feet of sand. DOE submitted to EPA a summary of a modeling effort which predicts tritium concentrations in ground water that would result from the operation of the infiltration crib. Based on the modeling information provided by DOE, the crib system would ensure that petitioned wastes (i.e., waste waters) containing tritium are isolated for many years while they migrate slowly through the subsurface environment from the crib to the Columbia River. By the time the waste waters reach the river (estimated to take more than 120 years), the effect of radioactive decay will have lowered concentrations of tritium in the waste waters to acceptable levels. In addition, the crib system would significantly reduce volatilization of organics.

Because EPA evaluated the hazardous constituents in the petitioned wastes, EPA requested DOE to provide additional modeling information concerning transport of hazardous chemical constituents using its existing model for transport of tritium. DOE submitted a ground water modeling study that was based on several conservative assumptions. A continuous waste water discharge of 150 gallons per minute (gpm) was assumed in the modeling (ETF is designed to handle a maximum feed rate of 150 gpm at 72 percent efficiency), which translates into approximately 78 million gallons per year (more than 4 times greater than the maximum annual volume of petitioned wastes expected to be generated). DOE's study also assumed that the ETF will treat hazardous waste forever (rather than the estimated period of 30 years or less needed to treat the petitioned wastes), chemical constituents will not be retarded in the unsaturated or the saturated zones, and there will be no attenuation processes (i.e., volatilization, biodegradation, hydrolysis, or adsorption). Under these worst-case assumptions, the DOE study predicted minimum dilution factors at the Columbia River ranging from 14 (after 200 years) to 9 (after 300 years).

Although the modeling assumptions were different, the dilution factors estimated from DOE's study (9 to 14) are consistent with the DAF of 10 calculated using the modified EPACML. Therefore, based on the results of both of these conservative analyses, EPA is assuming a DAF of 10 to establish delisting levels for the effluent wastes.

During the evaluation of DOE's petition, the Agency also considered the potential impact of the petitioned waste via non-ground-water routes. The Agency evaluated the potential hazards resulting from airborne exposure to volatile constituents present in DOE's treated effluent using a simple air dispersion model for releases from an underground crib disposal system. Similar to its use of the EPACML, the Agency used this model to back-calculate maximum allowable concentrations of volatile constituents that could be present in the treated effluent without presenting a potential hazard. The Agency then compared these concentrations with those set in the conditions proposed in today's notice (using the modified EPACML) to determine whether concentrations of volatile constituents would be of concern if the treated effluent met the criteria set forth in the proposed testing conditions. The results of this conservative evaluation indicated that there is no substantial present or potential hazard from airborne exposure to constituents from DOE's petitioned waste. A description of the Agency's assessment of the potential impact of DOE's waste, with regard to exposure to volatile constituents, is presented in the docket for today's proposed rule.

The Agency also considered the potential impact of the petitioned waste via a surface water route. (A description of the Agency's assessment is included in the RCRA public docket for today's notice.) In general, the Agency believes that constituents from the petitioned waste will not directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents, such as that modeled by the modified EPACML (or DOE's study), may occur. Further, the Agency believes that any constituents transported here would be diluted once they reached the Columbia River. The Agency, therefore, believes that this route of exposure is not of concern.

D. Conclusion

The Agency concludes that the descriptions of DOE's 200 Area Evaporator Treatment Facility process and analytical characterizations, in conjunction with the proposed delisting testing requirements, provide a reasonable basis to grant DOE's petition for an upfront conditional exclusion. The Agency believes that the samples collected from the treatability studies and waste variability study adequately represent the variations in raw materials and processing. The data submitted in support of the petition show that DOE's proposed ETF can substantially reduce the toxicity of the waste, and render effluent generated on site non-hazardous by reducing the levels of inorganic and organic constituents of concern in the waste to below delisting levels. In addition, under the testing provisions of the conditional exclusion, DOE will be required to retreat effluents in a verification tank exhibiting total constituent levels above a specified

level (i.e., "delisting level") (see Section F—Verification Testing Conditions).

The Agency proposes to grant a conditional exclusion to DOE–RL, located in Richland, Washington, for the liquid wastes described in its petition as EPA Hazardous Waste Nos. F001, F002, F003, F004, F005, and F039 (derived from F001 through F005). The Agency's decision to exclude this waste is based on process descriptions, characterization of untreated 242–A Evaporator PC, and results from the analysis of liquid wastes generated by a pilot-scale ETF using surrogate test solutions. If the proposed rule becomes effective, the petitioned liquid wastes, provided the conditions of the exclusion are met, will no longer be subject to regulation under parts 262 through 268 and the permitting standards of part 270.

E. Verification Testing Conditions

The testing requirements are to be conducted in two phases, initial and subsequent testing. The initial testing requirements apply to the first three verification tanks filled with treated effluent generated from the full-scale ETF at typical operating conditions. Following completion of testing requirements with the initial three verification tanks, the subsequent testing requirements would apply to every tenth verification tank filled with treated effluent.

If the final exclusion is granted as proposed, DOE will be required to: (1) Submit information on the operating parameters of the process units comprising the ETF; (2) collect and analyze a representative sample from each of the first three verification tanks filled with ETF effluent to verify that the units comprising the ETF meet the treatment capabilities of the pilot-scale units described in the petition; and (3) continue to collect and analyze representative samples from every tenth verification tank filled with ETF effluent to verify that the ETF effluent continues to meet the Agency's verification testing limitations (i.e., "delisting levels"). These proposed conditions are specific to the upfront exclusion petitioned for by DOE. The Agency may choose to modify these proposed conditions based on comments that may be received during the public comment period for this proposed rule. The proposed exclusion for DOE's Effluent Treatment Facility in Hanford, Washington, is conditional upon the following *requirements:*

(1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW–846 (or other EPA-approved) methodologies. If EPA judges the treatment process to be effective under the operating conditions used during the initial verification testing, DOE may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). DOE must continue to test as specified in Condition (1)(A) until notified by EPA in writing that testing in Condition (1)(A) may be replaced by Condition (1)(B).

(A) *Initial Verification Testing:* During the period required to fill the first three verification tanks (each designed to hold approximately 650,000 gallons) with effluents generated from an on-line, full-scale Effluent Treatment Facility (ETF), DOE must monitor the range of typical operating conditions for the ETF. DOE must collect a representative sample from each of the first three verification tanks filled with ETF effluents. The samples must be analyzed, prior to disposal of ETF effluents, for all constituents listed in Condition (3). DOE must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 90 days after the first verification tank is filled with ETF effluents.

The Agency believes that an initial period of approximately 10 days (based on an estimated 3-day period to fill each of the first three verification tanks) is appropriate for DOE to collect sufficient data to verify that a full-scale treatment process comprised of units such as those described in the petition (*e.g.*, ultraviolet/oxidation, reverse osmosis, ion exchange, etc.) is operating correctly. The initial verification testing conditions, if promulgated as proposed, will require a representative sample from each of the first three verification tanks filled with ETF effluents generated from an on-line, full-scale ETF. The Agency proposes this initial verification testing condition to ensure that the full-scale ETF is closely monitored during the start-up period, and to enable the collection of complete information characterizing the ETF effluents. If the Agency determines that the data from the initial verification period demonstrates that the treatment process is effective and that hazardous constituents of concern in the ETF effluents are consistently below delisting levels, EPA will notify DOE in writing that the testing conditions in (1)(A) may be replaced with the testing conditions in (1)(B).

(B) *Subsequent Verification Testing:* Following notification by EPA, DOE may substitute the testing conditions in this condition for (1)(A). DOE must continue to monitor operating conditions, and collect and analyze representative samples from every tenth verification tank filled with ETF effluents. These representative samples must be analyzed, prior to disposal of ETF effluents, for all constituents listed in Condition (3). If all constituent levels in a sample do not meet the delisting levels specified in Condition (3), DOE must analyze representative samples from the following two verification tanks generated prior to disposal. DOE may also collect and analyze representative samples more frequently.

The Agency believes that the concentrations of the constituents of concern in the ETF effluents may vary somewhat over time. As a result, in order to ensure that DOE's ETF can effectively handle any variation in constituent concentrations in the PC derived from the on-site double shell tanks, the Agency is proposing a subsequent testing condition. The proposed subsequent testing would verify that the ETF is operated in a manner similar to its operation during the initial verification testing and that the ETF effluents do not exhibit unacceptable levels of toxic constituents. Therefore, the Agency is proposing to require DOE to analyze representative samples from every tenth verification tank filled with ETF effluents as described in Condition (1)(B). The Agency believes that collecting representative samples from every tenth verification tank will ensure that the ETF is able to handle any potential variability in concentrations of those constituents of most concern. If DOE makes any significant changes in operating conditions as described in Condition (4), then DOE must re-institute all testing in Condition (1)(A), pending a new demonstration under this condition for reduced testing.

Future delisting proposals and decisions issued by the Agency may include different testing and reporting requirements based on an evaluation of the manufacturing and treatment processes, the waste, the volume of waste, and other factors normally considered in the petition review process.

(2) *Waste Holding and Handling:* DOE must store as hazardous all ETF effluents generated during verification testing (as specified in Conditions (1)(A) and (1)(B)), that is until valid analyses demonstrates that Condition (3) is satisfied. If the levels of hazardous constituents in the samples of ETF effluents are equal to or below all of the levels set forth in Condition (3), then the ETF effluents are not hazardous and may be managed and disposed of in accordance with all applicable solid

waste regulations. If hazardous constituent levels in any representative sample collected from a verification tank exceed any of the delisting levels set in Condition (3), the ETF effluents in that verification tank must be re-treated until the ETF effluents meet these levels. Following re-treatment, DOE must repeat analyses in Condition (3) prior to disposal.

The purpose of this condition is to ensure that ETF effluents which contain hazardous levels of inorganic or organic constituents are managed and disposed of in accordance with Subtitle C of RCRA. Holding the ETF effluents until characterization is complete will protect against improper handling of hazardous materials. The representative samples from the specified verification tanks must be analyzed for the appropriate parameters, and must meet the appropriate delisting levels, in order for the wastes to be considered non-hazardous.

(3) *Delisting Levels:* All total constituent concentrations in the waste samples must be measured using the appropriate methods specified in "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Publication SW–846 (or other EPA-approved methods). All total constituent concentrations must be equal to or less than the following levels (ppm):

Inorganic Constituents:	
Ammonium	10.0
Antimony	0.06
Arsenic	0.5
Barium	20.0
Beryllium	0.04
Cadmium	0.05
Chromium	1.0
Cyanide	2.0
Fluoride	40.0
Lead	0.15
Mercury	0.02
Nickel	1.0
Selenium	0.5
Silver	2.0
Vanadium	2.0
Zinc	100.0
Organic Constituents:	
Acetone	40.0
Benzene	0.05
Benzyl alcohol	100.0
1-Butyl alcohol	40.0
Carbon tetrachloride	0.05
Chlorobenzene	1.0
Chloroform	0.1
Cresol	20.0
1,4-Dichlorobenzene	0.75
1,2-Dichloroethane	0.05
1,1-Dichloroethylene	0.07
Di-n-octyl phthalate	7.0
Hexachloroethane	0.06
Methyl ethyl ketone	200.0
Methyl isobutyl ketone	30.0
Naphthalene	10.0
Tetrachloroethylene	0.05
Toluene	10.0
Tributyl phosphate	0.2
1,1,1-Trichloroethane	2.0
1,1,2-Trichloroethane	0.05
Trichloroethylene	0.05
Vinyl Chloride	0.02

The Agency selected the set of constituents specified in Condition (3) after evaluating information provided in DOE's petition describing the inventory of chemicals used in production plants and supporting operations feeding wastes to the double-shell tank system, reviewing information about the composition of the wastes in the double-shell tanks, and identifying available information about the health-based effects of these constituents. The constituents listed in Condition (3) include those constituents with available health-based levels that were: (1) detected in samples of the 242–A Evaporator effluent (i.e., the untreated waste), and (2) identified by DOE to be on the inventory of chemicals used at the Hanford site. The Agency is also proposing to require testing for other volatile chlorinated organic constituents of possible concern, i.e., those listed under the toxicity characteristic (§ 261.24). While these constituents were not found in the evaporator condensate samples, chlorinated compounds were one of the most difficult groups of chemicals to treat using the UV/OX process. Including these chlorinated constituents (many of which are common solvents) will help ensure that the treated effluent is nonhazardous.

As a further check on the operational efficiency of the treatment process, the Agency is also proposing to require testing for two key indicator parameters with no verified HBL, i.e., ammonia and tributyl phosphate. The Agency believes that ammonia is a good indicator of the efficiency of the RO stage of the treatment process, because ammonia was found at relatively high levels in most evaporator condensate samples (90th percentile upper confidence limit concentration was 511 ppm). Based on the maximum level of ammonia found in the waste feed (9350 ppm), and assuming the RO process is operating at a 99.9% removal efficiency, the Agency is proposing that the treated effluent be below a maximum of 10 ppm.

The Agency proposes to add tributyl phosphate as an additional indicator of the UV/OX treatment efficiency, because this chemical was found in nearly all evaporator condensate samples at significant levels (90th percentile upper confidence limit concentration was 4.1 ppm and the maximum concentration was 21 ppm). Tributyl phosphate was the only organic compound found above 1 ppm, except for 1-butyl alcohol and acetone (both of which are already on the testing list). The Agency is proposing that the concentration of tributyl phosphate in the treated effluents be below 0.2 ppm. The level of 0.2 ppm is an order of magnitude above the detection limit for tributyl phosphate, and would allow a sufficient margin for any variability in the waste sampling and analysis. The Agency has often used an order of magnitude (i.e., a factor of 10) in chemical analyses to allow for variations in analyses and matrices (for example, see 55 FR 22541, June 1, 1990, and 55 *FR* 30414, July 25, 1990).

The proposed list of analytes in condition (3) does not include four constituents given in Table 1 (i.e., benzaldehyde, N-nitrosodimethylamine, phenol, and pyridine), because these constituents were only found in one sample, and may be analytical anomalies. None were contained on DOE's inventory of chemicals used at the Hanford site, and these constituents are members of chemical classes that are readily destroyed by the UV/OX process. Therefore, the Agency believes that there is no reason to require analysis for these chemicals. EPA also is not placing methylene chloride on the list of analytes in condition (3), because this chemical was only detected in blanks obtained during characterization of the PC. Therefore, the Agency believes that this consitutent is unlikely to be present in the PC. Methylene chloride is well known as a common laboratory contaminant, and if it were on the list, the occurrence of "false positives" (i.e., detections due to lab contamination) may lead to unnecessary retreatment of ETF effluents.

The Agency established the delisting levels by back-calculating the maximum allowable levels (MALs) from the HBLs (see docket for today's rule for complete list) for the constituents of concern using the modified EPACML dilution and attenuation factor (DAF) of 10, i.e., MAL=HBL×DAF. This factor corresponds to a maximum annual waste volume of 19 million gallons (e.g., approximately 95,000 cubic yards) for a surface impoundment scenario.

(4) *Changes in Operating Conditions:* After completing the initial verification testing in Condition (1)(A), if DOE significantly changes the operating conditions established in Condition (1), DOE must notify the Agency in writing. After written approval by EPA, DOE must re-institute the testing required in Condition (1)(A). DOE must report the operations and test data, required by Condition (1)(A), including quality control data, obtained during this period no later than 60 days after the changes

take place. Following written notification by EPA, DOE may replace testing Condition (1)(A) with (1)(B). DOE must fulfill all other requirements in Condition (1), as appropriate.

To ensure consistent and efficient treatment, the Agency is requiring DOE to operate the ETF in accordance with the operating conditions established under Condition (1). However, the proposed exclusion allows DOE some flexibility in modifying the operating conditions to optimize its treatment process, if DOE can demonstrate the effectiveness of the modified operating conditions through new initial verification testing under Condition (1)(A).

(5) *Data Submittals:* At least two weeks prior to system start-up, DOE must notify, in writing, the Chief of the Waste Identification Branch (see address below) when the Effluent Treatment Process will be on-line and waste treatment will begin. The data obtained through Condition (1)(A) must be submitted to the Branch Chief, Waste Identification Branch, OSW (Mail Code 5304), U.S. EPA, 401 M Street, S.W., Washington, DC 20460 within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of three years. These records and data must be furnished upon request by EPA or the State of Washington and made available for inspection. Failure to submit the required data within the specified time period or to maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 USC 1001 and 42 USC 6928), I certify that the information contained in or accompanying this document is true, accurate, and complete.

As to the (those) identified section(s) of this document for which I cannot *personally* verify its (their) truth and accuracy I certify as the official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to DOE, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the DOE will be liable for any actions taken in contravention of its RCRA and CERCLA obligations premised upon DOE's reliance on the void exclusion.

If made final, the proposed exclusion will apply only to the wastes and waste volume (a maximum of 19 million gallons or 95,000 cubic yards generated annually) covered by the original demonstration. DOE would require a new exclusion if either its wastes or treatment processes are significantly altered beyond the changes in operating conditions described in Condition (4), such that an adverse change in waste composition (e.g., if levels of hazardous constituents increased significantly) or increase in waste volume occurred. Accordingly, DOE would need to file a new petition for the altered waste. DOE must treat waste generated in excess of 95,000 cubic yards per year or from changed processes as hazardous until a new exclusion is granted.

Although management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

IV. Effective Date

This rule, if finalized, will become effective immediately upon such finalization. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final promulgation, under the Administrative Procedure Act, 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. This proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its wastes as non-hazardous. There is no additional impact due to today's rule. Therefore, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the Agency certifies that the rule will not have any impact on any small entities.

This rule, if promulgated, will not have any adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96–511, 44 USC 3501 *et seq.*) and

have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

Dated: January 24, 1995.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In table 2 of appendix IX, part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
DOE–RL	Richland, Washington	Effluents (EPA Hazardous Waste Nos. F001, F002, F003, F004, F005, and F039 derived from F001 through F005) generated from the 200 Area Effluent Treatment Facility (ETF) located at the Hanford site (at a maximum annual generation rate of 19 million gallons per year) after [insert effective date of final rule]. To ensure that hazardous constituents are not present in the wastes at levels of regulatory concern while the treatment facility is in operation, DOE must implement a testing program. This testing program must meet the following conditions for the exclusion to be valid: (1) *Testing*: Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW–846 (or other EPA-approved) methodologies. If EPA judges the treatment process to be effective under the operating conditions used during the initial verification testing, DOE may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). DOE must continue to test as specified in Condition (1)(A) until notified by EPA in writing that testing in Condition (1) (A) may be replaced by Condition (1)(B). (A) *Initial Verification Testing:* During the period required to fill the first three verification tanks (each designed to hold approximately 650,000 gallons) with effluents generated from an on-line, full-scale Effluent Treatment Facility (ETF), DOE must monitor the range of typical operating conditions for the ETF. DOE must collect a representative sample from each of the first three verification tanks filled with ETF effluents. The samples must be analyzed, prior to disposal of ETF effluents, for all constituents listed in Condition (3). DOE must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 90 days after the first verification tank is filled with ETF effluents. (B) *Subsequent Verification Testing:* Following notification by EPA, DOE may substitute the testing conditions in this condition for (1)(A). DOE must continue to monitor operating conditions, and collect and analyze representative samples from every tenth verification tank filled with ETF effluents. These representative samples must be analyzed, prior to disposal of ETF effluents, for all constituents listed in Condition (3). If all constituent levels in a sample do not meet the delisting levels specified in Condition (3), DOE must analyze representative samples from the following two verification tanks generated prior to disposal. DOE may also collect and analyze representative samples more frequently. (2) *Waste Holding and Handling:* DOE must store as hazardous all ETF effluents generated during verification testing (as specified in Conditions (1)(A) and (1)(B)), that is until valid analyses demonstrates that Condition (3) is satisfied. If the levels of hazardous constituents in the samples of ETF effluents are equal to or below all of the levels set forth in Condition (3), then the ETF effluents are not hazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any representative sample collected from a verification tank exceed any of the delisting levels set in Condition (3), the ETF effluents in that verification tank must be re-treated until the ETF effluents meet these levels. Following re treatment, DOE must repeat analyses in Condition (3) prior to disposal. (3) *Delisting Levels*: All total constituent concentrations in the waste samples must be measured using the appropriate methods specified in "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Publication SW–846 (or other EPA-approved methods). All total constituent concentrations must be equal to or less than the following levels (ppm): *Inorganic Constituents:* Ammonium: 10.0 Antimony: 0.06 Arsenic: 0.5 Barium: 20.0 Beryllium: 0.04 Cadmium: 0.05 Chromium: 1.0 Cyanide: 2.0 Fluoride: 40.0 Lead: 0.15 Mercury: 0.02 Nickel: 1.0

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Selenium: 0.5 Silver: 2.0 Vanadium: 2.0 Zinc: 100.0 *Organic Constituents:* Acetone: 40.0 Benzene: 0.05 Benzyl alcohol: 100.0 1-Butyl alcohol: 40.0 Carbon tetrachloride: 0.05 Chlorobenzene: 1.0 Chloroform: 0.1 Cresol: 20.0 1,4-Dichlorobenzene: 0.75 1,2-Dichloroethane: 0.05 1,1-Dichloroethylene: 0.07 Di-n-octyl phthalate: 7.0 Hexachloroethane: 0.06 Methyl ethyl ketone: 200.0 Methyl isobutyl ketone: 30.0 Naphthalene: 10.0 Tetrachloroethylene: 0.05 Toluene: 10.0 Tributyl phosphate: 0.2 1,1,1-Trichloroethane 2.0 1,1,2-Trichloroethane: 0.05 Trichloroethylene: 0.05 Vinyl Chloride: 0.02 (4) *Changes in Operating Conditions:* After completing the initial verification testing in Condition (1)(A), if DOE significantly changes the operating conditions established in Condition (1), DOE must notify the Agency in writing. After written approval by EPA, DOE must re-institute the testing required in Condition (1)(A). DOE must report the operations and test data, required by Condition (1)(A), including quality control data, obtained during this period no later than 60 days after the changes take place. Following written notification by EPA, DOE may replace testing Condition (1)(A) with (1)(B). DOE must fulfill all other requirements in Condition (1), as appropriate. (5) *Data Submittals:* At least two weeks prior to system start-up, DOE must notify, in writing, the Chief of the Waste Identification Branch (see address below) when the Effluent Treatment Process will be on-line and waste treatment will begin. The data obtained through Condition (1)(A) must be submitted to the Branch Chief, Waste Identification Branch, OSW (Mail Code 5304), U.S. EPA, 401 M Street, S.W., Washington, DC 20460 within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of three years. These records and data must be furnished upon request by EPA or the State of Washington and made available for inspection. Failure to submit the required data within the specified time period or to maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 USC 1001 and 42 USC 6928), I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to DOE, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the DOE will be liable for any actions taken in contravention of its RCRA and CERCLA obligations premised *upon* DOE's reliance on the void exclusion.

(g) Law enforcement response to violations of law, including pursuit;

(h) Use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations; and

(i) Use of a road or trail that is not under Forest Service jurisdiction.

§ 261.14 Snowmobile use.

It is prohibited to possess or operate a snowmobile on National Forest System lands in violation of a restriction or prohibition established pursuant to 36 CFR part 212, subpart C, provided that the following uses are exempted from this section:

(a) Limited administrative use by the Forest Service;

(b) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(c) Authorized use of any combat or combat support vehicle for national defense purposes;

(d) Law enforcement response to violations of law, including pursuit;

(e) Use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations; and

(f) Use of a road or trail that is not under Forest Service jurisdiction.

PART 295—[REMOVED]

16. Remove part 295.

Dated: July 7, 2004.

Dale N. Bosworth,

Chief.

[FR Doc. 04–15775 Filed 7–14–04; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7786–6]

Hazardous Waste Management System; Proposed Exclusion for Identifying and Listing Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also, 'the Agency' or 'we') is proposing to grant a petition submitted by the United States Department of Energy, Richland Operations Office (DOE–RL) to exclude (or 'delist') from regulation as listed hazardous waste certain mixed waste ('petitioned waste') that are treated at the 200 Area Effluent Treatment Site (200 Area ETF) on the Hanford Facility, Richland, Washington.

The Agency proposes to conditionally grant the exclusion based on an evaluation of waste stream-specific and treatment process information provided by the DOE–RL. These proposed decisions, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) of 1976 as amended.

If today's proposal is finalized, we will have concluded that DOE–RL's petitioned waste does not meet any of the criteria under which the wastes were originally listed, and that there is no reasonable basis to believe other factors exist which could cause the waste to be hazardous.

DATES: Comments. We will accept public comments on this proposed decision until August 30, 2004. We will stamp comments postmarked after the close of the comment period as 'late'. These 'late' comments might not be considered in formulating a final decision.

ADDRESSES: Comments. Please send two copies of your comments to Dave Bartus, EPA Region 10, 1200 6th Avenue, MS WCM–127, Seattle, WA 98101. Electronic comments can be e-mailed to *bartus.dave@epa.gov.*

Request for Public Hearing. Your request for a hearing must reach EPA by July 30, 2004. The request must contain the information prescribed in section 260.20(d). Any person can request a hearing on this proposed decision by filing a written request with Rick Albright, Director, Office of Air, Waste and Toxics, EPA Region 10, 1200 6th Ave., MS OAR–107, Seattle, WA 98101.

Docket. The RCRA regulatory docket for this proposed rule is maintained by EPA, Region 10. You may examine docket materials at the EPA Region 10 library, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1289, during the hours from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Copies of the docket are available for review at the following Hanford Site Public Information Repository locations:

University of Washington, Suzzallo Library, Government Publications Division, Box 352900, Seattle, WA 98195–2900, (206) 543–4664. Contact: Eleanor Chase, *echase@u.washington.edu,* (206) 543–4664.

Gonzaga University, Foley Center, East 502 Boone, Spokane, WA 99258–0001, (509) 323–5806. Contact: Connie Scarppelli, *carter@its.gonzaga.edu.*

Portland State University, Branford Price Millar Library, 934 SW Harrison, Portland, OR 97207–1151, (503) 725–3690. Contact: Michael Bowman, *bowman@lib.pdx.edu.*

U.S. DOE Public Reading Room, Washington State University-TC, CIC Room 101L, 2770 University Drive, Richland, WA 99352, (509) 372–7443. Contact: Janice Parthree, *reading_room@pnl.gov.*

Copies of material in the regulatory docket can be obtained by contacting the Hanford Site Administrative Record via mail, phone, fax, or e-mail:

Address: Hanford Site Administrative Record, PO Box 1000, MSIN H6–08, 2440 Stevens Center Place, Richland, WA 99352, (509) 376–2530. E-mail: *Debra_A_Debbie_Isom@rl.gov.*

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Dave Bartus, EPA, Region 10, 1200 6th Avenue, MS WCM 127, Seattle, WA 98101, telephone (206) 553–2804, or via e-mail at *bartus.dave@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

A. What Action Is EPA Proposing?

The EPA is proposing a delisting action related to mixed [1] waste managed or generated by the 200 Area ETF on the Hanford Facility in Richland, Washington. The action relates to treated liquid effluents produced by the 200 Area ETF, which were first delisted in June 1995. A description of the wastewater influent to the 200 Area ETF considered in the original delisting, and how the original delisting was developed, may be found in the original proposed rule (60 FR 6054, February 1, 1995). EPA is proposing to modify this existing delisting by increasing the annual quantity of waste delisted to conform to the expected full treatment capacity of the 200 Area ETF and by expanding the list of constituents associated with hazardous waste number F039 (multisource leachate) for which 200 Area ETF treated effluent is delisted, from the current F001 to F005 constituents to all constituents for which F039 waste is listed.[2] This change will allow ETF to fulfill its anticipated future missions, which include treating mixed wastewaters from a number of additional sources beyond 242–A Evaporator process condensate (PC) upon which the original delisting was based. Finally, EPA is proposing to expand the list of hazardous waste numbers for which treated effluent is delisted to include certain wastewater forms of U- and P-listed wastes. In particular, these U- and P-listed waste numbers are those whose chemical constituents are included in the list of hazardous constituents for which F039 was listed (*see* 40 CFR part 261, appendix VII). This latter addition is intended to accommodate possible management of U- and P-listed wastewaters from spill cleanup or decontamination associated with management of these wastes at the Central Waste Complex (CWC) or other storage facilities. These spill cleanup wastes include exactly the same constituents that will eventually contribute to F039 when the source wastes are land disposed, so today's analysis of expanding the 200 Area ETF treated effluent to include F039 applies equally to the wastewater forms of the same chemical constituents in their U- and P-listed waste forms. This action will allow the 200 Area ETF to fulfill an expanded role in supporting Hanford Facility cleanup actions beyond those activities considered in the 1995 delisting rulemaking. Further details of how hazardous waste numbers are applied to 200 Area ETF treated effluent can be found in section II.A of today's proposal. Further details about 200 Area ETF treated effluent and how it is generated can be found in section III.A

The DOE–RL petitioned EPA to exclude (delist) treated liquid effluent from the treatment of liquid mixed waste at the 200 Area ETF because DOE–RL believes that the petitioned waste does not meet the RCRA criteria for which EPA originally listed the petitioned waste. The DOE–RL also believes there are no additional constituents or factors that could cause the waste to be a hazardous waste or warrant retaining the waste as hazardous waste.

Based on our review described in today's proposal, we agree with the petitioner that the identified treated liquid effluents are non-hazardous with respect to the original listing criteria. Furthermore, we find no additional constituents or factors that could cause the waste stream to be a hazardous waste or warrant retaining the waste as a hazardous waste. If our review had found that the waste remained a hazardous waste based on the factors for which the waste originally was listed, or if we found additional constituents or factors that could cause either waste stream to be a hazardous waste or warrant retaining the waste as a hazardous waste we would have proposed to deny the petition. It is important to note that even if the waste becomes delisted, the DOE–RL remains responsible for complying with the Atomic Energy Act (AEA), as the treated effluents will generally remain regulated as low-level radioactive wastes. Further, disposal of the treated liquid effluent on site is regulated by the Washington State Department of Ecology (Ecology) under the authority of WAC 173–216. Further details of how treated effluent will be managed if excluded under today's proposal may be found in section I.C below.

B. Why Is EPA Proposing To Approve These Delistings?

We believe that the petitioned waste should be conditionally delisted because the waste, when managed in accordance with today's proposed conditions, do not meet the criteria for which the wastes originally were listed and the waste do not contain other constituents or factors that could cause the waste stream to be a hazardous waste or warrant retaining the waste as a hazardous waste. Our proposed decision to delist the petitioned waste is based on information submitted by DOE–RL, including the description of the wastewaters managed by the ETF and their original generating sources, the ETF treatment processes, and the analytical data characterizing performance of the 200 Area ETF.

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. [*See* 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(2) through (4)]. These factors included (1) whether the waste are considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the hazardous constituents to migrate and to bioaccumulate; (5) persistence of the constituents in the environment once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) variability of the waste. We also evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(1), (2) and (3).

C. How Will DOE RL Manage the Petitioned Waste if Delisted?

Treated liquid effluents currently generated by the 200-Area ETF are land disposed at the State Authorized Land

[1] Mixed waste is defined as waste that contains both hazardous waste subject to the requirements of Resource Conservation and Recovery Act (RCRA) of 1976 as amended, and source, special nuclear, or by-product material subject to the requirements of the Atomic Energy Act (AEA) [*See* 42 United States Code (U.S.C.) 6903 (41), added by the Federal Facility Compliance Act (FFCA) of 1992].

[2] Today's proposal is not modifying the list of constituents for which F039 multisource leachate is listed. At the time of the original delisting, DOE–RL did not expect to manage F039 wastes at the 200 Area ETF from sources other than F001–F005 wastes. Therefore, the original 200 Area ETF delisting excluded only F039 wastes from F001–F005 sources.

Disposal Site (SALDS).[3] Treated effluent discussed in today's proposal must be disposed of at SALDS, as a condition of today's proposal. A brief description of the SALDS can be found in the DOE–RL application for the State Waste Discharge Permit ST 4500, and the permit fact sheet available at *http://www.ecy.wa.gov/programs/nwp/pdf/4500dfs.pdf.* EPA's original evaluation of this disposal unit with respect to delisting is found at 60 FR 6061 (February 1, 1995). The DOE–RL's petition for modification of the existing delisting does not reflect any change in design and operation of the SALDS compared to DOE–RL's original delisting petition and EPA's associated analysis. We note that this proposed exclusion is not dependant on the characteristics or protectiveness of effluent disposal at the SALDS. The fact that DOE-RL is not proposing management of excluded treated effluent other than at the SALDS; however, does provide a basis for the EPA to conclude that it is not necessary to consider other risk or exposure pathways in today's proposal beyond those considered in the original delisting rulemaking applicable to treated effluents.

In the November 2001 petition, DOE–RL noted that in the future the delisted treated effluent from 200 Area ETF could be used as makeup water at onsite facilities that have a demand for large quantities of demineralized water. Delisted treated effluent, however, contains appreciable amounts of tritium and must be managed to minimize personnel exposure and the potential for release. EPA encourages DOE–RL to pursue potential alternate uses of 200 Area ETF liquid effluents, and believes that, in general, such practices could prove to be fully protective, and a means to further the Hanford Site cleanup mission. Because no specific proposals have been made by DOE–RL, however, EPA lacks information to specifically evaluate impacts of such reuse practices with respect to delisting criteria, or whether such practice would identify other factors that would need to be considered in a delisting decision. Today's proposed rulemaking is based on continued disposal of treated effluents at the SALDS, but does include a provision whereby DOE–RL could request EPA to evaluate treated liquid effluent reuse proposals. If EPA finds, through this review, that delisting conditions in place at the time of the request ensure that the treated effluent is managed protectively with respect to delisting criteria, EPA may allow DOE–RL to commence the proposed activity without changes to the delisting rule. Otherwise, EPA could require the DOE–RL to submit a revised delisting petition, and new delisting conditions would need to be established to reflect the new proposed disposal/use activity.[4]

D. When Would EPA Finalize the Proposed Delisting Exclusions?

RCRA section 3001(f), 42 U.S.C. 6921(f), specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not make a final decision to grant an exclusion until the EPA has addressed all timely public comments (including any at public hearings) on today's proposal.

RCRA section 3010(b)(1), 42 U.S.C. 6930(b)(1), allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance with the new regulatory requirements. EPA believes that today's proposed exclusion, if finalized, would reduce existing regulatory requirements, so that a six-month period is not necessary for DOE–RL to come into compliance. As a result, EPA believes that, if finalized, today's proposal should be effective immediately upon final publication. A later date would impose unnecessary hardship and expense on the petitioner. *See also* section II.B for a discussion of today's proposal on State regulatory programs.

II. Background

A. What Laws and Regulations Give EPA the Authority To Delist Wastes?

On January 16, 1981, as part of the final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. EPA has amended this list several times. *See* 40 CFR 261.31 and 261.32. EPA lists these wastes as hazardous because (1) the wastes exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) the wastes meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

Individual waste streams could vary depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description might not be hazardous.

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility[5] should not be regulated as a hazardous waste.

To have their waste excluded, petitioners first must show that the waste generated at their facilities does not meet any of the criteria for which the waste was listed. *See* 40 CFR 260.22(a) and the background documents for the listed waste. Second, the EPA Administrator must determine, where the Administrator has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be hazardous waste, that such factors do not warrant retaining the waste as hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxic constituents at hazardous levels. *See* 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed waste. Although waste that is "delisted" (*i.e.*, excluded) has been evaluated to determine whether or not the waste exhibits any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste continues to be non-hazardous based on the hazardous waste characteristics (including characteristics

[3] The SALDS disposal site is an effluent infiltration gallery, consisting of a 116 foot by 200 foot rectangular drainfield with 4 inch porous pipe laterals coming off an 8 inch diameter header at 6 foot intervals. The drainfield pipes are 6 inches below the surface of a 6 foot deep gravel basin. The gravel basin is covered by a layer of native soil at least 12 inches deep. *See http://www.ecy.wa.gov/programs/nwp/pdf/4500dfs.pdf.* For purposes of developing delisting exclusion limits in the original 200 Area ETF exclusion and in today's proposal, EPA considers the SALDS unit to be functionally equivalent to an unlined surface impoundment, consistent with existing EPA delisting guidance and the existing 200 Area ETF delisting..

[4] As noted elsewhere in this proposal, delisting requirements that could be established as a result of this proposal are not effective under RCRA in States that have final authorization for delisting exclusion petition (40 CFR 260.22).

[5] Although no one produces hazardous waste without reason, many industrial processes result in the production of hazardous waste, as well as useful products and services. A "generating facility" is a facility in which hazardous waste is produced, and a "generator" is a person who produces hazardous waste or causes hazardous waste to be produced at a particular place. 40 CFR 260.10 provides regulatory definitions of "generator", "facility", "person", and other terms related to hazardous waste, and 40 CFR part 262 provides regulatory requirements for generators.

that might be promulgated subsequent to a delisting decision).

In addition, residues from the treatment, storage, or disposal of listed hazardous waste and mixtures containing listed hazardous waste also are considered hazardous waste. *See* 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such waste also is eligible for exclusion but remains hazardous waste until excluded.

On October 10, 1995, the EPA Administrator delegated to the EPA Regional Administrators the authority to evaluate and approve or deny petitions submitted by generators in accordance with 40 CFR 260.20 and 260.22 within their Regions (*See* EPA Delegations Manual, Delegation 8–19) in States not yet authorized to administer a delisting program in lieu of the Federal program.

B. How Would This Action Affect the States?

This proposed rule, if promulgated, would be issued under the Federal (RCRA) delisting authority found at 40 CFR 260.22. Some States are authorized to administer a delisting program in lieu of the Federal program, *i.e.*, to make their own delisting decisions. Therefore, this proposed exclusion, if promulgated, would not apply under RCRA in those authorized States. For States not authorized to administer a delisting program in lieu of the Federal program (as is the case with the State of Washington as of the date of today's proposal), today's proposal, if promulgated, would become effective with respect to the Federal (RCRA) program. DOE–RL would, however, have to comply with additional applicable State requirements.

States are allowed to impose regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in a State. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal and State programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

III. EPA's Evaluation of the Waste Information and Data for Liquid Effluent Waste

A. What Waste Did DOE RL Petition EPA To Delist and How Is the Waste Generated?

The original delisting action considered treatment of only one waste stream, process condensate from the 242–A Evaporator (242–A Evaporator PC). Since promulgation of the original delisting, the operating mission of the 200 Area ETF has expanded considerably. Currently, the operating capacity of the 200 Area ETF provides treatment of 242–A Evaporator PC, treatment of Hanford Site contaminated groundwater from various pump-and-treat systems, and a variety of other wastewaters generated from waste management and cleanup activities at Hanford.

As discussed in section 3.0 of DOE–RL's November 2001 petition, the mission of the 200 Area ETF is to treat wastewater generated on the Hanford Facility from cleanup activities including multisource leachate from operation of hazardous/mixed waste landfills, and other hazardous wastewaters from a variety of sources including analytical laboratory operations, research and development studies, waste treatment processes, environmental restoration and deactivation projects, and other waste management activities. Based on this change in the 200 Area ETF mission, the DOE–RL has petitioned EPA to modify the existing delisting applicable to treated liquid effluent from the 200 Area ETF by increasing the effluent volume limit to 210 million liters per year, and to conditionally exclude treated effluents from treatment by the 200 Area ETF of certain liquid Hanford wastes with hazardous waste numbers identified at 40 CFR 261.31 and 261.33 as F001–F005, F039, and all U- and P-listed substances appearing in the listing definition of F039. Under the current delisting, the liquid effluent volume is limited to approximately 86 million liters per year, and delisted only for F001–F005 waste numbers and F039 constituents from F001 through F005 waste numbers.

The November 2001 delisting petition explains that wastes bearing numbers P029, P030, P098, P106, P120, and U123, as well as other U- and P-listed numbers corresponding to F039 constituents, are currently managed, or may be managed in the future, as part of Hanford cleanup operations. Wastes bearing these waste numbers are intended for future disposal in the mixed waste landfill (Low-Level Burial Grounds (LLBG)). These wastes, therefore, eventually will contribute to generation of F039 multisource leachate from this unit, and are specifically considered in the analysis of F039 constituents in DOE–RL's delisting proposal (refer to Appendix B of the November 2001 delisting petition). The DOE–RL believes that wastewaters bearing these waste numbers could be generated from activities such as spill cleanup or equipment decontamination, and such wastewaters could be managed best at the 200 Area ETF. The DOE–RL is not proposing to manage the discarded commercial chemical products in the 200 Area ETF, but only wastewaters from spill cleanup or equipment decontamination. EPA believes that this is a reasonable approach, and is proposing to include these U- and P-listed numbers in today's proposed exclusion.

To ensure that the commercial chemical compounds themselves are not inappropriately managed at the 200 Area ETF, EPA is proposing as a condition of the proposed exclusion for these wastes that the 200 Area ETF may manage only influent wastewaters bearing less than 1.0 weight percent of any hazardous constituent. These wastewaters would also would bear the same U- and P-listed numbers by virtue of the "derived from" rule discussed above in section I.A. Because the hazardous constituents from these U- and P-listed wastes are already included in the analysis of 200 Area ETF performance for treatment of F039, EPA is not proposing any separate analysis specific to U- and P-listed numbers. EPA's proposal to include these U- and P-listed waste numbers in today's proposed action is intended to include influent wastewaters that might be generated from management of wastes currently stored in CWC, as well as such wastes managed elsewhere at Hanford or which may be generated in the future.

In theory, the provision of today's proposal dealing with U- and P-listed waste numbers could include all 213 constituents included in the regulatory definition of F039. In practice, EPA expects that the actual number of U- and P-listed constituents that might actually be managed under this provision will be significantly less for two reasons. First, not all F039 constituents have corresponding U- or P-listed waste numbers. Second, it is highly unlikely that most, or even many, of the U- and P-listed waste numbers considered by this provision would ever enter the influent wastewaters managed by ETF. In any case, EPA believes that today's proposal is fully protective and demonstrates compliance with delisting criteria regardless of the number of U- and P-listed waste numbers that actually end up contributing to wastewaters managed by ETF.

Beginning in 2007, DOE–RL expects to begin processing liquid effluents (wastewaters) from the Waste Treatment Plant (WTP), which currently is being designed and constructed to treat high-

level mixed waste stored in 177 underground storage tanks. At this time, a complete, detailed characterization of WTP liquid effluents is not available. Should this waste stream fit within the conditions of today's proposal, then the WTP effluents could be managed under this delisting action, if finalized. Should WTP effluents require significant reconfiguration of the 200 Area ETF system to be treated successfully or be outside the waste volume limitations or treatability envelope, or otherwise fail to meet the requirements of today's proposal, the DOE–RL could not manage either the treated effluent or concentrated wastes resulting from processing of WTP effluents as excluded wastes. In this instance, the DOE–RL would need to seek a further modification of the delisting rulemaking.

Given the lack of characterization data for future WTP effluents, EPA specifically is not considering this waste stream in its analysis of the proposed delisting action, other than to acknowledge that the DOE–RL might manage WTP effluents in the 200 Area ETF, provided the applicable delisting criteria and verification sampling requirements are met. EPA anticipates that it might be necessary to further modify the treated effluent delisting rule once WTP effluents are fully characterized.

B. What Information and Analyses Did DOE RL Submit To Support These Petitions?

The DOE–RL has provided a general description of the various waste streams that the 200 Area ETF expects to manage in addition to 242–A Evaporator PC and other waste streams currently being treated. This information is found in section 3.0 of the November 2001 delisting petition. Some of these waste streams have not yet been generated. As a result, these waste streams cannot be fully characterized at this time, nor can surrogate wastewaters be developed as was done as part of pilot testing associated with the original delisting action. The DOE–RL's request to modify the original delisting is based on extending the original process model, which has been validated through operating history, to these anticipated future waste streams. EPA is proposing that treated liquid effluent from these new influent waste streams be conditionally managed as excluded waste provided that the DOE–RL demonstrates prior to 200 Area ETF processing that delisting criteria can be met through application of the 200 Area ETF process model. All treated effluent, including treated effluent from processing of new influent waste streams that do not have an operating history of being managed at the 200 Area ETF, will be subject to a verification sampling requirement similar to that in the original delisting action for 242–A Evaporator PC. As with the original delisting action, all treated effluent will be subject to routine, periodic verification sampling. (*See* section III.N for a discussion of the applicability of LDR treatment requirements.)

The DOE–RL has submitted substantial data comparing actual operating performance of the 200 Area ETF to predicted treatment efficiency developed through pilot plant testing. These data consistently validate the pilot plant model developed in support of the original delisting, and indicate that for 242–A Evaporator PC processed to date, treatment efficiency is well in excess of that predicted by the process model. These data are presented in Table A–1 of the November 2001 delisting petition. The EPA believes that these data confirm that the 200 Area ETF is a robust treatment system well equipped to provide treatment necessary to meet delisting criteria for the wide range of new waste streams considered in this revised delisting action.

Detailed characterization data are not available for many non-process condensate waste streams that the DOE–RL proposes for consideration under this delisting action. Therefore, the DOE–RL has proposed a detailed waste acceptance process that allows this analysis to be conducted in conjunction with the 200 Area ETF waste acceptance process required by the Hanford Facility RCRA Permit WA7 89000 8967 and the State Waste Discharge Permit (ST4500) for the SALDS. Particulars of the waste acceptance process with respect to this proposed delisting action can be found in section 2.2 of the November 2001 delisting petition. In addition, Ecology provided technical assistance to the EPA on this matter by reviewing DOE–RL's 200 Area ETF waste acceptance process, including permit-required quality assurance plans (QAPs). EPA has reviewed and concurs with Ecology's technical conclusions that the waste profiling and acceptance process at the 200 Area ETF is sufficient to support delisting of the resulting treated effluents.

Briefly, this waste acceptance process is intended to accomplish the following:

- Establish operating conditions and operating configuration of the 200 Area ETF;
- Ensure contaminant concentrations do not interfere with or foul 200 Area ETF treatment processes (*e.g.*, interfere with ultraviolet oxidation (UV/OX) destruction, foul reverse osmosis (RO) membranes, etc.);
- Ensure compatibility with 200 Area ETF materials of construction and other influent wastewaters;
- Ensure treated effluents meet delisting criteria and SALDS waste discharge permit requirements;
- Estimate concentrations of constituents in the secondary treatment train and in concentrated waste (a discussion of EPA's proposed delisting of concentrated wastes follows);
- Ensure compliance with Hanford Facility RCRA Permit waste acceptance requirements.

Based on waste profile information provided by wastewater generators, the DOE–RL would compare constituent concentrations to ensure that the influent falls within the 200 Area ETF treatability envelope. The ETF treatability envelope is defined as the maximum untreated waste concentrations that the 200 Area ETF is capable of managing to meet treated effluent delisting criteria. The treatability envelope concept is essentially the same approach used by the EPA in evaluating treatability data provided by the DOE–RL in support of the original delisting petition, with modifications to account for operating history.

In some instances, wastewaters are accepted directly into the 200 Area ETF for treatment, while other wastewaters are accepted into the Liquid Effluent Retention Facility (LERF) basins.[6] Waste acceptance evaluations for wastewaters managed in LERF basins account for compatibility with basin materials in addition to treatability envelope considerations. For wastewaters accepted into LERF basins, treatability envelope evaluation reflect the commingled wastewater stream. Wastewaters are required to undergo periodic re-valuation under the site-wide permit waste analysis plan.

The DOE–RL's petition for modifying the existing treated effluent delisting is based on establishing a waste processing strategy for each waste stream. Each time a new wastewater is managed in the 200 Area ETF, a document must be prepared containing the waste processing strategy to reflect specific

[6] Information concerning management of influent wastewaters is provided for background and informational purposes only. Whether influent wastewaters are received directly by the 200 Area ETF directly or via management in the LERF basins is generally an operational decision distinct from the question of whether the wastewaters are acceptable candidates for management under today's proposed delisting.

waste constituents and to ensure that the treated effluent meets delisting criteria. The waste processing strategy consists of the processing configuration of the various treatment technologies available at the 200 Area ETF and the operating conditions of each. Examples of operating conditions include UV/OX residence time, RO reject rate, etc. Wastewaters that fit within the treatability envelope for a particular processing strategy can be processed directly, subject only to the periodic re-evaluation of each waste stream with respect to waste acceptance criteria required by the Hanford site-wide RCRA permit, and periodic verification of the treated effluent with respect to delisting requirements. Wastewaters for which a new processing strategy is developed where no operating history has been accumulated must undergo initial verification sampling similar to that required by the original delisting action. EPA believes that this scheme of establishing waste acceptance and processing strategy on a verified process model, coupled with initial and periodic on-going verification, provides certainty that delisting criteria will be met, reflecting data that validate the original process model, and the redundancy of verification testing, and is consistent with the delisting framework established in the original delisting action. In addition, it provides flexibility needed for the 200 Area ETF to fulfill its key role in Hanford Site cleanup activities.

C. How Did EPA Evaluate the Risk of Delisting This Waste?

For EPA to delist a particular waste, the petitioner must demonstrate that the waste does not meet any of the criteria under which the waste was listed, and that the waste does not exhibit any of the hazardous waste characteristics defined in 40 CFR 261.21 through 261.24. In addition, based on a complete application, EPA must determine where it has a reasonable basis to believe that factors (including additional constituents) exist other than those for which the waste was listed that could cause the waste to be a hazardous waste. If such factors exist, EPA must determine that such factors do not warrant retaining the waste as a hazardous waste. For petitioned waste that contains detectable chemical constituents, EPA generally makes this determination by gathering information to identify plausible routes of human or environmental exposure (*i.e.*, groundwater, surface water, air) and using fate and transport models to predict the release of hazardous constituents from the petitioned waste once the waste is disposed. The transport model predicts potential exposures and impacts of the petitioned waste on human health and the environment.

As discussed in the original delisting proposal (60 FR 6054, February 1, 1995), EPA used a modified version of the Environmental Protection Agency Composite Membrane Liner (EPACML) model based on disposal of waste in a surface impoundment to establish delisting levels for treated 200 Area ETF effluent. The original delisting proposal included a discussion of plausible exposure routes and an analysis of how these potential exposure routes influenced EPA's selection of delisting criteria, as well as a detailed discussion of how delisting levels were calculated from model outputs and toxicological data.

In analyzing the DOE–RL's current delisting petition, EPA does not believe that there is a substantial basis for choosing a different approach to evaluating the risks of delisting this waste or for establishing revised delisting criteria. In reaching this conclusion, we considered several factors:

- No changes in waste disposal practices. The DOE–RL currently manages 200 Area ETF treated effluents in the same manner as considered by EPA in the original delisting analysis, and DOE–RL's revised delisting petition does not propose any changes in these waste disposal practices. Therefore, we do not find any basis for any different analysis of potential exposure pathways or modeling compared to the original delisting analysis.
- 200 Area ETF treatment technology. Current 200 Area ETF processing technologies and configurations remain unchanged from the proposed design considered in EPA's original upfront delisting analysis. Further, the 200 Area ETF operating history confirms the treatment efficiencies and performance predicted by pilot plant testing and considered by EPA in the original delisting analysis. Therefore, we do not find any basis for alternate evaluation methodologies based on the treatment capabilities of the 200 Area ETF.
- Wastes managed by the 200 Area ETF. Although the original delisting analysis considered only PC from the 242–A Evaporator, this waste stream is quite complex, and is characterized by a wide range of chemical constituents and classes of compounds from diverse wastes in the Hanford Facility double shell tank system. Specifically with respect to organic constituents and the treatment efficacy of ultraviolet oxidation (UV/OX), the original delisting analysis was based on treatment efficiency for groups or classes of organic compounds. Although today's proposal considers additional chemical compounds that might be present in F039 multisource leachate from wastes other than F001 through F005, EPA believes that these additional constituents can be analyzed effectively using the original methodology. Further, EPA does not believe that any of the additional constituents considered in this delisting proposal pose treatability or risk questions that suggest the original chemical group approach to analyzing delisting risks and establishing delisting levels needs to be re-evaluated. A more specific discussion of how treatability groups and delisting levels are established, considering the additional waste streams and waste numbers to be managed by the 200 Area ETF under this proposed delisting, can be found in section 4.1.1 of the November 2001 delisting petition.

EPA also has examined the performance record of discharges of treated effluents from the 200 Area ETF under State Waste Discharge Permit No. ST4500. This permit, issued under the authority of chapter 90.48 of the Revised Code of Washington, as amended, requires monitoring of treated effluent and of groundwater affected by the SALDS. There are three elements to the ST4500 Permit monitoring requirements. These are: (1) Maximum effluent limitations; (2) "early warning" effluent limitations that provide an early warning that groundwater limitations are being approached in the effluent; and (3) groundwater limits. Each of these elements are described below:

- ST4500 Permit effluent monthly average—the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.
- Groundwater limit—maximum constituent concentration allowed in groundwater at monitoring well specified in the ST4500 Permit.
- Groundwater early warning limit—constituent concentration in groundwater that triggers early warning reporting requirements. Exceeding an early warning value does not constitute a violation of ST4500 Permit requirements.

These limits, including a comparison to proposed delisting levels (section D), are shown in the following table. All values are mg/L. The first three columns correspond to the ST4500 permit monitoring requirements described above, while the remaining columns contain the following information:

• Proposed delisting treatability group—class of similar chemical constituents as defined in Table 4–1 of the November 29, 2001 delisting petition.

• Proposed delisting level—constituent concentration limit for treated effluent in today's proposal.

• Comments—self-explanatory.

Constituent	ST 4500 permit effluent monthly average	Groundwater limit	Effluent groundwater early warning	Proposed delisting treatability group	Proposed delisting level	Comments
Acetone	N/A	0.16	N/A	19	2.4	
Acetophenone	0.01	N/A	N/A	19	N/A	
Benzene	N/A	0.005	0.005	3	0.06	
Carbon Tetrachloride	0.005	N/A	N/A	13	0.018	
Chloroform	N/A	0.062	0.005	13	N/A	
n-Nitrosodimethylamine	0.02	N/A	N/A	10e	0.02	Proposed delisting limit based on PQL.
Tetrachloroethylene	0.005	N/A	N/A	14	N/A	
Tetrahydrofuran	N/A	0.1	0.1	18a	0.56	
Total Organic Carbon (TOC)	1.1	N/A	N/A	N/A	N/A	
Arsenic	0.015	N/A	N/A	22	0.015	
Beryllium	0.04	N/A	N/A	21	0.045	
Cadmium	N/A	0.01	0.0075	22	0.011	
Chromium	0.02	N/A	N/A	22	0.068	
Copper	N/A	0.07	0.07	N/A	N/A	
Lead	N/A	0.05	0.038	22	0.09	
Mercury	N/A	0.002	0.002	22	0.0068	
Ammonia	0.83	N/A	N/A	24	6	
Chloride	N/A	N/A	N/A	N/A	N/A	
Nitrate	N/A	N/A	N/A	N/A	N/A	
Nitrite	N/A	N/A	N/A	N/A	N/A	
Sulfate	N/A	250	N/A	N/A	N/A	
Total Dissolved Solids	N/A	500	380	N/A	N/A	

PQL = practical quantitation limit.

N/A = not applicable. The set of constituents with reporting or enforceable limits established in the ST 4500 permit and in today's proposal are not identical. N/A table entries correspond to constituents included in the ST 4500 permit but not as constituents representative of a treatability group or vice versa.

To date, the DOE–RL has not reported any exceedences of any of the three monitoring criterion established by the ST4500 Permit. According to the Ecology fact sheet issued in conjunction with the latest reissue of the ST4500 Permit:

"During the history of the previous permit, the Permittee has remained in compliance based on Discharge Monitoring Reports (DMRs) and other reports submitted to Ecology and inspections conducted by Ecology." The only exceptions have been a few early high groundwater levels of sulfate. The sulfate levels were not due to the discharge of sulfate, but rather by the clean effluent dissolving sulfate that exists in the vadose zone. The sulfate levels peaked for about a year, always below groundwater standards, and have since returned to background levels.

Given that all of these ST4500 Permit wastewater discharge limits are at or below corresponding delisting levels, EPA concludes that the 200 Area ETF performs at least as well as the proposed delisting levels. This conclusion supports EPA's belief that 200 Area ETF processing model is well validated, and can be appropriately used to predict performance of 200 Area ETF for treatment of new waste streams for which actually operating data is not yet available. Further, these data show 200 Area ETF discharges to SALDS are not having a significant impact on groundwater. EPA therefore concludes that further analysis of groundwater monitoring data is not necessary in the context of the proposed delisting revisions.

D. What Delisting Levels Are EPA Proposing?

EPA is proposing to conditionally exclude treated effluents by establishing a set of verification constituents and concentrations that must be met as a condition of the exclusion. These concentrations are referred to as delisting levels. The process of selecting delisting levels and proposed verification constituents is similar to that used in the existing 200 Area ETF exclusion where constituents that are representative of a treatability group were selected as verification parameters.

Treatability groups established in today's proposal can be found in Table 4–1 of the November 29, 2001 delisting petition. Treatability groups have been established by grouping chemicals identified as 200 Area Effluent Treatment Facility Consolidated Constituents in Table B–1 of the November 29, 2001 delisting petition according to similar chemical structure and function. For example, all organic constituents with phthalate structure are grouped into treatability group 8. Inorganic constituents (metals in particular) are each assigned to their own treatability group. One difference in the process for selecting constituents representing each organic treatability group between the original delisting and today's proposal is that one constituent is selected and proposed to represent a treatability group. For inorganic treatability groups, each constituent is in a separate treatability group.

Because the initial delisting was an upfront delisting,[7] multiple constituents were selected for a few treatability groups. The initial delisting focused exclusively on listed wastewaters with a designation of F001 to F005, or F039 derived from F001 to F005, and the verification parameters included multiple constituents in several treatability groups. Because this

[7] An upfront delisting is an exclusion granted for a waste stream prior to full-scale commercial generation or treatment of the waste stream. In contrast, a traditional exclusion applies to an existing waste stream that can be fully characterized on a commercial scale.

delisting modification expands the constituents associated with the F039 waste number being delisted, the proposed verification constituents need to represent all the treatability groups. EPA's analysis of data presented in the DOE–RL's petition indicate that the data verify the process model used in the original delisting action. Further, EPA concludes the treatment performance necessary to meet delisting exclusion limits will be successfully demonstrated by the individual constituents proposed to represent each treatability group. Since these representative constituents have been selected after consideration of both toxicity and how difficult each constituent is to treat, EPA concludes that requiring multiple constituents to represent each treatability group would not provide greater assurance that exclusion limits are met for all constituents in the treatability group.

The constituents and the delisting levels for monitoring are determined in a three-phase approach. First, the health-based levels (HBLs)[8] are calculated based on toxicological data for each constituent of concern identified in Table B–1 of the November 2001 delisting petition. The HBLs are calculated using current toxicological data from IRIS, HEAST, and NCEA.[9] The target risk factor of 1.0×10^{-5} excess cancer risk is used with the oral slope factor to calculate a HBL for carcinogens. The target hazard quotient factor of 0.10 is used with the reference dose for oral exposure to calculate a HBL for non-carcinogens. When an oral slope factor and a reference dose for oral exposure are both available, the minimum (more conservative) resulting HBL is used. The groundwater ingestion pathway was the only pathway considered, based on the same rationale used to select the groundwater pathway in the initial delisting exclusion, found in 40 CFR part 261, appendix IX.

Second, a constituent is selected from a treatability group to represent the entire group. This methodology uses HBLs (the lower the HBL the higher the constituent toxicity), the electrical energy/order (EE/O), which is a measure of the UV/OX treatment efficiency for a constituent (the higher the EE/O the more difficult it is to destroy a constituent), and the practical quantitation limit (PQL). Constituents are ranked by the HBL and by the EE/O. HBLs within a factor of 10 are considered identical for this selection process because HBLs of constituents within most treatability groups range over a number of orders of magnitude. Each treatability group is evaluated individually. The constituents having the lowest HBL and the highest EE/O are the first candidates considered for selection. To ensure that acceptable analytical data can be obtained, the PQL is considered. If the PQL is higher than the delisting level (HBL times the dilution attenuation factor [DAF]),[10] then another constituent is evaluated.

Finally, the proposed delisting levels are based on the HBL times the DAF of 6. The methodology used by DOE–RL to calculate this DAF appears in section 4.0 of the November 2001 delisting petition. EPA has previously determined that the methodology used by DOE–RL in establishing the DAF of 6 is protective in a previous delisting. *See* 56 FR 32993, July 18, 1991. In a few cases, the delisting level is based on either the PQL, maximum contamination limit (MCL), or a concentration level derived from requirements of the Toxic Substance Control Act (TSCA) applicable to polychlorinated biphenyls (PCB) remediation waste, which EPA has determined to be protective of unrestricted exposure. EPA is proposing to establish delisting exclusion limits for PCBs based on TSCA values as a means to achieve consistency between RCRA and TSCA requirements applicable to treated effluent. *See* section III.N for a discussion of the relationship between delisting levels in today's proposal and LDR treatment requirements.

There are a number of constituents of concern in treated effluent where toxicological data are inconclusive or lacking. For treatability groups where these constituents are grouped, toxicological data for the constituent representing the treatability group is selected from one of the remaining treatability group constituents for which conclusive toxicological data are available. Stated another way, constituents representing each treatability group are selected based on a combination of available health-based data, difficulty to treat the constituent, and availability of acceptable analytical information. EPA believes that the methodology established in the original 200 Area ETF delisting and adopted as the basis for today's proposal provides certainty that when delisting criteria for representative constituents are met, all constituents in the same treatability group satisfy delisting requirements.

The methodology described in the previous paragraph for selecting constituents to represent each treatability group also supports EPA's proposal to have a single chemical constituent represent each treatability group. As noted above, each constituent representing a treatability group is selected on the basis of a combination of being difficult to treat and of being the most toxic. Provided the ETF waste processing strategy successfully demonstrates that the selected represented constituent meets delisting limits (as required as a condition of today's proposal), any other constituent in the same treatability group would either be less toxic, or be more completely destroyed or removed from the treated effluent than the representative constituent. In either instance, the selected representative constituent will always be the limiting factor within each treatability group with respect to meeting the requirements to exclude a particular waste.

The following are exceptions to this methodology.

- Group 2: Diethylstilbestrol, also called estrogen, was not selected because of analytical measurement difficulties and this constituent is highly unlikely to be in wastewater treated at the 200 Area ETF.
- Group 9a: 1-Butanol was chosen over propargyl alcohol because 1-butanol is expected to be more prevalent in wastewaters treated at the 200 Area ETF. Should treatment efficiency of the 200 Area ETF be limited by this treatability group, the greater prevalence of 1-butanol increases the likelihood that this treatment limitation would be identified by the verification sampling program. In other words, a constituent that is rarely found even in wastes prior to treatment would not be a good indicator of whether or not effective treatment has occurred, since such a constituent would not be expected to be found in treated effluent even after ineffective treatment.
- Group 10a: All constituents containing hydrazine were eliminated from selection because of their reactivity under strong oxidizing conditions

[8] Health-based levels are considered the cancer slope factor for carcinogens, and the reference dose for constituents with non-cancer health effects.

[9] The Integrated Risk Information System (IRIS) can be found at *http://www.epa.gov/iris*. The Health Effects Assessment Summary Tables (HEAST) can be found at "Health Effects Assessment Summary Tables FY 1997 Update," 9200.6–303(97–1), EPA 540/R–97–036, PB97–921199, July 199. Data from the National Center for Environmental Assessment (NCEA) may be found at *http://www.cfpub.epa.gov/nceo*.

[10] A dilution/attenuation factor is a measure of fate and transport effects on constituents as they migrate from a source area to a receptor. In this instance, the source area is the SALDS unit, modeled as an unlined surface impoundment and the receptor is a hypothetical individual ingesting groundwater affected by the waste source). Details of how the EPACML model was used to calculate DAF values for the 200 Area ETF may be found in the original delisting proposal, 60 FR 6054, February 1, 1995.

present in the UV/OX system at the 200 Area ETF. Because these constituents react so quickly in the conditions occurring in the UV/OX system, they do not provide appropriate measures of effective treatment for this treatability group.

- Group 10e: N-Nitrosodimethylamine was chosen. Because of analytical measurement difficulties, the delisting level is the PQL.
- Group 12: The delisting level for PCBs is based on the TSCA limit of 0.0005 mg/L (0.5 ppb). This level is where treated remediation waste is authorized for unrestricted use.[11]
- Group 17, 17a: The aldehyde group, in general, is reactive in water, which makes these constituents unlikely to be in wastewaters treated at the 200 Area ETF. Also, the reactivity of aldehydes causes analytical problems where these are difficult to analyze in the laboratory. The aldehyde group will be represented by treatability Group 13, the group that is most difficult to destroy.
- Group 19: Acetone was chosen over acetophenone because acetone is expected to be a more prevalent contaminant in wastewaters treated at the 200 Area ETF.
- Group 22, 21: The delisting level for arsenic is based on the PQL rather than the HBL. The delisting level for lead is based on the MCL for drinking water rather than a level based on toxicity.
- Group 25: This group includes group 25a and 25b. Tributyl phosphate was chosen from this group as tributyl phosphate is expected to be more prevalent in wastewaters treated at the 200 Area ETF.

EPA has not specifically evaluated environmental receptors in the original delisting or today's proposal because the proposed management scenario for excluded wastes is specifically intended to preclude exposure for an extended period of time during natural decay of radioactive tritium (tritium is technically impracticable to treat or remove from the 200 Area ETF effluent). To ensure treated effluent is not managed in a manner that might create environmental exposures, the EPA is proposing to limit management of treated effluent to the SALDS disposal unit.

Based on this methodology, Table 1 provides a list of proposed delisting constituents and delisting levels.

TABLE 1.—PROPOSED DELISTING CONSTITUENTS AND DELISTING LEVELS FOR TREATED EFFLUENT

Treatability group	Proposed delisting constituents	CAS #	HBL (mg/L)	EE/O	Justification	Proposed delisting level (mg/L)
1	Cresol [Cresylic acid]*	1319–77–3	2.0×10^{-11}	10	Representing group, has relatively low HBL and highest EE/O of group, target compound in SW–846 method(4), PQL less than delisting level.	1.2
2	2,4,6-trichlorophenol	88–06–2	6.0×10^{-2}	10	Representing group, has a low HBL and is a hard to destroy compound, target compound in SW–846 method, PQL less than delisting level.	3.6×10^{-1}
3, 15, 15a	Benzene*	71–43–2	1.0×10^{-2}	3	Representing group, the compound with the lowest HBL, target compound in SW–846 method, PQL less than delisting level.	6.0×10^{-2}
4	Chrysene	218–01–9	9.0×10^{-2}	10	Representing group, has a relatively low HBL and is one of the hard to destroy compounds, target compound in SW–846 method, PQL less than delisting level. *Chrysene* was chosen because the other constituents with lower HBLs have analytical measurement difficulties.	5.6×10^{-1}
5, 5a, 16	Hexachlorobenzene	118–74–1	4.0×10^{-4}	10	Representing group, has a relatively low HBL and is one of the hard to destroy compounds, target compound in SW–846 method, PQL less than delisting level. Hexachlorobenzene was chosen because Heptachlorodibenzofuran and Heptachlorodibenzo-p-dioxins have analytical measurement difficulties.	2.0×10^{-3}
6b, 14	Hexachlorocyclopentadiene	77–47–4	3.0×10^{-2}	10	Representing group, has a low HBL and is a hard to destroy compound, target compound in SW–846 method, PQL less than delisting level. Hexachlorocyclopentadiene was chosen over 1,4-Dichloro-2-butene and Hexachlorobutadiene because of analytical measurement difficulties, and over 1,1-Dichloroethylene and Vinyl chloride because of a higher EE/O.	1.8×10^{-1}

[11] In establishing a delisting limit based on the TSCA unrestricted use limit of 0.5 parts per billion for liquid remediation wastes, EPA is not necessarily representing that wastewaters managed by the 200 Area ETF are necessarily TSCA remediation wastes. Rather, EPA is simply "borrowing" a technical standard developed for PCBs and applying it in a RCRA exclusion rulemaking.

TABLE 1.—PROPOSED DELISTING CONSTITUENTS AND DELISTING LEVELS FOR TREATED EFFLUENT—Continued

Treatability group	Proposed delisting constituents	CAS #	HBL (mg/L)	EE/O	Justification	Proposed delisting level (mg/L)
7a	Dichloroisopropyl ether [Bis(2-Chloroisopropyl) ether].	108–60–1	1.0×10^{-3}	15	Representing group 7a and 7b, has a relatively low HBL and the EE/O is highest of group, target compound in SW–846 method, PQL less than delisting level. Dichloroisopropyl ether was chosen over Bis(2-Chloroethyl) ether and Dichloromethyl ether because of a higher EE/O.	6.0×10^{-2}
8	Di-n-octylphthalate*	117–84–0	8.0×10^{-2}	15	Representing group, has a relatively low HBL and the EE/O is highest of group, target compound in SW–846 method, PQL less than delisting level.	4.8×10^{-1}
9a	1-Butanol*	71–36–3	4×10^{-1}	10	Representing group, the compound with the lowest HBL, target compound in SW–846 method, PQL less than delisting level.	2.4
9	Isophorone	78–59–1	7.0×10^{-1}	30	Representing group, has a relatively low HBL and the EE/O is highest of group, target compound in SW–846 method, PQL less than delisting level. Isophorone was chosen because the other constituents with lower HBLs have analytical measurement difficulties and isophorone had the highest EE/O.	4.2
10a	Diphenylamine	122–39–4	9.0×10^{-2}	15	Representing group, has a relatively low HBL and the EE/O is close to highest of group, target compound in SW–846 method, PQL less than delisting level. Diphenylamine was chosen because *other* constituents with lower HBLs have analytical measurement difficulties.	5.6×10^{-1}
10b	p-Chloroaniline	106–47–8	2.0×10^{-2}	10	Representing group, has a relatively low HBL and the EE/O is highest of group, target compound in SW–846 method, PQL less than delisting level. p-Chloroaniline was chosen over 4,4'-Methylenebis(2-chloroaniline) and o-Nitroaniline because of analytical measurement difficulties.	1.2×10^{-1}
10c	Acetonitrile	75–05–8	Rescinded, previous (1994) HBL is 0.2 mg/L.	10	Representing group, has a relatively low HBL and the EE/O is close to highest of group, target compound in SW–846 method, PQL less than delisting level, the 1994 established HBL (0.2 mg/l) is used. Acetonitrile was chosen because it has, by far, the highest EE/O.	1.2
10d	Carbazole	86–74–8	3.0×10^{-2}	30	Representing group, has a relatively low HBL and it is one of the more difficult compounds to destroy, target compound in SW–846 method, PQL less than delisting level. Carbazole was chosen because other constituents with lower HBLs have analytical measurement difficulties.	1.8×10^{-1}
10e	N-Nitrosodimethylamine	62–75–9	1.0×10^{-5}	10	Representing group, target compound in SW–846 method, because of analytical measurement difficulties, the PQL is used as the delisting level.	2.0×10^{-2}
10f	Pyridine	110^{-86-1}	4.0×10^{-3}	4	Representing group, the compound with a low HBL, target compound in SW–846 method, PQL less than delisting level. Pyridine was chosen because the other constituent with a lower HBL has analytical measurement difficulties.	2.4×10^{-2}

TABLE 1.—PROPOSED DELISTING CONSTITUENTS AND DELISTING LEVELS FOR TREATED EFFLUENT—Continued

Treatability group	Proposed delisting constituents	CAS #	HBL (mg/L)	EE/O	Justification	Proposed delisting level (mg/L)
11	Lindane [gamma-BHC]	58–89–9	5.0×10^{-4}	40	Representing group, has a low HBL and is one of the more difficult compounds to destroy, target compound in SW–846 method, PQL less than delisting level. Lindane was chosen because of those with lower HBLs lindane has the highest EE/O.	3.0×10^{-3}
12	Aroclor 1016, 1221, 1232, 1242, 1248, 1254, 1260.	PCBs	3.0×10^{-4}	15	Representing group, target compound in SW–846 method, delisting level based on TSCA value, PQL less than delisting level.	5.0×10^{-4}
13, 6a	Carbon tetrachloride*	56–23–5	3.0×10^{-3}	200	Representing group, has relatively low HBL and is the compound with the highest EE/O, target compound in SW–846 method, PQL less than delisting level. Carbon tetrachloride was chosen because the other constituent with a lower HBL has analytical measurement difficulties and carbon tetrachloride has by far the highest EE/O.	1.8×10^{-2}
18a	Tetrahydrofuran	109–99–9	9.0×10^{-2}	4	Representing group 18 and 18a, a compound with relatively low HBL, target compound in SW–846 method, PQL less than delisting level. Tetrahydrofuran was chosen because the other constituent with a lower HBL has analytical measurement difficulties.	5.6×10^{-1}
19	Acetone*	67–64–1	4.0×10^{-1}	10	Representing group, has a relatively low HBL and is one of the harder to destroy compounds, target compound in SW–846 method, PQL less than delisting level.	2.4
20	Carbon disulfide	75–15–0	4.0×10^{-1}	5	Representing group, the compound with the lowest HBL, target compound in SW–846 method, PQL less than delisting level.	2.3
21, 22	Barium*	7440–39–3	3.0×10^{-1}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	1.6
21, 22	Beryllium*	7440–41–7	8.0×10^{-3}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	4.5×10^{-2}
21, 22	Nickel*	7440–02–0	$8.0e10^{-2}$	.....	HBL × DAF is delisting level, PQL is less than delisting level.	4.5×10^{-1}
21, 22	Silver*	7440–22–4	2.0×10^{-2}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	1.1×10^{-1}
21, 22	Vanadium*	7440–62–2	3.0×10^{-2}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	1.6×10^{-1}
21, 22	Zinc*	7440–66–6	1.0	.....	HBL × DAF is delisting level, PQL is less than delisting level.	6.8
22, 21	Arsenic*	7440–38–2	5.0×10^{-4}	.....	HBL below PQL, PQL of 0.015 mg/L used as delisting level.	1.5×10^{-2}
22, 21	Cadmium*	7440–43–9	2.0×10^{-3}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	1.1×10^{-2}
22, 21	Chromium*	7440–47–3	1.0×10^{-2}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	6.8×10^{-2}
22, 21	Lead*	7439–92–1	1.5×10^{-2}	.....	No HBL, used MCL of 0.015 mg/L and DAF = 6, (MCL * DAF).	9.0×10^{-2}
22, 21	Mercury*	7439–97–6	1.0×10^{-3}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	$6.8 \times 10^{-3(2)}$
22, 21	Selenium*	7782–49–2	2.0×10^{-2}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	1.1×10^{-1}
23	Fluoride*	16984–48–8	2.0×10^{-1}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	1.2
24	Ammonia*	7664–41–7	1.0(3)	.....	HBL × DAF is delisting level, PQL is less than delisting level.	6.0
24	Cyanide*	57–12–5	8.0×10^{-2}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	4.8×10^{-1}

TABLE 1.—PROPOSED DELISTING CONSTITUENTS AND DELISTING LEVELS FOR TREATED EFFLUENT—Continued

Treatability group	Proposed delisting constituents	CAS #	HBL (mg/L)	EE/O	Justification	Proposed delisting level (mg/L)
25a	Tributyl phosphate*	126–73–8	2.0×10^{-2}(3).	5	Representing group 25a and 25b, the compound with a low HBL, target compound in EPA method, PQL less than delisting level. No updated HBL. Previous delisting level is used, adjusted for a DAF of 6 instead of 10.	1.2×10^{-1}

CAS = Chemical Abstract Service. DAF = dilution attenuation factor. HBL = health-based levels. MCL = maximum contamination limit. PQL = practical quantitation limit. TSCA = Toxic Substances Control Act of 1976. (1) The HBL for cresol is assumed to be that for o-cresol and m-cresol. (2) The HBL for ammonia is assumed to be the same as used in the initial Delisting Petition. (3) The HBL for tributyl phosphate is assumed to be the same as used in the initial Delisting Petition. (4) The phrase "Target compound in SW–846" means that the associated constituent can be analyzed for and reported using promulgated SW–846 analytical methods.
*Current delisting parameters.

E. What Other Factors Did EPA Consider in Its Evaluation?

As noted in section III.C, EPA believes that the approach used in the original 200 Area ETF treated effluent delisting action is sound and environmentally protective. Further, EPA does not believe there is any basis to expand on the analysis conducted to support the original 200 Area ETF delisting. EPA has considered the potential for, but has concluded that there are no other factors that warrant consideration in this proposed delisting modification.

F. What Did EPA Conclude About DOE–RL's Analysis?

After reviewing the DOE–RL petition, EPA concludes that (1) no RCRA hazardous constituents are likely to be present in treated effluent above the proposed health-based delisting levels; and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity (refer to 40 CFR 261.21, 261.22, 261.23, and 261.24, respectively).[12] In addition, EPA considered other factors or criteria enumerated in section I.B that could cause the wastes to be hazardous under RCRA. Today's proposal expands the list of constituents for which the wastes are excluded to include certain U- and P-listed waste numbers which are defined by 40 CFR 261.33 as acutely hazardous. EPA's analysis demonstrates that treated effluents do not contain U- and P-listed constituents above health-based delisting levels, and therefor no longer meet the criteria under which the waste was originally listed as an acutely hazardous waste. Therefore, the treated effluents may be excluded from the definition of hazardous waste. The remaining factors discussed in section I.B were considered as part the analysis EPA performed to establish exclusion limits and the verification sampling program applicable to the wastes considered in today's proposed exclusion.

G. What Must DOE RL Do To Demonstrate Compliance With the Proposed Exclusion?

DOE–RL's obligation to demonstrate compliance with this proposed exclusion has two key components. The first is to demonstrate that each influent wastewater is within the processing capabilities (defined in this context as the ability to treat to delisting levels) of the 200 Area ETF prior to treatment. This demonstration is made through application of the verified treatment efficiency process model for the 200 Area ETF unit operations to waste characterization data required by the waste characterization and acceptance procedures in Hanford's site-wide RCRA permit, WA7 89000 8967. The second component is a treated effluent sampling program intended to verify that the predicted treatment levels in fact are achieved. The verification sampling program in turn has two phases—an initial qualification sampling requirement applicable to all influent waste streams that do not have an operating history of treatment in 200 Area ETF, and an on-going verification "spot check" sampling requirement. The first qualification phase is intended to demonstrate that the predicted treatment efficiencies can be achieved for new waste streams, while the "spot check" requirement is intended to identify any long-term changes in treatment efficiency or influent waste stream variability that would impact the ability of the 200 Area ETF to meet delisting requirements. At any time that an initial or verification sampling event indicates failure to meet delisting criteria, the DOE–RL is required to re-evaluate the waste characterization data (to identify any constituents, constituent levels, or other factors that might affect treatability of the waste), the treatment strategy and operational baseline, and to make any changes necessary to ensure subsequent batches of treated effluent do not fail delisting criteria. As with new treatment strategies, the initial treated effluent batch after any waste treatment strategy changes also is subject to verification sampling to ensure the treatment strategy changes are effective. In all cases where verification sampling is required, the corresponding batch of treated effluent cannot be discharged to the SALDS unit until compliance with delisting exclusion limits can be documented. Both of these overall compliance components and the two verification sampling program phases are essentially the same as in the original delisting action, with modifications to reflect actual operating experience and the additional influent wastes the 200 Area ETF expects to manage under this proposed exclusion.

EPA is also proposing additional conditions to ensure ongoing compliance with delisting exclusion limits. First, EPA is proposing a re-opener provision to allow EPA to re-evaluate the protectiveness of today's exclusion limits and management requirements should new information become available that might alter

[12] Delisting requirements of 40 CFR 260.22 state that an excluded waste cannot exhibit any of the characteristics of hazardous waste (reactivity, ignitability, corrosivity or toxicity). The delisting levels in today's proposal are below the toxicity characteristics levels, and there is no record of untreated or treated aqueous wastewaters associated with the 200 Area ETF having sufficient concentrations of any constituent to suggest that the reactivity or ignitability characteristic might be of concern with respect to treated effluents. Similarly, the nature of the treatment processes at the 200 Area ETF, which include multiple pH adjustment steps, insure that treated effluents do not exhibit the characteristic of corrosivity. EPA believes that treated effluents satisfy these delisting requirements. DOE–RL, however, must demonstrate that treated effluents do not exhibit the characteristics of ignitability or corrosivity through application of process knowledge or analytical sampling according to 40 CFR 262.11

conclusions reached should today's proposal be finalized. EPA currently includes this re-opener provision as a standard component of delisting rulemakings. Second, EPA is proposing record keeping and reporting requirements. These conditions are intended to ensure that documentation of information necessary to review the compliance history of RL is appropriately recorded and maintained.

H. How Must DOE RL Manage the Delisted Waste for Disposal?

As a condition of this proposed exclusion, DOE–RL would be required to dispose of treated effluent at the SALDS. As noted elsewhere in this proposal, EPA anticipates and encourages the DOE–RL to evaluate alternate reuse options for treated effluent. Such changes in management practices will require EPA approval pursuant to delisting condition 7.

I. How Must DOE RL Operate the Treatment Unit?

The DOE–RL would be required to operate the 200 Area ETF according to the waste processing strategies developed pursuant to this proposed exclusion, if finalized, including the waste treatment strategy developed under Condition (1)(a). Although not a specific condition of this proposed delisting, the DOE–RL also must operate the 200 Area ETF in compliance with applicable RCRA regulations, the requirements of the Hanford Facility RCRA Permit WA7 89000 8967, and in part, the requirements of the State Waste Discharge Permit ST4500.

J. What Must DOE RL Do if the Process Changes?

EPA expects that 200 Area ETF treatment technologies will evolve and/or change over the operating life of the unit in support of Hanford Facility cleanup. EPA is proposing an exclusion condition that will allow the DOE–RL to modify the treatability envelope for the 200 Area ETF with written EPA approval to reflect such changes. Under today's proposal, such changes to the treatability envelope will not require modifications to the exclusion rule. EPA notes that changes to the treatability envelope for ETF may require modification to the State Waste Discharge Permit ST4500 as well.

EPA has included a re-opener clause that may also provide a basis for modification of this proposed exclusion to reflect substantial changes to ETF or its performance. Since it is not possible to completely anticipate potential future changes or modifications to the 200 Area ETF treatment process, EPA is not providing a comprehensive definition of "substantial" in the context of the reopener clause. However, EPA is proposing that changes that would require Class II or Class III modifications to the Hanford Facility RCRA Permit WA7 89000 8967 would be considered "substantial." Without enumerating all possible changes to the 200 Area ETF, this proposal serves as a general example of "substantial" changes.

EPA notes that substantial changes to the 200 Area ETF that would warrant EPA review in the context of today's proposed exclusion would also likely require modification of the Hanford Facility RCRA Permit WA7 89000 8967

K. What Data Must DOE RL Submit?

EPA believes that the methodology in this proposed exclusion provides a sound and robust basis to accommodate the diverse waste streams expected to be managed by the 200 Area ETF under this proposed exclusion. Based on the 200 Area ETF operating history, EPA does not expect that the RL will encounter exceedances of delisting levels during verification sampling. Should exceedances occur, however, the retreatment and subsequent verification requirements of Conditions (2) and (3) in today's proposal provide assurances against environmental harm. Should such an exceedance occur, however, EPA believes that it might be indicative of unanticipated changes in waste streams or 200 Area ETF operations that require regulatory evaluation beyond the self-implementing provisions of Conditions (2) and (3). Therefore, EPA is proposing a recordkeeping and data submission requirement to ensure that EPA and Ecology are aware of such situations, and have the opportunity to take any appropriate response actions.

The DOE–RL also must disclose new or different data related to the 200 Area ETF or disposal of the waste if the data is relevant to the delisting (*see* Condition (4) of the proposed rule for the specifics of this requirement). This provision will allow EPA to re-evaluate the exclusion if new or additional information becomes available to EPA. The EPA will evaluate the information on which we based the decision to see if the information still is correct, or if circumstances have changed so that the information no longer is correct or would cause EPA to deny the petition if presented. This provision expressly requires the DOE–RL to report differing site conditions or assumptions used in the petition within 10 days. If EPA discovers such information itself or from a third party, EPA can act on the information as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at 40 CFR 268.6.

EPA believes that we have the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978) *et seq.* (APA), to re-open a delisting decision. We may re open a delisting decision when we receive new information that calls into question the assumptions underlying the delisting.

EPA believes a clear statement of its authority in delistings is merited in light of Agency experience, where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the toxicity characteristic leaching procedure (TCLP), thus leading the Agency to repeal the delisting. *See* Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997). If a threat to human health and the environment presents itself, EPA will continue to address these situations case by case. Where necessary, EPA can make a good cause finding to justify emergency rulemaking. *See* 5 U.S.C. 553(b).

L. What Happens if DOE RL Fails To Meet the Conditions of the Exclusion?

If DOE–RL violates the terms and conditions established in the exclusion, the Agency may begin procedures to withdraw the exclusion. If the analytical testing of the waste indicates treated effluents do not meet the delisting criteria described previously, the DOE–RL must notify EPA according to Condition (6). Because the 200 Area ETF provides the capability to re-treat waste, EPA is not proposing to suspend this proposed exclusion if verification sampling results fail to demonstrate compliance with delisting levels. The proposed delisting conditions do, however, require the DOE–RL to review and/or modify the associated waste processing strategy to ensure future treatment batches meet delisting criteria, and to perform additional verification testing to demonstrate that changes are effective. Since the conditions of today's proposed exclusion require DOE–RL to maintain records of verification sampling and waste processing strategies, and report verification failures to EPA (*see* Condition 6(b)), EPA can evaluate whether verification sampling failures are isolated and adequately addressed by re-treatment, or indicative of repeated and consistent failures that might warrant reopening of the exclusion rule under Condition 4. **Note:** Failure of treated effluent exclusion limits would not necessarily provide a basis to begin withdrawal proceedings,

because the waste could be managed as hazardous without violating terms of today's proposed exclusion, or applicable waste management requirements.

M. What Is EPA's Final Evaluation of This Delisting Petition?

We have reviewed DOE–RL's November 29, 2001 delisting petition, the operating history of the 200 Area ETF treatment process, the basis EPA used to establish the original delisting, and DOE–RL's proposed delisting levels and approach for waste acceptance and processing strategy development for new waste streams. EPA believes that these data and information provide a sufficient basis for EPA to grant the proposed modifications to the existing exclusion. The framework proposed by the DOE–RL for the 200 Area ETF operations, along with the updated verification requirement being proposed, ensures that the treated effluent will not pose a threat when managed as non-hazardous low-level radioactive waste in the SALDS. EPA, therefore, proposes to grant the proposed exclusion modification.

If we finalize this proposed exclusion, EPA no longer will regulate the petitioned waste as a listed hazardous waste under 40 CFR parts 262 through 268 and the permitting standards of part 270.

N. Relationship Between Today's Proposed Action and Compliance LDR Treatment Standards

Today's action proposes to exclude certain wastes from the definition of hazardous waste under the authority of 40 CFR 260.20 and 260.22. EPA is not proposing any action that establishes or imposes treatment requirements under the authority of land disposal restriction rules appearing at 40 CFR part 268, nor is EPA proposing that the numerical delisting criteria in today's proposal necessarily satisfy existing LDR treatment standards that may be applicable to treated effluents. In general, all of the influent wastewaters considered in today's proposal are expected to be generated and actively managed prior to the point of exclusion, should today's proposal be finalized. As such, EPA believes that the treated effluent in question are prohibited wastes and subject to applicable LDR treatment requirements prior to land disposal at the SALDS. For disposal at SALDS, applicable LDR prohibitions and treatment requirements are specified by WAC 173–303–140, which incorporates by reference 40 CFR part 268.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4,1993), the Agency must determine whether the regulatory action is "significant", and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This proposal to grant an exclusion is not a "significant regulatory action" under the terms of Executive Order 12866, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as non-hazardous. Therefore, EPA has determined that this proposed rule is not subject to OMB review.

B. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, is intended to minimize the reporting and recordkeeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and recordkeeping requirements affecting ten or more non-Federal respondents be approved by OPM. Although this action proposes to establish or modify information and recordkeeping requirements for DOE–RL, it does not impose those requirements on any other facility or respondents, and therefore is not subject to the provisions of the Paperwork Reduction Act.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Administration Regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant impact on small entities because the proposed rule will only have the effect of impacting the waste management of waste proposed for conditional delisting at the Hanford facility in the State of Washington. After considering the economic impacts of today's proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Public Law 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other

than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this rule.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. This proposed rule addresses the conditional delisting of waste at the federal Hanford Facility. Thus, Executive Order 13132 does not apply to this rule. Although Section 6 of the Executive Order 13132 does not apply to this proposed rule, EPA did consult with representatives of State and local governments in developing this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. The rule proposes to conditionally delist certain waste streams at the federal Hanford Facility and does not establish any regulatory policy with tribal implications. Thus, Executive Order 13175 does not apply to this proposed rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed action present a disproportionate risk to children. The proposed rule concerns the proposed conditional delisting of certain waste streams at the Hanford facility.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a "significant regulatory action" as defined under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through the Offce of Management and Budget (OMB), explanations when the Agency decides to use "government-unique" standards in lieu of available and applicable voluntary consensus standards.

This proposed rulemaking involves environmental monitoring and measurement, but is not establishing new technical standards for verifying compliance with concentration limits, data quality or test methodology. EPA proposes not to require the use of specific, prescribed analytic methods. Rather, the Agency plans to allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the prescribed performance criteria. Examples of performance criteria are discussed in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication-846, Third Edition, as amended by updates I, II, IIA, IIB and III. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation, if finalized.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on

the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. Because this proposed rule addresses the conditional delisting of certain waste streams at the Hanford Facility, with no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 6, 2004.

L. John Iani,

Regional Administrator, Region 10.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFYING AND LISTING HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2, of Appendix IX of part 261, it is proposed to revise the entry for "DOE RL, Richland, WA" to read as follows:

Appendix IX to Part 261—Water Excluded Under §§ 260.20 and 260.22

* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility/address	Waste description
*	* * * * * *
Department of Energy, Richland Operations (DOE–RL), Richland, Washington.	Treated effluents bearing the waste numbers identified below, from the 200 Area ETF located at the Hanford Facility, at a maximum generation rate of 210 million liters per year, subject to Conditions 1–7: This conditional exclusion applies to EPA Hazardous Waste Nos. F001, F002, F003, F004, F005, and F039. In addition, this conditional exclusion applies to all other U- and P-listed waste numbers that meet the following criteria: The U/P listed substance has a treatment standard established for wastewater forms of F039 multi-source leachate under 40 CFR 268.40, "Treatment Standards for Hazardous Wastes"; and The as-generated waste stream prior to treatment in the 200 Area Effluent Treatment Facility (200 Area ETF) is in the form of dilute wastewater containing a maximum of 1.0 weight percent of any hazardous constituent. This exclusion shall apply at the point of discharge from the 200 Area ETF verification tanks after satisfaction of Conditions 1–7. Conditions: (1) Waste Influent Characterization and Processing Strategy Preparation. (a) Prior to treatment of any waste stream in the 200 Area ETF, the DOE–RL must: (i) Complete sufficient characterization of the waste stream to demonstrate that the waste stream is within the treatability envelope of 200 Area ETF as specified in Tables C–1 and C–2 of the delisting petition dated November 20, 2001. Results of the waste stream characterization and the treatability evaluation must be in writing and placed in the facility operating record, along with a copy of the November 29, 2001 petition. Waste stream characterization may be carried out in whole or in part using the waste analysis procedures in the Hanford Facility RCRA Permit, WA7 89000 8967; (ii) Prepare a written waste processing strategy specific to the waste stream, based on the ETF process model documented in the November 29, 2001 petition. (b) DOE–RL may modify the 200 Area ETF treatability envelope specified in Tables C–1 and C–2 of the November 29, 2001 delisting petition to reflect changes in treatment technology or operating practices upon written approval of the Regional Administrator. (c) DOE–RL shall conduct all 200 Area ETF treatment operations for a particular waste stream according to the written waste processing strategy, as may be modified by Condition 3(b)(1). (d) The following definitions apply: (i) A waste stream is defined as all wastewater received by the 200 Area ETF that meet the 200 Area ETF waste acceptance criteria as defined by the Hanford Facility RCRA Permit, WA7 89000 8967 and are managed under the same 200 Area ETF waste processing strategy. (ii) A waste processing strategy is defined as a specific 200 Area ETF unit operation configuration, primary operating parameters and expected maximum influent total dissolved solids (TDS) and total organic waste carbon (TOC). Each processing strategy shall require monitoring and recording of treated effluent conductivity for purposes of Condition (2)(b)(i)(E), and for monitoring and recording of primary operating parameters as necessary to demonstrate that 200 Area ETF operations are in accordance with the associated waste processing strategy. (iii) Primary operating parameters are defined as ultraviolet oxidation (UV/OX) peroxide addition rate, reverse osmosis reject ratio, and processing flow rate as measured at the 200 Area ETF surge tank outlet. (iv) Key unit operations are defined as filtration, UV/OX, reverse osmosis, ion exchange, and secondary waste treatment. (2) Testing. DOE–RL shall perform verification testing of treated effluents according to Conditions (a), (b), and (c) below. (a) Sample collection and analysis, including quality control (QC) procedures, must be performed according to current version of SW–846 or other EPA-approved methodologies. DOE–RL shall maintain a written sampling and analysis plan in the facility operating record. Results of all sampling and analysis, including quality assurance (QA)/QC information, shall be placed in the facility operating record. (b) Initial verification testing. (i) Verification sampling shall consist of a representative sample of one filled effluent discharge tank, analyzed for all constituents in Condition (5), and for conductivity for purposes of establishing a conductivity baseline with respect to Condition (2)(b)(i)(E). Verification sampling shall be required under each of the following conditions: (A) Any new or modified waste processing strategy;

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility/address	Waste description
	(B) Influent wastewater total dissolved solids or total organic carbon concentration increases by an order of magnitude or more above values established in the waste processing strategy; (C) Changes in primary operating parameters; (D) Changes in influent flow rate outside a range of 150 to 570 liters per minute; (E) Increase greater than a factor of ten (10) in treated effluent conductivity (conductivity changes indicate changes in dissolved ionic constituents, which in turn are a good indicator of 200 Area ETF treatment efficiency). (F) Any failure of initial verification required by this condition, or subsequent verification required by Condition (2)(c). (ii) Treated effluents shall be managed according to Condition 3. Once Condition (3)(a) is satisfied, subsequent verification testing shall be performed according to Condition (2)(c). (c) Subsequent Verification: Following successful initial verification associated with a specific waste processing strategy, DOE–RL must continue to monitor primary operating parameters, and collect and analyze representative samples from every fifteenth (15th) verification tank filled with 200 Area ETF effluents processed according to the associated waste processing strategy. These representative samples must be analyzed prior to disposal of 200 Area ETF effluents for all constituents in Condition (5). Treated effluent from tanks sampled according to this condition must be managed according to Condition (3). (3) Waste Holding and Handling: DOE–RL must store as hazardous waste all 200 Area ETF effluents subject to verification testing in Conditions (2)(b) and (2)(c), that is, until valid analyses demonstrate Condition (5) is satisfied. (a) If the levels of hazardous constituents in the samples of 200 Area ETF effluent are equal to or below the levels set forth in Condition (5), the 200 Area ETF effluents are not listed as hazardous wastes provided they are disposed of in the State Authorized Land Disposal Site (SALDS) (except as provided pursuant to Condition (7)), according to applicable requirements and permits. Subsequent treated effluent batches shall be subject to verification requirements of Condition (2)(c). (b) If hazardous constituent levels in any representative sample collected from a verification tank exceed any of the delisting levels set in Condition (5), DOE–RL must: (i) Review waste characterization data, and review and change accordingly the waste processing strategy as necessary to ensure subsequent batches of treated effluent do not exceed delisting criteria; (ii) Retreat the contents of the failing verification tank; (iii) Perform verification testing on the retreated effluent. If constituent concentrations are at or below delisting levels in Condition (5), the treated effluent are not listed hazardous waste provided they are disposed at SALDS according to applicable requirements and permits (except as provided pursuant to Condition (7)), otherwise repeat the requirements of Condition (3(b). (iv) Perform initial verification sampling according to Condition (2)(b) on the next treated effluent tank once testing required by Condition (3)(b)(iii) demonstrates compliance with delisting requirements. (4) Re-opener Language. (a) If, anytime before, during, or after treatment of waste in the 200 Area ETF, DOE–RL possesses or is otherwise made aware of any data (including but not limited to groundwater monitoring data, as well as data concerning the accuracy of site conditions or the validity of assumptions upon which the November 29, 2001 petition was based) relevant to the delisted waste indicating that the treated effluent no longer meets delisting criteria (excluding recordkeeping and data submissions required by Condition (6)), or that groundwater affected by discharge of the treated effluent exhibits hazardous constituent concentrations above health-based limits, DOE–RL must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) DOE–RL shall provide written notification to the Regional Administrator no less than 180 days prior to any planned or proposed substantial modifications to the 200 Area ETF, exclusive of routine maintenance activities. This condition shall specifically include, but not be limited to, changes that do or would require Class II and III modification to the Hanford Facility RCRA Permit WA7 89000 8967 (in the case of permittee-initiated modifications) or equivalent modifications in the case of agency-initiated permit modifications. DOE–RL may request a modification to the 180-day notification requirement of this condition in the instance of agency-initiated permit modifications for purposes of ensuring coordination with permitting activities. (c) Based on the information described in paragraph (4)(a) or (4)(b) or any other relevant information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protest human health or the environment. Further action could include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) Delisting Levels: All total constituent concentrations in treated effluents managed under this exclusion must be equal to or less than the following levels, expressed as mg/L: Inorganic Constituents: Ammonia—6.0; Barium—1.6; Beryllium—4.5×10^{-2}; Nickel—4.5×10^{-1}; Silver—1.1×10^{-1}; Vanadium—1.6×10^{-1}; Zinc—6.8; Arsenic—1.5×10^{-2}; Cadmium—1.1×10^{-2}; Chromium—6.8×10^{-2}; Lead—9.0×10^{-2}; Mercury—6.8×10^{-3}; Selenium—1.1×10^{-1}; Fluoride—1.2; Cyanides—4.8×10^{-1}. Organic Constituents: Cresol—1.2; 2,4,6 Trichlorophenol—3.6×10^{-1}; Benzene—6.0×10^{-2}; Chrysene—5.6×10^{-1}; Hexachlorobenzene—2.0×10^{-3}; Hexachlorocyclopentadiene—1.8×10^{-1}; Dichloroisopropyl ether; (*Bis(2-Chloroisopropyl)* ether—6.0×10^{-2}; Di-n-octylphthalate—4.8×10^{-1}; 1-Butanol—2.4; Isophorone—4.2; Diphenylamine—5.6×10^{-1}; p-Chloroaniline—1.2×10^{-1}; Acetonitrile—1.2; Carbazole—1.8×10^{-1}; N-Nitrosodimethylamine—2.0×10^{-3}; Pyridine—2.4×10^{-2}; Lindane [gamma-BHC]—3.0×10^{-3}; Arochlor [total of Arochlors 1016, 1221, 1232, 1242, 1248, 1254, 1260]—5.0×10^{-4}; Carbon tetrachloride—1.8×10^{-2}; Tetrahydrofuran—5.6×10^{-1}; Acetone—2.4; Carbon disulfide—2.3; Tributyl phosphate—1.2×10^{-1}. (6) Recordkeeping and Data Submittals.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility/address	Waste description
	(a) DOE–RL shall maintain records of all waste characterization, and waste processing strategies required by Condition (1), and verification sampling data, including QA/QC results, in the facility operating record for a period of no less than three (3) years. However, this period is automatically extended during the course of any unresolved enforcement action regarding the 200 Area ETF or as requested by EPA. (b) No less than thirty (30) days after receipt of verification data indicating a failure to meet delisting criteria of Condition (5), DOE–RL shall notify the Regional Administrator. This notification shall include a summary of waste characterization data for the associated influent, verification data, and any corrective actions taken according to Condition (3)(b)(i). (c) Records required by Condition (6)(a) must be furnished on request by EPA or the State of Washington and made available for inspection. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making of submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928). I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the (those) identified section(s) of the document for which I cannot personally verify its (their) truth and accuracy, I certify as the official having supervisory responsibility of the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to DOE–RL, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the DOE–RL will be liable for any actions taken in contravention of its RCRA and CERCLA obligations premised upon DOE–RL's reliance on the void exclusion." (7) Treated Effluent Disposal Requirements. DOE–RL may at any time propose alternate reuse practices for treated effluent managed under terms of this exclusion in lieu of disposal at the SALDS. Such proposals must be in writing to the Regional Administrator, and demonstrate that the risks and potential human health or environmental exposures from alternate treated effluent disposal or reuse practices do not warrant retaining the waste as a hazardous waste. Upon written approval by EPA of such a proposal, non-hazardous treated effluents may be managed according to the proposed alternate practices in lieu of the SALDS disposal requirement in paragraph (3)(a). The effect of such approved proposals shall be explicitly limited to approving alternate disposal practices in lieu of the requirements in paragraph (3)(a) to dispose of treated effluent in SALDS.
* * * * * * *	

[FR Doc. 04–15945 Filed 7–14–04; 8:45 am]
BILLING CODE 6560–50–P

rule is not a "major rule "as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 27, 2005.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.910 [Amended]

■ 2. Section 180.910 is amended by removing the following exemptions and any associated Limits and Uses from the table: Dichlorodifluoromethane, Dichlorotetrafluoroethane, and Trichlorofluoromethane.

§ 180.930 [Amended]

■ 3. Section 180.930 is amended by removing the following exemptions and any associated Limits and Uses from the table: Dichlorodifluoromethane and Trichlorofluoromethane.

[FR Doc. 05–15334 Filed 8–2–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7946–8]

Hazardous Waste Management System; Final Exclusion for Identification and Listing Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is finalizing its proposed action to grant a petition submitted by the United States Department of Energy, Richland Operations Office (Energy) to exclude (or 'delist') from regulation as listed hazardous waste certain mixed waste ('petitioned waste') following treatment at the 200 Area Effluent Treatment Site (200 Area ETF) on the Hanford Facility, Richland, Washington. This action conditionally grants the exclusion based on an evaluation of waste stream-specific and treatment process information provided by Energy. Wastes meeting the conditions of this exclusion are exempt from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) of 1976 as amended. In finalizing this action, EPA has concluded that Energy's petitioned waste does not meet any of the criteria under which the wastes were originally listed, and that there is no reasonable basis to believe other factors exist which could cause the waste to be hazardous.

DATES: This final rule is effective on September 2, 2005.

ADDRESSES: The RCRA regulatory docket for this final rule is maintained by EPA, Region 10. You may examine docket materials at the EPA Region 10 library, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1289, during the hours from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Copies of key docket documents are available for review at the following Hanford Site Public Information Repository locations:

University of Washington, Suzzallo Library, Government Publications Division, Box 352900, Seattle, WA 98195–2900. (206) 543–4664. Contact: Eleanor Chase, *echase@u.washington.edu*, (206) 543–4664.

Gonzaga University, Foley Center, East 502 Boone, Spokane, WA 99258–0001. (509) 323–5806. Contact: Connie Scarppelli, *carter@its.gonzaga.edu*.

Portland State University, Branford Price Millar Library, 934 SW Harrison, Portland, OR 97207–1151. (503) 725–3690. Contact: Michael Bowman, *bowman@lib.pdx.edu*.

U.S. DOE Public Reading Room, Washington State University-TC, CIC Room 101L, 2770 University Drive, Richland, WA 99352. (509) 372–7443. Contact: Janice Parthree, *reading_room@pnl.gov*.

Copies of material in the regulatory docket can be obtained by contacting the Hanford Site Administrative Record via mail, phone, fax, or e-mail:

Address: Hanford Site Administrative Record, PO Box 1000, MSIN H6–08, 2440 Stevens Center Place, Richland, WA 99352. (509) 376–2530. E-mail: *Debra_A_Debbie_Isom@rl.gov*.

The docket contains the petition, and all information used by EPA to evaluate the petition including public comments received by EPA and comment responses.

FOR FURTHER INFORMATION CONTACT: For information concerning this document, contact Dave Bartus, Office of Air, Waste and Toxics (OAWT), EPA, Region 10, 1200 6th Avenue, MS AWT–127, Seattle, WA 98101, telephone (206) 553–2804, or via e-mail at *bartus.dave@epa.gov*.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

A. What Rule Is EPA Finalizing?

After evaluating Energy's petition and supplemental information provided by Energy, EPA proposed on July 15, 2004 (69 FR 42395), to exclude the petitioned mixed [1] wastes managed or generated by the 200 Area ETF on the Hanford Facility in Richland, Washington. The action relates to treated liquid effluents

[1] Mixed waste is defined as waste that contains both hazardous waste subject to the requirements of Resource Conservation and Recovery Act (RCRA) of 1976 as amended, and source, special nuclear, or by-product material subject to the requirements of the Atomic Energy Act (AEA) (*see* 42 United States Code (U.S.C.) 6903 (41), added by the Federal Facility Compliance Act (FFCA) of 1992).

produced by the 200 Area ETF, which were first delisted in June 1995. *See* 60 FR 6054, February 1, 1995. EPA's final exclusion modifies this existing delisting by increasing the annual quantity of waste delisted to conform to the expected full treatment capacity of the 200 Area ETF and by expanding the list of hazardous waste numbers and F039 constituents for which 200 Area ETF treated effluent is delisted. Changes relating to waste numbers for which 200 Area ETF treated effluent is excluded include expanding the list of constituents associated with hazardous waste number F039 (multisource leachate), from the current F001 to F005 constituents to all constituents for which F039 waste is listed,[2] adding certain wastewater forms of U- and P-listed wastes, and certain additional F-listed waste numbers. These additional U-, P- and F-listed waste numbers are those whose chemical constituents are included in the list of hazardous constituents for which F039 was listed (see 40 CFR part 261, appendix VII). This latter addition is intended to accommodate possible management of U-, P- and F-listed wastewaters from spill cleanup or decontamination associated with management of these wastes at the Central Waste Complex (CWC) or other storage facilities. These spill cleanup wastes include exactly the same constituents that will eventually contribute to F039 when the source wastes are land disposed, so today's analysis of expanding the 200 Area ETF treated effluent to include F039 applies equally to the wastewater forms of the same chemical constituents in their U-, P- and F-listed waste forms.

The effect of these changes is to allow the 200 Area ETF to fulfill an expanded role in supporting Hanford Facility cleanup actions beyond those activities considered in the 1995 delisting rulemaking. In particular, these changes will allow the 200 Area ETF to treat mixed wastewaters from a number of additional sources beyond 242–A Evaporator process condensate (PC) upon which the original delisting was based.

B. Why Is EPA Finalizing the Proposed Exclusion?

We believe that the petitioned waste should be conditionally delisted because the waste, when managed in accordance with today's final conditions, do not meet the criteria for which the wastes originally were listed and the waste do not contain other constituents or factors that could cause the waste stream to be a hazardous waste or warrant retaining the waste as a hazardous waste. Our final decision to delist the petitioned waste is based on information submitted by Energy, including the description of the wastewaters managed by the ETF and their original generating sources, the ETF treatment processes, and the analytical data characterizing performance of the 200 Area ETF.

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See 42 U.S.C. 6921(f), and 40 CFR 260.22. These factors include: (1) Whether the waste are considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the hazardous constituents to migrate and to bio-accumulate; (5) persistence of the constituents in the environment once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) variability of the waste. We also evaluated the petitioned waste against the listing criteria at 40 CFR 261.11(a)(1), (2) and (3) and factors required by 40 CFR 260.22(a)(2). EPA finds the petitioned wastes do not meet the listing criteria and determined that none of the factors listed above warrant retaining the petitioned wastes as hazardous.

C. What Are the Limits of This Exclusion?

This exclusion applies to certain 200 Area ETF treated effluents identified in today's final rule, provided the conditions contained herein are satisfied.

D. When Is the Final Rule Effective?

The effective date of today's action is September 2, 2005. RCRA Section 3010(b)(1), 42 U.S.C. 6930(b)(1), allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance with the new regulatory requirements. In the proposed rule preamble, EPA noted that the rule, if finalized, would reduce existing regulatory requirements, so that a six-month period was not necessary for Energy to come into compliance. EPA further noted that, if finalized, the proposal would be effective immediately upon final publication, and that a later date would impose unnecessary hardship and expense on the petitioner.

After further reflection and consideration of Energy's comments, EPA continues to believe that a full six month period is not necessary to achieve full compliance with this rule. EPA recognizes, however, that the revised exclusion will contain somewhat different conditions than the original exclusion rule. Even though today's final rule provides relief from RCRA regulatory requirements for significantly more wastes than was previously the case, Energy must still demonstrate compliance with the new conditions of the new exclusion, even for wastes currently being processed in compliance with the existing exclusion. One example of such a condition is preparation of a waste processing strategy. To ensure Energy has adequate opportunity to update its internal procedures and produce documentation required by the new exclusion conditions, EPA is delaying the effective date of the final rule to 30 days after publication.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude, or delist, from the RCRA list of hazardous waste, waste the generator believes should not be considered hazardous under RCRA.

B. What Regulations Allow Wastes To Be Delisted?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations. 40 CFR 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

C. What Information Must the Generator Supply for a Delisting Petition?

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe

[2] As noted in the proposed rule, this final rule is not modifying the list of constituents for which F039 multiscource leachate is listed. At the time of the original delisting, DOE–RLS did not expect to manage F039 wastes at the 200 Area ETF from sources other than F001–F005 wastes. Therefore, the original 200 Area ETF delisting excluded only F039 wastes from F001–F005 sources.

that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

D. How Will This Action Affect States?

This final rule is issued under the federal (RCRA) delisting authority found at 40 CFR 260.22. Some states are authorized to administer a delisting program in lieu of the federal program, *i.e.*, to make their own delisting decision. Therefore, this rule does not apply under RCRA in those authorized states. For states not authorized to administer a delisting program in lieu of the federal program (as is the case with the State of Washington as of the date of today's final rule), today's rule will become effective with respect to the federal (RCRA) program. Energy will, however, have to comply with any additional applicable state requirements.

States are allowed to impose regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally-issued exclusion from taking effect in a state. Because a petitioner's waste may be regulated under a dual system, (*i.e.*, both federal and state programs), petitioners are urged to contact state regulatory authorities to determine the current status of their wastes under the state laws.

III. EPA's Evaluation of the Waste Information for 200 Area ETF Treated Effluent

What Waste Did Energy Petition EPA To Delist?

The original delisting action considered treatment of only one waste stream, process condensate from the 242–A Evaporator (242–A Evaporator PC). Since promulgation of the original delisting, the operating mission of the 200 Area ETF has expanded considerably. Currently, the operating capacity of the 200 Area ETF provides treatment of 242–A Evaporator PC, treatment of Hanford Site contaminated groundwater from various pump-and-treat systems, and a variety of other wastewaters generated from waste management and cleanup activities at Hanford.

As discussed in section 3.0 of Energy's November 2001 petition, the mission of the 200 Area ETF is to treat wastewater generated on the Hanford Facility from cleanup activities including multisource leachate from operation of hazardous/mixed waste landfills, and other hazardous wastewaters from a variety of sources including analytical laboratory operations, research and development studies, waste treatment processes, environmental restoration and deactivation projects, and other waste management activities. Based on this change in the 200 Area ETF mission, Energy petitioned EPA to modify the existing delisting applicable to treated liquid effluent from the 200 Area ETF by increasing the effluent volume limit to 210 million liters per year, and to conditionally exclude treated effluents from treatment by the 200 Area ETF of certain liquid Hanford wastes with hazardous waste numbers identified at 40 CFR 261.31 and 261.33 as F001–F005, F039, and all U- and P-listed substances and selected additional F-listed waste numbers whose associated compounds appear in the listing definition of F039. Under the current delisting, the liquid effluent volume is limited to approximately 86 million liters per year, and delisted only for F001–F005 waste numbers and F039 waste constituents from F001 through F005 waste numbers.

The November 2001 delisting petition explains that wastes bearing numbers P029, P030, P098, P106, P120, and U123, as well as other U- and P-listed numbers corresponding to F039 constituents, are currently managed, or may be managed in the future, as part of Hanford cleanup operations. Wastes bearing these waste numbers are intended for future disposal in the mixed waste landfill (Low-Level Burial Grounds (LLBG)). These wastes, therefore, eventually will contribute to generation of F039 multisource leachate from this unit, and are specifically considered in the analysis of F039 constituents in Energy's delisting petition (refer to Appendix B of the November 2001 delisting petition). Energy believes that wastewaters bearing these waste numbers could be generated from activities such as spill cleanup or equipment decontamination, and such wastewaters could be managed best at the 200 Area ETF. Energy's petition did not propose to manage the discarded commercial chemical products in the 200 Area ETF, but only wastewaters from spill cleanup or equipment decontamination.

To ensure that the commercial chemical compounds themselves are not inappropriately managed at the 200 Area ETF, EPA's proposal limited the wastes that could be managed by the 200 Area ETF to only those influent wastewaters bearing less than 1.0 weight percent of any hazardous constituent. These wastewaters would also bear the same U- and P-listed numbers by virtue of the 'derived from' rule discussed in Section I.A of the proposed rule. Because the hazardous constituents from these U- and P-listed wastes are already included in the analysis of 200 Area ETF performance for treatment of F039, EPA is not proposing any separate analysis specific to U- and P-listed numbers. EPA's proposal to include these U- and P-listed waste numbers is intended to include influent wastewaters that might be generated from management of wastes currently stored in CWC, as well as such wastewaters managed elsewhere at Hanford or which may be generated in the future.

As discussed below in section IV, comments from Energy clarified Energy's intent in the November 29, 2001 petition to include a number of other F-listed waste numbers among those considered in the requested exclusion.

IV. Public Comments Received on the Proposed Rule

EPA received comments on the proposed rule from the applicant and from an individual commenter. Individual comments and EPA's response may be found in the response to comments document, which has been included in the docket for this final rulemaking. A summary of key comments and changes, if any, to the proposed rule, appear below.

In addition to changes made in response to public comments, EPA is also making changes to the proposed rule necessary to conform to the Methods Innovation Rule, 70 FR 34538, June 14, 2005. Details of these changes and EPA's rationale for them can also be found in the response to comments document.

A. Department of Energy Comments

Comments from the Department of Energy focused on the proposed regulatory language and explanatory preamble text. One of Energy's comments questioned the addition of a number of conditions in the proposed exclusion which do not appear in the current exclusion, stating that EPA had not provided an explanation for the additional conditions. Energy presented as a basis for its comment statements in the proposed rule generally noting EPA's perspective that the 200 Area ETF is a robust, well-designed and well-operated wastewater treatment unit. While EPA affirms its statements regarding the robust nature of the facility, EPA fundamentally disagrees with Energy's comment. As noted in the

proposal preamble and in EPA's response to comments, a key objective of the revised 200 Area ETF "upfront" delisting is to accommodate treatment of a wide range of waste streams not considered in the original exclusion, many of which have not yet been generated or characterized. Since Energy could not reasonably provide detailed characterization of wastes streams that have yet to be generated, EPA proposed a waste acceptance framework based on an engineering evaluation of waste streams. This model provides a degree of confidence that treatment in the 200 Area ETF will meet delisting exclusion limits to the same degree of confidence as if detailed waste stream characterization were available, while avoiding the need to frequently revise the delisting rule itself. As a result, EPA finds that the additional conditions noted in Energy's comments are not only fully justified, but absolutely essential to achieving the degree of flexibility requested by Energy in their delisting petition, given the lack of complete waste characterization information.

Another of Energy's comments provided clarification of Energy's intent to expand the suite of waste numbers covered by the proposed exclusion. Essentially, Energy provided a defensible argument that a number of additional F-listed waste numbers should be addressed by the exclusion. EPA agrees with this comment in part, but is limiting the additional F-listed waste numbers to those with a reasonable nexus to wastes expected to be managed by the 200 Area ETF. See the first paragraph of the regulatory exclusion language finalized today, appearing below in Table 2 in Appendix IX of 40 CFR part 261.

Energy requested relief from the proposed exclusion condition relating to recording of treated effluent conductivity, contending that doing so would be without basis and a burden. EPA disagrees, since both measuring and recording of treated effluent provides important documentation confirming performance of the 200 Area ETF. This measurement also provides a basis, in part, for EPA's decision to relax the verification sampling frequency for treated effluent from every 10th verification tank, as in the original exclusion, to every 15th verification tank. Given the extended interval between full verification sampling, measuring and recording of treated effluent conductivity provide a simple but effective indicator or 200 Area ETF performance with regard to inorganic treatment efficiency. Therefore, EPA is retaining the recording condition as proposed.

Energy requested relief from the condition generally limiting disposal of treated effluent at the State Authorized Land Disposal Site, or SALDS. Energy's comment is based on jurisdictional grounds, and Energy's belief that treated effluent "is essentially demineralized water." As described in Section III.C of the proposed rule preamble, the condition in question is established on the grounds that EPA evaluated the risk of treated effluent only with respect to a groundwater ingestion pathway, consistent with the approach taken by EPA in the original exclusion. The requirement to generally dispose of treated effluent at SALDS is intended to ensure exposure pathways other than groundwater do not occur without EPA analysis of potential risks from such pathways. EPA is retaining this condition as proposed, noting that the proposed and final rules do provide flexibility with respect to disposal practices through Condition 7 of the exclusion rule. Energy also requested deletion of Condition 7, on the basis that no non-radiological considerations warrant the condition, and that Energy is already engaged in various reuse activities using treated effluent. EPA is retaining Condition 7, since it relates directly to the scope of EPA's analysis of treated effluent risks, and since it provides flexibility for exactly the reuse practices noted in the comment.

Energy raised issues concerning reporting of environmental data, including groundwater data, to EPA in Condition (4)(a) of the proposed rule. Energy requested deletion of this condition on the grounds of being vague, and if retained, reconsideration of the requirement to report certain data within a ten-day period. EPA does not agree that the proposed condition is vague—in fact, EPA specifically crafted the condition to be specific in its scope. Although EPA did not propose explicit environmental or groundwater monitoring requirements as a condition of the proposed exclusion, EPA continues to believe that information that may otherwise become available to Energy relating to performance deficiencies of the 200 Area ETF (or any treatment facility subject to a delisting exclusion, for that matter) should be timely made available to EPA for consideration. EPA needs to ensure its ability to timely obtain and consider data that may indicate adverse environmental impacts of activities subject to the exclusion. Therefore, EPA is retaining the environmental data submission condition as defensible and implementable.

Finally, Energy requested modification to condition 4(b) relating to notification to EPA of changes to the 200 Area ETF. EPA accepted this comment in part, and has added clarifying language to more clearly define facility changes subject to this reporting requirement. See condition (4)(b).

Energy also provided a number of comments on preamble language in the proposed rule. In general, EPA notes these comments, and where appropriate, provides a clarifying analysis in the response to comments document to assist in implementing the regulatory exclusion conditions themselves. EPA has also provided an expanded discussion in the response to comments document of the relationship between exclusion conditions and Land Disposal Restriction treatment standards to assist Energy and the public in understanding this nexus, noting that the delisting exclusion rule does not impose nor demonstrate compliance with LDR treatment standards.

B. Individual Commenter

One individual provided a number of detailed comments. A number of these comments applied to Energy's November 29, 2001 petition document, rather than EPA's proposed rule. EPA has noted these comments, but finds that they were appropriately addressed in the proposal itself. One comment, however raised a valid point about a technical issue relating to how inorganic treatment/removal efficiencies were presented in Energy's petition. Energy's petition presented historical data in terms of maximum removal efficiencies. In some cases, data exists for some waste streams indicating removal efficiencies less than the maximum. While EPA does not believe that these differences would require significant change in the exclusion from what EPA proposed, EPA is never the less updating exclusion conditions to better relate removal efficiencies referenced by Condition (1)(a)(i) for purposes of establishing waste treatment strategies to actual or measured performance of the 200 Area ETF. More specifically, EPA is requiring Energy to adopt a more conservative approach to use of existing removal efficiency data that are applied to influent waste streams other than from which they were generated. In addition, EPA is defining more explicit methodology for Energy to update these removal efficiency data as it gains additional processing experience with new influent waste streams. See exclusion conditions 1(a)(ii) and 1(b). EPA expects that this change will not alter actual operations of the 200 Area

ETF, but it will provide a more defensible basis for the engineering demonstrations that Energy must make under terms of the final exclusion.

V. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant", and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that today's final rule is not a "significant regulatory action" under the terms of Executive Order 12866, since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as non-hazardous. Therefore, EPA has determined that this final rule is not subject to OMB review.

B. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OMB. Although this final rule establishes information and record-keeping requirements for Energy, it does not impose those requirements on any other facility or respondents, and therefore is not subject to the provisions of the Paperwork Reduction Act.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Administration Regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The final exclusion will only have the effect of impacting the waste management of waste proposed for conditional delisting at the Hanford facility in the State of Washington. After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Public Law 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this rule.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. This final rule addresses the conditional delisting of waste at the federal Hanford Facility. Thus, Executive Order 13132 does not apply to this rule. Although Section 6 of the Executive Order 13132 does not apply

to this proposed rule, EPA did consult with representatives of State and local governments in developing this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. The final rule conditionally delists certain wastes at the federal Hanford Facility and does not establish any regulatory policy with tribal implications. Thus, Executive Order 13175 does not apply to this final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed action present a disproportionate risk to children. The final rule concerns the proposed conditional delisting of certain wastes at the Hanford facility.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a "significant regulatory action" as defined under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides to use "government-unique" standards in lieu of available and applicable voluntary consensus standards.

This final rule involves environmental monitoring and measurement, but is not establishing new technical standards for verifying compliance with concentration limits, data quality or test methodology. EPA is not requiring the use of specific, prescribed analytic methods. Therefore, EPA did not explicitly consider the use of any voluntary consensus standards. Rather, the Agency has specifically accommodated use of an alternative method that meets the prescribed performance criteria. Examples of performance criteria are discussed in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication-846, Third Edition, as amended by updates I, II, IIA, IIB and III.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. Because this final rule addresses the conditional delisting of certain waste streams at the Hanford Facility, with no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 25, 2005.

Julie M. Hagensen,

Acting Regional Administrator, Region 10.

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(4), and 6938.

■ 2. In Table 2, of Appendix IX of Part 261, the existing entry for "DOE RL, Richland, WA" is removed and a new entry for "Department of Energy (Energy)" is added in alphabetical order to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
United States Department of Energy (Energy).	Richland, Washington	Treated effluents bearing the waste numbers identified below, from the 200 Area Effluent Treatment Facility (ETF) located at the Hanford Facility, at a maximum generation rate of 210 million liters per year, subject to Conditions 1–7: This conditional exclusion applies to Environmental Protection Agency (EPA) Hazardous Waste Nos. F001, F002, F003, F004, F005, and F039. This exclusion also applies to EPA Hazardous Waste Nos. F006–F012, F019 and F027 provided that the as-generated waste streams bearing these waste numbers prior to treatment in the 200 Area ETF is in the form of dilute wastewater containing a maximum of 1.0 weight percent of any hazardous constituent. In addition, this conditional exclusion applies to all other U- and P-listed waste numbers that meet the following criteria: The U/P listed substance has a treatment standard established for wastewater forms of F039 multi-source leachate under 40 CFR 268.40,"Treatment Standards for Hazardous Wastes"; and the as-generated waste stream prior to treatment in the 200 Area ETF is in the form of dilute wastewater containing a maximum of 1.0 weight percent of any hazardous constituent. This exclusion shall apply at the point of discharge from the 200 Area ETF verification tanks after satisfaction of Conditions 1–7. Conditions: (1) Waste Influent Characterization and Processing Strategy Preparation (a) Prior to treatment of any waste stream in the 200 Area ETF, Energy must: (i) Complete sufficient characterization of the waste stream to demonstrate that the waste stream is within the treatability envelope of 200 Area ETF as specified in Tables C–1 and C–2 of the delisting petition dated November 29, 2001. Results of the waste stream characterization and the treatability evaluation must be in writing and placed in the facility operating record, along with a copy of the November 29, 2001 petition. Waste stream characterization may be carried out in whole or in part using the waste analysis procedures in the Hanford Facility RCRA Permit, WA7 89000 8967; (ii) Prepare a written waste processing strategy specific to the waste stream, based on the ETF process model documented in the November 29, 2001 petition. For waste processing strategies applicable to waste streams for which inorganic envelope data is provided in Table C–2 of the November 29, 2001 petition, Energy shall use envelope data specific to that waste stream, if available. Otherwise, Energy shall use the minimum envelope in Table C–2. (b) Energy may modify the 200 Area ETF treatability envelope specified in Tables C–1 and C–2 of the November 29, 2001 delisting petition to reflect changes in treatment technology or operating practices upon written approval of the Regional Administrator. Requests for modification shall be accompanied by an engineering report detailing the basis for a modified treatment envelope. Data supporting modified envelopes must be based on at least four influent waste stream characterization data points and corresponding treated effluent verification sample data points for wastes managed under a particular waste processing strategy. Treatment efficiencies must be calculated based on a comparison of upper 95 percent confidence level constituent concentrations. Upon written EPA approval of the engineering report, the associated inorganic treatment efficiency data may be used in lieu of those in Tables C–1 and C–2 for purposes of condition (1)(a)(i). (c) Energy shall conduct all 200 Area ETF treatment operations for a particular waste stream according to the written waste processing strategy, as may be modified by Condition 3(b)(i). (d) The following definitions apply: (i) A waste stream is defined as all wastewater received by the 200 Area ETF that meet the 200 Area ETF waste acceptance criteria as defined by the Hanford Facility RCRA Permit, WA7 89000 8967 and are managed under the same 200 Area ETF waste processing strategy. (ii) A waste processing strategy is defined as a specific 200 Area ETF unit operation configuration, primary operating parameters and expected maximum influent total dissolved solids (TDS) and total organic carbon (TOC). Each waste processing strategy shall require monitoring and recording of treated effluent conductivity for purposes of Condition (2)(b)(i)(E), and for monitoring and recording of primary operating parameters as necessary to demonstrate that 200 Area ETF operations are in accordance with the associated waste processing strategy. (iii) Primary operating parameters are defined as ultraviolet oxidation (UV/OX) peroxide addition rate, reverse osmosis reject ratio, and processing flow rate as measured at the 200 Area ETF surge tank outlet. (iv) Key unit operations are defined as filtration, UV/OX, reverse osmosis, ion exchange, and secondary waste treatment. (2) Testing. Energy shall perform verification testing of treated effluents according to Conditions (a), (b), and (c) below.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(a) No later than 45 days after the effective date of this rule, or such other time as may be approved of in advance and in writing by EPA, Energy shall submit to EPA a report proposing required data quality parameters and data acceptance criteria (parameter values) for sampling and analysis which may be conducted pursuant to the requirements of this rule. This report shall explicitly consider verification sampling and analysis for purposes of demonstrating compliance with exclusion limits in Condition 5, as well as any sampling and analysis which may be required pursuant to Conditions (1)(a)(i) and (1)(d)(ii). This report shall contain a detailed justification for the proposed data quality parameters and data acceptance criteria. Following review and approval of this report, the proposed data quality parameters and data acceptance criteria shall become enforceable conditions of this exclusion. Pending EPA approval of this report, Energy may demonstrate compliance with sampling and analysis requirements of this rule through application of methods appearing in EPA Publication SW–846 or equivalent methods. Energy shall maintain a written sampling and analysis plan, including QA/QC requirements and procedures, based upon these enforceable data quality parameters and data acceptance criteria in the facility operating record, and shall conduct all sampling and analysis conducted pursuant to this rule according to this written plan. Records of all sampling and analysis, including quality assurance QA/QC information, shall be placed in the facility operating record. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. (b) Initial verification testing. (i) Verification sampling shall consist of a representative sample of one filled effluent discharge tank, analyzed for all constituents in Condition (5), and for conductivity for purposes of establishing a conductivity baseline with respect to Condition (2)(b)(i)(E). Verification sampling shall be required under each of the following conditions: (A) Any new or modified waste strategy; (B) Influent wastewater total dissolved solids or total organic carbon concentration increases by an order of magnitude or more above values established in the waste processing strategy; (C) Changes in primary operating parameters; (D) Changes in influent flow rate outside a range of 150 to 570 liters per minute; (E) Increase greater than a factor of ten (10) in treated effluent conductivity (conductivity changes indicate changes in dissolved ionic constituents, which in turn are a good indicator of 200 Area ETF treatment efficiency). (F) Any failure of initial verification required by this condition, or subsequent verification required by Condition (2)(c). (ii) Treated effluents shall be managed according to Condition 3. Once Condition (3)(a) is satisfied, subsequent verification testing shall be performed according to Condition (2)(c). (c) Subsequent Verification: Following successful initial verification associated with a specific waste processing strategy, Energy must continue to monitor primary operating parameters, and collect and analyze representative samples from every fifteenth (15th) verification tank filled with 200 Area ETF effluents processed according to the associated waste processing strategy. These representative samples must be analyzed prior to disposal of 200 Area ETF effluents for all constituents in Condition (5). Treated effluent from tanks sampled according to this condition must be managed according to Condition (3). (3) Waste Holding and Handling: Energy must store as hazardous waste all 200 Area ETF effluents subject to verification testing in Condition (2)(b) and (2)(c), that is, until valid analyses demonstrate Condition (5) is satisfied. (a) If the levels of hazardous constituents in the samples of 200 Area ETF effluent are equal to or below the levels set forth in Condition (5), the 200 Area ETF effluents are not listed as hazardous wastes provided they are disposed of in the State Authorized Land Disposal Site (SALDS) (except as provided pursuant to Condition (7)) according to applicable requirements and permits. Subsequent treated effluent batches shall be subject to verification requirements of Condition (2)(c). (b) If hazardous constituent levels in any representative sample collected from a verification tank exceed any of the delisting levels set in Condition (5), Energy must: (i) Review waste characterization data, and review and change accordingly the waste processing strategy as necessary to ensure subsequent batches of treated effluent do not exceed delisting criteria; (ii) Retreat the contents of the failing verification tank; (iii) Perform verification testing on the retreated effluent. If constituent concentrations are at or below delisting levels in Condition (5), the treated effluent are not listed hazardous waste provided they are disposed at SALDS according to applicable requirements and permits (except as provided pursuant to Condition (7)), otherwise repeat the requirements of Condition (3)(b).

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(iv) Perform initial verification sampling according to Condition (2)(b) on the next treated effluent tank once testing required by Condition (3)(b)(iii) demonstrates compliance with delisting requirements. (4) Re-opener Language (a) If, anytime before, during, or after treatment of waste in the 200 Area ETF, Energy possesses or is otherwise made aware of any data (including but not limited to groundwater monitoring data, as well as data concerning the accuracy of site conditions or the validity of assumptions upon which the November 29, 2001 petition was based) relevant to the delisted waste indicating that the treated effluent no longer meets delisting criteria (excluding record keeping and data submissions required by Condition (6)), or that groundwater affected by discharge of the treated effluent exhibits hazardous constituent concentrations above health-based limits, Energy must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Energy shall provide written notification to the Regional Administrator no less than 180 days prior to any planned or proposed substantial modifications to the 200 Area ETF, exclusive of routine maintenance activities, that could affect waste processing strategies or primary operating parameters. This condition shall specifically include, but not be limited to, changes that do or would require Class II or III modification to the Hanford Facility RCRA Permit WA7 89000 8967 (in the case of permittee-initiated modifications) or equivalent modifications in the case of agency-initiated permit modifications operations. Energy may request a modification to the 180-day notification requirement of this condition in the instance of agency-initiated permit modifications for purposes of ensuring coordination with permitting activities. (c) Based on the information described in paragraph (4)(a) or (4)(b) or any other relevant information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action could include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (5) Delisting Levels: All total constituent concentrations in treated effluents managed under this exclusion must be equal to or less than the following levels, expressed as mg/L: Inorganic Constituents Ammonia—6.0 Barium—1.6 Beryllium—4.5×10^{-2} Nickel—4.5×10^{-1} Silver—1.1×10^{-1} Vanadium—1.6×10^{-1} Zinc—6.8 Arsenic—1.5×10^{-2} Cadmium—1.1×10^{-2} Chromium—6.8×10^{-2} Lead—9.0×10^{-2} Mercury—6.8×10^{-3} Selenium—1.1×10^{-1} Fluoride—1.2 Cyanides—4.8×10^{-1} Organic Constituents: Cresol—1.2 2,4,6 Trichlorophenol—3.6×10^{-1} Benzene—6.0×10^{-2} Chrysene—5.6×10^{-1} Hexachlorobenzne—2.0×10^{-3} Hexachlorocyclopentadiene—1.8×10^{-1} Dichloroisopropyl ether [Bis(2-Chloroisopropyl) either]—6.0×10^{-2} Di-n-octylphthalate—4.8×10^{-1} 1-Butanol—2.4 Isophorone—4.2 Diphenylamine—5.6×10^{-1} p-Chloroaniline—1.2×10^{-1} Acetonitrile—1.2 Carbazole—1.8×10^{-1} N-Nitrosodimethylamine—2.0×10^{-2} Pyridine—2.4×10^{-2} Lindane [gamma-BHC]—3.0×10^{-3} Arochlor [total of Arochlors 1016, 1221, 1232, 1242, 1248, 1254, 1260]—5.0×10^{-4} Carbon tetrachloride—1.8×10^{-2} Tetrahydrofuran—5.6×10^{-1} Acetone—2.4

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Carbon disulfide—2.3 Tributyl phosphate—1.2×10^{-1} (6) Recordkeeping and Data Submittals. (a) Energy shall maintain records of all waste characterization, and waste processing strategies required by Condition (1), and verification sampling data, including QA/QC results, in the facility operating record for a period of no less than three (3) years. However, this period is automatically extended during the course of any unresolved enforcement action regarding the 200 Area ETF or as requested by EPA. (b) No less than thirty (30) days after receipt of verification data indicating a failure to meet delisting criteria of Condition (5), Energy shall notify the Regional Administrator. This notification shall include a summary of waste characterization data for the associated influent, verification data, and any corrective actions taken according to Condition (3)(b)(i). (c) Records required by Condition (6)(a) must be furnished on request by EPA or the State of Washington and made available for inspection. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928). I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the (those) identified section(s) of the document for which I cannot personally verify its (their) truth and accuracy, I certify as the official having supervisory responsibility of the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to Energy, I recognize and agree that this exclusion of waste will be void as if it never had effect to the extent directed by EPA and that the Energy will be liable for Energy's reliance on the void exclusion." (7) Treated Effluent Disposal Requirements. Energy may at any time propose alternate reuse practices for treated effluent managed under terms of this exclusion in lieu of disposal at the SALDS. Such proposals must be in writing to the Regional Administrator, and demonstrate that the risks and potential human health or environmental exposures from alternate treated effluent disposal or reuse practices do not warrant retaining the waste as a hazardous waste. Upon written approval by EPA of such a proposal, non-hazardous treated effluents may be managed according to the proposed alternate practices in lieu of the SALDS disposal requirement in paragraph (3)(a). The effect of such approved proposals shall be explicitly limited to approving alternate disposal practices in lieu of the requirements in paragraph (3)(a) to dispose of treated effluent in SALDS.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[RCRA–2004–0009; FRL–7947–8]

Land Disposal Restrictions: Site-Specific Treatment Variances for Heritage Environmental Services LLC and Chemical Waste Management, Chemical Services, Inc

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is today granting two site-specific treatment standard variances from the Land Disposal Restrictions (LDR) treatment standards to Chemical Waste Management, Chemical Services LLC (CWM), and to Heritage Environmental Services LLC (Heritage), to treat a selenium-bearing hazardous waste from the glass manufacturing industry. This final rule follows a proposed rule and a subsequent request for comment. These facilities intend to treat and dispose of selenium-bearing hazardous waste from Guardian Industries Corp. (Guardian) at their RCRA permitted facilities in Model City, New York and Indianapolis, Indiana, respectively. Based on treatment data on a new proprietary chemical stabilization technology provided by Heritage, EPA is issuing variances so that both facilities may treat the Guardian waste to an alternate treatment standard of 11 mg/L selenium, as measured by the TCLP.

Upon promulgation of this final rule, CWM and Heritage may dispose of the treated waste in permitted RCRA Subtitle C landfills, provided they meet the applicable LDR treatment standards for any other hazardous constituents in the waste. EPA is granting these variances because the chemical properties of the wastes differ significantly from the waste used to establish the current LDR standard for selenium (5.7 mg/L, as measured by the Toxicity Characteristic Leaching Procedure (TCLP)), and the petitions have adequately demonstrated that the waste cannot be treated to meet this treatment standard.

DATES: This final rule is effective August 3, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA–2004–0009. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose

ATTACHMENT 3-4

Dated: November 9, 2001.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 01–28857 Filed 11–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7103–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Nissan North America, Inc., Smyrna, Tennessee (Nissan), to exclude (or "delist") a certain hazardous waste from the list of hazardous wastes under RCRA regulation. Nissan will generate the petitioned waste by treating wastewater from Nissan's automobile assembly plant when aluminum is one of the metals used to manufacture automobile bodies. The waste so generated is a wastewater treatment sludge that meets the definition of F019. Nissan petitioned EPA to grant a generator-specific delisting, because Nissan believes that its F019 waste does not meet the criteria for which this type of waste was listed. EPA reviewed all of the waste-specific information provided by Nissan, performed calculations, and determined that the waste could be disposed in a landfill without harming human health and the environment. Today's proposed rule proposes to grant Nissan's petition to delist its F019 waste, and requests public comment on the proposed decision. If the proposed delisting becomes a final delisting, Nissan's petitioned waste will no longer be classified as F019, and will not be subject to regulation as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The waste will still be subject to local, State, and Federal regulations for nonhazardous solid wastes.

DATES: EPA is requesting public comments on this proposed decision. Comments will be accepted until January 3, 2002. Comments postmarked after the close of the comment period will be stamped "late." These "late" comments may not be considered in formulating a final decision.

Any person may request a hearing on this proposed decision by filing a request with Richard D. Green, Director of the Waste Management Division, EPA, Region 4, whose address appears below, by December 4, 2001. The request must contain the information prescribed in section 260.20(d).

ADDRESSES: Send two copies of your comments to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303. Send one copy to Nina Vo, Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535. Identify your comments at the top with this regulatory docket number: R4–01–01–NissanP. Comments may also be submitted by e-mail to *sophianopoulos.judy@epa.gov.* If files are attached, please identify the format.

Requests for a hearing should be addressed to Richard D. Green, Director, Waste Management Division, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

The RCRA regulatory docket for this proposed rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The docket contains the petition, all information submitted by the petitioner, and all information used by EPA to evaluate the petition.

The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies.

Copies of the petition are available during normal business hours at the following addresses for inspection and copying: U.S. EPA, Region 4, Library, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8190; and Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535. The EPA, Region 4, Library is located near the Five Points MARTA station in Atlanta. The Tennessee Department of Environment and Conservation is located in downtown Nashville near the intersection of Church Street and 4th Avenue North, about 0.2 mile northwest of Riverfront Park and 0.2 mile southwest of Bicentennial Park. Documents are also available for viewing and downloading at the Web site of EPA, Region 4: *http://www.epa.gov/region4/index.html.* At this site, click on "Waste," "Resource Conservation and Recovery Act (RCRA)," "RCRA Program, and then on "New" under "Enforcement and Compliance."

FOR FURTHER INFORMATION CONTACT: For general and technical information about this proposed rule, contact Judy Sophianopoulos, South Enforcement and Compliance Section, (Mail Code 4WD–RCRA), RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8604, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background

A. What Laws and Regulations Give EPA the Authority To Delist Wastes?

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in Sec. 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, sections 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility [1] should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. *See* section 260.22(a) and the background documents for the listed wastes. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. *See* section 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on the hazardous waste characteristics (i.e., characteristics which may be promulgated subsequent to a delisting decision.)

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See Section 261.3(a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived-from" rules and remanded them to the EPA on procedural grounds. *Shell Oil Co.* v. *EPA, 950 F.2d 741 (D.C. Cir. 1991).* On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278), and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. On May 16, 2001, EPA amended the mixture and derived-from rules for certain types of wastes (66 FR 27218 and 66 FR 27266). The mixture and derived-from rules are codified in 40 CFR 261.3, paragraphs (a)(2)(iv) and (c)(2)(i). EPA plans to address all waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with sections 260.20 and 260.22, by generators within their Regions (National Delegation of Authority 8–19), in States not yet authorized to administer a delisting program in lieu of the Federal program. On March 11, 1996, the Regional Administrator of EPA, Region 4, redelegated delisting authority to the Director of the Waste Management Division (Regional Delegation of Authority 8–19).

B. How Did EPA Evaluate This Petition?

This petition requests a delisting for a hazardous waste listed as F019. In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in Section 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. *See* section 260.22(a) and (d). The EPA considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

1. What Is the EPACML Model That EPA Used in the Past for Determining Delisting Levels?

In the past, EPA used the EPA Composite Model for Landfills (EPACML) fate and transport model, modified for delisting, as one approach for determining the delisting levels for petitioned waste. *See* 56 FR 32993–33012, July 18, 1991, for details on the use of the EPACML model to determine the concentrations of constituents in a waste that will not result in groundwater contamination. With the EPACML approach, as used in the past, EPA calculated a delisting level for each hazardous constituent by using the maximum estimated waste volume to determine a Dilution Attenuation Factor (DAF) from a table of waste volumes and DAFs previously calculated by the EPACML model, as modified for delisting. *See* 56 FR 32993–33012, July 18, 1991. The maximum estimated waste volume is the maximum number of cubic yards of petitioned waste to be disposed of each year. The delisting level for each constituent was equal to the DAF multiplied by the maximum contaminant level (MCL) which the Safe Drinking Water Act allows for that constituent in drinking water. The delisting level is a concentration in the waste leachate that will not cause the MCL to be exceeded in groundwater underneath a landfill where the waste is disposed. This method of calculating delisting levels resulted in conservative levels that were protective of

[1] Although no one produces hazardous waste intentionally, many industrial processes result in the production of hazardous waste, as well as useful products and services. A "generating facility" is a facility in which hazardous waste is produced, and a "generator" is a person who produces hazardous waste or causes hazardous waste to be produced at a particular place. Please see 40 CFR 260.10 for regulatory definitions of "generator," "facility," "person," and other terms relating to hazardous waste, and 40 CFR part 262 for regulatory requirements for generators.

groundwater, because the model did not assume that the landfill had the controls required of Subtitle D landfills. A Subtitle D landfill is a landfill subject to RCRA Subtitle D nonhazardous waste regulations, and to State and local nonhazardous waste regulations.

2. What Is the DRAS That Uses the New EPACMTP Model to Calculate Not Only Delisting Levels, But Also To Evaluate the Effects of the Waste on Human Health and the Environment?

The EPA is proposing to use the Delisting Risk Assessment Software (DRAS),[2] developed by EPA, Region 6, to evaluate this delisting petition. The DRAS uses a new model, called the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP). The EPACMTP improves on the EPACML model in several ways. EPA is proposing to use the DRAS to calculate delisting levels and to evaluate the impact of Nissan's petitioned waste on human health and the environment. Delisting levels are the maximum allowable concentrations for hazardous constituents in the waste, so that disposal in a landfill will not harm human health and the environment by contaminating groundwater, surface water, or air.

Today's proposal provides background information on the mechanics of the DRAS, and the use of the DRAS in delisting decision-making. Please see the EPA, Region 6, *RCRA Delisting Technical Support Document* (RDTSD) for a complete discussion of the DRAS calculation methods. The RDTSD, and **Federal Registers**, 65 FR 75637–75651, December 4, 2000, and 65 FR 58015–58031, September 27, 2000, are the sources of the DRAS information presented in today's preamble, and are included in the RCRA regulatory docket for this proposed rule.

The DRAS performs a risk assessment for petitioned wastes that are disposed of in the two waste management units of concern: surface impoundments for liquid wastes and landfills for non-liquid wastes. Nissan's petitioned waste is solid, not liquid, and will be disposed in a landfill; therefore, only the application of DRAS to landfills will be discussed in this preamble.

DRAS calculates releases from solid-phase wastes in a landfill, with the following assumptions: (1) The wastes are disposed in a Subtitle D landfill and covered with a 2-foot-thick native soil layer; (2) the landfill is unlined or effectively unlined due to a liner that will eventually completely fail. The two parameters used to characterize landfills are (1) area and (2) depth (the thickness of the waste layer). Data to characterize landfills were obtained from a nationwide survey of industrial Subtitle D landfills.[3] Parameters and assumptions used to estimate infiltration of leachate from a landfill are provided in the *EPACMTP Background Document and User's Guide*, Office of Solid Waste, U.S. EPA, Washington, DC, September 1996.

DRAS uses the EPACMTP model to simulate the fate and transport of dissolved contaminants from a point of release at the base of a landfill, through the unsaturated zone and underlying groundwater, to a receptor well at an arbitrary downstream location in the aquifer (the rock formation in which the groundwater is located). DRAS evaluates, with the EPACMTP model, the groundwater exposure concentrations at the receptor well that result from the chemical release and transport from the landfill (*Application of EPACMTP to Region 6 Delisting Program; Development of Waste Volume-Specific Dilution Attenuation Factors*, U.S. EPA, August 1996). For the purpose of delisting determinations, receptor well concentrations for both carcinogens and non-carcinogens from finite-source degraders and non-degraders are determined with this model. Delisted waste is a finite source, because in a finite period of time, the waste's constituents will leach and move out of the landfill. If EPA makes a final decision to delist Nissan's F019 waste, Nissan must meet the delisting levels and dispose of the waste in a Subtitle D landfill, because EPA determined the delisting levels based on a landfill model.

3. Why Is the EPACMTP an Improvement Over the EPACML?

The EPACMTP includes three major categories of improvements over the EPACML.

The improvements include:

1—Incorporation of additional fate and transport processes (e.g., degradation of chemical constituents; fate and transport of metals);

2—Use of enhanced flow and transport equations (e.g., for calculating transport in three dimensions); and

3—Revision of the Monte Carlo methodology (e.g., to allow use of site-specific, waste-specific data) (*EPACMTP Background Document and User's Guide*, Office of Solid Waste, U.S. EPA, Washington, DC, September 1996).

A summary of the key enhancements which have been implemented in the EPACMTP is presented here and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR **Federal Register** proposal docket (60 FR 66344, December 21, 1995). For more information, please contact Judy Sophianopoulos, South Enforcement and Compliance Section, (Mail Code 4WD–RCRA), RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8604, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call. You may also contact her by e-mail: *sophianopoulos.judy@epa.gov*.

The EPACML accounts for: One-dimensional steady and uniform advective flow; contaminant dispersion in the longitudinal, lateral, and vertical directions; and sorption. However, advances in groundwater fate and transport have been made in recent years and EPA proposes and requests public comment on the use of the EPACMTP, which is a more advanced groundwater fate and transport model, for this RCRA delisting.

The EPACML was limited to conditions of uniform groundwater flow. It could not handle accurately the conditions of significant groundwater mounding and non-uniform groundwater flow due to a high rate of infiltration from the waste disposal units. These conditions increase the transverse horizontal, as well as the vertical, spreading of a contaminant plume.

The EPACMTP model overcomes the deficiencies of the EPACML in the

[2] For more information on DRAS and EPACMTP, please see 65 FR 75637–75651, December 4, 2000 and 65 FR 58015–58031, September 27, 2000. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). URL addresses for Region 6 delisting guidance and software are the following:

1. Delisting Guidance Manual *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dlistpdf.htm*.

2. Delisting Risk Assessment Software (DRAS) *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm*.

3. *DRAS Technical Support Document* (DTSD) *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dtsd.htm*.

4. DRAS Users Guide *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/uguide.pdf*.

Region 6 has made them available to the public, free of charge.

[3] *Nationwide Survey of Industrial Subtitle D Landfills*, Westat, 1987.

following way: The subsurface as modeled with the EPACMTP consists of an unsaturated zone beneath a landfill and a saturated zone, the underlying water table aquifer. Contaminants move vertically downward through the unsaturated zone to the water table. The EPACMTP simulates one-dimensional, vertically downward flow and transport of contaminants in the unsaturated zone, as well as two-dimensional or three-dimensional groundwater flow and contaminant transport in the underlying saturated zone. The EPACML used a saturated zone module that was based on a Gaussian distribution of the concentration of a chemical constituent in the saturated zone. The module also used an approximation to account for the initial mixing of the contaminant entering at the water table (saturated zone) underneath the waste unit. The module accounting for initial mixing in the EPACML could lead to unrealistic groundwater concentrations. The enhanced EPACMTP model incorporates a direct linkage between the unsaturated zone and saturated zone modules which overcomes these limitations of the EPACML. The following mechanisms affecting contaminant migration are accounted for in the EPACMTP model: Transport by advection and dispersion, retardation resulting from reversible linear or nonlinear equilibrium sorption on the soil and aquifer solid phase, and biochemical degradation processes. The EPACML did not account for biochemical degradation, and did not account for sorption as accurately as the EPACMTP.

The EPACMTP consists of four major components:

1—A module that performs one-dimensional analytical and numerical solutions for water flow and contaminant transport in the unsaturated zone beneath a waste management unit;

2—A numerical module for steady-state groundwater flow subject to recharge from the unsaturated zone;

3—A module of analytical and numerical solutions for contaminant transport in the saturated zone; and

4—A Monte Carlo module for assessing the effect of the uncertainty resulting from variations in model parameters on predicted receptor well concentrations.

4. Where Can Technical Details on the EPACMTP Be Found?

For more information on DRAS and EPACMTP, please see 65 FR 75637–75651, December 4, 2000; 65 FR 58015–58031, September 27, 2000; and 66 FR 9781–9798, February 12, 2001. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). A summary of DRAS is presented in 66 FR 9781–9798, February 12, 2001. Footnote 2 in Preamble Section I.B.2. above lists the URL addresses for Region 6 guidance on DRAS.

5. What Methods Is EPA Proposing To Use To Determine Delisting Levels for This Petitioned Waste?

Nissan submitted to the EPA analytical data from its Smyrna, Tennessee plant. Samples of wastewater treatment sludge were collected from roll-off containers over a one-month period, in accordance with a sampling and analysis plan approved by EPA and the Tennessee Department of Environment and Conservation. A summary of analytical data is presented in Table 1 of section II below, with analytical details in the Table footnotes.

After reviewing the analytical data and information on processes and raw materials that Nissan submitted in the delisting petition, EPA developed a list of constituents of concern and calculated delisting levels and risks using DRAS and EPACMTP DAFs as described above. EPA requests public comment on this proposed method of calculating delisting levels and risks for Nissan's petitioned waste.

EPA also requests comment on three additional methods of evaluating Nissan's delisting petition and determining delisting levels: (1) Use of the Multiple Extraction Procedure (MEP), SW–846 Method 1320[4], to evaluate the long-term resistance of the waste to leaching in a landfill; (2) setting limits on total concentrations of constituents in the waste that are more conservative than results obtained by DRAS for total concentrations; and (3) setting delisting levels at the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) levels in 40 CFR 268.48. The UTS levels for Nissan's constituents of concern are the following:

Arsenic: 5.0 mg/l TCLP; Barium: 21 mg/l TCLP; Cadmium: 0.11 mg/l TCLP; Chromium: 0.60 mg/l TCLP; Cyanide Total: 590 mg/kg; Cyanide Amenable 30 mg/kg; Lead: 0.75 mg/l TCLP; Nickel: 11 mg/l TCLP; Silver: 0.14 mg/l TCLP; Vanadium: 1.6 mg/l; Zinc: 4.3 mg/l TCLP; Acetone: 160 mg/kg; Bis-2-ethylhexyl phthalate: 28 mg/kg; 2-Butanone: 36 kg/kg; Isobutyl alcohol: 170 mg/kg; 4-Methyl phenol: 5.6 mg/kg; Di-n-octyl phthalate: 28 mg/kg; Phenol: 6.2 mg/kg; and Xylenes: 30 mg/kg.

The EPA provides notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

A. Summary of Delisting Petition Submitted by Nissan North America, Inc., Smyrna, Tennessee (Nissan)

Nissan manufactures light-duty vehicles and is seeking a delisting for the sludge that will be generated by treating wastewater from its manufacturing operations, when aluminum will be used to replace some of the steel in the vehicle bodies. Wastewater treatment sludge does not meet a hazardous waste listing definition when steel-only vehicle bodies are manufactured. However, the wastewater treatment sludge generated at manufacturing plants where aluminum is used as a component of vehicle bodies, meets the listing definition of F019 in Section 261.3.[5]

Nissan petitioned EPA, Region 4, on October 12, 2000, to exclude this F019 waste, on an upfront, generator-specific basis, from the list of hazardous wastes in 40 CFR part 261, subpart D.

The hazardous constituents of concern for which F019 was listed are hexavalent chromium and cyanide (complexed). Nissan petitioned the EPA to exclude its F019 waste because Nissan does not use either of these constituents in the manufacturing process. Therefore, Nissan does not believe that the waste meets the criteria of the listing.

Nissan claims that its F019 waste will not be hazardous because the constituents of concern for which F019 is listed will be present only at low concentrations and will not leach out of the waste at significant concentrations. Nissan also believes that this waste will not be hazardous for any other reason (i.e., there will be no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as

[4] "SW–846" means EPA Publication SW–846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods." Methods in this publication are referred to in today's proposed rule as "SW–846," followed by the appropriate method number.

[5] "Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process."

the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. *See* section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the EPA's evaluation of Nissan's petition.

In support of its petition, Nissan submitted: (1) Descriptions of its manufacturing and wastewater treatment processes, the generation point of the petitioned waste, and the manufacturing steps that will contribute to its generation; (2) Material Safety Data Sheets (MSDSs) for materials used to manufacture vehicles; (3) the minimum and maximum annual amounts of wastewater treatment sludge typically generated, and an estimate of the maximum annual amount expected to be generated in the future; (4) results of analysis of the currently generated waste at the Nissan plant in Smyrna, Tennessee for the chemicals in Appendix IX of 40 CFR part 264: 17 metals; cyanide; 58 volatile organic compounds and 124 semi-volatile organic compounds; and, in addition to the Appendix IX list, hexavalent chromium ; (5) results of analysis for those chemicals (i.e., Appendix IX list, hexavalent chromium) and fluoride in the leachate obtained from this waste by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311); (6) results of determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity, in this waste; (7) results of determinations of hexavalent chromium and percent solids; and (8) results of a dye tracer study and source inventory of Nissan's industrial wastewater system.

The Nissan assembly plant in Smyrna, Tennessee, manufactures light-duty vehicles. Nissan's Standard Industrial Classification (SIC) code is 3711. The manufacturing process that will cause F019 to be generated is conversion coating, when applied to vehicles that contain aluminum. Conversion coating takes place in three of Nissan's four paint plants and treats the metal surface of each vehicle body before painting to provide resistance to corrosion and to prepare the metal surface for optimum paint adhesion. Wastewater from all plant operations is treated at Nissan's industrial wastewater pretreatment plant. The wastewater is monitored for compliance with Nissan's Significant Industrial User's permit before discharging to the Town of Smyrna publicly owned treatment works. Treatment results in the formation of insoluble metal hydroxides. Wastewater treatment sludge is generated when these metal hydroxides are dewatered in a filter press. The sludge that exits from the filter press will be classified as F019 when the vehicle bodies contain aluminum, and the exit from the filter press will be the point of generation of F019.

Nissan currently generates from 1,000 to 1,500 tons of wastewater treatment sludge per year at its Smyrna, Tennessee assembly plant, and estimated a future maximum annual generation rate of 2,000 tons.

Table 1 below summarizes the hazardous constituents and their concentrations in Nissan's wastewater treatment sludge generated from the manufacture of steel-only vehicle bodies at the Smyrna, Tennessee plant.

TABLE 1.— NISSAN NORTH AMERICA, INC., SMYRNA, TENNESSEE: WASTEWATER TREATMENT SLUDGE PROFILE

Parameters [1]	NS–01a NS–02a [2]	NS–03a	NS–04a	NS–05a	Max.	Mean	S.D.	C.V. [3]
Metals								
Arsenic	4.2 3.0	3.2U	4.3	4.3	4.3	3.8	0.64	17
Arsenic—TCLP	0.050U 0.050U	0.050U	0.050U	0.050U	0.050U	NA	NA	NA
Barium	6,200 6,600	3,400	2,100	3,400	6,600	4340	1959	45.1
Barium—TCLP	0.14 0.15	0.14	0.11	0.13	0.15	0.134	0.0152	11.3
Cadmium	0.61U 0.60U	0.81	0.71U	0.81U	0.81	0.708	0.103	14.5
Cadmium—TCLP	0.010U 0.010U	0.010U	0.010U	0.010U	0.010U	NA	NA	NA
Chromium—Total	100 120	130	160	150	160	132	23.9	18.1
Chromium—Total TCLP	0.050U 0.050U	0.050U	0.050U	0.050U	0.050U	NA	NA	NA
Hexavalent Chromium	0.80UN* 6.7N*	2.6U	2.9UN	3.2U	6.7	3.24	2.15	66.3
Hexavalent Chromium—TCLP	0.25U 0.25U	0.050U	0.050U	0.050U	0.25U	NA	NA	NA
Cobalt	22 24	21	8.7	16	24	18.3	6.14	33.5
Cobalt—TCLP	0.19 0.16	0.13	0.062	0.080	0.19	0.12	0.053	43.0
Copper	820* 870*	1,600	750	820	1,600	972	354	36.4
Copper—TCLP	0.050U	0.050U	0.050U	0.050U	0.05U	NA	NA	NA
Lead	210 230	390	320	320	390	294	73.7	25.1
Lead—TCLP	0.050U 0.050U	0.050U	0.050U	0.050U	0.050U	NA	NA	NA
Nickel	3,000 3,100	4,200	4,100	4,100	4,200	3,700	595.8	16.1
Nickel—TCLP	32 33	46	41	31	46	36.6	6.58	18.0

TABLE 1.— NISSAN NORTH AMERICA, INC., SMYRNA, TENNESSEE: WASTEWATER TREATMENT SLUDGE PROFILE— Continued

Parameters [1]	NS–01a NS–02a [2]	NS–03a	NS–04a	NS–05a	Max.	Mean	S.D.	C.V. [3]
Silver	0.61U 0.60U	0.68	0.71U	0.81U	0.81U	0.682	0.0853	12.5
Silver—TCLP	0.010U 0.010U	0.010U	0.010U	0.010U	0.010U	NA	NA	NA
Tin	700 710	590	600	810	810	682	90.4	13.2
Tin—TCLP	0.10U 0.01U	0.10U	0.10U	0.10U	0.10U	NA	NA	NA
Vanadium	190 190	52	18	48	190	99.6	83.6	83.9
Vanadium—TCLP	0.050U 0.050U	0.050U	0.050U	0.050U	0.050U	NA	NA	NA
Zinc	15,000 17,000	15,000	20,000	17,000	20,000	16,800	2,049	12.2
Zinc—TCLP	17 16	17	16	7.2	17	14.6	4.19	28.6
Inorganic Non-Metals								
Total Cyanide	3.2 3.1	2.9	1.4	1.0	3.2	2.32	1.04	44.7
Total Cyanide—TCLP	0.0095 0.0073	0.0050U	0.0050U	0.0050U	0.0095	0.00636	0.00202	31.7
Fluoride—TCLP	0.23 0.22	2.1	1.7	1.8	2.1	1.21	0.911	75.3
Hazardous Waste Characteristics								
Corrosivity: Measured pH [Regulatory limit: ≤2.0 or ≥12.5].	8.2 8.0	9.1	9.0	9.2	9.2 Minimum: 8.0	8.7	0.56	6.4
Ignitability: Measured Flash Point, °F [Regulatory limit: <140°F].	>212 >212	>212	>212	>212	>212	>212	0	0
Reactive Sulfide: Measured hydrogen sulfide released, mg/kg [Interim Guidance Level: 500 mg/kg].	260 210	66U	280U	320	320	227	98.4	43.3
Reactive Cyanide: Measured hydrogen cyanide released, mg/kg [Interim Guidance Level: 250 mg/kg].	0.61U 0.60U	0.66U	0.71U	0.81U	0.81U	NA	NA	NA
Other Properties								
Percent Solids	41 42	38	35	31	42	37.4	4.51	12.0

Parameters [1]	NS–01b NS–02b	NS–03b	NS–04b	NS–05b	Max.	Mean	S.D.	C.V. [3]
Volatile Organic Compounds								
Acetone	0.570 0.530	4.500	0.130J	0.015U	4.500	1.15	1.89	164
Acetone—TCLP	0.120D	0.160D	0.093JD	0.240BD	0.240BD	0.137	0.0663	48.4
2-Butanone	0.150J 0.230J	1.000	0.028U	0.029U	1.000	0.287	0.407	142
2-Butanone—TCLP	0.020U 0.020U	0.020U	0.020U	0.020U	0.020U	NA	NA	NA
Isobutyl alcohol	0.024U 0.024U	7.4	0.73	0.029U	7.4	1.64	3.24	198
Isobutyl alcohol—TCLP	0.020UD 0.020UD	0.020UD	0.830D	0.020UD	0.830	0.182	0.362	199
Xylenes (all isomers)	0.320 0.440	2.700	0.270	0.0029U	2.700	0.746	1.10	148
Xylenes (all isomers)—TCLP	0.0020U 0.0020U	0.033D	0.007JD	0.011JD	0.033	0.0110	0.0129	117
Semi-volatile Organic Compounds								

Parameters [1]	NS–01a NS–02a [2]	NS–03a	NS–04a	NS–05a	Max.	Mean	S.D.	C.V. [3]
Bis(2-ethylhexyl) phthalate	520JD 430JD	45.0J	92.0J	22.0U	520	222	235	106
Bis(2-ethylhexyl) phthalate—TCLP	0.004U 0.004U	0.020U	0.020U	0.020U	0.020U	NA	NA	NA
Di-n-octyl phthalate	390D 320D	110	150	22.0JD	390	198	152	76.8
Di-n-octyl phthalate—TCLP	0.004U 0.004U	0.020U	0.020U	0.020U	0.020U	NA	NA	NA
4-Methylphenol	17.0JD 5.1JD	4.2U	5.1U	3.4U	17.0	6.96	5.66	81.3
4-Methylphenol—TCLP	0.100D 0.096D	0.040U	0.040U	0.040U	0.100	0.0632	0.0318	50.3
Phenol	10.0JD 3.40JD	2.10U	2.60U	1.70U	10.0	3.96	3.44	86.8
Phenol—TCLP	0.036D 0.038D	0.028JD	0.015JD	0.010U	0.038	0.0254	0.0125	49.1

[1] Parameters are the chemicals or properties analyzed.

[2] The first set of results for each chemical shows the concentrations determined by total analysis of the samples in milligrams of chemical per kilogram of waste (mg/kg). The second set of results for each chemical shows the concentrations determined by analysis of the TCLP extracts of the samples in milligrams of chemical per liter of TCLP extract of the waste (mg/L). The TCLP results are in the row where the name of the chemical is followed by "—TCLP." B = Compound detected in blank; D = Sample had to be diluted; E = Parameter concentration estimated due to matrix interference; J = Estimated result; the actual result is likely to be greater than zero but less than the estimated value; N = Predigested spike recovery not within control limits; NA = Not applicable; U = Not detected above the method detection limit, which is the value preceding the U; * = Duplicate analysis was not within control limits. The metals, antimony, beryllium, mercury, selenium, and thallium were not detected by total analysis of samples and are not included in the table in order to save space. Xylene (including all its isomers), 2-butanone (methyl ethyl ketone or MEK), isobutyl alcohol, and acetone were the only volatile organic compounds (VOCs) found at a level equal to or greater than 1 part per million by total analysis of the waste and are the only VOCs included in the table. For the same reason, bis(2-ethylhexyl) phthalate, di-n-octyl phthalate, 4-methylphenol (p-cresol)[6], and phenol are the only semi-volatile organic compounds included in the table. Columns 2 through 4 in the table heading contain sample identification numbers. "NS" stands for Nissan samples; numbers 01 through 05 are sequential numbers linking samples to the roll-offs from which they were collected. Numbers 01 and 02 were from the first roll-off sampled (see Note 4 below), and Numbers 03 through 05 were from roll-offs two through four, respectively. The letter "a" denotes a composite sample and the letter "b" denotes a grab sample. As described in the petition, four randomly selected roll-offs were sampled over the time period, by collecting one composite sample per roll-off. Each composite sample was a mixture of twelve vertical core samples. Each vertical core sample was approximately six to ten inches in depth and one inch in diameter; three vertical core samples were collected at each of four randomly selected locations per roll-off. Grab samples of each roll-off were collected for VOC analysis (see Note 4 below).

[3] The last four columns contain a statistical analysis of the analytical results. Max. = maximum concentration found; Mean. = mean or average concentration found = sum of concentrations divided by the number of samples; S.D.= standard deviation = the square root of [(sum of squares of the differences between each measured concentration and the mean)divided by (the number of samples minus 1)]; C.V. = coefficient of variation, expressed as a percent = 100 times the standard deviation divided by the mean concentration. Statistical analyses were performed only if the parameter was detected in more than one sample. If a chemical was not detected in any of the samples, NA (not applicable) was written in the last three columns. Detection limits reported by the laboratory were used in the statistical calculations when chemicals were not detected (U) in some of the samples. This is a conservative assumption, which is likely to result in overestimation of the mean concentration.

[4] One of the four composite samples was collected from a roll-off that was representative of plant maintenance activities and split into two samples for analysis: Sample Number NS–01a and its field duplicate, NS–02a. NS–01b was a grab sample from this roll-off, for VOC analysis, and NS–02b was a field duplicate of this sample. Composite samples NS–03a, NS–04a, and NS–05a were collected from three roll-offs that were representative of routine plant operations. Grab samples NS–03b, NS–04b, and NS–05b were collected from these three roll-offs for VOC analysis.

EPA concluded after reviewing Nissan's waste management and waste history information that no other hazardous constituents, other than those tested for, are likely to be present in Nissan's petitioned waste. In addition, on the basis of test results and other information provided by Nissan, pursuant to section 260.22, EPA concluded that the petitioned waste will not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See Sections 261.21, 261.22, and 261.23, respectively.

During its evaluation of Nissan's petition, EPA also considered the potential impact of the petitioned waste on media other than groundwater. With regard to airborne dispersal of waste, EPA evaluated the potential hazards resulting from airborne exposure to waste contaminants from the petitioned waste using an air dispersion model for releases from a landfill. The results of this evaluation indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from Nissan's petitioned waste. (A description of EPA's assessment of the potential impact of airborne dispersal of Nissan's petitioned waste is presented in the RCRA public docket for today's proposed rule.)

EPA evaluated the potential impact of the petitioned waste on surface water resulting from storm water runoff from a landfill containing the petitioned waste, and found that the waste would not present a threat to human health or the environment. (See the docket for today's proposed rule for a description of this analysis). In addition, EPA believes that containment structures at municipal solid waste landfills can effectively control runoff, as Subtitle D regulations (*see* 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. While some contamination of surface water is possible through runoff from a waste disposal area, EPA believes that the dissolved concentrations of hazardous constituents in the runoff are likely to be lower than the TCLP results reported in today's proposed rule, because of the aggressive acidic medium used for extraction in the TCLP. EPA also believes that, in general, leachate derived from the waste will not directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents may occur. Transported contaminants would be further diluted in the receiving water body. Subtitle D controls would minimize significant releases to surface water from erosion of undissolved particulates in runoff.

B. What Delisting Levels Did EPA Obtain With DRAS and EPACMTP?

In order to account for possible variability in the generation rate, EPA calculated delisting levels using Nissan's estimated maximum generation rate of 2,000 tons of wastewater treatment sludge per year. EPA converted the 2,000 tons to a waste volume of 2,400 cubic yards, by using the density of water for the density of the sludge. While the sludge is certainly more dense than water, using the lower density results in a higher value for the waste volume, and a lower, more conservative, Dilution Attenuation Factor (DAF).

Delisting levels and risk levels calculated by DRAS, using the EPACMTP model, are presented in Table 2 below. DRAS found that the major pathway for human exposure to this waste is groundwater ingestion, and the majority of the delisting and risk levels for the TCLP leachate of the waste were calculated based on that pathway. EPA requests public comment on using DRAS-calculated values based on MCLs, when these would result in more conservative delisting levels. The input values required by DRAS were the chemical constituents in Nissan's petitioned waste; their maximum reported concentrations in the TCLP extract of the waste and in the unextracted waste (*See* Table 1, Preamble Section II.A.); the maximum annual volume to be disposed (2,400 cubic yards) in a landfill; the desired risk level, which was chosen to be no worse than 10^{-6} for carcinogens; and a hazard quotient of no greater than 1 for non-carcinogens. The carcinogenic constituents detected in the waste are cadmium, hexavalent chromium, and bis(2-ethylhexyl) phthalate. Cadmium also has non-carcinogenic toxic effects. Allowable total concentrations in the waste, as calculated by DRAS for the waste, itself, not the TCLP leachate, were all at least 1,000 times greater than the actual maximum total concentrations found in the waste, and are not included in Table 2, since many amount to metal or cyanide concentrations of several per cent. However, in addition to limits on the concentrations of constituents in the TCLP leachate of the petitioned waste, EPA does propose to set the following limits on total concentrations, in units of milligrams of constituent per kilogram of unextracted waste (mg/kg): Barium: 20,000; Cadmium: 500; Chromium: 1,000; Cyanide (Total, not Amenable): 200; Lead: 2,000; and Nickel: 20,000. EPA asks for public comment on these limits which were chosen to be both protective of human health and the environment and to be realistic, attainable values for wastewater treatment sludges that contain metals and cyanide. The maximum reported total concentrations for Nissan's petitioned waste were all well below these limits. The limit for cyanide was chosen so that the waste could not exhibit the reactivity characteristic for cyanide by exceeding the interim guidance for reactive cyanide of 250 mg/kg of releasable hydrogen cyanide (SW–846, Chapter Seven, Section 7.3.3.)

TABLE 2.—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR NISSAN'S PETITIONED WASTE

Constituent	Delisting Level (mg/l TCLP)/ Delisting level in TCLP Based on MCL	DAF	DRAS-Calculated Risk for Maximum Concentration of Carcinogen in Waste	DRAS-Calculated Hazard Quotient for Maximum Concentration of Non-Carcinogen in Waste
Inorganic Constituents				
Arsenic	2.63×10^{-3}/2.70	54	9.5×10^{-6}	
Barium	206*/157*	78.2		8.98×10^{-4}.
Cadmium	1.58*/0.422	84.4	5.78×10^{-15}	0.00316.
Chromium	6.10×10^{5}*/1.08×10^{3}*		1.08×10^{4}	1.23×10^{-7}.
Hexavalent Chromium	Not Calculable; Risk Based on Inhalation of Particles in Air.	43.6	9.11×10^{-14}	
Copper	2.96×10^{4}/2.56×10^{4}▼	1.97×10^{4}		3.23×10^{-5}.
Cyanide	38.0/10.1	50.6		2.50×10^{-4}.
Lead	211*	1.41×10^{4}		Not Calculable; No Reference Dose for Lead.
Nickel	79.4	106		0.579.
Zinc	789	70		0.0216.
Organic Constituents				
Acetone	201	53.4		0.00125.
Bis(2-ethylhexyl)phthalate	0.0787/0.321	53.4	1.64×10^{-7}	
4-Methylphenol	10	53.4		0.0119.
Di-n-octyl phthalate	0.0984	75.9		0.102.
Isobutyl alcohol	602	53.4		0.00145.
Phenol	1,200	53.4		3.47×10^{-5}.
Xylenes	2,810/534	53.4		2.23×10^{-5}.
Total Hazard Quotient for All Waste Constituents.				0.726.
Total Carcinogenic Risk for the Waste (due to Arsenic, Cadmium, Hexavalent Chromium, and Bis(2-ethylhexyl) phthalate).			9.66×10^{-6}.	

* These levels are all greater than the Toxicity Characteristic (TC) regulatory level in 40 CFR 261.24. A waste cannot be delisted if it exhibits a hazardous characteristic; therefore, the delisting level for each of these constituents could not be greater than the TC level of 100 for Barium; 1.0 for Cadmium; 5.0 for Chromium; and 5.0 for Lead.

▼ The Safe Drinking Water Act standard for copper is a recommended secondary standard, rather than an enforceable MCL.

EPA proposes to use the delisting levels in the TCLP leachate calculated by the DRAS, using the EPACMTP (Table 2), in combination with the limits on total concentrations proposed in the paragraph preceding Table 2. These proposed delisting levels are summarized in Table 3, below. EPA is proposing to base the delisting levels for chromium on analysis for total chromium, not hexavalent chromium, for the following reasons: (1) Hexavalent chromium was undetected in the TCLP leachate of the petitioned waste; (2) the maximum reported concentration of total chromium in the unextracted waste was only 160 mg/kg; and (3) the maximum reported concentration of hexavalent chromium in the unextracted waste was only 6.7 mg/kg. EPA is not proposing delisting levels for cobalt, copper, silver, tin, vanadium, zinc, acetone, isobutyl alcohol, phenol, and xylenes, because the DRAS-calculated TCLP levels for these constituents are at least two orders of magnitude greater than the maximum reported concentrations in the TCLP leachate of the petitioned waste. EPA is not proposing delisting levels for arsenic for the following reasons: (1) TCLP leachate concentration was non-detect; (2) total concentration in the unextracted waste was below the background soil concentration for most of Tennessee, below the national average background, and three orders of magnitude below the DRAS allowable total concentration; and (3) DRAS found no ecological risk at the maximum reported concentrations and a human cancer risk within the range of 10^{-4} to 10^{-6} assuming a TCLP concentration equal to one-half the reporting limit of the analytical laboratory.

TABLE 3.—SUMMARY OF DELISTING LEVELS FOR NISSAN'S PETITIONED WASTE

Constituent	DRAS-Calculated Delisting Level (mg/l TCLP)	Proposed Total Concentrations (mg/kg in unextracted waste)
Inorganic Constituents		
Barium	*100.0	20,000
Cadmium	0.422	500.
Chromium	*5.0	1,000
Cyanide	10.1	200 (Total, not Amenable)
Lead	*5.0	2,000
Nickel	79.4	20,000
Organic Constituents		
Bis(2-ethylhexyl) phthalate	0.0787	
Di-n-octyl phthalate	0.0984	
4-Methylphenol	10	

*DRAS-calculated delisting level was higher than the TC level; therefore, the delisting level was set at the TC level.

C. Should the Multiple Extraction Procedure (MEP) Be Used To Evaluate This Delisting Petition?

EPA developed the MEP test (SW–846 Method 1320) to help predict the long-term resistance to leaching of stabilized wastes, which are wastes that have been treated to reduce the leachability of hazardous constituents. The MEP consists of a TCLP extraction of a sample followed by nine sequential extractions of the same sample, using a synthetic acid rain extraction fluid (prepared by adding a 60/40 weight mixture of sulfuric acid and nitric acid to distilled deionized water until the pH is 3.0 ± 0.2). The sample which is subjected to the nine sequential extractions consists of the solid phase remaining after, and separated from, the initial TCLP extract. EPA designed the MEP to simulate multiple washings of percolating rainfall in the field, and estimates that these extractions simulate approximately 1,000 years of rainfall. (*See* 47 FR 52687, Nov. 22, 1982.)

MEP data can be used to indicate whether a petitioned waste would be expected to leach hazardous constituents over the life of a landfill.[7] The average life of a landfill is approximately 20 years. (*See* 56 FR 32993, July 18, 1991; and 56 FR 67197, Dec. 30, 1991.)

EPA requests public comment on whether the MEP should be used in the evaluation of Nissan's petitioned waste.

D. Conclusion

After reviewing Nissan's processes, the EPA concludes that (1) no hazardous constituents of concern are likely to be present in Nissan's waste at levels that would harm human health and the environment; and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. *See* 40 CFR 261.21, 261.22, and 261.23, respectively.

EPA believes that Nissan's petitioned waste will not harm human health and the environment when disposed in a nonhazardous waste landfill if the delisting levels for land disposal as proposed in Preamble section II.B. are met.

EPA proposes to exclude Nissan's petitioned waste from being listed as F019, based on descriptions of waste management and waste history, evaluation of the results of waste sample analysis, and on the requirement that Nissan's petitioned waste must meet proposed delisting levels before disposal. Thus, EPA's proposed decision is based on verification testing conditions. If the proposed rule becomes effective, the exclusion will be valid only if the petitioner demonstrates that the petitioned waste meets the verification testing conditions and delisting levels in the amended Table 1 of Appendix IX of 40 CFR part 261. If the proposed rule becomes final and EPA approves that demonstration, the petitioned waste would not be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270. Although management of the waste covered by this petition would, upon final promulgation, be relieved from Subtitle C jurisdiction, the waste would remain

[7] This estimate would be based on the following type of calculation for a 100-gram sample, using nickel as an example: % nickel leached out over a long period of time = 100 × (total number of milligrams of nickel in all the sample MEP extracts) ÷ the number of milligrams of nickel originally present in the 100-gram sample.

a solid waste under RCRA. As such, the waste must be handled in accordance with all applicable Federal, State, and local solid waste management regulations. Pursuant to RCRA section 3007, EPA may also sample and analyze the waste to determine if delisting conditions are met.

III. Limited Effect of Federal Exclusion

Will This Rule Apply in All States?

This proposed rule, if promulgated, would be issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal and State programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws. Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, i.e., to make their own delisting decisions. Therefore, this proposed exclusion, if promulgated, would not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, Nissan must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Effective Date

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for the petitioner. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should *be effective immediately upon final* publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

V. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VI. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 **note**) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based Measurement System ("PBMS"), EPA proposes not to require the use of specific, prescribed analytical methods, except when required by regulation in 40 CFR parts 260 through 270. Rather the Agency plans to allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

VII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

VIII. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement and Fairness Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule, if promulgated, will not have an adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and *would* be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have

a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

IX. Executive Order 12866

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition , jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal of policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order.

OMB has exempted this proposed rule from the requirement for OMB review under section (6) of Executive Order 12866.

X. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084 Affecting Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. Today's proposed rulemaking does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

XII. Submission to Congress and General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States.

The EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability, etc. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedures, or practice that do not substantially affect the rights or obligations of non-agency parties. *See* 5 U.S.C. 804(3). This rule will become effective on the date of publication as a final rule in the **Federal Register**.

XIII. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications."

"Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: November 5, 2001.

James S. Kutzman,

Acting Director, Waste Management Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261–IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX, part 261 add the following wastestream in alphabetical order by *facility* to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Nissan North America, Inc	Smyrna, Tennessee	Wastewater treatment sludge (EPA Hazardous Waste No. F019) that Nissan North America, Inc. (Nissan) generates by treating wastewater from the automobile assembly plant located at 983 Nissan Drive in Smyrna, Tennessee. This is a conditional exclusion for up to 2,400 cubic yards of waste (hereinafter referred to as "Nissan Sludge") that will be generated each year and disposed in a Subtitle D landfill after [insert date of final rule.] Nissan must demonstrate that the following conditions are met for the exclusion to be valid. (1) *Delisting Levels:* All leachable concentrations for these metals, cyanide, and organic constituents must not exceed the following levels (ppm): Barium-100.0; Cadmium-0.422; Chromium-5.0; Cyanide-10.1, Lead-5.0; and Nickel-79.4; Bis(2-ethythexyl) phthalate-0.0787; Di-n-octyl phthalate -0.0984; and 4-Methylphenol-10.0. These concentrations must be measured in the waste leachate obtained by the method specified in 40 CFR 261.24, except that for cyanide, deionized water must be the leaching medium. The total concentration of cyanide (total, not amenable) in the waste, not the waste leachate, must not exceed 200 mg/kg. Cyanide concentrations in waste or leachate must be measured by the method specified in 40 CFR 268.40, Note 7. The total concentrations of metals in the waste, not the waste leachate, must not exceed the following levels (ppm): Barium-20,000; Cadmium-500; Chromium-1,000; Lead-2,000; and Nickel-20,000. (2) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies, where specified by regulations in 40 CFR parts 260–270. Otherwise, methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the Nissan Sludge meet the delisting levels in Condition (1). (A) *Initial Verification Testing:* Nissan must collect and analyze a representative sample from each of the first eight rolloff boxes of Nissan sludge generated in its wastewater treatment system after [insert date of final rule]. Nissan must analyze for the constituents listed in Condition (1). Nissan must report analytical test data, including quality control information, no later than 60 days after generating the first Nissan Sludge to be disposed in accordance with the delisting Conditions (1) through (7). (B) *Subsequent Verification Testing:* If the initial verification testing in Condition (2)(A) is successful, i.e., delisting levels of condition (1) are met for all of the eight rolloffs described in Condition (2)(A), Nissan must implement an annual testing program to demonstrate that constituent concentrations measured in the TCLP extract and total concentrations measured in the unextracted waste do not exceed the delisting levels established in Condition (1). (3) *Waste Holding and Handling:* Nissan must store as hazardous all Nissan Sludge generated until verification testing, as specified in Condition (2)(A), is completed and valid analyses demonstrate that Condition (1) is satisfied. If the levels of constituents measured in the composite samples of Nissan Sludge do not exceed the levels set forth in Condition (1), then the Nissan Sludge is non-hazardous and must be managed in accordance with all applicable solid waste regulations. If constituent levels in a composite sample exceed any of the delisting levels set forth in Condition (1), the batch of Nissan Sludge generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA. (4) *Changes in Operating Conditions:* Nissan must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are implemented. EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify Nissan in writing that the Nissan Sludge must be managed as hazardous waste F019 until Nissan has demonstrated that the wastes meet the delisting levels set forth in Condition (1) and any levels established by EPA for the additional constituents of concern, and Nissan has received written approval from EPA. If EPA determines that the changes do not result in additional constituents of concern, EPA will notify Nissan, in writing, that Nissan must verify that the Nissan Sludge continues to meet Condition (1) delisting levels.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) *Data Submittals:* Data obtained in accordance with Condition (2)(A) must be submitted to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, Mail Code: 4WD–RCRA, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303. This submission is due no later than 60 days after generating the first batch of Nissan Sludge to be disposed in accordance with delisting Conditions (1) through (7). Records of analytical data from Condition (2) must be compiled, summarized, and maintained by Nissan for a minimum of three years, and must be furnished upon request by EPA or the State of Tennessee, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). (6) *Reopener Language:* (A) If, at any time after disposal of the delisted waste, Nissan possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, Nissan must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (B) If the testing of the waste, as required by Condition (2)(B), does not meet the delisting requirements of Condition (1), Nissan must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (C) Based on the information described in paragraphs (6)(A) or (6)(B) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If EPA determines that the reported information does require Agency action, EPA will notify the facility in writing of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Nissan with an opportunity to present information as to why the proposed action is not necessary. Nissan shall have 10 days from the date of EPA's notice to present such information. (E) Following the receipt of information from Nissan, as described in paragraph (6)(D), or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment, given the information received in accordance with paragraphs (6)(A) or (6)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise. (7) *Notification Requirements:* Nissan must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.

[FR Doc. 01–28624 Filed 11–16–01; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[I.D. 062501B]

RIN 0648–AN62

Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearing notice; extension of public comment period.

SUMMARY: Notice is hereby given that the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, will extend the public comment period, through December 31, 2001, for the purpose of receiving comments on the proposed rule to amend the regulations protecting sea turtles to enhance their effectiveness

Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276).

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wilflife populations. A section 810 analysis was completed as part of the FEIS process. The final section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations may be some local impacts on subsistence users, but the program is not likely to significant restrict subsistence uses.

Paperwork Reduction Act

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the paperwork Reduction Act of 1995.

Other Requirements

The adjustment have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 501 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing gear, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Department certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the measuring of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that the adjustments will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA—Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: May 28, 2002.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Kenneth E. Thompson,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 02–15735 Filed 6–20–02; 8:45 am]

BILLING CODE 3410–11–M; 4310–55–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7235–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a petition submitted by Nissan North America, Inc., Smyrna, Tennessee (Nissan), to exclude (or "delist") a certain hazardous waste from the lists of hazardous wastes. Nissan will generate the petitioned waste by treating wastewater from Nissan's automobile assembly plant in Smyrna, Tennessee when aluminum is one of the metals used to manufacture automobile bodies. The waste so generated is a wastewater treatment sludge that meets the definition of F019. Nissan petitioned EPA to grant a "generator-specific" delisting because Nissan believes that its F019 waste does not meet the criteria for which this type of waste was listed. EPA reviewed all of the waste-specific information provided by Nissan, performed calculations, and determined

that the waste could be disposed in a landfill without harming human health and the environment. This action responds to Nissan's petition to delist this waste on a generator-specific basis from the hazardous waste lists, and to public comments on the proposed rule. EPA took into account all public comments on the proposed rule before setting the final delisting levels. Final delisting levels in the waste leachate are based on the EPA Composite Model for Leachate Migration with Transformation Products as used in EPA, Region 6's Delisting Risk Assessment Software. Today's rule also sets limits on the total concentration of each hazardous constituent in the waste. In accordance with the conditions specified in this final rule, Nissan's petitioned waste is excluded from the requirements of hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The petitioned waste remains subject to all applicable federal, state, and local requirements for nonhazardous waste.

EFFECTIVE DATE: This rule is effective on June 21, 2002.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

The reference number for this docket is R4–01–01–NissanF. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies. For copying at the Tennessee Department of Environment and Conservation (TDEC), please see below.

FOR FURTHER INFORMATION CONTACT: For general and technical information concerning this final rule, please contact Judy Sophianopoulos, RCRA Enforcement and Compliance Branch (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8604, or call, toll free (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call. Questions may also be e-mailed to Ms. Sophianopoulos at *sophianopoulos.judy@epa.gov*. You may also contact Nina Vo, Tennessee Department of Environment and Conservation (TDEC), 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535, (615) 532–9268. If you wish to copy documents at TDEC, please contact Ms. Vo for copying procedures and costs.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background

A. What Is a Delisting Petition?

A delisting petition is a request made by a hazardous waste generator to exclude one or more of his/her wastes from the lists of RCRA-regulated hazardous wastes in Sections 261.31, 261.32, and 261.33 of Title 40 of the Code of Federal Regulations (40 CFR 261.31, 261.32, and 261.33). The regulatory requirements for a delisting petition are in 40 CFR 260.20 and 260.22. EPA, Region 6 has prepared a guidance manual, *Region 6 Guidance Manual for the Petitioner,*[1], which is recommended by EPA Headquarters in Washington, D.C. and all EPA Regions.

B. What Laws and Regulations Give EPA the Authority To Delist Wastes?

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11 (a)(2) or (a)(3). Discarded commercial chemical product wastes which meet the listing criteria are listed in § 261.33(e) and (f).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the

[1] This manual may be down-loaded from Region 6's Web Site at the following URL address: http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dlistpdf.htm

hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on the hazardous waste characteristics (i.e., characteristics which may be promulgated subsequent to a delisting decision.)

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See 40 CFR 261.3 (a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived-from" rules and remanded them to the EPA on procedural grounds. Shell Oil Co. v. EPA, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278), and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. On May 16, 2001, EPA amended the mixture and derived-from rules for certain types of wastes (66 FR 27218 and 66 FR 27266). The mixture and derived-from rules are codified in 40 CFR 261.3, paragraphs (a)(2)(iv) and (c)(2)(i). EPA plans to address all waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with Sections 260.20 and 260.22 by generators within their Regions (National Delegation of Authority 8–19) in States not yet authorized to administer a delisting program in lieu of the Federal program. On March 11, 1996, the Regional Administrator of EPA, Region 4, redelegated delisting authority to the Director of the Waste Management Division (Regional Delegation of Authority 8–19).

C. What Is the History of This Rulemaking?

Nissan manufactures light-duty vehicles, and is seeking a delisting for the sludge that will be generated by treating wastewater from its manufacturing operations, when aluminum will be used to replace some of the steel in the vehicle bodies. Wastewater treatment sludge does not meet a hazardous waste listing definition when steel-only automobile bodies are manufactured. However, the wastewater treatment sludge generated at automobile manufacturing plants where aluminum is used as a component of automobile bodies, meets the listing definition of F019 in § 261.31.[2]

Nissan petitioned EPA, Region 4, on October 12, 2000, to exclude this F019 waste on a generator-specific basis from the lists of hazardous wastes in 40 CFR part 261, subpart D.

The hazardous constituents of concern for which F019 was listed are hexavalent chromium and cyanide (complexed). Nissan petitioned the EPA to exclude its F019 waste because Nissan does not use either of these constituents in the manufacturing process. Therefore, Nissan does not believe that the waste meets the criteria of the listing.

Nissan claims that its F019 waste will not be hazardous because the constituents of concern for which F019 is listed will be present only at low concentrations and will not leach out of the waste at significant concentrations. Nissan also believes that this waste will not be hazardous for any other reason (i.e., there will be no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). As a result of the EPA's evaluation of Nissan's petition, the Agency proposed to grant a delisting to Nissan on November 19, 2001. See 66 FR 57918–57930, November 19, 2001, for details. Today's rulemaking addresses public comments received on the proposed rule and finalizes the proposed decision to grant Nissan's petition for delisting.

[2] "Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process."

II. Summary of Delisting Petition Submitted by Nissan North America, Inc., Smyrna, Tennessee (Nissan)

A. What Waste Did Nissan Petition EPA To Delist?

Nissan petitioned EPA, Region 4, on October 12, 2000, to exclude a maximum annual weight of 2,000 tons (2,400 cubic yards) of its F019 waste, on an upfront, generator-specific basis, from the list of hazardous wastes in 40 CFR part 261, subpart D. The Nissan assembly plant in Smyrna, Tennessee, manufactures light-duty vehicles, and is seeking a delisting for the sludge that will be generated by treating wastewater from its manufacturing operations, when aluminum will be used to replace some of the steel in the vehicle bodies. Wastewater treatment sludge does not meet a hazardous waste listing definition when steel-only automobile bodies are manufactured. However, the wastewater treatment sludge generated at automobile manufacturing plants where aluminum is used as a component of automobile bodies meets the listing definition of F019 in § 261.31.

B. What Information Did Nissan Submit To Support This Petition?

In support of its petition, Nissan submitted: (1) Descriptions of its manufacturing and wastewater treatment processes, the generation point of the petitioned waste, and the manufacturing steps that will contribute to its generation; (2) Material Safety Data Sheets (MSDSs) for materials used to manufacture vehicles; (3) the minimum and maximum annual amounts of wastewater treatment sludge typically generated, and an estimate of the maximum annual amount expected to be generated in the future; (4) results of analysis of the currently generated waste at the Nissan plant in Smyrna, Tennessee for the chemicals in Appendix IX of 40 CFR part 264: 17 metals; cyanide; 58 volatile organic compounds and 124 semi-volatile organic compounds; and, in addition to the Appendix IX list, hexavalent chromium; (5) results of analysis for those chemicals (i.e., Appendix IX list, hexavalent chromium) and fluoride in the leachate obtained from this waste by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311); (6) results of determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity, in this waste; (7) results of determinations of percent

solids; and (8) results of a dye tracer study and source inventory of Nissan's industrial wastewater system.

The hazardous constituents of concern for which F019 was listed are hexavalent chromium and cyanide (complexed). Nissan petitioned the EPA to exclude its F019 waste because Nissan does not believe that the waste meets the criteria of the listing.

Nissan submitted to the EPA analytical data from its plant in Smyrna, Tennessee. As described in the petition, samples of wastewater treatment sludge were collected from roll-off containers over a one-month period, in accordance with a sampling and analysis plan approved by EPA and the Tennessee Department of Environment and Conservation. The maximum reported concentrations of the toxicity characteristic (TC) metals barium, cadmium, chromium, and lead in the TCLP extracts of the samples were below the TC regulatory levels. The maximum reported concentration of total cyanide in unextracted waste was 3.35 milligrams per kilogram (mg/kg), which is greater than the generic exclusion level of 1.8 mg/kg for high temperature metal recovery (HTMR) residues in 40 CFR 261.3(c)(2)(ii)(C)(1), and less than 590 mg/kg, the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) level, in 268.48. Chromium was undetected in the TCLP extract of any sample. Please see the proposed rule, 66 FR 57918–57930, November 19, 2001, for details on Nissan's analytical data, production process, and generation process for the petitioned waste. EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has maintained a spot-check sampling and analysis program to verify the representative nature of data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before or after granting a delisting. Section 3007 of RCRA gives EPA the authority to conduct inspections to determine if a delisted waste is meeting the delisting conditions.

After reviewing the analytical data and information on processes and raw materials that Nissan submitted in the delisting petition, EPA developed a list containing the following constituents of concern: Arsenic, Barium, Cadmium, Chromium, Cyanide, Lead, Nickel, Silver, Vanadium, Zinc, Acetone, Bis-2-ethylhexyl phthalate, 2-Butanone, Isobutyl alcohol, 4-Methyl phenol, Di-n-octyl phthalate, Phenol, and Xylenes. EPA calculated delisting levels and risks for these constituents using Delisting Risk Assessment Software (DRAS),[3] developed by EPA, Region 6. The DRAS uses a new model, called the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP). Please see the proposed rule (66 FR 57918–57930, November 19, 2001) for details. EPA requested and received public comment on the proposed use of DRAS and EPACMTP for calculating delisting levels and risks for Nissan's petitioned waste.

III. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

For reasons stated in both the proposal and this final rule, EPA believes that Nissan's petitioned waste should be excluded from hazardous waste control. EPA, therefore, is granting a final generator-specific exclusion to Nissan North America, Inc., of Smyrna, Tennessee, for a maximum annual generation rate of 2,400 cubic yards of the waste described in its petition as EPA Hazardous Waste Number F019. This waste is required to undergo verification testing before being considered as excluded from Subtitle C regulation. Requirements for waste to be land disposed have been included in this exclusion. The exclusion applies only to the waste as described in Nissan's petition, dated October 2000.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of the delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation. See 40 CFR part 260, Appendix I. Nonhazardous waste management is subject to all applicable federal, state, and local regulations.

B. What Are the Terms of This Exclusion?

In the rule proposed on November 19, 2001, EPA requested public comment on which of the following possible methods should be used to evaluate Nissan's delisting petition and set delisting levels for the petitioned waste (see 66 FR 57918–57930, November 19, 2001):

(1) Delisting levels based on the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP model) as used in EPA, Region 6's Delisting Risk Assessment Software (DRAS); (2) use of DRAS-calculated levels based on Safe Drinking Water Act Maximum Contaminant Levels (MCLs) if more conservative delisting levels would be obtained; (3) use of the Multiple Extraction Procedure (MEP), SW–846 Method 1320, to evaluate the long-term resistance of the waste to leaching in a landfill; (4) setting limits on total concentrations of constituents in the waste that are more conservative than results of calculations of constituent release from waste in a landfill to surface water and air, and release during waste transport; (5) setting delisting levels at the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) levels in 40 CFR 268.48. See the proposed rule, 66 FR 57918–57930, November 19, 2001, for details of calculating delisting levels using these methods.

After considering all public comments on the proposed rule, EPA is granting Nissan, in today's final rule, an exclusion from the lists of hazardous wastes in subpart D of 40 CFR part 261 for its petitioned waste when disposed in a Subtitle D[4] landfill. Nissan must meet all of the following delisting conditions in order for this exclusion to be valid: (1) Delisting levels in mg/l in the TCLP extract of the waste based on

[3] For more information on DRAS and EPACMTP, please see 65 FR 75637–75651, December 4, 2000 and 65 FR 58015–58031, September 27, 2000. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). URL addresses for Region 6 delisting guidance and software are the following:

1. Delisting Guidance Manual http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dlistpdt.htm

2. Delisting Risk Assessment Software (DRAS) http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm

3. DRAS Technical Support Document (DTSD) http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dtsd.htm

4. DRAS Users Guide http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/uguide.pdf

Region 6 has made them available to the public, free of charge.

[4] The term, "Subtitle D landfill," refers to a landfill that is licensed to land dispose nonhazardous wastes, that is, wastes that are not RCRA hazardous wastes. A Subtitle D landfill is subject to federal standards in 40 CFR parts 257 and 258 and to state and local regulations for nonhazardous wastes and nonhazardous waste landfills.

the DRAS EPACMTP model of 100.0[5] for Barium, 0.422[6] for Cadmium, 5.0 for Chromium, 10.1 for Cyanide, 5.0 for Lead, and 79.4 for Nickel; (2) the total concentration of cyanide (total, not amenable) in the waste, not the waste leachate, must not exceed 200 mg/kg; (3) the total concentrations, in mg/kg, of metals in the waste, not the waste leachate, must not exceed 20,000 for Barium, 500 for Cadmium, 1,000 for Chromium, 2,000 for Lead, and 20,000 for Nickel.

EPA did not propose delisting levels for cobalt, copper, silver, tin, vanadium, zinc, acetone, isobutyl alcohol, phenol, and xylenes, because the DRAS-calculated TCLP levels for these constituents are at least two orders of magnitude greater than the maximum reported concentrations in the TCLP leachate of the petitioned waste. EPA did not propose delisting levels for arsenic for the following reasons: (1) TCLP leachate concentration was non-detect; (2) total concentration in the unextracted waste was below the background soil concentration for most of Tennessee, below the national average background, and three orders of magnitude below the DRAS allowable total concentration; and (3) DRAS found no ecological risk at the maximum reported concentrations and a human cancer risk within the range of 10^{-4} to 10^{-6} assuming a TCLP concentration equal to one-half the reporting limit of the analytical laboratory. Therefore, today's final rule does not have delisting levels for arsenic, cobalt, copper, silver, tin, vanadium, zinc, acetone, isobutyl alcohol, phenol, and xylenes.

Delisting levels and risk levels calculated by DRAS, using the EPACMTP model, are presented in Table 1 below. These levels promulgated in today's final rule are the same as the levels proposed in Table 3 of the proposed rule (66 FR 57918–57930, November 19, 2001). DRAS found that the major pathway for human exposure to this waste is groundwater ingestion, and calculated delisting and risk levels based on that pathway. For details, see the following **Federal Registers**: 65 FR 75637–75651, December 4, 2000; 65 FR 58015–58031, September 27, 2000; and the proposed rule for Nissan's petitioned waste, 66 FR 57918–57930, November 19, 2001.

TABLE 1.—SUMMARY OF DELISTING LEVELS FOR NISSAN'S PETITIONED WASTE

Constituent	DRAS-Calculated Delisting Level (mg/l TCLP)	Total Concentrations * (mg/kg in unextracted waste)
Inorganic Constituents		
Barium	**100.0	20,000
Cadmium	#0.422	500
Chromium	**5.0	1,000
Cyanide (Total, not Amenable)	#10.1	200
Lead	**5.0	2,000
Nickel	79.4	20,000
Organic Constituents		
Bis(2-ethylhexyl) phthalate	0.0787	.....
Di-n-octyl phthalate	0.0984	.....
4-Methylphenol	10	.....

*These total concentration levels are more conservative (less than) DRAS-calculated total concentration levels.

**DRAS-calculated delisting level was higher than the TC level; therefore, the delisting level was set at the TC level.

#DRAS-calculated delisting levels for cadmium and cyanide are based on MCLs.

After taking into account all public comments on the proposed rule, EPA is retaining in today's final rule to exclude Nissan's petitioned waste all conditions (Conditions (1) through (7)) in Table 1, Appendix IX of part 261 of the proposed rule (66 FR 57918–57930, November 19, 2001). The final delisting levels are the same as those proposed and are presented in Table 1 above.

C. When Is the Delisting Effective?

This rule is effective on June 21, 2002. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule reduces the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final publication.

These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the States?

The final exclusion being granted today is issued under the Federal RCRA delisting program. States, however, are allowed to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal RCRA and State non-RCRA programs, petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, i.e., to make their own delisting decisions. Therefore, this exclusion does not apply in those authorized States. If the petitioned waste will be transported to and managed in any State with delisting authorization, Nissan must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

EPA received public comments on the proposed rule published in 66 FR 57918–57930, November 19, 2001, from (1) Alliance of Automobile Manufacturers, Washington, DC; (2) Nissan North America, Inc., Smyrna, Tennessee, (Nissan), the petitioner; (3) Alcoa, Inc., Pittsburgh, Pennsylvania; and (4) The Aluminum Association, Washington, DC. EPA commends and appreciates the thoughtful comments submitted by all of the commenters.

B. Comments and Responses From EPA

Comment: The Alliance of Automobile Manufacturers (Alliance) stated that it strongly supports the proposed delisting, and agrees that fate and transport models may be useful tools to evaluate delisting petitions. However, the Alliance believes that the F019 listing itself should be revised to exclude wastewater treatment sludges from automotive industry conversion

[5] Delisting levels cannot exceed the Toxicity Characteristic (TC) regulatory levels. Therefore, although the DRAS EPACMTP calculates higher concentrations (see the proposed rule, 66 FR 57918–57930, November 19, 2001, and Table 1, below), the delisting levels in the final rule are set at the TC levels for barium, chromium, and lead. *In order for the waste to* be delisted, concentrations in the TCLP extract of the waste must be less than the TC levels. See the regulatory definition of a TC waste in 40 CFR 261.24.

[6] Delisting levels for cadmium and cyanide are based on MCLs and are more conservative than calculations based on risk alone.

coating on aluminum when hexavalent chromium and cyanides are not used in the process.

Response: Today's final rule is site-specific and waste-specific; it applies only to Nissan's plant in Smyrna, Tennessee, and only to the petitioned waste. An exclusion of general applicability would require a separate rule-making, with more extensive data collection and risk analysis. EPA understands the Alliance's concern about the need for each auto company to submit a delisting petition. Please see 67 FR 10341–10353, March 7, 2002, for a proposal by EPA, Region 5, in a cooperative project with the State of Michigan, to address this concern.

Comment: The Alliance disagrees with EPA's proposed use of (1) the MEP to evaluate Nissan's delisting petition; (2) establishing delisting levels based on total concentrations; and (3) establishing delisting levels based on LDR treatment standards.

Response: (1) EPA has used MEP analysis of petitioned wastes in the past as a measure of the long-term resistance of the waste to leaching (see, for example, 47 FR 52687, Nov. 22, 1982; 61 FR 14696–14709, April 3, 1996; 65 FR 48436, August 8, 2000; and 66 FR 9789, 9793–9794, February 12, 2001), which is an important consideration for waste to be disposed in a Subtitle D (nonhazardous waste) landfill. As explained in the response to the Alliance's second comment, EPA has decided not to use the MEP to evaluate Nissan's petitioned waste. (2) The Alliance brings up some significant issues in this comment and makes some good points. However, EPA feels that the proposed limits on total concentrations are reasonable, given that the delisted waste will not be subject to regulation as a hazardous waste under RCRA Subtitle C. These limits will provide added reassurance to the public that management of the waste as nonhazardous will be protective of human health and the environment. EPA has decided not to use the MEP to evaluate Nissan's petitioned waste, but will set the following limits on total concentrations (in mg/kg) which are the same as those proposed: Barium: 20,000; Cadmium: 500; Chromium: 1,000; Cyanide (Total, not Amenable): 200; Lead: 2,000; and Nickel: 20,000. (3) EPA has decided not to set delisting levels based on LDR for Nissan's petitioned waste, and the final delisting levels in Appendix IX of part 261 established in today's final rule are not based on LDR. The analytical data submitted by Nissan indicate that the petitioned waste, when generated, would meet LDR Universal Treatment Standards (UTS) for all constituents of concern except Nickel, Zinc, Bis(2-ethylhexyl) phthalate, Di-n-octyl phthalate, 4-Methylphenol, and Phenol. The petitioned waste as generated meets the LDR UTS for F019 nonwastewaters, namely, Chromium (Total): 0.60 mg/L TCLP; Cyanides (Total): 590 mg/kg; and Cyanides (Amenable) 30 mg/kg. See the proposed rule, 66 FR 57918–57930, November 19, 2001.

Comment: The Alliance commented on the use of the EPACMTP and DRAS by saying that their use should be the subject of a separate rulemaking because they raise complex issues that EPA should not try to resolve in this delisting.

Response: Use of the EPACMTP and DRAS has been described in detail in 65 FR 75637–75651, December 4, 2000, and 65 FR 58015–58031, September 27, 2000. TheDecember 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). For every delisting petition submitted to EPA, EPA proposes and requests comment on all available methods for evaluating the petition and setting delisting levels, including the EPACMTP and DRAS. Thus, these models, and future improvements, will be proposed for comment in every delisting rulemaking.

Comment: Nissan directed EPA's attention to the following typographical errors in the proposed rule (66 FR 57918–57930, November 19, 2001): (1) On page 57923, the Reactive Sulfide result for Sample NS–04a should be changed from 280U to 280; and the TCLP result for Tin in Sample NS–02a should be changed from 0.01U to 0.10U, in accordance with the report sheets from the analytical laboratory; (2) On page 57922, the TCLP result for Copper in Sample NS–02a is missing; the value 0.05U should be added; and (3) Footnote 6 is missing from page 57924.

Response: EPA is grateful to Nissan for pointing out the above errors and will make the indicated corrections. (The errors for Tin and Reactive Sulfide also occur in Table 6–4 of the petition; Section F of the petition contains the analytical laboratory report sheets which indicate the correct results.) Footnote 6, to be added to page 57924 should read: [6] Because 4-methylphenol could not be distinguished from 3-methylphenol in all samples, the values reported for 4-methylphenol in Table 1 include the values for 3-methylphenol.

In addition, EPA discovered a typographical error in Footnote 7 on page 57926: the plus sign (+) should be changed to a division sign (÷). Footnote 7 should read: [7] This estimate would be based on the following type of calculation for a 100-gram sample, using nickel as an example: % nickel leached out over a long period of time = 100 × (total number of milligrams of nickel in all the sample MEP extracts) ÷ the number of milligrams of nickel originally present in the 100-gram sample.

Comment: Nissan disagrees with EPA's proposed method of setting delisting levels based on the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) in 40 CFR 268.48. Nissan believes that UTS levels are inappropriate for setting delisting levels, because UTS levels were not designed for such a use, but were established to determine whether a hazardous waste could be land disposed.

Response: EPA has decided not to set delisting levels based on LDR UTS for Nissan's petitioned waste, and the final delisting levels in Appendix IX of part 261 established in today's final rule are not based on LDR UTS. The analytical data submitted by Nissan indicate that the petitioned waste, when generated, would meet LDR UTS for all constituents of concern except Nickel, Zinc, Bis(2-ethylhexyl) phthalate, Di-n-octyl phthalate, 4-Methylphenol, and Phenol. The petitioned waste meets the LDR UTS for F019 nonwastewaters, namely, Chromium (Total): 0.60 mg/L TCLP; Cyanides (Total): 590 mg/kg; and Cyanides (Amenable) 30 mg/kg. See the proposed rule, 66 FR 57918–57930, November 19, 2001.

Comment: Nissan disagrees with EPA's proposed method of setting delisting levels based on the DRAS EPACMTP. Nissan believes that these levels are inappropriate because they are more stringent than the Toxicity Characteristic (TC) levels used to determine if a waste is hazardous.

Response: Although there is understandable confusion between the definition of hazardous waste and the delisting process, EPA has decided to use the DRAS EPACMTP as the basis for the delisting levels in the TCLP extract of Nissan's waste. The DRAS levels minimize the risk to human health and the environment of land disposal in a nonhazardous (Subtitle D) landfill. As presented in Table 1, Section III.B. of today's preamble, DRAS-calculated delisting levels are the following concentrations in the TCLP extract of

the petitioned waste, in ppm (mg/L): Barium-100.0;[7] Cadmium-0.422;[8] Chromium-5.0; Cyanide-10.1, Lead-5.0; Nickel-79.4; Bis(2-ethylhexyl) phthalate-0.0787; Di-n-octyl phthalate-0.0984; and 4-Methylphenol-10.0.

Comment: Nissan disagrees with EPA's proposal to set limits on total concentrations for delisting. Nissan believes that limits on total concentrations are an added burden without additional benefits, that hazardous wastes are defined by TCLP concentrations rather than total concentrations, and that TCLP limits should be sufficient.

Response: Nissan's points are well taken. However, EPA has decided to promulgate in today's final rule the limits on total concentrations that were proposed. EPA has decided not to require evaluation of the waste by the MEP and believes that total concentration limits serve to reassure the public that long term effects on human health and the environment are minimized. It is true that TCLP concentrations are the only consideration when identifying wastes that could be hazardous by the Toxicity Characteristic of 40 CFR 261.24. However, EPA considers total concentrations as well as TCLP concentrations when deciding whether wastes should be listed hazardous wastes in Subpart D of 40 CFR part 261.

Comment: Alcoa, Inc. (Alcoa) agrees with EPA's proposal to delist Nissan's wastewater treatment sludge, but does not support the use of the MEP to evaluate Nissan's waste, believing that the merits of the MEP should be the subject of a separate **Federal Register** notice.

Response: EPA has used MEP analysis of petitioned wastes in the past as a measure of the long-term resistance of the waste to leaching (see, for example, 47 FR 52687, Nov. 22, 1982; 61 FR 14696–14709, April 3, 1996; 65 FR 48436, August 8, 2000; and 66 FR 9789, 9793–9794, February 12, 2001), which is an important consideration for waste to be disposed in a Subtitle D (nonhazardous waste) landfill. EPA has requested in the past and will continue to request public comment on the MEP and all other methods for evaluating delisting petitions each time a proposed rule for delisting a waste is published in the **Federal Register**.

EPA has decided not to use the MEP to evaluate Nissan's petitioned waste, but has decided to promulgate in today's final rule the proposed limits on total concentrations.

Comment: Alcoa does not support proposed limits on total concentrations, because EPA did not establish a correlation between groundwater contamination and total constituent concentrations.

Response: Alcoa's point is well taken, but EPA has decided to promulgate the proposed limits on total concentrations as a condition of delisting. EPA has decided not to evaluate Nissan's waste by means of the MEP and believes that total concentration limits serve to reassure the public that long term effects on human health and the environment are minimized.

Comment: Alcoa does not support setting delisting levels based on LDR UTS, believing that such levels would be "arbitrary, inappropriate and contradictory." Alcoa states that LDR UTS are technology-based, while EPA's delisting evaluation is risk-based and that EPA concluded that Nissan's waste presents no risk to human health and the environment.

Response: EPA has decided not to set delisting levels based on LDR UTS for Nissan's petitioned waste, and the final delisting levels in Appendix IX of part 261 established in today's final rule are not based on LDR UTS. The analytical data submitted by Nissan indicate that the petitioned waste, when generated, would meet LDR UTS for all constituents of concern except Nickel, Zinc, Bis(2-ethylhexyl) phthalate, Di-n-octyl phthalate, 4-Methylphenol, and Phenol. The petitioned waste meets the LDR UTS for F019 nonwastewaters, namely, Chromium (Total): 0.60 mg/L TCLP; Cyanides (Total): 590 mg/kg; and Cyanides (Amenable) 30 mg/kg. See the proposed rule, 66 FR 57918–57930, November 19, 2001.

Comment: The Aluminum Association (TAA) supports the proposed delisting and the comments submitted by the Alliance of Automobile Manufacturers. TAA believes that the F019 listing definition should be revised to exclude automobile assembly plant wastewater treatment sludge when aluminum parts are used in place of steel and the conversion coating process does not use hexavalent chromium and cyanides.

Response: Today's final rule is site-specific and waste-specific; it applies only to Nissan's plant in Smyrna, Tennessee, and only to the petitioned waste. An exclusion of general applicability would require a separate rule-making, with more extensive data collection and risk analysis. EPA understands the concern of The Aluminum Association and the Alliance of Automobile Manufacturers about the need for each automobile manufacturer to submit a delisting petition. Please see 67 FR 10341–10353, March 7, 2002, for a proposal by EPA, Region 5, in a cooperative project with the State of Michigan, to address this concern.

Comment: TAA does not believe it is appropriate to set delisting levels based on (1) the MEP; (2) LDR UTS; or (3) total concentrations.

Response: (1) EPA has used MEP analysis of petitioned wastes in the past as a measure of the long-term resistance of the waste to leaching (see, for example, 47 FR 52687, Nov. 22, 1982; 61 FR 14696–14709, April 3, 1996; 65 FR 48436, August 8, 2000; and 66 FR 9789, 9793–9794, February 12, 2001), which is an important consideration for waste to be disposed in a Subtitle D (nonhazardous waste) landfill. EPA has requested in the past and will continue to request public comment on the MEP and all other methods for evaluating delisting petitions each time a proposed rule for delisting a waste is published in the **Federal Register**.

EPA has decided not to use the MEP to evaluate Nissan's petitioned waste, but has decided to promulgate in today's final rule the proposed limits on total concentrations.

(2) EPA has decided not to set delisting levels based on LDR UTS for Nissan's petitioned waste, and the final delisting levels in Appendix IX of part 261 established in today's final rule are not based on LDR UTS. The analytical data submitted by Nissan indicate that the petitioned waste, when generated, would meet LDR UTS for all constituents of concern except Nickel, Zinc, Bis(2-ethylhexyl) phthalate, Di-n-octyl phthalate, 4-Methylphenol, and Phenol. The petitioned waste meets the LDR UTS for F019 nonwastewaters, namely, Chromium (Total): 0.60 mg/L TCLP; Cyanides (Total): 590 mg/kg; and Cyanides (Amenable) 30 mg/kg. See the proposed rule, 66 FR 57918–57930, November 19, 2001.

(3) EPA has decided to promulgate the proposed limits on total concentrations as a condition of delisting. EPA has decided not to evaluate Nissan's waste by means of the MEP and believes that total concentration limits serve to reassure the public that long term effects on human health and the environment are minimized.

[7] Delisted wastes cannot exhibit a hazardous waste characteristic. Therefore, when delisting levels are set at the Toxicity Characteristic (TC) regulatory levels, the TCLP extract of the petitioned waste must have concentrations less than the TC levels in order to meet conditions for delisting. Although the DRAS EPACMTP calculates higher concentrations (see the proposed rule, 66 FR 57918–57930, November 19, 2001, and Table 1, Section III.B. of today's preamble), the delisting levels in the final rule are set at the TC levels for barium, chromium, and lead.

[8] DRAS-calculated delisting levels for cadmium and cyanide are based on MCLs.

Comment: TAA believes that the use of DRAS and EPACMTP should be the subject of a separate rulemaking.

Response: Use of the EPACMTP and DRAS has been described in detail in 65 FR 75637–75651, December 4, 2000, and 65 FR 58015–58031, September 27, 2000. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). For every delisting petition submitted to EPA, EPA proposes and requests comment on all available methods for evaluating the petition and setting delisting levels, including the EPACMTP and DRAS. Thus, these models, and future improvements, will be proposed for comment in every delisting rulemaking.

V. Analytical and Regulatory Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to comprehensive review by the Office of Management and Budget (OMB), and the other provisions of the Executive Order. A significant regulatory action is defined by the Order as one that may:

—Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

—Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

—Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or

—Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

EPA has determined that today's final rule is not a significant regulatory action as defined by Executive Order 12866 and is, therefore, not subject to OMB comprehensive review and the other provisions of the Executive Order.

B. What Economic and Equity Analyses Were Completed in Support of the Proposed Delisting for Nissan's Wastewater Treatment Sludge?

No economic and equity analyses were required in support of the November 19, 2001 proposed rule. The proposed rule applies only to a single waste at a single facility. Therefore the proposal would have had no generalized effect on industrial compliance costs and would have reduced compliance costs for the single facility, Nissan.

C. What Substantive Comments Were Received on the Cost/Economic Aspects of the Proposed Delisting for Nissan's Wastewater Treatment Sludge?

Public comments were received from four entities. None of the comments dealt with economic effects of the proposed rule.

D. What Are the Potential Costs and Benefits of Today's Final Rule?

The value of any regulatory action is traditionally measured by the net change in social welfare that it generates. All other factors being equal, a rule that generates positive net welfare would be advantageous to society, while a rule that results in negative net welfare to society should be avoided.

Today's final rule applies to a single waste at a single facility. Therefore, EPA has determined that the rule is not expected to have any generalized economic, health, or environmental effects on society.

E. What Consideration Was Given to Small Entities Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.?

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's final rule on small entities, a small entity is defined either by the number of employees or by the annual dollar amount of sales/revenues. The level at which an entity is considered small is determined for each North American Industrial Classification System (NAICS) code by the Small Business Administration (SBA).

EPA has examined the potential effects today's final rule may have on small entities, as required by the RFA/Small Business Regulatory Enforcement Fairness Act (SBREFA). Today's final rule affects a single waste at a single facility, Nissan. Therefore, EPA has determined and certifies that this rule will not have a significant economic impact on a substantial number of small entities.

F. Was the Unfunded Mandates Reform Act Considered in This Final Rule?

Executive Order 12875, "Enhancing the Intergovernmental Partnership" (October 26, 1993), called on federal agencies to provide a statement supporting the need to issue any regulation containing an unfunded federal mandate and describing prior consultation with representatives of affected state, local, and tribal governments.

Signed into law on March 22, 1995, the Unfunded Mandates Reform Act (UMRA) supersedes Executive Order 12875, reiterating the previously established directives while also imposing additional requirements for federal agencies issuing any regulation containing an unfunded mandate.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any single year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may *significantly* or uniquely affect small governments, including tribal governments, the Agency must develop a small

government agency plan, as required under section 203 of UMRA. This plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule is not subject to the requirements of sections 202 and 205 of UMRA. Today's final rule will not result in $100 million or more in incremental expenditures. The aggregate annualized incremental social costs for today's final rule are projected to be near zero. Furthermore, today's final rule is not subject to the requirements of section 203 of UMRA. Section 203 requires agencies to develop a small government Agency plan before establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. EPA has determined that this final rule will not significantly or uniquely affect small governments.

G. Were Equity Issues and Children's Health Considered in This Final Rule?

By applicable executive order, we are required to consider the impacts of today's rule with regard to environmental justice and children's health.

1. Executive Order 12898: Environmental Justice

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population" (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). Today's final rule applies to a single waste at a single facility. We have no data indicating that today's final rule would result in disproportionately negative impacts on minority or low income communities.

2. Executive Order 13045: "Protection of Children From Environmental Health Risks and Safety Risks"

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. Today's final rule is not subject to the Executive Order because it is not economically significant, as defined in Executive Order 12866.

H. What Consideration Was Given to Tribal Governments?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Today's final rule will not significantly or uniquely affect the communities of Indian tribal governments, nor impose substantial direct compliance costs on them.

I. Were Federalism Implications Considered in Today's Final Rule?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Today's final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. Thus, Executive Order 13132 does not apply to this final rule.

J. Were Energy Impacts Considered?

Executive Order 13211, "Actions Concerning Regulations That Affect Energy Supply, Distribution, or Use" (May 18, 2001), addresses the need for regulatory actions to more fully consider the potential energy impacts of the proposed rule and resulting actions. Under the Order, agencies are required to prepare a Statement of Energy Effects when a regulatory action may have significant adverse effects on energy supply, distribution, or use, including impacts on price and foreign supplies. Additionally, the requirements obligate agencies to consider reasonable alternatives to regulatory actions with adverse effects and the impacts the alternatives might have upon energy supply, distribution, or use.

Today's final rule applies to a single waste at a single facility and is not likely to have any significant adverse impact on factors affecting energy supply. EPA believes that Executive Order 13211 is not relevant to this action.

VI. Paperwork Reduction Act

This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because there are no paperwork requirements as part of this final rule, EPA is not required to prepare an Information Collection Request (ICR) in support of today's action.

VII. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule involves environmental monitoring or measurement. Consistent with the Agency's Performance Based Measurement System ("PBMS"), EPA proposed not to require the use of specific, prescribed analytical methods, except when required by regulation in 40 CFR parts 260 through 270. Therefore, today's final rule allows the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

VIII. The Congressional Review Act (5 U.S.C. 801 et seq., as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States.

The EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedures, or practice that do not substantially affect the rights or obligations of non-agency parties. See 5 U.S.C. 804(3). A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication as a final rule in the **Federal Register**.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: June 13, 2002.

James S. Kutzman,

Acting Director, Waste Management Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX, part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Nissan North America,Inc	Smyrna, Tennessee	Wastewater treatment sludge (EPA Hazardous Waste No. F019) that Nissan North America, Inc. (Nissan) generates by treating wastewater from the automobile assembly plant located at 983 Nissan Drive in Smyrna, Tennessee. This is a conditional exclusion for up to 2,400 cubic yards of waste (hereinafter referred to as "Nissan Sludge") that will be generated each year and disposed in a Subtitle D landfill after June 21, 2002. Nissan must demonstrate that the following conditions are met for the exclusion to be valid. (1) *Delisting Levels:* All leachable concentrations for these metals, cyanide, and organic constituents must not exceed the following levels (ppm): Barium—100.0; Cadmium—0.422; Chromium—5.0; Cyanide—10.1, Lead—5.0; and Nickel—79.4; Bis(2-ethylhexyl) phthalate-0.0787; Di-n-octyl phthalate-0.0984; and 4-Methylphenol—10.0. These concentrations must be measured in the waste leachate obtained by the method specified in 40 CFR 261.24, except that for cyanide, deionized water must be the leaching medium. The total concentration of cyanide (total, not amenable) in the waste, not the waste leachate, must not exceed 200 mg/kg. Cyanide concentrations in waste or leachate must be measured by the method specified in 40 CFR 268.40, Note 7. The total concentrations of metals in the waste, not the waste leachate, must not exceed the following levels (ppm): Barium—20,000; Cadmium—500; Chromium—1,000; Lead—2,000; and Nickel—20,000. (2) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies, where specified by regulations in 40 CFR parts 260—270. Otherwise, methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the Nissan Sludge meet the delisting levels in Condition (1).

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) *Initial Verification Testing:* Nissan must collect and analyze a representative sample from each of the first eight roll-off boxes of Nissan sludge generated in its wastewater treatment system after June 21, 2002. Nissan must analyze for the constituents listed in Condition (1). Nissan must report analytical test data, including quality control information, no later than 60 days after generating the first Nissan Sludge to be disposed in accordance with the delisting Conditions (1) through (7). (B) *Subsequent Verification Testing:* If the initial verification testing in Condition (2)(A) is successful, i.e., delisting levels of condition (1) are met for all of the eight roll-offs described in Condition (2)(A), Nissan must implement an annual testing program to demonstrate that constituent concentrations measured in the TCLP extract and total concentrations measured in the unextracted waste do not exceed the delisting levels established in Condition (1). (3) *Waste Holding and Handling:* Nissan must store as hazardous all Nissan Sludge generated until verification testing, as specified in Condition (2)(A), is completed and valid analyses demonstrate that Condition (1) is satisfied. If the levels of constituents measured in the composite samples of Nissan Sludge do not exceed the levels set forth in Condition (1), then the Nissan Sludge is non-hazardous and must be managed in accordance with all applicable solid waste regulations. If constituent levels in a composite sample exceed any of the delisting levels set forth in Condition (1), the batch of Nissan Sludge generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA. (4) *Changes in Operating Conditions:* Nissan must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are implemented. EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify Nissan in writing that the Nissan Sludge must be managed as hazardous waste F019 until Nissan has demonstrated that the wastes meet the delisting levels set forth in Condition (1) and any levels established by EPA for the additional constituents of concern, and Nissan has received written approval from EPA. If EPA determines that the changes do not result in additional constituents of concern, EPA will notify Nissan, in writing, that Nissan must verify that the Nissan Sludge continues to meet Condition (1) delisting levels. (5) *Data Submittals:* Data obtained in accordance with Condition (2)(A) must be submitted to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, Mail Code: 4WD–RCRA, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. This submission is due no later than 60 days after generating the first batch of Nissan Sludge to be disposed in accordance with delisting Conditions (1) through (7). Records of analytical data from Condition (2) must be compiled, summarized, and maintained by Nissan for a minimum of three years, and must be furnished upon request by EPA or the State of Tennessee, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required *records* for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). (6) *Reopener Language:* (A) If, at any time after disposal of the delisted waste, Nissan possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, Nissan must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (B) If the testing of the waste, as required by Condition (2)(B), does not meet the delisting requirements of Condition (1), Nissan must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (C) Based on the information described in paragraphs (6)(A) or (6)(B) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If EPA determines that the reported information does require Agency action, EPA will notify the facility in writing of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Nissan with an opportunity to present information as to why the proposed action is not necessary. Nissan shall have 10 days from the date of EPA's notice to present such information.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(E) Following the receipt of information from Nissan, as described in paragraph (6)(D), or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are *necessary* to protect human health or the environment, given the information received in accordance with paragraphs (6)(A) or (6)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise. (7) *Notification Requirements:* Nissan must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.
*	*	* * * * *

[FR Doc. 02–15612 Filed 6–20–02; 8:45 am]
BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1626

Restrictions on Legal Assistance to Aliens; 1626 Negotiated Rulemaking Working Group Meeting

AGENCY: Legal Services Corporation.

ACTION: Regulation negotiation working group meeting.

SUMMARY: LSC is conducting a Negotiated Rulemaking to consider revisions to its alien representation regulations at 45 CFR Part 1626. This document announces the dates, times, and address of the next meeting of the working group, which is open to the public.

DATES: The Legal Services Corporation's 1626 Negotiated Rulemaking Working Group will meet on June 26–27, 2002. The meeting will begin at 9 a.m. on June 26, 2002. It is anticipated that the meeting will end by 3:30 p.m. on June 27, 2002.

ADDRESSES: The meeting will be held at the offices of Marasco Newton Group, Inc., 2425 Wilson Blvd., Arlington, VA 22201.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Legal Services Corporation, 750 First St., NE., 11th Floor, Washington, DC, 20001; (202) 336–8817 (phone); (202) 336–8952 (fax); *mcondray@lsc.gov.*

SUPPLEMENTARY INFORMATION: LSC is conducting a Negotiated Rulemaking to consider revisions to its alien representation regulations at 45 CFR Part 1626. The working group will hold its next meeting on the dates and at the location announced above. The meeting is open to the public. Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Ms. Condray.

Victor M. Fortuno,
Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–15715 Filed 6–20–02; 8:45 am]
BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1389; MM Docket No.01–133; RM–10143 & RM–10150]

Radio Broadcasting Services; Mason, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Notice of Proposed Rule Making* in this proceeding considered a petition filed by Charles Crawford requesting the allotment of Channel 249C3 at Mason, Texas and a petition filed by Katherine Pyeatt requesting the allotment of Channel 269C3 at Mason, Texas. *See* 66 FR 35768, July 9, 2001. In response to the proposal filed by Katherine Pyeatt, this document allots Channel 269C3 at Mason, Texas, at coordinates 30–45–00 and 99–10–41. There is a site restriction 5.7 kilometers (3.6 miles) east of the community. Mexican concurrence has been requested for this allotment but notification has not been received. Therefore, operation with the facilities specified for Mason herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico. Due to a lapse in the Commission's data base which failed to disclose a short spacing with a proposal to allot Channel 249C1 at Converse, Texas, in MM Docket 00–148, we will dismiss the proposal to allot Channel 249C3 at Mason, Texas. With this action, this proceeding is terminated. A filing window for Channel 269C3 at Mason will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective July 29, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–133, adopted June 5, 2002, and released June 14, 2002. The full text of this Commission decision is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: June 15, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–12582 Filed 6–23–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7925–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Amendment

AGENCY: Environmental Protection Agency.

ACTION: Proposed amendment and request for comment.

SUMMARY: The Environmental Protection Agency (EPA, also "the Agency" or "we" in this preamble) is proposing to modify an exclusion (or "delisting") from the lists of hazardous waste previously granted to Nissan North America, Inc. (Nissan) in Smyrna, Tennessee.

This action responds to a petition for amendment submitted by Nissan to increase the maximum annual volume covered by its current exclusion for a F019 listed hazardous waste.

The Agency is basing its tentative decision to grant the petition for amendment on an evaluation of specific information provided by the petitioner. This tentative decision, if finalized, would increase the annual volume of waste conditionally excluded from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

DATES: EPA is requesting public comments on this proposed amendment. We will accept comments on this proposal until August 8, 2005. Comments postmarked after the close of the comment period will be stamped "late." These late comments may not be considered in formulating a final decision.

Any person may request a hearing on this tentative decision to grant the petition for amendment by filing a request by July 11, 2005. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send two copies of your comments to Daryl R. Himes, South Enforcement and Compliance Section, RCRA Enforcement and Compliance Branch, Waste Management Division, U.S. EPA Region 4, 61 Forsyth Street SW., Atlanta, GA, 30303. Comments may also be sent to Daryl R. Himes via email at *Himes.Daryl@epa.gov.*

Your request for a hearing should be addressed to Narindar M. Kumar, Chief, RCRA Enforcement and Compliance Branch, Waste Division, U.S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303.

The RCRA regulatory docket for this proposed rule is located at the offices of U.S. EPA Region 4, 61 Forsyth Street SW., Atlanta, GA, 30303, and is available for your viewing from 8:30 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. Please call Daryl R. Himes, at (404) 562–8614 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, please contact Daryl R. Himes at the address above or at (404) 562–8614.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background

A. What Laws and Regulations Give EPA the Authority To Delist Waste?

EPA published amended lists of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA. These lists have been amended several times, and are found at 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of 40 CFR Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity), or (2) they meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be.

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure which allows a person to demonstrate that a specific listed waste from a particular generating facility should not be regulated as a hazardous waste, and should, therefore, be delisted.

According to 40 CFR 260.22(a)(1), in order to have these wastes excluded a petitioner must first show that wastes generated at its facility do not meet any of the criteria for which the wastes were listed. The criteria which we use to list wastes are found in 40 CFR 261.11. An explanation of how these criteria apply to a particular waste is contained in the background document for that listed waste.

In addition to the criteria that we considered when we originally listed the waste, we are also required by the provisions of 40 CFR 260.22(a)(2) to consider any other factors (including additional constituents), if there is a reasonable basis to believe that these factors could cause the waste to be hazardous.

In a delisting petition, the petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics defined in Subpart C of

40 CFR Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity), and must present sufficient information for EPA to determine whether the waste contains any other constituents at hazardous levels.

A generator remains obligated under RCRA to confirm that its waste remains nonhazardous based on the hazardous waste characteristics defined in Subpart C of 40 CFR Part 261 even if EPA has delisted its waste.

We also define residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes as hazardous wastes. (*See* 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively.) These wastes are also eligible for exclusion but remain hazardous wastes until delisted.

B. What Waste Is Currently Delisted at Nissan?

Nissan operates a light-duty vehicle manufacturing facility in Smyrna, Tennessee. As a result of Nissan's use of aluminum as a component of its automobile bodies, Nissan generates a sludge meeting the listing definition of F019 at 40 CFR 261.31.

On October 12, 2000, Nissan petitioned EPA under the provisions in 40 CFR 260.20 and 260.22 to exclude the F019 sludge, discussed above, from hazardous waste regulation.

In support of its October 12, 2000, petition, Nissan submitted sufficient information to EPA to allow us to determine that the waste was not hazardous based upon the criteria for which it was listed and that no other hazardous constituents were present in the waste at levels of regulatory concern.

A full description of the Agency's evaluation of the 2000 Nissan petition is contained in the Proposed Rule and Request for Comments published in the **Federal Register** on November 19, 2001, (223 FR 57918).

After evaluating public comment on the Proposed Rule, we published a final decision in the **Federal Register** on June 21, 2002, (67 FR 41287) to exclude the Nissan F019 wastewater treatment sludge from the list of hazardous wastes found in 40 CFR 261.31.

EPA's final decision in 2002 was conditioned on the volume of waste identified in the 2001 Nissan petition. Specifically, the exclusion granted by EPA is limited to a maximum annual volume of 2400 cubic yards. Any additional waste volume in excess of this limit generated by Nissan in a calendar year was to have been managed as hazardous waste.

C. What Does Nissan Request in Its Petition for Amendment?

As a result of an increase in wastewater treatment sludge filter cake production associated with an increase in vehicle production, Nissan petitioned EPA on February 3, 2004, for an amendment to its June 21, 2002, final exclusion. In its petition, Nissan requested an increase in the maximum annual waste volume that is covered by its exclusion from 2400 cubic yards to 3500 cubic yards.

II. Disposition of Petition Amendment

A. What Information Did Nissan Submit to Support Its Petition for Amendment?

The exclusion which we granted to Nissan on June, 21, 2002, is a conditional exclusion. In order for its exclusion to have remained effective, Nissan has performed verification testing on its delisted F019 waste water treatment sludge. Constituents tested for by the required verification testing were previously identified for Nissan by EPA in the June 21, 2002, final exclusion. The constituents identified were those detected in initial analysis of Nissan's F019 waste water treatment sludge.

Nissan has submitted its verification testing results to EPA as required in the June 21, 2002, Final Rule. A summary of the maximum values detected from samples of Nissan's F019 waste for each of Nissan's verification testing constituents are presented in Table 1 below. The values presented were identified from a review of the verification testing results as well as the initial testing results which were performed to identify the verification testing constituents.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1] WWTP FILTER CAKE

Inorganic constituents	Total constituent concentration (mg/kg)	TCLP leachate concentration (mg/l)
Barium	6600.0	0.18
Cadmium	6.0	<0.010
Chromium	160.00	<0.050
Lead	390.0	<0.0050
Nickel	4600	<0.050
4-Methyl-phenol (p-cresol)	.....	0.31
Bis (2-ethylhexyl) phthalate	.....	<0.050
Di-n-octyl phthalate	.....	<0.050
Cyanide	3.2	0.0095

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

< Denotes that the constituent was not detected at the concentration specified in the table.

The verification testing program specified by the current exclusion for Nissan requires leachate constituent analysis for the metal and organic constituents. In addition, analysis for *totals levels for each of the metal* constituents as well as cyanide is also currently required.

B. How did EPA evaluate risk for the November 19, 2001, Nissan petition and this proposed amendment?

In the rule proposed on November 19, 2001, and this proposed amendment, EPA has determined the delisting levels for Nissan's F019 waste water treatment plant sludge based on the following: (1) EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP model) as used in EPA, Region 6's Delisting Risk Assessment Software (DRAS); (2) use of DRAS-calculated levels based on Safe Drinking Water Act Maximum Contaminant Levels (MCLs) if more conservative delisting levels would be obtained; (3) use of the Multiple Extraction Procedure (MEP), SW–846 Method 1320, to evaluate the long-term resistance of the waste to leaching in a landfill; (4) setting limits on total concentrations of constituents in the waste.

C. What Conclusion Did EPA Reach?

EPA believes that the information provided by Nissan provides a reasonable basis to grant Nissan's petition for an amendment to its current delisting. We, therefore, propose to grant Nissan an amendment for an increase in waste volume. The data submitted to support the petition and the Agency's evaluation show that the constituents in the Nissan wastewater treatment sludge filter cake are below health-based levels used by the Agency for delisting decision-making even at the increased maximum annual waste volume of 3500 cubic yards.

For this delisting determination, we used information gathered to identify plausible exposure routes (*i.e.*, groundwater, surface water, air) for hazardous constituents present in the petitioned waste. We determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for Nissan's petitioned waste. We applied the Delisting Risk Assessment Software (DRAS) described above to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal, and we determined the potential impact of the disposal of Nissan's petitioned waste on human health and the environment. In assessing potential risks to groundwater, we used the increased maximum waste volume and the maximum measured or calculated leachate concentrations as inputs to the DRAS program to estimate the constituent concentrations in the groundwater at a hypothetical receptor well downgradient from the disposal site. Using an established risk level, the DRAS program can back-calculate receptor well concentrations (referred to as a compliance-point concentration) using standard risk assessment algorithms and Agency health-based numbers.

EPA Region 4 generally defines acceptable risk levels for the delisting program as wastes with an excess cancer risk of no more than 1×10^{-5} and a hazard quotient of no more than 1.0 for individual constituents.

Using the maximum compliance-point concentrations and the EPACMTP fate and transport modeling factors, the DRAS further back-calculates the maximum waste constituent concentrations which would not exceed the compliance-point concentrations in groundwater.

The Agency believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible groundwater contamination resulting from disposal of the petitioned waste in a landfill and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of the RCRA Subtitle C program. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

Similarly, the DRAS used the increased waste volume requested in the petition and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.*, volatilization or wind-blown particulate from the landfill). As in the groundwater analyses, the DRAS uses the established acceptable risk level, the health-based data, and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations. In most cases, because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict, and does not presently control, how a petitioner will manage a waste after it is excluded. Therefore, we believe that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model.

As a condition of Nissan's current delisting, Nissan must continue to test for a list of verification constituents. Based on the increased waste volume requested in the petition, new proposed maximum allowable leachate concentrations and maximum allowable total constituent concentrations (as explained below) for these constituents were derived by back-calculating from the delisting health-based levels through the proposed fate and transport model for a landfill management scenario. The maximum allowable concentration of the verification constituents, both in leachate and totals levels, were recalculated for each of the current verification constituents. These concentration limits are shown in Table 2 below.

TABLE 2.—MAXIMUM ALLOWABLE CONCENTRATION OF CONSTITUENTS IN LEACHATE OR IN WASTE [1]

Constituent	Maximum allowable leachate concentration (mg/l)	Maximum allowable total concentration (mg/kg)
Barium	1.00e+02	6.16e+07
Cadmium	1.00e+00	6.43e+05
Chromium	5.00e+00	1.93e+09
Lead	5.00e+00	4.56e+05
Nickel	6.07e+01	2.57e+07
Cyanide	7.73e+00	2.57e+07
Bis(2-ethylhexyl)phthalate	6.01e−01	.....
p-Cresol	7.66e+00	.....
Di-n-octyl phthalate	7.52e−02	.....

[1] The term "e" in the table is a variation of "scientific notation" in base 10 exponential form and is used in this table because it is a convenient way to represent very large or small numbers. For example, 3.00e–03 is equivalent to 3.00×10^{-3} and represents the number 0.003.

The Final Rule published in the **Federal Register** on June 21, 2002, (67 FR 41287) included maximum allowable total concentration limits for each of the inorganic constituents and cyanide for which Nissan would be required to perform verification testing results. Upon a comparative review of the maximum total constituent levels analyzed for as shown in Table 1 to the maximum allowable levels of these constituents as calculated by the DRAS model, EPA is proposing to remove the requirement from the June 21, 2002, Final Rule which requires Nissan to

analyze its verification samples for the currently specified total values. This proposal is being made based upon a comparison made by EPA between the results of such totals analysis shown in Table 1 as compared to the totals levels calculated for these constituents by the DRAS model in Table 2. The maximum allowable verification levels for total constituent levels shown in Table 2 are in excess of an order of magnitude of three (10^3) times greater than the results of the sample analysis performed by Nissan for totals values shown in Table 1.

III. Conditions for Exclusion

A. What Are the Maximum Allowable Concentrations of Hazardous Constituents?

The following table (Table 3) summarizes the maximum allowable constituent concentrations (delisting levels) which EPA is proposing for Nissan's waste. We recalculated these delisting levels for each constituent that is part of Nissan's current delisting using the DRAS and the increased maximum annual waste volume of 3500 cubic yards. These proposed delisting levels were derived from the health-based calculations performed by the DRAS program using either strict health-based levels or MCLs, or from Toxicity Characteristic regulatory levels, whichever resulted in a lower (*i.e.*, more conservative) concentration.

TABLE 3.—MAXIMUM ALLOWABLE CONCENTRATION OF CONSTITUENTS IN LEACHATE OR IN WASTE [1]

Constituent	Maximum allowable leachate concentration (mg/l)
Barium	1.00e+02
Cadmium	1.00e+00
Chromium	5.00e+00
Lead	5.00e+00
Nickel	6.07e+01
Cyanide	7.73e+00
Bis(2-ethylhexyl)phthalate	6.01e−01
p-Cresol	7.66e+00
Di-n-octyl phthalate	7.52e−02

[1] The term "e" in the table is a variation of "scientific notation" in base 10 exponential form and is used in this table because it is a convenient way to represent very large or small numbers. For example, 3.00e–03 is equivalent to 3.00×10^{-3} and represents the number 0.003.

The current maximum allowable constituent concentrations (delisting levels) for Nissan as found in 40 CFR 261 Appendix IX, Table 1, are specified as leachate concentrations for inorganic and organic constituents and cyanide, and as total constituent concentrations for inorganic constituents for reasons set forth previously in the Proposed Rule published in the **Federal Register** on November 19, 2001 (223 FR 57918).

B. How Frequently Must Nissan Test the Waste and How Must It Be Managed Until It Is Disposed?

Nissan must continue to test and manage its waste according to the conditions set forth in its current delisting. We are not proposing in this amendment to change the method of sample collection, the frequency of sample analyses or the waste holding procedures currently specified in EPA's final decision in the **Federal Register** on June 21, 2002, (67 FR 41287), except the total constituent analyses, which no longer will be required.

C. What Must Nissan Do If the Process Changes?

We are not proposing to change the conditions regarding process changes as set forth in EPA's final decision in the **Federal Register** on June 21, 2002, (67 FR 41287).

D. What Data Must Nissan Submit?

We are not proposing to change the data Nissan is required to submit as specified in EPA's final decision in the **Federal Register** on June 21, 2002, (67 FR 41287).

E. What Happens If Nissan Fails to Meet the Conditions of the Exclusion?

We are not proposing to change the reopener language Nissan is required to comply with as specified in EPA's final decision in the **Federal Register** on June 21, 2002, (67 FR 41287).

IV. Effect on State Authorizations

This proposed amendment, if promulgated, would be issued under the Federal RCRA delisting program. States, however, may impose more stringent regulatory requirements than EPA pursuant to Section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (RCRA) or State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (*i.e.*, to make their own delisting decisions). Therefore, this proposed amendment, if promulgated, may not apply in those authorized States, unless it is adopted by the State. If the petitioned waste is managed in any State with delisting authorization, Nissan must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

V. Effective Date

EPA is today making a tentative decision to grant Nissan's petition for amendment. This proposed rule, if made final, will become effective immediately upon such final publication. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for a facility generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective

immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedures Act, 5 U.S.C. 553(d).

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a "regulatory action" subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Public Comments

A. How May I as an Interested Party Submit Comments?

The EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to the Chief, North Section, RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303. Send a third copy to Mr. Mike Apple, Director, Division of Solid Waste Management, Tennessee Department of Environment and Conservation, 5th Floor, L&C Tower, 401 Church Street, Nashville, Tennessee 37243–1535. You should identify your comments at the top with this regulatory docket number: R$DLP–0401–Nissan.

You should submit requests for a hearing to Narrindar M. Kumar, Chief, RCRA Enforcement and Compliance Branch, Waste Division, U.S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at the U.S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303.

It is available for viewing in the EPA Freedom of Information Act Review Room from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (404) 562–8614 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VIII. Regulatory Impact

Under Executive Order 12866, the EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of the EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from the EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

IX. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on small entities. This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of the EPA's hazardous waste regulations and would be limited to one facility. Accordingly, the EPA hereby certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

X. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96 511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050 0053.

XI. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, the EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for the EPA rules under section 205 of the UMRA, the EPA must identify and consider alternatives. The alternatives must include the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before the EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA

a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of the EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that this delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

XII. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that the EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XIII. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply. Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, the EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to have "meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XIV. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the EPA is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by the EPA, the Act requires that the EPA provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the EPA has no need to consider the use of voluntary consensus standards in developing this final rule.

XV. Executive Order 13132 Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires the EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Section 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: June 9, 2005.

Jon D. Johnston,

Acting Director, Waste Management Division, Region 4.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX, part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under Secs. 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * *
Nissan North America, Inc	Smyrna, Tennessee	Wastewater treatment sludge (EPA Hazardous Waste No. F019) that Nissan North America, Inc. (Nissan) generates by treating wastewater from the automobile assembly plant located at 983 Nissan Drive in Smyrna, Tennessee. This is a conditional exclusion for up to 3,500 cubic yards of waste (hereinafter referred to as "Nissan Sludge") that will be generated each year and disposed in a Subtitle D landfill after [Publication Date of the Final Rule]. Nissan must continue to demonstrate that the following conditions are met for the exclusion to be valid. (1) Delisting Levels: All leachable concentrations for these metals, cyanide, and organic constituents must not exceed the following levels (ppm): Barium—100.0; Cadmium—0.422; Chromium—5.0; Cyanide—7.73, Lead—5.0; and Nickel—60.7; Bis—(2-ethylhexyl) phthalate—0.601; Di-n-octyl phthalate—0.0752; and 4–Methylphenol—7.66. These concentrations must be measured in the waste leachate obtained by the method specified in 40 CFR 261.24, except that for cyanide, deionized water must be the leaching medium. Cyanide concentrations in waste or leachate must be measured by the method specified in 40 CFR 268.40, Note 7. (2) Verification Testing Requirements: Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies, where specified by regulations in 40 CFR parts 260–270. Otherwise, methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the Nissan Sludge meet the delisting levels in Condition (1). Nissan must perform an annual testing program to demonstrate that the constituent concentrations measured in the TCLP extract do not exceed the delisting levels established in Condition (1). If the levels of constituents measured in Nissan's annual testing program do not exceed the levels set forth in Condition (1), then the Nissan Sludge is non-hazardous and must be managed in accordance with all applicable solid waste regulations. If constituent levels in a composite sample exceed any of the delisting levels set forth in Condition (1), the batch of Nissan Sludge generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA. (4) Changes in Operating Conditions: Nissan must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are implemented. EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify Nissan in writing that the Nissan Sludge must be managed as hazardous waste F019 until Nissan has demonstrated that the wastes meet the delisting levels set forth in Condition (1) and any levels established by EPA for the additional constituents of concern, and Nissan has received written approval from EPA. If EPA determines that the changes do not result in additional constituents of concern, EPA will notify Nissan, in writing, that Nissan must verify that the Nissan Sludge continues to meet Condition (1) delisting levels. (5) Data Submittals: Data obtained in accordance with Condition (2) must be submitted to Narindar M. Kumar, Chief, RCRA Enforcement and Compliance Branch, Mail Code: 4WD–RCRA, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. The submission is due no later than 60 days after taking each annual verification samples in accordance with delisting Conditions (1) through (7). Records of analytical data from Condition (2) must be compiled, summarized, and maintained by Nissan for a minimum of three years, and must be furnished upon request by EPA or the State of Tennessee, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(6) Reopener Language: (A) If, at any time after disposal of the delisted waste, Nissan possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, Nissan must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (B) If the testing of the waste, as required by Condition (2)(B), does not meet the delisting requirements of Condition (1), Nissan must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (C) Based on the information described in paragraphs (6)(A) or (6)(B) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If EPA determines that the reported information does require Agency action, EPA will notify the facility in writing of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Nissan with an opportunity to present information as to why the proposed action is not necessary. Nissan shall have 10 days from the date of EPA's notice to present such information. (E) Following the receipt of information from Nissan, as described in paragraph (6)(D), or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment, given the information received in accordance with paragraphs (6)(A) or (6)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise. (7) Notification Requirements: Nissan must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.

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[FR Doc. 05–12579 Filed 6–23–05; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

45 CFR Part 61

RIN 0906–AA46

Office of the Secretary, Health Care Fraud and Abuse Data Collection Program: Reporting of Final Adverse Actions; Correction

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Proposed correction amendment.

SUMMARY: This document proposes a correction to the final regulations, which were published in the **Federal Register** on October 26, 1999 (64 FR 57740). These regulations established a national health care fraud and abuse data collection program for the reporting and disclosing of certain adverse actions taken against health care providers, suppliers and practitioners, and for maintaining a data base of final adverse actions taken against health care providers, suppliers and practitioners. An inadvertent error appeared in the text of the regulations concerning the definition of the term "any other negative action or finding." As a result, we are proposing to correct 45 CFR 61.3, Definitions, to assure the technical correctness of these regulations.

DATES: To assure consideration, public comments must be mailed and delivered to the address provided below by no later than 5 p.m., July 25, 2005.

ADDRESSES: Please mail or deliver your written comments to the following address: Department of Health and Human Services, Office of Inspector General, Attention: OIG–46–CA2, 330 Independence Avenue, SW., Room 5246, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, OIG Regulations Officer Office of External Affairs, (202) 619–0089.

SUPPLEMENTARY INFORMATION: The HHS Office of Inspector General (OIG) issued final regulations on October 26, 1999 (64 FR 57740) that established a national health care fraud and abuse data collection program—the Healthcare Integrity and Protection Data Bank (HIPDB)—for the reporting and disclosing of certain final adverse actions taken against health care providers, suppliers and practitioners, and for maintaining a data base of final adverse actions taken against health care providers, suppliers and practitioners. The final rule established a new 45 CFR part 61 to implement the requirements for reporting of specific data elements to, and procedures for obtaining information from, the HIPDB. In that final rule, an inadvertent error appeared in § 61.3—the definitions section of the regulations—and is now being proposed for correction.

Section 61.3 expanded on previous regulatory definitions and provided additional examples of the scope of various terms set fort in the statute. On page 57755 of the preamble, summarizing the various revisions being made to the final rule, we indicated that with respect to the definition for the term "any other negative action or finding" there are certain kinds of actions or findings that would not meet the intent of the statute and *not* be

construction permit conditions are permanent. Thus, WDNR has resolved this deficiency identified in the NOD.

3. Federal Enforceability

The NOD cited Wisconsin for failure to comply with 40 CFR 70.6(b), which provides that all terms and conditions in a title V permit are federally enforceable, that is, enforceable by EPA or citizens. However, the permitting authority can designate as not federally enforceable any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. 40 CFR 70.6(b)(2). In contrast, EPA has determined that all conditions of a permit issued pursuant to a program approved into a state's SIP are federally enforceable. 40 CFR 52.23. (See the May 20, 1999 letter from John Seitz to Robert Hodanbosi and Charles Lagges.)

Wisconsin had identified all permit requirements in title V permits originating from Wisconsin's air toxics program (Wis. Admin. Code NR 445) as enforceable by the State only, even when the requirements were established in a permit issued pursuant to a SIP-approved program, such as a construction permit. Wisconsin's failure to include the terms established in a permit issued pursuant to a SIP-approved program into the federally enforceable side of its title V permits was contrary to 40 CFR 70.6.

In its NOD Resolution, WDNR included the internal guidance memorandum, "Interface Between Construction and Operation Permits", cited above. This memorandum directs the permit writers to make federally enforceable any requirement in the title V permit that was included in the source's construction permit issued pursuant to a SIP-approved program. EPA has determined that WDNR has addressed this program implementation issue identified in the NOD.

4. Insignificant Emission Unit Requirements

40 CFR 70.5(c) authorizes EPA to approve as part of a state program a list of insignificant activities and emission levels (IEUs) which need not be included in the permit application, provided that the application may not omit information needed to determine the applicability of, or to impose, any applicable requirement. Nothing in part 70, however, authorizes a state to exempt IEUs from the permit content requirements of 40 CFR 70.6.

Wisconsin's regulations, at NR 407, contain criteria for sources to identify IEUs in their applications, and require that permit applications contain information necessary to determine the applicability of, or to impose, any applicable requirement. However, WDNR did not include in its title V permits federally enforceable applicable requirements to which IEUs are subject. Therefore, Wisconsin's interpretation and implementation of its regulations was inconsistent with part 70.

WDNR included in its NOD Resolution an example of a revised title V permit template establishing the changes it has implemented in order to address this issue. WDNR has revised its title V permits to include the source's IEU's under the federally enforceable portion of the permit. WDNR has also included the requirements applicable to the IEU's as part of the general terms and conditions for each permit. Thus, EPA has determined that WDNR has adequately addressed this program implementation issue identified in the NOD.

III. What Action Is EPA Taking and What Does This Mean?

EPA is notifying the public that based on the information provided by WDNR; internal operational changes within WDNR; and EPA's approval of statutory changes requested by Wisconsin, that EPA has determined that Wisconsin has resolved each of deficiencies identified by EPA in the NOD for Wisconsin's Operating Permit Program, 69 FR 10167 (March 4, 2004). Therefore, based on the rationale set forth above, EPA is not invoking sanctions pursuant to section 179(b) of the Act, nor administering any portion of the State's operation permit program, pursuant to 40 CFR 70.10(b)(4).

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 et seq.

Dated: February 16, 2006.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 06–1797 Filed 2–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–8037–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Amendment

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA, also the Agency or we in this preamble) today is granting a petition to modify an exclusion (or delisting) from the lists of hazardous waste previously granted to Nissan North America, Inc. (Nissan) in Smyrna, Tennessee. This action responds to a petition for amendment submitted by Nissan to increase the maximum annual volume of waste and to eliminate the total concentration limits in its wastewater treatment sludge covered by its current exclusion. After careful analysis, we have concluded the petitioned waste does not present an unacceptable risk when disposed of in a Subtitle D (nonhazardous waste) landfill. This exclusion applies to F019 wastewater treatment sludge generated by Nissan at its facility in Smyrna, Tennessee. Accordingly, this final amendment conditionally excludes a specific yearly volume of the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when the petitioned waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

DATES: *Effective Date:* February 27, 2006.

ADDRESSES: The RCRA regulatory docket for this final amendment is located at the EPA Library, U.S. Environmental Protection Agency Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, and is available for you to view from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general and technical information concerning this final rule, please contact Kris Lippert, RCRA Enforcement and Compliance Branch (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW.,

Atlanta, Georgia 30303, (404) 562–8605, or call, toll free (800) 241–1754. Questions may also be e-mailed to Ms. Lippert at *lippert.kristin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview Information

A. What Action Is EPA Finalizing?

After evaluating Nissan's petition, we are amending the current Nissan's delisting published in the **Federal Register** on June 21, 2002 (67 FR 42187) to increase the maximum annual waste volume that is covered by its exclusion from 2,400 cubic yards to 3,500 cubic yards and to eliminate the total concentration limits for barium, cadmium, chromium, cyanide, lead, and nickel for its F019 wastewater treatment sludge from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA). The waste will still be subject to local, State, and Federal regulations for nonhazardous solid wastes.

B. Why Is EPA Approving This Petition for Amendment?

Nissan petitioned EPA to exclude the increased volume of its F019 wastewater treatment sludge because it does not believe, even at the increased volume, that the petitioned waste meets the criteria for which it was listed. EPA is also eliminating the total concentration limits for barium, cadmium, chromium, cyanide, lead, and nickel from its F019 wastewater treatment sludge.

Nissan believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as factors (including additional constituents) other than those for which the waste was listed, as required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See, section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(a)(1) and (2).

For reasons stated in both the proposed amendment and this document, we believe that Nissan's F019 wastewater treatment sludge should continue to be excluded from hazardous waste control at the increased volume. EPA also believes that eliminating all total concentration limits will not harm human health and the environment when disposed in a nonhazardous waste landfill, if the required delisting levels are met. Therefore, we are granting the final amendment to Nissan, located in Smyrna, Tennessee, for its F019 wastewater treatment sludge, generated at a maximum annual volume of 3,500 cubic yards.

C. What Are the Terms of This Exclusion?

This amended exclusion applies to the waste described in the petition only if the requirements described above as well as in Table 1 of Appendix IX to part 261 of Title 40 of the Code of Federal Regulations are satisfied. The maximum annual volume of the wastewater treatment sludge is 3,500 cubic yards.

D. When Is the Final Amendment Effective?

This rule is effective February 27, 2006. HSWA amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. For these same reasons, this rule can become effective immediately (that is, upon publication in the **Federal Register**) under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

E. How Does This Action Affect States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be directly affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received EPA's authorization to make their own delisting decisions. We describe these two situations below.

We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State, or that prohibits a Federally issued exclusion from taking effect in the State until the State approves the exclusion through a separate State administrative action. Because a dual system (that is, both Federal and State programs) may regulate a petitioner's waste, we urge petitioners to contact the applicable State regulatory authorities or agencies to establish the status of their waste under that State's program.

We have also authorized some States to administer a delisting program in place of the Federal program; that is, to make State delisting decisions. Therefore, this exclusion does not necessarily apply within those authorized States. If Nissan transports the petitioned waste to, or manages the waste in, any State with delisting authorization, Nissan must obtain delisting approval from that State before it can manage the waste as nonhazardous in that State.

In order for this amendment to be effective in an authorized State, that State must adopt this amendment through its State administrative process.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a formal request from a generator to EPA or another agency with jurisdiction to exclude from the lists of hazardous waste regulated by RCRA, a waste that the generator believes should not be considered hazardous.

B. What Regulations Allow Hazardous Waste Generators to Delist Waste?

Under 40 CFR 260.20 and 260.22, a generator may petition EPA to remove its waste from hazardous waste control by excluding it from the lists of hazardous wastes contained in 40 CFR 261.31, 261.32 and 261.33. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273 of Title 40 of the Code of Federal Regulations. 40 CFR 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. A generator can petition EPA for an amendment to an existing exclusion under these same provisions of the Code of Federal Regulations.

C. What Information Must the Generator Supply?

A petitioner must provide sufficient information to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine that the waste is not hazardous for any other reason.

III. EPA's Evaluation of the Waste Data

A. What Waste Is the Subject of This Amendment?

Nissan operates a light-duty vehicle manufacturing facility in Smyrna, Tennessee. As a result of Nissan's use of aluminum as a component in its automobile bodies, Nissan generates a sludge meeting the listing definition of F019 at 40 CFR 261.31. Nissan was granted its current Federal delisting exclusion for this F019 wastewater treatment sludge at a maximum annual volume of 2,400 cubic yards on June 21, 2002 (67 FR 42187).

A full description of this waste and the Agency's evaluation of the original Nissan's petition are contained in the "Proposed Rule and Request for Comments" published in the **Federal Register** on November 19, 2001 (66 FR 57918). After evaluating public comment on the proposed rule, we published a final decision in the **Federal Register** on June 21, 2002 (67 FR 42187), to exclude Nissan's wastewater treatment sludge derived from the treatment of EPA Hazardous Waste No. F019 from the list of hazardous wastes found in 40 CFR 261.31. The hazardous constituents of concern for which F019 was listed are hexavalent chromium and cyanide (complexed). Nissan petitioned the EPA to exclude its F019 waste because Nissan does not use either of these constituents in the manufacturing process. Therefore, Nissan did not believe that the waste meets the criteria of the listing. EPA's final decision to grant the delisting exclusion on June 21, 2002, was conditioned on the following delisting levels: (1) Delisting Levels: All leachable concentrations for these metals, cyanide, and organic constituents must not exceed the following levels (ppm): Barium-100.0; Cadmium-0.422; Chromium-5.0; Cyanide-7.73, Lead-5.0; and Nickel-60.7; Bis-(2-ethylhexyl) phthalate-0.601; Di-n-octyl phthalate-0.0752; and 4-Methylphenol-7.66; (2) the total concentration of cyanide (total, not amenable) in the waste, not the waste leachate, must not exceed 200 mg/kg; and (3) the total concentrations, in mg/kg, of the metals in the waste, not the waste leachate, must not exceed the following levels: Barium-20,000; Cadmium-500; Chromium-1,000; Lead-2,000; and Nickel-20,000. If the waste exceeded any of the delisting limits, then the waste has to be managed as hazardous waste.

B. How Did EPA Evaluate This Petition?

In support of its original petition, Nissan submitted: (1) Descriptions of its manufacturing and wastewater treatment processes, the generation point of the petitioned waste, and the manufacturing steps that will contribute to its generation; (2) Material Safety Data Sheets (MSDSs) for materials used to manufacture vehicles; (3) the minimum and maximum annual amounts of wastewater treatment sludge typically generated, and an estimate of the maximum annual amount expected to be generated in the future; (4) results of analysis of the currently generated waste at the Nissan plant in Smyrna, Tennessee for chemicals in Appendix IX of 40 CFR part 264: 17 metals; cyanide; 58 volatile organic compounds and 124 semi-volatile organic compounds; and, in addition to the Appendix IX list, hexavalent chromium; (5) results of the analysis for those chemicals (i.e., Appendix IX list, hexavalent chromium) and fluoride in the leachate obtained from this waste by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311); (6) results of the determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity, in these wastes; (7) results of determinations percent solids; and (8) results of a dye tracer study and source inventory of Nissan's industrial wastewater system.

EPA reviewed the allowable total concentrations in the waste, as calculated by DRAS for the waste, to determine if increasing the maximum annual waste volume from 2,400 cubic yards to 3,500 cubic yards would be still protective to human health and the environment. The allowable total concentrations, according to the DRAS, were all at least 1,000 times greater than the actual maximum total concentrations found in the waste. Based on the DRAS results, EPA grants Nissan's petition for amendment to increase the maximum annual waste volume to 3,500 cubic yards and to eliminate all total concentration limits.

IV. Public Comments on the Proposed Amendment

A. Who Submitted Comments on the Proposed Rule?

We received no public comments on Nissan's Proposed Amendment and Request for Comments published in the **Federal Register** on June 24, 2005 (70 FR 36547).

V. Administrative Assessments

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a "regulatory action" subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), or to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The Congressional Review Act, 5 U.S.C. 801 et seq. as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: December 1, 2005.

Beverly H. Banister,

Acting Director, Waste Management Division.

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

■ 2. In Table 1 of Appendix IX, part 261 revise the entry for Nissan North America, Inc., to read as follows:

Appendix IX to Part 261—Wastes Excluded Under Secs. 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Nissan North America, Inc.	Smyrna, Tennessee	Wastewater treatment sludge (EPA Hazardous Waste No. F019) that Nissan North American, Inc. (Nissan) generates by treating wastewater from automobile assembly plant located on 983 Nissan Drive in Smyrna, Tennessee. This is a conditional exclusion for up to 3,500 cubic yards of waste (hereinafter referred to as "Nissan Sludge") that will be generated each year and disposed in a Subtitle D landfill after February 27, 2006. Nissan must continue to demonstrate that the following conditions are met for the exclusion to be valid. (1) *Delisting Levels:* All leachable concentrations for these metals, cyanide, and organic constituents must not exceed the following levels (ppm): Barium-100.0; Cadmium-0.422; Chromium-5.0; Cyanide-7.73, Lead-5.0; and Nickel-60.7; Bis-(2-ethylhexyl) phthalate-0.601; Di-n-octyl phthalate-0.0752; and 4–Methylphenol-7.66. These concentrations must be measured in the waste leachate obtained by the method specified in 40 CFR 261.24, except that for cyanide, deionized water must be the leaching medium. Cyanide concentrations in waste or leachate must be measured by the method specified in 40 CFR 268.40, Note 7. (2) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A, (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the Nissan Sludge meet the delisting levels in Condition (1). Nissan must perform an annual testing program to demonstrate that constituent concentrations measured in the TCLP extract do not exceed the delisting levels established in Condition (1). (3) *Waste Holding and Handling:* Nissan must hold sludge containers utilized for verification sampling until composite sample results are obtained. If the levels of constituents measured in Nissan's annual testing program do not exceed the levels set forth in Condition (1), then the Nissan Sludge is non-hazardous and must be managed in accordance with all applicable solid waste regulations. If constituent levels in a composite sample exceed any of the delisting levels set forth in Condition (1), the batch of Nissan Sludge generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA. (4) *Changes in Operating Conditions:* Nissan must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are implemented. EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify Nissan in writing that the Nissan Sludge must be managed as hazardous waste F019 until Nissan has demonstrated that the wastes meet the delisting levels set forth in Condition (1) and any levels established by EPA for the additional constituents of concern, and Nissan has received written approval from EPA. If EPA determines that the changes do not result in additional constituents of concern, EPA will notify Nissan, in writing, that Nissan must verify that the Nissan Sludge continues to meet Condition (1) delisting levels.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) *Data Submittals:* Data obtained in accordance with Condition (2) must be submitted to Narindar M. Kumar, Chief, RCRA Enforcement and Compliance Branch, Mail Code: 4WD–RCRA, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. The submission is due no later than 60 days after taking each annual verification samples in accordance with delisting Conditions (1) through (7). Records of analytical data from Condition (2) must be compiled, summarized, and maintained by Nissan for a minimum of three years, and must be furnished upon request by EPA or the State of Tennessee, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). (6) *Reopener Language:* (A) If, at any time after disposal of the delisted waste, Nissan possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, Nissan must report the data, in writing, to EPA and Tennessee within 10 days of first possessing or being made aware of that data. (B) If the testing of the waste, as required by Condition (2), does not meet the delisting requirements of Condition (1), Nissan must report the data, in writing, to EPA and Tennessee within 10 days of first possessing or being made aware of that data. (C) Based on the information described in paragraphs (6)(A) or (6)(B) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If EPA determines that the reported information does require Agency action, EPA will notify the facility in writing of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Nissan with an opportunity to present information as to why the proposed action is not necessary. Nissan shall have 10 days from the date of EPA's notice to present such information. (E) Following the receipt of information from Nissan, as described in paragraph (6)(D), or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment, given the information received in accordance with paragraphs (6)(A) or (6)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise. (7) *Notification Requirements:* Nissan must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.

* * * * * * *

[FR Doc. 06–1790 Filed 2–24–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R01–RCRA–2006–0062; FRL–8038–3]

New Hampshire: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of New Hampshire has applied to EPA for Final authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this immediate final action.

DATES: This Final authorization will become effective on April 28, 2006 unless EPA receives adverse written comment by March 29, 2006. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R01–RCRA–2006–0062. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information might not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard

ATTACHMENT 3.5

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the final rules section and the proposed rule located in the proposed rules section of the **Federal Register** published on March 20, 2001.

Dated: May 3, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–11911 Filed 5–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6958–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to use the Delisting Risk Assessment Software (DRAS) in the evaluation of a delisting petition. Based on waste specific information provided by the petitioner, EPA is proposing to use the DRAS to evaluate the impact of the petitioned waste on human health and the environment.

The EPA is also proposing to grant a petition submitted by Tenneco Automotive, Inc. (Tenneco) to exclude (or delist) certain solid wastes generated by its Paragould, Arkansas, facility from the lists of hazardous wastes contained in 40 CFR 261.24 and 261.31 (hereinafter all sectional references are to 40 CFR unless otherwise indicated).

Tenneco submitted the petition under sections 260.20 and 260.22(a). Section 260.20 allows any person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 266, 268 and 273. Section 260.22(a) specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude that Tenneco's petitioned waste is nonhazardous with respect to the original listing criteria and that the stabilization process Tenneco used will substantially reduce the likelihood of migration of constituents from this waste. We would also conclude that their process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: We will accept comments until June 25, 2001. We will stamp comments received after the close of the comment period as "late." These "late" comments may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by June 11, 2001. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send three copies of your comments. You should send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. You should send a third copy to the Arkansas Department of Environmental Quality (ADEQ), P.O. Box 8913, Little Rock, Arkansas, 72209–8913. Identify your comments at the top with this regulatory docket number: "F–00–ARDEL–TENNECO."

You should address requests for a hearing to the Director, Carl Edlund, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Michelle Peace at (214) 665–7430.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

A. What Action Is EPA Proposing?

The EPA is proposing:

(1) To grant Tenneco's petition to have its stabilized sludge excluded, or delisted, from the definition of a hazardous waste; and

(2) To use a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency would use this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

B. Why Is EPA Proposing To Approve This Delisting?

Tenneco's petition requests a delisting for listed hazardous wastes. Tenneco does not believe that the petitioned waste meets the criteria for which EPA listed it. Tenneco also believes no additional constituents or factors could cause the waste to be hazardous. The EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the

waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. The EPA believes that the petitioned waste does not meet these criteria. The EPA's proposed decision to delist waste from Tenneco's facility is based on the information submitted in support of today's rule, *i.e.*, descriptions of the wastes and analytical data from the Paragould facility.

C. How Will Tenneco Manage the Waste if It Is Delisted?

Tenneco currently stores the petitioned waste (stabilized sludge) generated in containment vaults on-site at its facility. If the delisting exclusion is finalized, Tenneco will dispose of the sludge in a solid waste landfill in Arkansas.

D. When Would EPA Finalize the Proposed Delisting?

RCRA section 3001(f) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on today's proposal.

RCRA section 3010(b)(1) at 42 U.S.C. 6930(b)(1), allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

The EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How Would This Action Affect the States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received authorization from EPA to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States unless that State makes the rule part of its authorized program. If Tenneco transports the petitioned waste to or manages the waste in any State with delisting authorization, Tenneco must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, sections 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does It Require of a Petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions the Agency because it does not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which EPA lists a waste are in part 261 and further explained in the background documents for the listed waste.

In addition, under section 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See part 261 and the background documents for the listed waste.)

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the waste.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in section 260.22(a) and section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

The EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See § 261.3(a)(2)(iii) and (iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and

remain hazardous wastes until excluded.

The "mixture" and "derived-from" rules are now final, after having been vacated, remanded, and reinstated. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to EPA on procedural grounds. See *Shell Oil Co.* v. *EPA.*, 950 F.2d 741 (D.C. Cir. 1991). EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues. See 57 FR 7628 (March 3, 1992). These rules became final on October 30, 1992. See 57 FR 49278 (October 30, 1992). Consult these references for more information about mixtures and derived from wastes.

III. EPA's Evaluation of the Waste Information and Data

A. What Waste Did Tenneco Petition EPA To Delist?

On September 8, 2000, Tenneco petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, stabilized sludge excavated from the Finch Road Landfill in Paragould, Arkansas. The waste falls under the classification of listed waste because of the "derived from" rule in 40 CFR 261.3. Specifically, in its petition, Tenneco requested that EPA grant an exclusion for 1,800 cubic yards of dewatered sludge resulting from its hazardous waste treatment process. The resulting waste is listed, in accordance with the "derived from" rule.

B. What Is Tenneco, and How Did It Generate This Waste?

In 1973, Monroe Auto Equipment Company (now Tenneco Automotive, Inc.) purchased a seven-acre tract of land, which included an inactive sand and gravel borrow pit. This site was approved by the State to be used as a landfill. Approximately 15,400 cubic yards of waste water treatment sludge was deposited in the borrow pit between 1973 and 1978, the sludge originated from settling ponds that were used for the treated waste water from Tenneco's Paragould manufacturing plant. In 1996, a Superfund Record of Decision (ROD) was issued pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan at 40 CFR 300.430(f)(5) for the Finch Road Landfill. The ROD specified the requirements for remediation of the soil and groundwater at the site. In 1999, Tenneco submitted a petition to modify the ROD to include the excavation, treatment, and off-disposal of the waste in a Subtitle D landfill.

The Superfund removal action consisted of the excavation and segregation of the sludge; stabilizing the sludge with 10 percent lime addition; and stockpiling the stabilized sludge in an on-site lined containment cell.

The waste would not have been classified as RCRA hazardous waste in its original state because it was generated and placed in the Finch Road landfill prior to RCRA regulation. The stabilized sludge currently falls under the classification of listed waste because of the management (removal action) of the material occurred after the effective date of the rules in 1980. It is listed as F006, sludge from electroplating operations, based upon its original source. The waste code of the constituents of concern is EPA Hazardous Waste No. F006. The constituents of concern for F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

C. What Information and Analyses Did Tenneco Submit To Support Its Petition?

To support its petition, Tenneco submitted:

(1) historical information on past waste generation and management practices;

(2) results of the total constituent list for 40 CFR part 264, appendix IX volatiles, semivolatiles, and metals except pesticides, herbicides, and PCBs;

(3) results of the constituent list for appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

(4) results from total oil and grease analyses and pH measurements.

D. What Were the Results of Tenneco's Analysis?

The EPA believes that the descriptions of the Tenneco analytical characterization provide a reasonable basis to grant Tenneco's petition for an exclusion of the stabilized sludge. The EPA believes the data submitted in support of the petition show the stabilized sludge is non-hazardous. Analytical data for the stabilized sludge samples were used in the DRAS. The data summaries for detected constituents are presented in Tables I. The EPA has reviewed the sampling procedures used by Tenneco and has determined they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations in the stabilized sludge. The data submitted in support of the petition show that constituents in Tenneco's waste are presently below health-based levels used in the delisting decision-making. The EPA believes that Tenneco has successfully demonstrated that the stabilized sludge is non-hazardous.

TABLE I.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS STABILIZED SLUDGE [1]

Constituent	Total constituent analyses (mg/kg)	TCLP Leachate concentration (mg/l)
Antimony	13.4	0.00335
Arsenic	21.5	0.0125
Barium	3.35	0.371
Benzene	0.008	0.050
Cadmium	0.423	0.050
cis-1,3-Dichloropropene	0.023	0.050
Ethylbenzene	0.04	0.0015
Lead	575	0.223
Mercury	0.00015	0.0006
Methyl ethyl ketone	0.076	0.00015
Nickel	7.32	0.07
Tetrachloroethylene	0.014	0.0015
Toluene	0.073	0.0015
1,1,1-Trichloroethane	0.011	0.005
Trichloroethylene	0.029	0.0015

TABLE I.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS STABILIZED SLUDGE [1]—Continued

Constituent	Total constituent analyses (mg/kg)	TCLP Leachate concentration (mg/l)
Xylenes (total)	0.22	0.0015

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

E. How Did EPA Evaluate the Risk of Delisting the Waste?

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. The EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for Tenneco's petitioned waste. EPA applied the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000) and 65 FR 75637 (December 4, 2000), to predict the maximum allowable concentrations of hazardous constituents that may release from the petitioned waste after disposal and determined the potential impact of the disposal of Tenneco's petitioned waste on human health and the environment. A copy of this software can be found on the world wide web at *www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm*. In assessing potential risks to ground water, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and Agency health-based numbers. Using the maximum compliance-point concentrations and the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in groundwater.

The EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.*, volatilization or wind-blown particulate from the landfill). As in the above ground water analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or "delisting levels").

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. The EPA does control the type of unit where the waste is disposed. The waste must be disposed in the type of unit the fate and transport model evaluates.

The EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, Tenneco has never directly disposed of this material in its solid waste landfill, so no representative data exists. Therefore, EPA has determined that it would be unnecessary to request ground water monitoring data.

The EPA believes that the descriptions of Tenneco's hazardous waste process and analytical characterization provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized. Thus, EPA should grant Tenneco's petition for a one-time exclusion of the stabilized sludge.

The DRAS results which calculate the maximum allowable concentration of chemical constituents in the waste are presented in Table II. Based on the DRAS, the petitioned waste should be delisted because no constituents of concern exceed the maximum allowable concentrations.

TABLE II.—DRAS MAXIMUM ALLOWABLE CONCENTRATIONS OF CONSTITUENTS IN LEACHATE

Constituent	DRAS maximum allowable Leachate concentration (mg/l)
Antimony	15.1
Arsenic	0.274
Barium	100
Benzene	0.163

TABLE II.—DRAS MAXIMUM ALLOWABLE CONCENTRATIONS OF CONSTITUENTS IN LEACHATE—Continued

Constituent	DRAS maximum allowable Leachate concentration (mg/l)
Cadmium	1.0
Cis-1,3-Dichloropropene	93800
Ethylbenzene	55.8
Lead	5.0
Mercury	0.2
Methyl ethyl ketone	200
Nickel	827
Tetrachloroethylene	0.7
Toluene	98.5
1,1,1-Trichloroethane	23.2
Trichloroethylene	0.5
Xylenes (total)	1750

F. What Did EPA Conclude About Tenneco's Analysis?

The EPA concluded, after reviewing Tenneco's processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by products in Tenneco's waste. In addition, on the basis of explanations and analytical data provided by Tenneco, pursuant to section 260.22, the EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

G. What Other Factors Did EPA Consider?

During the evaluation of Tenneco's petition, EPA also considered the potential impact of the petitioned waste via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from Tenneco's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from Tenneco's waste under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Tenneco's waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from Tenneco's stabilized sludge. A description of EPA's assessment of the potential impact of Tenneco's waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for today's proposed rule, F–00–ARDEL–TENNECO.

The EPA also considered the potential impact of the petitioned waste via a surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (See 56 *FR* 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in today's notice due to the aggressive acidic medium used for extraction in the TCLP. The EPA believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as ground water.

Based on the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, EPA evaluated the potential impacts on surface water if Tenneco's waste were released from a municipal solid waste landfill through runoff and erosion. See, the RCRA public docket for today's proposed rule for further information on the potential surface water impacts from runoff and erosion. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that Tenneco's stabilized sludge is not a present or potential substantial hazard to human health and the environment via the surface water exposure pathway.

H. What Is EPA's Evaluation of This Delisting Petition?

The descriptions of Tenneco's hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this document), provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (see Table II). We believe Tenneco's process will substantially reduce the likelihood of migration of hazardous constituents from the petitioned waste. Tenneco's process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes we should grant Tenneco an exclusion for the stabilized sludge. The EPA believes the data submitted in support of the petition show Tenneco's process can render the stabilized sludge nonhazardous.

We have reviewed the sampling procedures used by Tenneco and have determined they satisfy EPA criteria for collecting representative samples of variable constituent concentrations in the stabilized sludge. The data submitted in support of the petition show that constituents in Tenneco's waste are presently below the compliance point concentrations used in the delisting decision-making and would not pose a substantial hazard to the environment. The EPA believes that Tenneco has successfully demonstrated that the stabilized sludge is nonhazardous.

The EPA therefore, proposes to grant a one-time exclusion to the Tenneco Automotive, in Paragould, Arkansas, for the stabilized sludge described in its petition. The EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the stabilized sludge.

If we finalize the proposed rule, the Agency will no longer regulate the petitioned waste under parts 262 through 268 and the permitting standards of part 270.

IV. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, Tenneco, must comply with the requirements in 40 CFR part 261, appendix IX, Table 1. The text below gives the rationale and details of those requirements.

If the proposed exclusion is made final, it will apply only to 1,800 cubic yards of stabilized sludge. This is a one-time disposal of the sludge. We would require Tenneco to file a new delisting petition if it generates more than 1,800 cubic yards of waste. Tenneco must manage waste volumes greater than 1,800 cubic yards of stabilized sludge as hazardous until we grant a new exclusion.

If this exclusion becomes final, Tenneco's management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction. Tenneco would be required to either treat, store, or dispose of the waste in an on-site facility that has a state permit, license, or is registered to manage municipal or industrial solid waste. If not, Tenneco must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a state permit, license, or is registered to manage municipal or industrial solid waste.

(1) Reopener Language

The purpose of this condition is to require Tenneco to disclose new or different information related to a condition at the facility or disposal of the waste if it is pertinent to the delisting. This provision will allow EPA to reevaluate the exclusion if a source provides new or additional information to the Agency. The EPA will evaluate the information on which we based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition if presented. This provision expressly requires Tenneco to report differing site conditions or assumptions used in the petition within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at section 268.6.

The EPA believes that we have the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978) *et seq.*, to reopen a delisting decision. We may reopen a delisting decision when we receive new information that calls into question the assumptions underlying the delisting.

The Agency believes a clear statement of its authority in delistings is merited in light of Agency experience. See Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading the Agency to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations case by case. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. *See* APA section 553(b).

(2) Notification Requirements

In order to adequately track wastes that have been delisted, EPA is requiring that Tenneco provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. This notification requirement must be met if the waste is transported off-site. Tenneco must provide this notification within 60 days of commencing this activity.

B. What Happens If Tenneco Violates the Terms and Conditions?

If Tenneco violates the terms and conditions established in the exclusion, the Agency will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the Agency will evaluate the need for enforcement activities on a case-by-case basis. The Agency expects Tenneco to conduct the appropriate waste analysis and comply with the criteria explained above in Condition 1 of the exclusion.

V. Public Comments

A. How Can I as an Interested Party Submit Comments?

The EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency (EPA), 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to the Arkansas Department of Environmental Quality, P.O. Box 8913, Little Rock, Arkansas, 72209–8913 Identify your comments at the top with this regulatory docket number: "F–00–ARDEL–TENNECO."

You should submit requests for a hearing to Carl Edlund, Director, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from today's proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available

for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on a small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects that communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under section 12(d) if the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

XIII. Executive Order 13132 Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and

local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: March 12, 2001.

Carl E. Edlund,

P.E., Director, Multimedia Planning and Permitting Division, Region 6.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Tenneco Automotive.	Paragould, AR ..	Stabilized sludge from electroplating operations, excavated from the Finch Road Landfill and currently stored in containment cells by Tenneco (EPA Hazardous Waste Nos. F006). This is a one-time exclusion for 1,800 cubic yards of stabilized sludge. This exclusion was published on May 11, 2001. (1) Reopener Language: (A) If, anytime after disposal of the delisted waste, Tenneco possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) If Tenneco fails to submit the information described in (2)(A) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator or his delegate determines that the reported information does require *Agency action*, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information. (D) Following the receipt of information from the facility described in (1)(C) or (if no information is presented under (1)(C)) the initial receipt of information described in (1)(A), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (2) Notification Requirements: Tenneco must do following before transporting the delisted waste off-site: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the exclusion. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if Tenneco ships the delisted waste to a different disposal facility.
*	*	*

[FR Doc. 01–11912 Filed 5–10–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7025–8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting a petition submitted by Tenneco Automotive (Tenneco) to exclude from hazardous waste control (or delist) a certain solid waste. This final rule responds to the petition submitted by Tenneco to delist F006 stabilized sludge on a "generator specific" basis from the lists of hazardous waste.

After careful analysis and use of the Delisting Risk Assessment Software, the EPA has concluded the petitioned waste is not hazardous waste when disposed of in Subtitle D landfills. This exclusion applies to 1,800 cubic yards of excavated stabilized waste water treatment sludge currently stored in containment cells at Tenneco's Paragould, Arkansas facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in Subtitle D landfills.

EFFECTIVE DATE: August 9, 2001.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Freedom of Information Act review room on the 7th floor from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is "F–00-ARDEL-TENNECO." The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact Bill Gallagher, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas at (214) 665–6775. For technical information concerning this notice, contact Michelle Peace, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, (214) 665–7430.

SUPPLEMENTARY INFORMATION:

The information in this section is organized as follows:

I. Overview Information

A. What Action Is EPA Finalizing?

After evaluating the petition, EPA proposed, on May 11, 2001 to exclude the Tenneco waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (see 66 FR 24085). The EPA is finalizing:

(1) The decision to grant Tenneco's petition to have its wastewater treatment sludge excluded, or delisted, from the definition of a hazardous waste, subject to certain continued monitoring conditions; and

(2) The decision to use the Delisting Risk Assessment Software, which includes the EPACMTP fate and transport model, to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency used this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed in a Subtitle D landfill.

B. Why Is EPA Approving This Delisting?

Tenneco's petition requests a delisting for listed hazardous wastes. Tenneco does not believe the petitioned waste meets the criteria for which EPA listed it as a hazardous waste. Tenneco also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4). In making the final delisting determination, EPA also evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner the waste is nonhazardous with respect to the original listing criteria. If the EPA had found, based on this review, the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. The EPA believes the petitioned waste does not meet these criteria. EPA's final decision to delist waste from Tenneco's facility is based on the information submitted by Tenneco in its petition, including descriptions of the stabilization techniques and analytical data from the Paragould, AR facility.

C. What Are the Limits of This Exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in Table 1 of part 261 and the conditions contained herein are satisfied. This is a one-time exclusion for 1,800 cubic yards of stabilized waste water treatment sludge.

D. How Will Tenneco Manage the Waste It Is Delisted?

Tenneco currently stores the petitioned waste (stabilized waste water treatment sludge) generated in containment vaults on-site at its facility. Tenneco will dispose of the sludge in a Subtitle D solid waste landfill in Arkansas.

E. When Is the Final Delisting Exclusion Effective?

This rule is effective August 9, 2001. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months after the rule is published when the regulated community does not need the six-month period to come into compliance. That is

the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. This reduction in existing requirements also provides a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How Does This Final Rule Affect States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received our authorization to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If Tenneco transports the petitioned waste to or manages the waste in any State with delisting authorization, Tenneco must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude from the list of hazardous wastes, wastes the generator believes should not be considered hazardous under RCRA.

B. What Regulations Allow Facilities To Delist a Waste?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

C. What Information Must the Generator Supply?

Petitioners must provide sufficient information to the EPA to allow the EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

III. EPA's Evaluation of the Waste Data

A. What Waste Did Tenneco Petition EPA To Delist?

On September 8, 2000, Tenneco petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, a waste by-product (stabilized sludge from the wastewater treatment plant) which falls under the classification of listed waste because of the "derived from" rule in RCRA 40 CFR 261.3. Specifically, in its petition, Tenneco Automotive, located in Paragould, Arkansas, requested that EPA grant an exclusion for 1,800 cubic yards of stabilized sludge from electroplating operations, excavated from the Finch Road Landfill and currently stored in containment cells. The resulting waste is listed, in accordance with § 261.3(c)(2)(i) (i.e., the "derived from" rule). The waste code of the constituents of concern is EPA Hazardous Waste No. F006. The constituents of concern for F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

B. How Much Waste Did Tenneco Propose To Delist?

Specifically, in its petition, Tenneco requested that EPA grant a one-time exclusion for 1,800 cubic yards of stabilized sludge.

C. How Did Tenneco Sample and Analyze the Waste Data in This Petition?

To support its petition, Tenneco submitted:

(1) Historical information on past waste generation and management practices;

(2) Results of the total constituent list for 40 CFR part 264, Appendix IX volatiles, semivolatiles, and metals except pesticides, herbicides, and PCBs;

(3) Results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

(4) Results from total oil and grease analyses and pH measurements.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

The EPA received public comments on the May 11, 2001, proposal from General Motors (GM).

B. Response To Comments

General Motors (GM) comments the terms used in the DRAS should be more clearly defined. Does the term Cw for waste contamination account for the total mass of contamination in the waste or only that portion that may enter the aqueous phase?

All terms and equations used in the Delisting Risk Assessment Software (DRAS) program are discussed in the Delisting Technical Support Document (DTSD). All abbreviations, acronyms, and variables are listed in Chapter 1, pages x-xx of the DTSD. The DTSD is updated to reflect revisions and modifications to risk algorithms and methodology. The Agency encourages all users and reviewers to comment on the technical support documentation and continues to improve the clarity and transparency of the DTSD. The term Cw is not used in the document. Without specific information to the page location/screen location of the term referenced in the question above, no further response can be provided.

GM comments that the definition of the criteria to be used to determine de minimis risk levels and risk estimates should be provided for a meaningful public review.

Information on the Risk and Hazard Assessment can be found in Chapter 4 of the DTSD. Discussion of criteria and quantification of risk are discussed in this Chapter.

The Delisting Program in its history has never focused on site-specific conditions. It has since its inception

been a program specifically for waste generators. A review of the 40 CFR 260.22 indicates that these are petitions to amend part 261 to exclude a waste produced at a particular facility. The Agency is not currently using the model to predict site-specific results. Since disposal of the delisted waste may occur at any Subtitle C or D landfill in the United States, site-specific considerations are not usually given. The DRAS model is based on national averages of the site specific factors and is intended to model a reasonable worst case scenario for disposal.

The Agency continues to review chemical-specific parameter data. Where appropriate, these data will be incorporated into the DRAS analyses. However, as explained above, in delisting analyses, site specific characteristics (beyond waste constituent concentration and volume) are not incorporated into analyses. Default values are given for many parameters used in risk. The Agency can not fully evaluate how release mechanisms and exposure scenarios may be impacted because the final disposal location remains undefined.

GM comments that documentation of the sensitivity analysis should be provided for a meaningful public review.

The DRAS provides the forward-calculated risk level and back-calculated allowable waste concentration for each exposure pathway, thereby permitting the user to determine which pathway drives the risk for a given chemical. These analyses are currently provided for the user by the DRAS program on the Chemical-Specific Results screen.

GM comments that unlikely scenarios and assumptions which compound the release and risk estimates should be justified.

The DRAS model is intended to model a reasonable worst case model and is based on national averages of these factors. This is the same assumption used for the EPACML.

The DRAS employs standard risk assessment default parameters that are accepted throughout the Agency in risk analyses (i.e., residential exposure @ 350 days/yr, selection of the 90th percentile). These default standards are described and listed in Appendix A of the DTSD.

The DRAS does employ a conservative approach to exposure assessment by assuming the receptor may be exposed to both the most sensitive groundwater pathway and the most sensitive surface exposure pathway. The Agency has no way of knowing that this situation will not occur and therefore deems it prudent to protect for this condition by adding risks. Again, the Agency has no way of knowing the direction of media flow and must assume that all media flow may move toward the receptor. The Agency has no data to indicate that the landfill volume data and other data from the 1987 landfill survey report is not valid. When updated data are available, they will be incorporated into the analyses.

The groundwater fate and transport model used by the Agency to determine first order decay and other processes is the EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP). This model has been peer reviewed and received an excellent review from the Science Advisory Board (SAB). EPA has proposed use of this SAB-reviewed model and no convincing comments to the contrary have been received.

The DRAS is complex and EPA must explain the models and risk processes used in establishing regulatory limits.

Attached to the Delisting Risk Assessment Software is a Technical Support Document which explains the risk algorithms and documentation of the decisions made in development of the model. Publication costs prohibit the inclusion of all this information into the **Federal Register** notice but it is readily available in both the Technical Support Document and at the Region 6 Delisting page (*www.epa.gov/earth1/r6/pd-o/pd-o.htm*). However, the Agency believes that the Delisting Risk Assessment Software is no more complex than use of the EPACML for delisting, just because the calculations have been computerized make them no more difficult to understand than the EPACML. Similar regression models were developed for the DRAS. The risk pathways for surface water and air volatilization are evaluated by the same equations used previously in the delisting program. And finally, the pathways for showering and dermal contact are equations which are commonly used in risk assessments performed for cleanups and site assessments under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) commonly known as Superfund and other programs.

GM comments that model should be peer reviewed and the public should have the formal opportunity to provide comments.

The model has been peer reviewed by EPA risk assessors and EPA's Office of Research and Development scientists. The public has the opportunity to comment on the use of the DRAS model each time a delisting is proposed which is based on the DRAS model. The Agency is currently using the same level of public review used by the delisting program for use of the EPA Composite Model for Landfills in 1991. The model as modified for the delisting program was promulgated in conjunction with its use in evaluating the Reynolds Metals Delisting petition. See, 56 FR 32993 (July 18, 1991). No challenge was made to procedures for promulgating the use of the EPACML in delisting evaluations.

Summary of GM Comments

GM summarizes its comments on the DRAS by stating that (1) EPA is proposing significant changes to the methodology it uses to evaluate delisting petitions. It appears the changes would apply to all future delisting petitions. (2) The proposed changes are complex. (3) It appears the proposed changes would apply in all USEPA Regions. (4) The proposed changes may include elements of the still-draft, unpromulgated, and controversial HWIR waste model. It is inappropriate and contrary to law and the Administrative Procedures Act to use a model prior to public notice and comment. (5) No **Federal Register** notice has been given to clearly indicate the EPA plans to change the way it reviews and evaluates delisting petitions. Instead, references to the changes in the model have been made as part of proposals to delist specific waste streams. (6) If EPA is changing the model it uses to evaluate delisting petitions (from the EPACML to the DRAS model) USEPA should provide specific and clear public notification of this intent. The risk assessment methodology for delisting that has been used since 1991 should still apply until public review period is completed.

The EPA is following the same notice provided for changing from the VHS model to the EPA Composite Model for Landfills (EPACML). See 56 *FR* 32993, July 18, 1991. The public has the opportunity to comment on the DRAS model each time a delisting is proposed which is based on the DRAS model. General Motors has not stated any reason why the DRAS model is not appropriate for use in evaluating the risk associated with the Tenneco Delisting. EPA will consider use of alternatives model for assessing risk if the comments received show that another model is more appropriate under the circumstances.

General Motors states that use of model with public review and comment

is a violation of the Administrative Procedures Act and law. Opportunity for public review and comment is provided for each delisting petition. Comments are requested for each delisting decision regarding the decision to delist the waste and use of a model to assess the risk posed to human health and the environment. Each time the model is used, just as with the use of the EPACML, the public and interested stakeholders can comment on the appropriateness of the use. In fact, each proposed rule for approving a delisting proposes the use of a model in the evaluation of risk and asks for comment. Examples can be seen in the **Federal Register** for the EPACML as well as the DRAS. See, 56 FR 32993 (July 18, 1991), 64 FR 44867 (August 18, 1999), and 65 FR 75641 (December 4, 2000). Any petitioner or interested party may suggest more appropriate evaluation tools for predicting risk. Thus, EPA believes that adequate public notice has been provided and the APA has not been violated.

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. The final to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to manage its waste as nonhazardous. There is no additional impact therefore, due to this final rule. Therefore, this proposal would not be a significant regulation and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required however if the Administrator or delegated representative certifies the rule will not have any impact on a small entities.

This rule if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. The EPA finds that this final delisting decision is deregulatory in nature and does not impose any enforceable duty upon State, local, or tribal governments or the private sector. In addition, the final delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

X. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." This rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

XI. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically

significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XII. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XIII. National Technology Transfer and Advancement Act

Under section 12(d) if the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 27, 2001.

Stephen Gilrein,

Acting Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX, part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* *	* *	* * *
Tenneco Automotive	Paragould, AR	Stabilized sludge from electroplating operations, excavated from the Finch Road Landfill and currently stored in containment cells by Tenneco (EPA Hazardous Waste Nos. F006). This is a one-time exclusion for 1,800 cubic yards of stabilized sludge when it is disposed of in a Subtitle D landfill. This exclusion was published on August 9, 2001. (1) *Reopener Language:* (A) If, anytime after disposal of the delisted waste, Tenneco possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) If Tenneco fails to submit the information described in (2)(A) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
		(C) If the Regional Administrator or his delegate determines the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information. (D) Following the receipt of information from the facility described in (1)(C) or (if no information is presented under (1)(C)) the initial receipt of information described in (1)(A), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (2) *Notification Requirements:* Tenneco must do following before transporting the delisted waste offsite: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the exclusion. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if Tenneco ships the delisted waste to a different disposal facility.

* * * * *

[FR Doc. 01–20043 Filed 8–8–01; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 01–150; FCC 01–205]

Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations

AGENCY: Federal Communications Commission.

ACTION: Final rule; interpretation.

SUMMARY: This document clarifies that non-dominant carriers are required to file applications and obtain Commission approval before consummating a transaction involving an acquisition of corporate control. Connecting carriers, as defined in the Communications Act of 1934, as amended (Act), are not subject to section 214 when engaging in acquisitions of corporate control.

DATES: Effective August 9, 2001.

FOR FURTHER INFORMATION CONTACT: Aaron N. Goldberger, Attorney-Advisor, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1591.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Declaratory Ruling*, CC Docket No. 01–150, FCC 01–205, adopted July 12, 2001 and released July 20, 2001. The complete text of this *Declaratory Ruling* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC.

Synopsis of Declaratory Ruling

1. In the *Declaratory Ruling*, the Commission clarifies its rules governing requests for authorization pursuant to section 214 of the Act to transfer domestic interstate transmission lines through an acquisition of corporate control. Under section 214, applicants must obtain Commission authorization before constructing, operating, or acquiring domestic interstate transmission lines. The Commission, in § 63.01, granted blanket authority to domestic interstate communications common carriers to provide domestic interstate services and to construct, acquire, and operate domestic transmission lines. The blanket authority in § 63.01, however, expressly does not apply to acquisitions of corporate control. When an acquisition of corporate control is involved, carriers must file a section 214 application with the Commission and obtain Commission approval prior to consummating a proposed transaction.

2. The Commission, in the *Declaratory Ruling*, clarifies that non-dominant carriers are required to file applications and obtain Commission approval before consummating a transaction involving an acquisition of corporate control. In particular, there is nothing either in the Commission's previous orders or the plain language of § 63.01 to support the contention that acquisitions of corporate control involving non-dominant carriers are covered under the blanket authority of § 63.01. Connecting carriers, as defined in the Act, are not subject to section 214 when engaging in acquisitions of corporate control.

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Declaratory Ruling*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA

ATTACHMENT 3.6

the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .34 hours per response.

Respondents: Certain wholesale dealers of dogs intended for hunting, breeding, or security purposes.

Estimated annual number of respondents: 5.

Estimated annual number of responses per respondent: 6.4.

Estimated annual number of responses: 32.

Estimated total annual burden on respondents: 11 hours.

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 1

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

Accordingly, we propose to amend 9 CFR part 1 as follows:

PART 1—DEFINITION OF TERMS

1. The authority citation for part 1 would be revised to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

2. In § 1.1, the definition for "dealer" would be revised to read follows:

§ 1.1 Definitions.

* * * * *

Dealer means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, *limbs, blood, serum, or other parts)* for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog at the wholesale level for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section, unless such store sells any animals to a research facility, an exhibitor, or a dealer (wholesale); any retail outlet where dogs are sold for hunting, breeding, or security purposes; or any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than $500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats, during any calendar year.

* * * * *

Done in Washington, DC, this 29th day of November 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–30765 Filed 12–1–00; 8:45 am]

BILLING CODE 3410–34–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6910–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to use the Delisting Risk Assessment Software (DRAS) in the evaluation of a delisting petition. Based on waste specific information provided by the petitioner, EPA is proposing to use the DRAS to evaluate the impact of the petitioned waste on human health and the environment. Today's proposal provides background information on the mechanics of the DRAS, and the use of the DRAS in delisting decision-making.

The EPA is also proposing to grant a petition submitted by Eastman Chemical Company—Texas Operations, (Eastman) to exclude (or delist) certain solid wastes generated by its Longview, Texas, facility from the lists of hazardous wastes contained in 40 CFR 261.24 and 261.31 (hereinafter all sectional references are to 40 CFR unless otherwise indicated).

Eastman submitted the petition under sections 260.20 and 260.22(a). Section 260.20 allows any person to petition the Administrator to modify or revoke any provision of sections 260 through 266, 268 and 273. Section 260.22(a) specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude that Eastman's petitioned waste is nonhazardous with respect to the original listing criteria and that the waste process Eastman uses will substantially reduce the likelihood of migration of hazardous constituents from this waste. We would also conclude that their process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: We will accept comments until January 18, 2001. We will stamp comments received after the close of the comment period as "late." These "late" comments may not be considered in formulating a final decision.

Your requests for a hearing must reach EPA by December 19, 2000. The request must contain the information prescribed in section 260.20(d).

ADDRESSES: Please send three copies of your comments. Two copies should be sent to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A third copy should be sent to the Texas Natural Resources Conservation Commission (TNRCC), P.O. Box 13087, Austin, Texas, 78711–3087. Identify your comments at the top with this regulatory docket number: "F–00–TXDEL–TXEASTMAN."

You should address requests for a hearing to the Director, Carl Edlund, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Michelle Peace at (214) 665–7430.

SUPPLEMENTARY INFORMATION:

The Information in This Section is Organized as Follows

I. What Risk Assessment Methods Has the Agency Used in Previous Delisting Determinations That Are Being Revised in This Proposal?

A. Introduction

The fate and transport of constituents in leachate from the bottom of the landfill or surface impoundment waste unit through the unsaturated zone (non-water bearing layer) and to a drinking water well in the saturated zone (water-bearing layer) is estimated using a fate and transport model. The Agency has applied the U.S. EPA Composite Model for Landfill (EPACML) fate and transport model to estimate constituent concentrations in groundwater at a receptor well located downgradient from a landfill or surface impoundment. The EPACML fate and transport model was used to determine a dilution attenuation factor (DAF). The DAF estimates the degree of dilution and attenuation that a waste constituent would undergo as it leaches from a waste management unit and is transported in the subsurface, into the saturated zone, and to a theoretical downgradient receptor well. The EPACML was originally developed to compute DAFs and set regulatory levels for specific constituents for the Toxicity Characteristics Rule (TC Rule) 55 FR 11798 (March 29, 1990). Subsequently, the EPACML has been used for multiple RCRA delistings beginning with the Reynolds Metals delisting decision 56 FR 67197 (December 30, 1991). The EPACML accounts for:

- one-dimensional steady and uniform advective flow;
- contaminant dispersion in the longitudinal, lateral, and vertical directions and;
- sorption

However, advances in groundwater fate and transport have been made in recent years and the Agency proposes the use of a more advanced groundwater fate and transport model for this RCRA delisting. More specific details about the DRAS can be found in 65 FR 58015 (September 27, 2000).

B. What Fate and Transport Model Does the Agency Use in the DRAS for Evaluating the Risks to Groundwater From the Proposed Exempted Waste?

The Agency proposes to use the EPACMTP (EPA's Composite Model for leachate migration with Transformation Products) in this delisting determination. The EPACMTP considers the subsurface fate and transport of chemical constituents. The EPACMTP is capable of simulating the fate and transport of dissolved contaminants from a point of release at the base of a waste management unit, through the unsaturated zone and underlying groundwater (saturated zone), to a receptor well at an arbitrary downstream location in the aquifer. The model accounts for the following mechanisms affecting contaminant migration: transport by advection and dispersion, retardation resulting from reversible linear or nonlinear equilibrium adsorption onto the soil and aquifer solid phase, and biochemical degradation processes (EPACMTP Background Document and User's Guide, 1996).

C. Why Is the EPACMTP Fate and Transport Model an Improvement Over the EPACML?

The modeling approach used for this proposed rulemaking includes three major categories of enhancements over the EPACML. The enhancements include:

1—Incorporation of additional fate and transport processes (*e.g.*, degradation of chemical constituents);
2—Use of enhanced flow and transport solution algorithms and techniques (*e.g.*, three-dimensional transport) and;
3—Revision of the Monte Carlo methodology (*e.g.*, site-based implementation of available input data) (EPACMTP Background Document and User's Guide, 1996)

A Discussion of the key enhancements which have been implemented in the EPACMTP is presented here and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). The EPACML was limited to conditions of uniform groundwater flow. It could not handle accurately the conditions of significant groundwater mounding and non-uniform groundwater flow due to a high rate of infiltration from the waste units. These conditions increase the transverse horizontal as well as the vertical spreading of a contaminant plume. The EPACMTP accounts for these effects directly by simulating groundwater flow in the vertical as well as horizontal directions.

The EPACMTP can simulate fate and transport of metals, taking into account geochemical influences on the mobility of metals. The EPA's MINTEQA2 metals speciation model is used to generate effective sorption isotherms for individual metals, corresponding to a range of geochemical conditions (EPACMTP Metals Background Document, 1996). The transport modules in EPACMTP have been enhanced to incorporate the nonlinear MINTEQ sorption isotherms. This enhancement provides the model with the capability to simulate, in the unsaturated and in the saturated zones, the impact of pH, leachate organic matter, natural organic matter, iron

hydroxide and the presence of other ions in the groundwater on the mobility of metals. The saturated zone module implemented in the EPACML was based on a Gaussian distribution of concentration of a chemical constituent in the saturated zone. The module also used an approximation to account for the initial mixing of the contaminant entering at the water table (saturated zone) underneath the waste unit. The module accounting for initial mixing in the EPACML could lead to unrealistic groundwater concentrations. The enhanced EPACMTP model incorporates a direct linkage between the unsaturated zone and saturated zone modules which overcomes these limitations of the EPACML.

To enable a greater flexibility and range of conditions that can be modeled, the analytical saturated zone transport module has been replaced with a numerical module, based on the highly efficient state-of-the-art Laplace Transform Galerkin (LTG) technique (EPACMTP Background Document and User's Guide, 1996). The enhanced module can simulate the anisotropic, non-uniform groundwater flow, and transient, finite source, conditions. The latter requires the model to calculate a maximum receptor well concentration over a finite time horizon, rather than just the steady state concentration which was calculated by the EPACML. The saturated zone modules have been implemented to provide either a fully three-dimensional (3D) solution, or a highly efficient quasi-3D solution. The latter has been implemented for Monte Carlo applications and provides nearly the same accuracy as the fully three dimensional option but is more computationally efficient. Both the unsaturated zone and the saturated zone transport modules can accommodate the formation and the transport of parent as well as of the transformation products.

A highly efficient semi-analytical unsaturated zone transport module has been incorporated to handle the transport of metals in the unsaturated zone and can use MINTEQA2 derived linear or nonlinear sorption isotherms. Conventional numerical solution techniques are inadequate to handle extremely nonlinear isotherms. An enhanced method-of-characteristic based solution has been implemented which overcomes these problems and thereby enables the simulation of metals transport in the Monte Carlo framework. *Non-linearity in the metals sorption* isotherms is primarily of concern at higher concentration values; for low concentrations, the isotherms are linear or close to linear. Because of the attenuation in the unsaturated zone, and the subsequent dilution in the saturated zone, concentrations in the saturated zone are usually low enough so that properly linearized isotherms are used by the model in the saturated zone without significant errors.

The internal routines in the model which determine placement of the receptor well relative to the areal extent of the contaminant plume have been revised and enhanced. The calculation of the areal extent of the plume has been revised to take into consideration the dimensions of the waste unit. The logic for placing a receptor well inside the plume limits has been improved to eliminate a bias towards larger waste unit areas and to ensure that the placement of the well inside these limits, for a given radial distance from the unit, is truly randomly uniform. However, for this proposal, the closest drinking water well is located anywhere on the downgradient side of the waste unit.

The data sources from which parameter distributions for nationwide Monte Carlo assessments are obtained have been evaluated, and where appropriate, have been revised to make use of the latest data available for modeling. Leachate rates for Subtitle D waste units have been revised using the latest version of the HELP model with the revised data inputs. Source specific input parameters (*e.g.*, waste unit area and volume) have been developed for various different types of industrial waste units besides landfills. Input values for the groundwater related parameters have been revised to utilize information from a nationwide industry survey of actual contaminated sites. The original version of the model was implemented for Monte Carlo assessments assuming continuous source (infinite source) conditions only. This methodology did not take into account the finite volume and/or operational life of waste units. The EPACMTP model has been implemented for Monte Carlo assessments of either continuous source or finite source scenarios. In the latter scenario, predicted groundwater impact is not only based on the concentrations of contaminants in the leachate, but also on the amount of constituent in the waste unit and/or the operational life of the unit.

The landfill is taken to be filled to capacity and covered when leaching begins. The time period during which the landfill is filled-up, usually on the order of 20 years, is considered to be small relative to the time required to leach all of the constituent mass out of the landfill. The model simulation results indicate that this assumption is not unreasonable; the model calculated leaching duration is typically on the order of several hundred years. The leachate flux, or infiltration rate, is determined using the HELP model. The net infiltration rate is calculated using a water balance approach, which considers precipitation, evapotranspiration, and surface run-off. The HELP model was used to calculate landfill infiltration rates for a representative subtitle D landfill with 2-foot earthen cover, and no liner or leachate collection system, using climatic data from 97 climatic stations located throughout the United States. These correspond to the reasonable worst case assumptions as explained in the HWIR Risk Assessment Background Document for the HWIR proposed notice 60 FR 66344 (December 21, 1995). Additional details on the methodologies used by the EPACMTP to derive DAFs for waste constituents modeled for the landfill scenario are presented in the Background Documents for the proposed HWIR rule. See 60 FR 66344 (December 21, 1995). The fraction of waste in the landfill is assigned a uniform distribution with lower and upper limits of 0.036 and 1.0, respectively, based on analysis of waste composition in Subtitle D landfills. The lower bound assures that the waste unit will always contain a minimum amount of the waste of concern. The waste density is assigned a value based on reported densities of hazardous waste, and varies between 0.7 and 2.1 g/cm^3.

The area of the surface impoundment and the impoundment depth used by the EPACMTP are obtained from the EPA's Office of Solid Waste Subtitle D Industrial Survey and were entered into the Monte Carlo analyses as distributions. The sediment layer at the base of the impoundment is taken to be 2 feet thick and to have an effective equivalent saturated conductivity of 10 minus;7 cm/s. These values were selected in recognition of the fact that most non-hazardous waste surface impoundments do have some kind of liner in place. Additional details on the methodologies used by the EPACMTP to derive DAFs for waste constituents modeled for the surface impoundment waste management scenario are presented in the Background Documents for the 1995 proposed HWIR rule. See 60 FR 66344 (December 21, 1995).

D. Has the EPACMTP Methodology Been Formally Reviewed?

The Science Advisory Board (SAB), a public advisory group that provides information and advice to the EPA, reviewed the EPACMTP model as part of a continuing effort to provide

improvements in the development and external peer review of environmental regulatory models. Overall, the SAB commended the Agency for making significant enhancements to the EPACMTP's predecessor, the EPACML and for responding to previous SAB suggestions. The SAB also concluded that the mathematical formulation incorporating daughter products into the model appeared to be correct and that the site-based approach using hydrogeologic regions is superior to the previous approach used in EPACML. The model underwent public comment during the 1995 proposed HWIR. See 60 FR 66344 (December 21, 1995).

E. Has the Agency Modified the EPACMTP as Utilized in the HWIR Proposal?

The EPACMTP, as developed for HWIR, determined the DAF using a Monte Carlo approach that selected, at random, a waste volume from a range of waste volumes identified in EPA's 1987 Subtitle D landfill survey. In delisting determinations, the waste volume of the petitioner is known. Therefore, application of EPACMTP to the delisting program has been modified to evaluate the specific waste volume. The Agency modified the DAFs determined under the HWIR proposal to account for a known waste volume. To generate waste volume-specific DAFs, EPA developed "scaling factors" to modify DAFs developed for HWIR (based on the entire range of disposal unit areas) to DAFs for delisting waste volumes. This was accomplished by computing a 90th percentile DAF for a conservative chemical for 10 specific waste volumes (ranging from 1,000 cubic yards to 300,000 cubic yards) for each waste management scenario (landfill and surface impoundment). The Agency assumed that DAFs for a specific waste volume are linearly related to DAFs developed by EPACMTP for the HWIR. DAF scaling factors were computed for the ten increment waste volumes. Using these ten scaling factor DAFs, regression equations were developed for each waste management scenario to provide a continuum of DAF scaling factors as a function of waste volume.

The regression equations are coded into the DRAS program which then automatically adjusts the DAF for the waste volume of the petitioner. The method used to verify the scaling factor approach is presented in the document, Application of EPACMTP to Region 6 Delisting Program: Development of Volume-adjusted Dilution Attenuation Factors (1996). For the landfill waste management scenario, the DAF scaling factors ranged from 9.5 for 10,000 cu. yard to approximately 1.0 for waste volumes greater than 200,000 cu. yards. Therefore, for solid waste volumes greater than 200,000 cu. yards, the waste volume-specific DAF is the same as the DAF computed for the proposed HWIR. The regression equation that can be used to determine the DAF scaling factor (DSF) as a function of waste volume (in cubic yards) for the landfill waste management unit is: $DSF = 6152.7^{*} (\text{waste volume})^{-0.7135}$. The correlation coefficient of this regression equation is 0.99, indicating a good fit of this line to the data points. DAF scaling factors for surface impoundment waste volumes ranged from 2.4 for 2,000 cu. yards to approximately 1.0 for 100,000 cu. yards. For liquid waste volumes greater than 200,000 cu. yards, the waste volume-specific DAF is the same as the DAF computed for the proposed HWIR. The regression equation for DAF scaling factor (DSF) as a function of waste volume for surface impoundment wastes is: $DSF = 14.2^{*} (\text{waste volume})^{-0.2288}$. The correlation coefficient of this regression equation is also 0.99, indicating an extremely good fit of this line to the data points.

F. What Modifications Have Been Made to the DRAS Since its Proposal on September 27, 2000?

Several revisions have been made to the DRAS program in order to improve the modeling. Specifically, the groundwater inhalation pathway was revised to reflect recent advances in modeling household inhalation from home water use (*e.g.*, showering). The basis for estimating the concentration of constituents in the indoor air is based on the mass transfer of constituent from water to shower air. The initial version of DRAS used a fate and transport model described by McKone and Bogen (1982) which predicted the highest waste concentration emitted from the water into the air during a given water use period (*e.g.*, 10-minute shower). This method was revised to more accurately predict the average concentration occurring during the exposure event.

The revised model used in this analysis is based the equations presented in McKone (1987). The shower model estimates the change in the shower (or bathroom or household) air concentration based on the mass of constituent lost by the water (fraction emitted or emission rate) and the air exchange rate between the various model compartments (shower, the rest of the bathroom, and the rest of the house). The resulting differential equations were solved using finite difference numerical integration. The average air concentration in the shower and bathroom are obtained by averaging the concentrations obtained for each time step over the duration of the exposure event (shower and bathroom use). These concentrations and the durations of daily exposure are used to estimate risk from inhalation exposures to residential use of groundwater. Further, improvements were made to more accurately reflect the transfer efficiency of the waste constituent from the groundwater to the air compartment. The fraction emitted from the bathroom or household water use is a function of the input transfer efficiency (or maximum fraction emitted) and the driving force for mass transfer (the differential between air saturation concentration at air/water interface and bulk air concentration). For example, in the shower compartment, the constituent emission rate is estimated from the change in the shower water concentration as the water falls through the air. The shower emissions can be modeled based on falling droplets as a means of estimating the surface-area-to-volume ratio for mass transfer and the residence time of the water in the shower compartment, assuming the compound concentration in the gas phase is constant over the time frame of the droplet fall. By assuming the drops fall at terminal velocity, the surface-area-to-volume ratio and the residence time can be determined based solely on droplet size. A droplet size of approximately 1 mm (0.1 cm) was selected. The terminal velocity for the selected droplet size is approximately 400 cm/s. The fraction of constituent emitted from a water droplet at any given time can then be calculated.

The equations used to predict surface volatilization from a landfill have been modified to more accurately reflect true waste concentration releases. The previous version of DRAS used Farmer's equation to estimate the emission rate of volatiles from the surface of the landfill. Farmer's equation assumes that the emission originates as volatiles in liquids trapped in the pore spaces between solid particles of waste. The volatiles evaporate from the liquid and are emitted from the landfill following gaseous diffusion through the solid waste particles and soil cover to the surface of the landfill. Farmer's equation requires the mole fraction of a given volatile constituent in the liquid in order to calculate the emission. The previous version of DRAS used the TCLP value of a volatile constituent in the waste to approximate the mole fraction of a given constituent in the pore liquid. Since the TCLP test

includes a 20-fold dilution, the calculation might underestimate the available concentration of volatiles in freshly deposited waste. The DRAS has been revised to use Shen's modification of Farmer's equation, described in U.S. EPA Office of Air Quality Planning and Standards' 1984 Evaluation and Selection of Models for Estimating Air Emissions from Hazardous Waste Treatment, Storage, and Disposal Facilities. EPA–450/3–84–020. Shen took the simplified version of Farmer's equation for vapor flux from a soil surface and converted it to an emission rate by multiplying it by the exposed landfill area. Shen's modification uses the total waste constituent concentration (weight fraction in the bulk waste) to approximate the mole fraction of that constituent in the liquid phase.

In estimating the amount of a given waste constituent that is released to surface water and eventually becomes freely dissolved in the water column, previous delisting petitions and the earlier version of the DRAS used the maximum observed TCLP concentration in waste as the total amount of the waste constituent available for erosion. Further, the former method assumed that all of the constituent mass that reached the stream, based on TCLP, became dissolved in the aqueous phase. Assuming complete conversion to a dissolved state is overly conservative and not in agreement with recent Agency methodology. In the revised DRAS, the total waste constituent concentration is used to estimate the constituent mass that reaches the stream. The portion of the waste constituent that becomes freely dissolved is determined by an estimate of partitioning between suspended solids and the aqueous phase. This methodology is described in U.S. EPA's 1998 Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, Volume One. Peer Review Draft. EPA530–D–98–001A.

Recent developments in mercury partitioning described in the Mercury Report to Congress led to another revision to the surface water pathway. The DRAS was modified to account for bioaccumulation of methyl mercury as a result of the release of mercury into the surface water column. The primary human health hazard posed by the release of mercury into surface water is through bioaccumulation of methyl mercury in fish followed by human consumption of the contaminated fish. Biological processes in surface water cause the conversion, or methylation, of elemental mercury to methyl mercury. In accordance with the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, Volume One. Peer Review Draft, 15% of mercury in the water column is assumed to be converted to methyl mercury. This fraction is then used, along with the current bioaccummulation factor, to determine the predicted concentration of methyl mercury in fish tissue.

II. Overview Information

A. What Action Is EPA Proposing?

The EPA is proposing:

(1) To grant Eastman's petition to have its wastewater treatment sludge excluded, or delisted, from the definition of a hazardous waste, subject to certain continued verification and monitoring conditions; and

(2) To use a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency would use this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

B. Why Is EPA Proposing To Approve This Delisting?

Eastman's petition requests a delisting for listed hazardous wastes. Eastman does not believe that the petitioned waste meets the criteria for which EPA listed it. Eastman also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste were originally listed, EPA would have proposed to deny the petition.) The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. The EPA believes that the petitioned waste does not meet these criteria. EPA's proposed decision to delist waste from Eastman's facility is based on the information submitted in support of today's rule, *i.e.*, descriptions of the waste water treatment system, incinerator, and analytical data from the Longview facility.

C. How Will Eastman Manage the Waste if it Is Delisted?

Eastman currently disposes of the petitioned waste (wastewater treatment sludge) generated at its facility in an on-site, state permitted solid waste landfill after the sludge has been incinerated. The ash from the incineration process was delisted by EPA in June 1996. If the waste is delisted it will meet the criteria for disposal in a Subtitle D landfill without incineration.

The incinerator is a RCRA Subtitle C regulated unit permitted by the Texas Natural Resource Conservation Commission. This proposed decision will not affect the current regulatory controls on the incineration unit.

D. When Would EPA Finalize the Proposed Delisting?

RCRA section 3001(f) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on today's proposal.

RCRA section 3010(b)(1) at 42 USCA 6920(b)(1),allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

The EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How Would This Action Affect the States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude

two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received authorization from EPA to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C.A. § 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States unless that State makes the rule part of its authorized program. If Eastman transports the petitioned waste to or manages the waste in any State with delisting authorization, Eastman must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

III. Background

A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA. The EPA has amended this list several times and published it in §§ 261.31 and 261.32.

We list these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in §§ 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does it Require of a Petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions the Agency because they do not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for the listed wastes. The criteria for which EPA lists a waste are in Part 261 and in the background documents for the listed wastes.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See Part 261 and the background documents for the listed wastes.)

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the wastes.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in § 260.22(a) and 3001 (f) of RCRA, 42 U.S.C. § 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

The EPA must also consider as hazardous wastes mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See §§ 261.3(a)(2)(iii and iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded.

The "mixture" and "derived-from" rules are now final, after having been vacated, remanded, and reinstated. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to EPA on procedural grounds. See *Shell Oil Co. v. EPA., 950 F.2d 741* (D.C. Cir. 1991). EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues. See 57 *FR* 7628 (March 3, 1992). These rules became final on October 30, 1992. See (57 *FR* 49278). Consult these references for more information about mixtures derived from wastes.

IV. EPA's Evaluation of the Waste Data

A. What Waste Did Eastman Petition EPA To Delist?

On February 4, 2000, Eastman petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, a waste by-product (dewatered sludge from the wastewater treatment plant) which falls under the classification of listed waste because of the "derived from" rule in RCRA 40 CFR 261.3. Specifically, in its petition, Eastman Chemical Company, Texas Operations, located in Longview, Texas, requested that EPA grant an exclusion for 82,100 cubic yards per year of dewatered sludge resulting from its hazardous waste treatment process. The resulting waste is listed, in accordance with §261.3(c)(2)(i) (i.e., the "derived from" rule).

B. What Is Eastman Chemical Company, and What Process Does it use?

Eastman occupies approximately 6,000 acres in Longview, Texas. The facility owns and operates an organic chemical and plastics manufacturing facility in Longview, Texas. During manufacturing operations, various waste waters are generated such as process waste water, blowdowns from boilers, cooling towers, and the incinerators, and some storm water. Process waste waters from the facility, blowdowns, recovered ground water, leachate from the RCRA hazardous waste landfill, and some storm water are routed to an activated sludge wastewater treatment plant (WWTP). A sludge is generated from the waste water treatment system, which is dewatered and is currently sent to a fluidized bed incinerator (FBI) for thermal treatment. The resulting delisted FBI ash is disposed of in a solid waste landfill.

Influent to the waste water treatment plant is a combination of hazardous and non-hazardous waste. During treatment of the influent waste water, biological sludge is generated and dewatered. The wastewater treatment sludge currently falls under the classification of listed waste according to RCRA 40 CFR 261.3(c)(2)(i) because of the "derived

from" rule. The waste codes of the constituents of concern are EPA Hazardous Waste Nos. F001, F002, F003, F005, K009, K010, U001, U002, U028, U031, U069, U088, U112, U115, U117, U122, U140, U147, U154, U159, U161, U220, U226, U239 and U359.

Table 1 lists the constituents of concern for these waste codes.

TABLE 1.—HAZARDOUS WASTE CODES ASSOCIATED WITH WASTE STREAMS

Waste code	Basis for characteristics/listing
F001	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1- trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F002	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1- trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2- trichloro-1,2,2-trichlorofluoroethane, orthodichlorobenzene, trichlorofluoromethane.
F003	Not applicable.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane.
K009	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid.
K010	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde.
U001	Acetaldehyde.
U002	Acetone.
U028	Bis(2-ethylhexyl) phthalate.
U031	n-Butyl alcohol.
U069	Dibutyl phthalate.
U088	Di-ethyl phthalate.
U112	Ethyl acetate.
U115	Ethylene Oxide.
U117	Ethyl ether.
U122	Formaldehyde.
U140	Isobutyl alcohol.
U147	Maleic anhydride.
U154	Methanol.
U159	Methyl ethyl ketone.
U161	Methyl isobutyl ketone.
U220	Toluene.
U226	1,1,1 Trichloroethane (Methyl chloroform).
U239	Xylene.
U359	Ethylene Glycol monoethyl ether.

C. How Did Eastman Sample and Analyze the Waste Data in This Petition?

To support its petition, Eastman submitted:

(1) descriptions of its waste water treatment system associated with petitioned wastes;

(2) results of the total constituent list for 40 CFR Part 264 Appendix IX volatiles, semivolatiles, and metals except pesticides, herbicides, and PCBs;

(3) results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

(4) results for reactive sulfide,

(5) results for reactive cyanide;

(6) results for pH;

(7) results of the metals concentrations using multiple pH extraction fluids;

(8) information and results from testing of the fluidized bed incinerator's compliance testing and

(9) results from oil and grease analysis.

D. What Were the Results of Eastman's Analysis?

The EPA believes that the descriptions of the Eastman hazardous waste process and analytical characterization provide a reasonable basis to grant Eastman's petition for an exclusion of the wastewater treatment sludge. The EPA believes the data submitted in support of the petition show Eastman's process can render the wastewater treatment sludge non-hazardous. The EPA has reviewed the sampling procedures used by Eastman and has determined they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations in the wastewater treatment sludge. The data submitted in support of the petition show that constituents in Eastman's waste are presently below health-based levels used in the delisting decision-making. The EPA believes that Eastman has successfully demonstrated that the wastewater treatment sludge is non-hazardous.

Eastman Chemical also conducted additional sampling at the pHs of 4.93, 7.0, and 10.1 to simulate whether the wastes would remain stable if disposed in a wide range of landfill pH environments. The highest level of leaching occurred at pH 4.93. The leachate concentrations for barium, nickel and zinc were below the maximum leachate concentration listed in Table II.

Eastman also provide data from its 1998 trial burn to demonstrate that the FBI incinerator met the required organic destruction and removal efficiency for RCRA incinerators and that the unit also met the Boiler and Industrial Furnace Tier I limits for metals.

E. How did EPA Evaluate the Risk of Delisting the Waste?

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. The EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for Eastman's petitioned waste. EPA applied the Delisting Risk Assessment Software (DRAS) described above, to predict the maximum allowable concentrations of hazardous constituents that may release from the petitioned waste after disposal and determined the potential impact of the disposal of Eastman's petitioned waste on human health and the environment. In assessing potential risks to ground water, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS

program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the established an acceptable risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and Agency health-based numbers. Using the maximum compliance-point concentrations and the EPACMTP fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in groundwater.

The EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenario resulted in conservative values for the compliance-point concentrations and ensured that the waste, once removed from hazardous waste regulation, may not pose a significant threat to human health or the environment.

Similarly, the DRAS used the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.*, volatilization or wind-blown particulate from the landfill). As in the ground water analyses, the DRAS uses the established acceptable risk level, the health-based data and standard risk assessment and exposure algorithms to predicts maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or "delisting levels"). In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model.

The EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, Eastman has never directly disposed of this material in its solid waste landfill, so no representative data exists. Therefore, EPA has determined that it would be unnecessary to request ground water monitoring data.

From the evaluation of Eastman's delisting petition, EPA developed a list of constituents for the verification testing conditions. Proposed maximum allowable leachable concentrations for these constituents were derived by back-calculating from the delisting health-based levels through the proposed fate and transport model for a landfill management scenario. These concentrations (i.e., "delisting levels") are part of the proposed verification testing conditions of the exclusion.

The EPA believes that the descriptions of Eastman's hazardous waste process and analytical characterization, in conjunction with the proposed testing requirements (as discussed later in this notice) provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized. Thus, EPA should grant Eastman's petition for a conditional exclusion of the wastewater treatment sludge.

The EPA Region 6 Delisting Program guidance document states that the appropriate fate and effect model will be used to determine the effect the petitioned waste could have on human health if it is not managed as a hazardous waste. Specifically, the model considers the maximum estimated waste volume and the maximum reported leachate concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) are then compared directly to the health-based levels used in delisting decision-making for hazardous constituents of concern. EPA Region 6 is proposing the DRAS as the appropriate model for this delisting. This subsection presents an evaluation of the potential for ground water contamination for the petitioned waste using the DRAS.

The EPA considered the appropriateness of alternative waste management scenarios for Eastman's wastewater treatment sludge. The EPA decided, based on the information provided in the petition, that disposal of the wastewater treatment sludge in a municipal solid waste landfill is the most reasonable, worst-case scenario for the wastewater treatment sludge. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The EPA, therefore, evaluated Eastman's petitioned waste using DRAS which predicts the potential for ground water contamination from waste placed in a landfill.

For the evaluation of Eastman's petitioned waste, EPA used the DRAS to evaluate the mobility of the hazardous constituents detected in the extract of samples of Eastman's wastewater treatment sludge. Total analysis was also utilized for the wastewater treatment sludge. The maximum annual waste volume for Eastman is 82,100 cubic yards per year. The DAFs are currently calculated assuming an ongoing process generates waste for 20 years.

Analytical data for the wastewater treatment sludge samples were used in the model. The data summaries for detected constituents are presented in Tables II and III.

The EPA's evaluation of the wastewater treatment sludge is based on the maximum reported Total and TCLP concentrations (See Table II). Based on the DRAS, the petitioned waste should be delisted because no constituents of concern exceed the delisting concentrations.

TABLE II.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS WASTEWATER TREATMENT SLUDGE [1]

Constituent	Total Constituent Analyses (mg/kg)	TCLP Leachate Concentration (mg/l)
Antimony	1.5	<0.050
Barium	13	0.083
Chromium	2.5	<0.010

TABLE II.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS WASTEWATER TREATMENT SLUDGE [1]—Continued

Constituent	Total Constituent Analyses (mg/kg)	TCLP Leachate Concentration (mg/l)
Cobalt	3.5	0.062
Lead	2.1	<0.050
Mercury	0.067	<0.0015
Nickel	20	0.18
Selenium	1.5	0.065
Silver	0.18	<0.005
Vanadium	1.7	0.014
Zinc	97	1.7
Acenaphthene	1.8	<0.010
Acetone	<2.5	4.0
bis(2-ethylhexyl) phthlate	4.1	<0.010
2-Butanone	<2.5	1.4
Chloroform	<0.25	0.009
Fluorene	2.0	<0.010
Methanol	0.052	<5.0
Methylene Chloride	<0.25	0.15
2-Methyl naphthalene	7.4	<0.010
Naphthalene	5.5	<0.010

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

TABLE III.—MAXIMUM ALLOWABLE CONCENTRATIONS OF CONSTITUENTS IN LEACHATE

Constituent	Maximum allowable leachate concentration (mg/l)
Antimony	0.0515
Barium	7.3
Chromium	5.0
Cobalt	2.25
Lead	5.0
Mercury	0.00115
Nickel	2.83
Selenium	0.22
Silver	0.384
Vanadium	2.11
Zinc	28
Acenaphthene	1.25
Acetone	7.13
bis(2-ethylhexyl) phthlate	0.28
2-Butanone	48.2
Chloroform	0.0099
Fluorene	0.55
Methanol	35.7
Methylene Chloride	0.486
Naphthalene	0.0321

F. What Did EPA Conclude About Eastman's Analysis?

The EPA concluded, after reviewing Eastman's processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by products in Eastman's waste. In addition, on the basis of explanations and analytical data provided by Eastman, pursuant to § 260.22, the EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

G. What Other Factors Did EPA Consider?

During the evaluation of Eastman's petition, EPA also considered the potential impact of the petitioned waste via non-ground water routes (*i.e.*, air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from Eastman's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from Eastman's waste under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Eastman's waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from Eastman's Wastewater treatment sludge. A description of EPA's assessment of the potential impact of Eastman's waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for today's proposed rule, F–00–TXDEL–TXEASTMAN.

The EPA also considered the potential impact of the petitioned waste via a surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (See 56 *FR* 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in today's notice due to the aggressive acidic medium used for extraction in the TCLP. The EPA believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as ground water.

Based on the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, EPA evaluated the potential impacts on surface water if Eastman's waste were released from a municipal solid waste landfill through runoff and erosion. See the RCRA public docket for today's proposed rule for further information on the potential surface water impacts from runoff and erosion. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that Eastman's wastewater treatment sludge is not a present or potential substantial hazard

to human health and the environment via the surface water exposure pathway.

H. What Is EPA's Evaluation of This Delisting Petition?

The descriptions of Eastman's hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (see Table III). We believe Eastman's process will substantially reduce the likelihood of migration of hazardous constituents from the petitioned waste. Eastman's process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes we should grant Eastman an exclusion for the wastewater treatment sludge. The EPA believes the data submitted in support of the petition show Eastman's process can render the wastewater treatment sludge nonhazardous.

We have reviewed the sampling procedures used by Eastman and have determined they satisfy EPA criteria for collecting representative samples of variable constituent concentrations in the wastewater treatment sludge. The data submitted in support of the petition show that constituents in Eastman's waste are presently below the compliance point concentrations used in the delisting decision-making and would not pose a substantial hazard to the environment. The EPA believes that Eastman has successfully demonstrated that the wastewater treatment sludge is nonhazardous.

The EPA therefore, proposes to grant a conditional exclusion to the Eastman Chemical Company, in Longview, Texas, for the wastewater treatment sludge described in its petition. The EPA's decision to conditionally exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the wastewater treatment sludge.

If we finalize the proposed rule, the Agency will no longer regulate the petitioned waste under parts 262 through 268 and the permitting standards of part 270.

V. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, Eastman, must comply with the requirements in 40 CFR part 261, Appendix IX, Tables 1, 2, and 3. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituents for which Eastman must test the leachate from the wastewater treatment sludge, below which these wastes would be considered nonhazardous.

The EPA selected the set of inorganic and organic constituents specified in Paragraph (1) because of information in the petition. We compiled the list from the composition of the waste, descriptions of Eastman's treatment process, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making.

These delisting levels correspond to the allowable levels measured in the TCLP extract of the waste.

(2) Waste Holding and Handling

The purpose of this paragraph is to ensure that any wastewater treatment sludge which might contain hazardous levels of inorganic and organic constituents are managed and disposed of in accordance with Subtitle C of RCRA. If EPA determines that the data collected under this condition do not support the data provided in the petition, the exclusion will not cover the petitioned waste.

(3) Verification Testing Requirements

Although the wastewater treatment sludge would be considered delisted upon promulgation of the final rule, EPA believes that conditional testing requirements are still warranted to ensure continued effectiveness of the treatment process. During the initial verification period, which is described in paragraph (3)(A), Eastman must perform quarterly sampling for a period of one year to maintain the delisted status of the waste. As an additional condition of the initial verification period, the waste must continue to be processed in the incinerator prior to disposal in a landfill. After successful completion of the initial verification period, which is 12 months from the date of promulgation, the subsequent verification period, which is described in paragraph (3)(B), will begin. During the subsequent verification period, the waste may be either directly disposed in a landfill or disposed as an ash in a landfill with prior incineration.

(A) *Testing:* The EPA believes that quarterly sampling of this waste is adequate for a facility to collect sufficient data to verify that the data provided for the wastewater treatment sludge in the 2000 petition, is representative. Eastman may dispose of the sludge as a non-hazardous waste during the initial verification period if the waste is processed as described in the 1996 delisting exclusion and meets the exclusion levels of the fluidized bed incinerator ash.

If the data from the initial verification period demonstrate that the treatment process is effective, Eastman may request subsequent verification testing. EPA will notify Eastman, in writing, if and when it may replace the testing conditions in paragraph(3)(A)(i) with the testing conditions in (3)(B).

(B) *Subsequent Verification Testing:* The EPA believes that the concentrations of the constituents of concern in the wastewater treatment sludge may vary over time. As a result, to ensure that Eastman's treatment process can effectively handle any variation in constituent concentrations in the waste, we are proposing a subsequent verification testing condition.

The proposed subsequent testing would verify that Eastman wastes are similar to those sludges generated during the initial verification testing. It would also verify that the wastewater treatment sludge does not exhibit unacceptable levels of toxic constituents. Eastman would begin annual sampling on the anniversary date of the final exclusion.

(4) Changes in Operating Conditions

Paragraph (4) would allow Eastman the flexibility of modifying its processes (for example, changes in equipment or changes in operating conditions) to improve its treatment process. However, Eastman must prove the effectiveness of the modified process and request approval from the EPA. Eastman must manage wastes generated during the new process demonstration as hazardous waste until they have obtained written approval and Paragraph (3) is satisfied.

(5) Data Submittals

To provide appropriate documentation that Eastman's facility is properly treating the waste, Eastman must compile, summarize, and keep delisting records on-site for a minimum of five years. They should keep all analytical data obtained through Paragraph (3) including quality control information for five years. Paragraph (5) requires that Eastman furnish these data upon request for inspection by any employee or representative of EPA or the State of Texas.

If the proposed exclusion is made final, it will apply only to 82,100 cubic

yards of wastewater treatment sludge, generated annually at the Eastman facility after successful verification testing.

We would require Eastman to file a new delisting petition under any of the following circumstances:

(a) If it uses any new manufacturing or production process(es), or significantly change from the current process(es) described in its petition; or

(b) If it makes any changes that could affect the composition or type of waste generated.

Eastman must manage waste volumes greater than 82,100 cubic yards of wastewater treatment sludge as hazardous until we grant a new exclusion.

If this exclusion becomes final, Eastman's management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction. Eastman would be required to either treat, store, or dispose of the waste in an on-site facility that has a State permit, license, or is registered to manage municipal or industrial solid waste. If not, Eastman must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a State permit, license, or is registered to manage municipal or industrial solid waste.

(6) Reopener Language

The purpose of Paragraph 6 is to require Eastman to disclose new or different information related to a condition at the facility or disposal of the waste if it is pertinent to the delisting. Eastman must also use this procedure, if the waste sample in the annual testing fails to meet the levels found in Paragraph 1. This provision will allow EPA to reevaluate the exclusion if a source provides new or additional information to the Agency. The EPA will evaluate the information on which we based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition if presented. This provision expressly requires Eastman to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to *those provisions found in* RCRA regulations governing no-migration petitions at § 268.6.

The EPA believes that we have the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. § 551 (1978) *et seq.*, to reopen a delisting decision. We may reopen a delisting decision when we receive new information that calls into question the assumptions underlying the delisting.

The Agency believes a clear statement of its authority in delistings is merited in light of Agency experience. See Reynolds Metals Company at 62 FR 37694 (July 14, 1997)and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading the Agency to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations case by case. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. *See* APA § 553 (b).

(7) Notification Requirements

In order to adequately track wastes that have been delisted, EPA is requiring that Eastman provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. Eastman currently intends to manage the petitioned waste on-site. This notification requirement must be met if the waste is transported off-site. Eastman must provide this notification within 60 days of commencing this activity.

B. What Happens if Eastman Violates the Terms and Conditions?

If Eastman violates the terms and conditions established in the exclusion, the Agency will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the Agency will evaluate the need for enforcement activities on a case-by-case basis. The Agency expects Eastman to conduct the appropriate waste analysis and comply with the criteria explained above in Paragraphs 3, 4, 5 and 6 of the exclusion.

VI. Public Comments

A. How Can I as an Interested Party Submit Comments?

The EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency (EPA), 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753. Identify your comments at the top with this regulatory docket number: "F–00–TXDEL–EASTMAN."

You should submit requests for a hearing to Carl Edlund, Director, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VII. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from today's proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the

Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

IX. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

X. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

XI. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XII. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects that communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XIII. National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

XIV. Executive Order 13132 Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with

State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous Waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f)

Dated: November 17, 2000.

Bill Luthans,

Deputy Director, Multimedia Planning and Permitting Division, Region 6.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Tables 1, 2, and 3 of Appendix IX of part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Eastman Chemical Company	Longview, Texas	Wastewater treatment sludge, (at a maximum generation of 82,100 cubic yards per calendar year) generated by Eastman (EPA Hazardous Waste Nos. F001, F002, F003, F005 generated at Eastman. Eastman must implement a testing program that meets the following conditions for the exclusion to be valid: (1) *Delisting Levels:* All concentrations for the following constituents must not exceed the following levels (mg/l). For the wastewater treatment sludge constituents must be measured in the waste leachate by the method specified in 40 CFR 261.24. (A) Wastewater treatment sludge (i) Inorganic Constituents: Antimony—0.0515; Barium—7.30; Cobalt—2.25; Chromium—5.0; Lead—5.00; Mercury—0.0015; Nickel—2.83; Selenium—0.22; Silver—0.384; Vanadium—2.11; Zinc—28.0 (ii) Organic Constituents: Acenaphthene—1.25; Acetone—7.13; bis(2-ethylhexylphthalate—0.28; 2-butanone—42.8; Chloroform—0.0099; Fluorene—0.55; Methanol—35.7; Methylene Chloride—0.486; naphthalene—0.0321. (2) *Waste Holding and Handling:* Eastman may dispose of the waste water treatment sludge if it meets the conditions of the Eastman delisting exclusion found in 40 CFR Part 261, Appendix IX Tables, 1, 2, and 3 (September 25, 1996). If the waste water treatment sludge is not managed in the manner above, Eastman must manage it in accordance with applicable its RCRA Subtitle C requirements. If the levels of constituents measured in the samples of the waste water treatment sludge do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. (3) *Verification Testing Requirements:* Eastman must perform sample collection and analyses, including quality control procedures, according to SW–846 methodologies. After completion of the initial verification period, Eastman may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Eastman must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B). (A) *Initial Verification Testing:* (i) At quarterly intervals for one year after the final exclusion is granted, Eastman must collect and analyze composites of the wastewater treatment sludge for constituents listed in Condition (1). (B) *Subsequent Verification Testing:* Following termination of the quarterly testing, Eastman must continue to test a representative composite sample for all constituents listed in Condition (1) on an annual basis (no later than twelve months after the final exclusion). (4) *Changes in Operating Conditions:* If Eastman significantly changes the process which generate(s) the waste(s) and which may or could affect the composition or type waste(s) generated as established under Condition (1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process). Eastman must notify the EPA in writing and may no longer handle the waste generated from the new process or no longer manage as nonhazardous until the waste meet the delisting levels set in Condition (1) and it has received written approval to do so from EPA. (5) *Data Submittals:* Eastman must submit or maintain, as applicable, the information described below. If Eastman fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Condition (6). Eastman must:

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) Submit the data obtained through Condition (3) to Mr. William Gallagher, Chief, Region 6 Delisting Program, EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–O) within the time specified. (B) Compile records of operating conditions and analytical data from Condition (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the State of Texas request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. "As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. "If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion." (6) *Reopener Language* (A) If, anytime after disposal of the delisted waste, Eastman possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in Condition (1), Eastman must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (C) If Eastman fails to submit the information described in Conditions (5), (6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information. (E) Following the receipt of information from the facility described in Condition (6)(D) or (if no information is presented under Condition (6)(D)) the initial receipt of information described in Conditions (5), (6)(A) or (6)(B), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (7) *Notification Requirements:* Eastman must do following before transporting the delisted waste off-site: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the exclusion. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if they ship the delisted waste into a different disposal facility.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
* *	* *	* * * * *

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* *	* *	* * * * *
Eastman Chemical Company	Longview,Texas	Wastewater treatment sludge, (at a maximum generation of 82,100 cubic yards per calendar year) (EPA Hazardous Waste Nos. K009, K010) generated at Eastman. Eastman must implement the testing program described in Table 1 of this Appendix. Waste Excluded From Non-Specific Sources for the petition to be valid.
* *	* *	* * * * *

TABLE 3.—WASTE EXCLUDED FROM COMMERCIAL CHEMICAL PRODUCTS, OFF SPECIFICATION SPECIES, CONTAINER RESIDUES, AND SOIL RESIDUES THEREOF

Facility	Address	Waste description
Eastman Chemical Company	Longview, Texas	Wastewater treatment sludge, (at a maximum generation of 82,100 cubic yards per calendar year) generated by Eastman (EPA Hazardous Waste Nos. U001, U002, U028, U031, U069, U088, U112, U115, U117, U122, U140, U147, U154, U159, U161, U220, U226, U239, U359). Eastman must implement the testing program described in Table 1 of this Appendix. Waste Excluded From Non-Specific Sources for the petition to be valid.
* *	* *	* * * * *

[FR Doc. 00–30632 Filed 12–1–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–6910–9]

Land Disposal Restrictions: Notice of Intent to Grant a Site-Specific Treatment Variance to Dupont Environmental Treatment—Chambers Works Wastewater Treatment Plant, Deepwater, New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing to grant a site-specific treatment variance from the Land Disposal Restrictions (LDR) standards for wastewater treatment sludge generated at the Dupont Environmental Treatment (*DET*)—*Chambers Works* Wastewater Treatment Plant located in Deepwater, New Jersey. This sludge is derived from the treatment of multiple listed, including K088, and characteristic hazardous waste. DET requests this treatment variance because they contend that the chemical properties of the sludge differ significantly from the waste used to establish the LDR treatment standard for arsenic in K088 nonwastewaters. Accordingly, we propose to grant an alternate treatment standard of 5.0 mg/L Toxicity Characteristic Leaching Procedure (TCLP) for the arsenic in the wastewater treatment sludge generated at this facility.

If promulgated, DET may then dispose of their wastewater treatment sludge in their on-site RCRA Subtitle C landfill provided the sludge complies with the specified alternate treatment standard for arsenic in K088 nonwastewaters and meets all other applicable LDR treatment standards.

DATES: Comments must be received by December 26, 2000. Comments received after the close of the comment period will be stamped "late" and may or may not be considered by the Agency.

ADDRESSES: Commenters should submit an original and two copies of their comments referencing Docket Number F–2000–DPVP–FFFFF to: (1) If using regular U.S. Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA–HQ), 1200 Pennsylvania Avenue, NW, Washington DC 20460–0002, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202.

You may view public comments and supporting materials in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 am to 4 pm Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling 703–603–9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost $0.15 per page. (The index is available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them).

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). The RCRA Hotline is open Monday-Friday, 9 am to 6 pm, Eastern Standard Time. For more detailed information on specific aspects of this proposal, contact Elaine

Federal Register

Thursday,
August 16, 2001

Part III

Environmental Protection Agency

40 CFR Part 261
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7025–3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting a petition submitted by Eastman Chemical Corporation—Texas Operations (Eastman Chemical) to exclude from hazardous waste control (or delist) a certain solid waste. This final rule responds to the petition submitted by Eastman Chemical to delist the dewatered wastewater treatment sludge on a "generator specific" basis from the lists of hazardous waste.

After careful analysis, the EPA has concluded that the petitioned waste is not hazardous waste when disposed of in Subtitle D landfills. This exclusion applies to dewatered wastewater treatment sludge generated at Eastman Chemical's Longview, Texas facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in Subtitle D landfills but imposes testing conditions to ensure that the future-generated wastes remain qualified for delisting.

EFFECTIVE DATE: August 16, 2001.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Freedom of Information Act review room on the 7th floor from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is "F–00–TXDEL–TXEASTMAN". The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact Bill Gallagher, at (214) 665–6775. For technical information concerning this document, contact Michelle Peace, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, (214) 665–7430.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

A. What Action Is EPA Finalizing?

The EPA is finalizing:

(1) the decision to grant Eastman's petition to have its wastewater treatment sludge excluded, or delisted, from the definition of a hazardous waste, subject to certain continued verification and monitoring conditions; and

(2) to use the Delisting Risk Assessment Software to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency used this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

After evaluating the petition, EPA proposed, on December 4, 2000 to exclude the Eastman Chemical waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (see 65 FR 75637, December 4, 2000)

B. Why Is EPA Approving This Delisting?

Eastman's petition requests a delisting for listed hazardous wastes. Eastman does not believe that the petitioned waste meets the criteria for which EPA listed it. Eastman also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)-(4). In making the final delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste were originally listed, EPA would have proposed to deny the petition.) The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. The EPA believes that the petitioned waste does not meet these criteria. EPA's final decision to delist waste from Eastman's facility is based on the information submitted in support of this rule, i.e., descriptions of the waste water treatment system, incinerator, and analytical data from the Longview facility.

C. What Are the Limits of This Exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in Table 1 of part 261, Appendix IX and the conditions contained herein are satisfied. The maximum annual volume of the dewatered wastewater treatment sludge is 82,100 cubic yards.

D. How Will Eastman Chemical Manage the Waste if It Is Delisted?

Eastman currently disposes of the petitioned waste (wastewater treatment sludge) generated at its facility in an on-site, state permitted solid waste landfill after the sludge has been incinerated. The ash from the incineration process was delisted by EPA in June 1996. As a delisted material, it will meet the criteria for disposal in a Subtitle D landfill without incineration.

The incinerator is a RCRA Subtitle C regulated unit permitted by the Texas Natural Resource Conservation

Commission. This final decision will not affect the current regulatory controls on the incineration unit.

E. When Is the Final Delisting Exclusion Effective?

This rule is effective August 16, 2001. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How Does This Final Rule Affect States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received our authorization to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If Eastman Chemical transports the petitioned waste to or manages the waste in any State with delisting authorization, Eastman Chemical must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude from the list of hazardous wastes, wastes the generator does not consider hazardous under RCRA.

B. What Regulations Allow Facilities To Delist a Waste?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 266, 268 and 273 of Title 40 of the Code of Federal Regulations. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

C. What Information Must the Generator Supply?

Petitioners must provide sufficient information to EPA to allow the EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

III. EPA's Evaluation of the Waste Data

A. What Waste Did Eastman Chemical Petition EPA To Delist?

On February 4, 2000, Eastman petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, a waste by-product (dewatered sludge from the wastewater treatment plant) which falls under the classification of listed waste because of the "derived from" rule in RCRA 40 CFR 261.3(c)(2)(i). Specifically, in its petition, Eastman Chemical Company, Texas Operations, located in Longview, Texas, requested that EPA grant an exclusion for 82,100 cubic yards per year of dewatered sludge resulting from its hazardous waste treatment process. The resulting waste is listed, in accordance with § 261.3(c)(2)(i) (i.e., the "derived from" rule). The waste codes of the constituents of concern are EPA Hazardous Waste Nos. F001, F002, F003, F005, K009, K010, U001, U002, U028, U031, U069, U088, U112, U115, U117, U122, U140, U147, U154, U159, U161, U220, U226, U239 and U359. Table 1 lists the constituents of concern for these waste codes.

TABLE 1.—HAZARDOUS WASTE CODES ASSOCIATED WITH WASTE STREAMS

Waste code	Basis for characteristics/listing
F001—Spent halogented solvents used in degreasing.	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachlorlde, chlorinated fluorocarbons
F002—Spent halogented solvents	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trichlorofluoroethane, ortho-dichlorobenzene, trichlorofluoromethane
F003—Spent non-halogented solvents	Not applicable
F005—Spent non-halogented solvents	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane
K009—Distillation bottoms from the production of acetaldehyde from ethylene.	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid
K010—Distillation side cuts from the production of acetaldehyde from ethylene.	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde
U001	Acetaldehyde
U002	Acetone
U028	Bis(2-ethylhexyl) phthalate
U031	n-Butyl alcohol
U069	Dibutyl phthalate

TABLE 1.—HAZARDOUS WASTE CODES ASSOCIATED WITH WASTE STREAMS—Continued

Waste code	Basis for characteristics/listing
U088	Di-ethyl phthalate
U112	Ethyl acetate
U115	Ethylene Oxide
U117	Ethyl ether
U122	Formaldehyde
U140	Isobutyl alcohol
U147	Maleic anhydride
U154	Methanol
U159	Methyl ethyl ketone
U161	Methyl isobutyl ketone
U220	Toluene
U226	1,1,1 Trichloroethane (Methyl chloroform)
U239	Xylene
U359	Ethylene Glycol monoethyl ether

B. How Much Waste Did Eastman Chemical Propose To Delist?

Specifically, in its petition, Eastman Chemical requested that EPA grant a standard exclusion for 82,100 cubic yards of dewatered wastewater treatment sludge generated per calender year.

C. How Did Eastman Chemical Sample and Analyze the Waste Data in This Petition?

To support its petition, Eastman submitted:

(1) descriptions of its waste water treatment system associated with petitioned wastes;

(2) results of the total constituent list for 40 CFR Part 264 Appendix IX volatiles, semivolatiles, and metals except pesticides, herbicides, and PCBs;

(3) results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

(4) results for reactive sulfide,

(5) results for reactive cyanide;

(6) results for pH;

(7) results of the metals concentrations using multiple pH extraction fluids;

(8) information and results from testing of the fluidized bed incinerator's compliance testing and

(9) results from oil and grease analysis.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

The EPA received public comments on December 4, 2000, proposal from three interested parties, General Motors, Delphi Automotive, and Eastman Chemical Company.

B. Request for Clarification of Preamble Language and Provisions in Table 1 of Appendix IX of Part 261.

Eastman comments that the language in the preamble of the rules may be interpreted more strictly than the language in the exclusion.

For purposes of compliance with the exclusion in Table 1 of Appendix 1 of part 261, if Eastman significantly changes the process which generate(s) the waste(s) and which may or could affect the composition or type waste(s) generated as established under Condition (1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process). Eastman must (A) notify the EPA in writing of the change and (B) may no longer handle or manage the waste generated from the new process as nonhazardous until Eastman has demonstrated through testing the waste meets the delisting levels set in Condition (1) and (C) Eastman has received written approval to begin managing the wastes as non-hazardous from EPA. The Agency will revise Condition 4 of Table 1 of Appendix IX of part 261 to reflect this change.

Eastman also comments that the text in Item 1 of Table 1 could be misinterpreted.

There is a typo in Item 1 of Table 1 (65 FR 75649, December 4, 2000). The delisting level of 2-butanone is listed as 42.8 but should be 48.2 in accordance with Table III of the preamble. The Agency has rechecked the values from the Delisting Risk Assessment Software (DRAS) and notes the correct concentration limit is 42.8 mg/l for 2-butanone.

C. Comments on the Delisting Risk Assessment Software

Delphi Automotive generally supports the Eastman Chemical Company's Delisting Petition to delist its sludge but has extensive comments on the Delisting Risk Assessment Software. Delphi comments that the ease of use and simplicity for inputting two variables into the model has resulted in a model that is not designed to be a site-specific model but rather is waste generator specific. Hence, any site specific factors such as hydrogeology, climate, ecology, population density, etc. cannot be incorporated as modifiers of release or risk estimates. This leaves the model inflexible, not representative, and leads to an overestimation of releases and risk. Delphi goes on to identify concerns and questions regarding the Delisting Risk Assessment model. Delphi and GM list their concerns in the areas of (1) assumptions regarding the landfill; minimal cover; criteria applied regarding risk levels; the TCLP; unlikely risk scenarios; undocumented sensitivity analysis; issues surrounding Nickel; and notice and review issues.

Information on the Risk and Hazard Assessment can be found in Chapter 4 of the DTSD. A discussion of criteria and the method for quantifying of risk is provided in Chapter 4.

The Delisting Program in its history has never focused on site-specific conditions. It has since its inception been a program specifically for waste generators. A review of the 40 CFR 260.22 indicates that these are petitions to amend part 261 to exclude a waste produced at a particular facility. The Agency is not currently using the model to predict site-specific results. Since disposal of the delisted waste may occur at any landfill in the United States, site-specific considerations are not usually given. The DRAS model is based on

national averages of the site specific factors and is intended to model a reasonable worst case scenario for disposal.

The Agency continues to review chemical-specific parameter data. Where appropriate, these data will be incorporated into the DRAS analyses. However, as explained above, in delisting analyses, site specific characteristics (beyond waste constituent concentration and volume) are not incorporated into analyses. Default values are given for many parameters used in risk. The Agency can not fully evaluate how release mechanisms and exposure scenarios may be impacted because the final disposal location remains undefined. See Tenneco Automotive Proposed Rule, 66 FR 24088, May 11, 2001 and the proposed Rule for Bekaert Steel Corporation in Rogers, AR, 61 FR 32748, June 25, 1996.

Delphi comments that the DRAS assumes that landfill is unlined and that leaching occurs from the beginning which is counter to performance standard and use of liners, covers & slurry walls. The assumption of no liner is not consistent with CMTP which assumes a liner. The DRAS model should allow for the option of including a liner and should use Subtitle D landfill characteristics.

There are existing solid waste landfills which have no liner. Over time, liners also fail, delistings do not currently have an expiration date, therefore it is reasonable to consider scenarios for liner failure or that no liner exists. After a delisting has been granted, the Agency does not designate a specific landfill where the waste may be disposed. Therefore, the Agency has assumed a reasonable worst case scenario of no liner.

The DRAS assumes minimal cover which increases volatilization and particulate emission estimates which may not be reasonable.

Since disposal of a delisted material may occur in any unauthorized State, we must evaluate whether a State may or may not have regulatory requirements for daily cover. Regulations requiring daily cover on municipal landfills do not necessarily apply to industrial solid waste landfills. Furthermore, violations do occur. The worst case scenario must consider that the minimal requirements for daily cover exists.

General Motors and Delphi comments that the terms used in the DRAS should be more clearly defined. Does the term Cw for waste contamination account for the total mass of contamination in the waste or only that portion that may enter the aqueous phase and be transported into the unsaturated zone and/or the leachable portion?

All terms and equations used in the Delisting Risk Assessment Software (DRAS) program are discussed in the Delisting Technical Support Document (DTSD). All abbreviations, acronyms, and variables are listed in Chapter 1, pages x-xx of the DTSD. The DTSD is updated to reflect revisions and modifications to risk algorithms and methodology. The Agency encourages all users and reviewers to comment on the technical support documentation and continues to improve the clarity and transparency of the DTSD. The term Cw is not used in the document. Without specific information to the page location/screen location of the term referenced in the question above, no further response can be provided.

Does a Hazard Index of greater than 1 mean that the waste cannot be delisted?

A Hazard Index (HI) of 1 does not mean that the waste cannot be delisted, but that a more thorough evaluation of the waste will be necessary. In cases where the HI exceeds one for the entire waste, the Agency will then go on to evaluate the target organ for the critical effect of those chemicals contributing to the total HI. In some cases, the hazards associated with various chemicals in the waste result from effects to the same target organ, and are indeed additive. In other cases, the hazards of different chemicals impact different target organs, and are not additive, in which case the HI is lowered accordingly. The DRAS automatically assumes the conservative approach; summing all hazards to calculate the HI.

What criteria determine whether the allowable leachate concentration is set by SDWA MCL, DRAS calculation, treatment technology or toxicity characteristic level? Are some levels below background?

The allowable level is the most conservative of the DRAS calculations, a calculation based on the Safe Drinking Water Act Maximum Contaminant Level (MCL) or the toxicity characteristic level. Technology based treatment standards are not considered. The exception to this is the level for arsenic which is frequently calculated based on the concentration allowed by the MCL. Does EPA policy require that MCL or SW criteria be met? Does this policy apply at all downgradient distances or just those corresponding to the DAF?

Groundwater must meet MCL criteria but not surface water criteria. The DAF is used to calculate the concentration in the groundwater at a well a set distance downgradient. This distance was based on the results of a survey which identified the distance to the closest drinking water wells located near solid waste landfills throughout the country.

The pH of a landfill is generally higher than the pH of the extraction fluid used in the TCLP which affects the leachability of the metals.

The leachability of this waste was measured using three different extraction fluids representing a range of pH values. The pH values evaluated in this petition ranged from pH 4.93, 7.0, and 10.1. This is a fairly new piece of information requested by the Agency to evaluate whether the waste leachability will be significantly affected by changes in the pH environment.

The duration of leaching 18 min or 18 hr. may over or underestimate the leachability of some constituents. The Toxicity Characteristic Leaching Procedure (TCLP) does not account for variations in time to equilibrium for different species. The TCLP under predicts the maximum concentration of some anions and does not account for a variety of processes that can affect leachate quality, quantity and migration.

For regulatory purposes, the TCLP must be performed in 18 ± 2 hours. Eighteen hours is theoretically the residence time the aqueous phase remains in contact with the solid phase as it percolates through the waste in a landfill scenario. Assuming the data are being used for other purposes there is still no logical basis for decreasing the leaching time, since any lesser leaching time will generally under estimate the potential constituent concentrations.

The Agency should verify if the TCLP accounts for Dissolved Oxygen Content (DOC) in leachate which affects mobility of metals in the aquifer.

The TCLP does not account for site-specific conditions such as conductivity, pH, dissolved oxygen, and total dissolved solids. It is to be anticipated that no test methodology will be universally appropriate in all circumstances and will be varied based upon discrete *site-specific conditions* as was anticipated by the rule promulgating revisions to the TCLP. See, 55 FR 11798 (March 29, 1990) and

the Reynolds Metals Delisting Repeal 62 FR 41005 (July 31, 1997).

It may be appropriate for the Agency to consider data from the SPLP.

The Agency would consider any additional data that the petitioner chooses to submit. At this time the Agency requires leach testing for stabilized waste at 3 different pHs. The Agency also evaluates data from the Multiple Extraction Procedure (MEP). During the development of the Sampling and Analysis Plan for this delisting petition, the Agency and petitioner discussed which analytical methods were to be used and the approach for adequate characterization of the waste. The TCLP and testing at 3 different pHs were deemed appropriate analyses for characterizing this waste.

Several assumptions used in the DRAS model are unlikely and unreasonable: (1) A receptor lives and works at a single location 100 m downgradient and is exposed 350 days/yr; (2) Individuals are exposed to the 90th percentile level for all paths; (3) All media flow toward the receptor; (4) The landfill volume and conditions from 1987 is still valid; (5) The waste is placed uniformly at great depth over the whole landfill; (6) Only the most sensitive pathway for each constituent is selected which is an unlikely scenario; (7) First order decay applies although processes of oxidation, hydrolysis and biodegredation are not considered separately; (8) Transformation rate may not be reasonable for biological processes; (9) Fate and leaching estimates should include Kow, pKa, Henry's Law and potential for biological transformation; (10) All streams are fishable and representative; and (11) Nickel has a fish BCF of 307 which is unsupported by peer review publications and EPA's own documents. The DRAS model is intended to model a reasonable worst case model and is based on national averages of these factors. This is the same assumption used for the EPACML.

The DRAS employs risk assessment default parameters that are accepted throughout the Agency in risk analyses (i.e., residential exposure @ 350 days/yr, selection of the 90th percentile). These default standards are described and listed in Appendix A of the DTSD.

The DRAS does employ a conservative approach to exposure assessment by assuming the receptor may be exposed to both the most sensitive groundwater pathway and the most sensitive surface exposure pathway. To maximize the impact of the waste, the model assumes uniform placement of the waste and selects the most sensitive pathway for each constituent. The Agency has no way of knowing that this situation will not occur and therefore deems it prudent to protect for this condition by adding risks. Again, the Agency has no way of knowing the direction of media flow and must assume that all media flow may move toward the receptor. The Agency has no data to indicate that the landfill volume data and other data from the 1987 landfill survey report is not valid. When updated data are available, they will be incorporated into the analyses.

The groundwater fate and transport model used by the Agency to determine first order decay and other processes is the EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP). This model has been peer reviewed and received an excellent review from the Science Advisory Board (SAB). EPA has proposed use of this SAB-reviewed model and no convincing comments to the contrary have been received. The bioconcentration factor (BCF) for nickel has been revised from 307 to 78. The revised nickel BCF will be incorporated into the upcoming DRAS version 2.0.

GM and Delphi both comment that the model does not account for the uncertainty or sensitivity estimate on this exposure. Without a sensitivity analysis it is impossible to determine if a single pathway drives the risk. If data for most sensitive parameter is uncertain or limited, confidence in the result will be poor.

The DRAS provides the forward-calculated risk level and back-calculated allowable waste concentration for each exposure pathway, thereby permitting the user to determine which pathway drives the risk for a given chemical. These analyses are currently provided for the user by the DRAS program on the Chemical-Specific Results screen.

What is the effect of assuming a DAF of 18?

The Dilution Attenuation Factor (DAF) of 18 is a conservative DAF determined by the EPACMTP fate and transport model for the landfill waste management scenario. The DAF of 18 represents the class of organic chemicals for non-degrading, non-sorbing, characteristics. When creating a chemical to add to the DRAS chemical library for use in DRAS analyses, we recommend using a conservative value.

What is the sensitivity of using the 50th percentile on release and risk estimates?

The DRAS assessment uses high end estimates from the 90th percentile to select the best available data for each parameter. As mentioned in 65 FR 58019 (September 27, 2000), some EPA risk assessments may select the 50th percentile of the best available to represent typical values. The DRAS assessment always defaults to high-end values.

The BCF of 307 for nickel in fish is unsupported in EPA's own documents. Nickel does not bioaccumulate due to incomplete adsorption and rapid excretion. Literature values are much less. BCF should not be used for predicting chronic toxicity. Some organs can regulate internal concentrations. Ni^{+2}, not the parent, is persistent and bioavailable.

The Bioconcentration Factor (BCF) for nickel has been revised to 78 and will be incorporated into DRAS version 2.0. This value is based on the geometric mean of 3 laboratory values (100, 100, 47). Further background on the studies used to derive these BCFs is available in the document entitled "Screening Level Ecological Risk Assessment Protocol for Hazardous Waste Combustion Facilities" (EPA530–D–99–001). However, neither BCF value (307 or 78) will have an impact on the delisting levels for nickel as the delisting level is driven by the groundwater ingestion pathway. In the DRAS risk analyses, nickel does not constitute an appreciable risk via surface pathways including fish ingestion in which the BCF is used to calculate risk.

How does the model distinguish metals that are important for some animals?

Delisting levels for metals far exceed any micronutrient levels. These micronutrient levels are accounted for in the delisting levels but the excess of the delisting level is not significant enough to pose a risk to the animals.

Current science suggests that the skin and respiratory tract are targets for soluble nickel salts yet the model literature states that the target organs and critical effects are decreased organ and or body weights.

The oral Reference Dose (RfD) is based on the assumption that thresholds exist for certain toxic effects such as cellular necrosis. It is expressed in units of mg/kg-day. Ambrose, et al. in "Long-term Toxicologic Assessment of Nickel in Rats and Dogs" [1] reported the results of a 2-year feeding study using rats given 0, 100, 1000 or 2500 ppm nickel (estimated as 0, 5, 50 and 125 mg Ni/

[1] Ambrose, A.M., P.S. Larson, J.R. Borzelleca and G.R. Hennigar, Jr. 1976. Long-term toxicologic Assessment of Nickel in Rats and Dogs. J. Food Sci. Technol. 13: 181–187.

kg bw) in the diet. Clinical signs of toxicity, such as lethargy, ataxia, irregular breathing, cool body temperature, salivation and discolored extremities, were seen primarily in the 100 mg/kg/day group; these signs were less severe in the 35 mg/kg/day group. Based on the results obtained in this study, the 5 mg/kg/day nickel dose was a "no observed adverse effect levels" (NOAEL), whereas 35 mg/kg/day was a "lowest observed adverse effects levels" (LOAEL) for decreased body and organ weights. For further information, please refer to the Agency's IRIS database.

In aquatic environs, much of the nickel present as ionic or stable organic complexes. Hence much of the nickel is insoluble with minimal bioavailability. Also, soil which contains high organic matter will limit nickel's mobility. Are maximum permissible levels set below background? Background levels for nickel are approximately 3.3 ppb freshwater; 2.1 ppb groundwater; 4 to 30 mg/kg soil.

The Agency agrees that some nickel may be insoluble, have minimal bioavailability, and have mobility dependent on organic content. However as explained above, in delisting analyses, site specific characteristics (beyond waste constituent concentration and volume) are not incorporated into analyses. Default values are given for many parameters used in risk analyses including the organic content of fishable waters. The Agency has no way of knowing what streams may be impacted and, therefore, establishes a conservative estimate of pertinent variables.

The DRAS is complex and EPA must explain the models and risk processes used in establishing regulatory limits.

Attached to the Delisting Risk Assessment Software is a Technical Support Document which explains the risk algorithms and documentation of the decisions made in development of the model. Publication costs prohibit the inclusion of all this information into the **Federal Register** notice but it is readily available in both the Technical Support Document and at the Region 6 Delisting page (*www.epa.gov/earth1/r6/pd-o/pd-o.htm*). However, the Agency believes that the Delisting Risk Assessment Software is no more complex than use of the EPACML for delisting, just because the calculations *have been computerized* make them no more difficult to understand than the EPACML. Similar regression models were developed for the DRAS. The risk pathways for surface water and air volatilization are evaluated by the same equations used previously in the delisting program. And finally, the pathways for showering and dermal contact are equations which are commonly used in risk assessments performed for cleanups and site assessments under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) commonly known as Superfund and other programs.

EPA should confirm stoichiometry, speciation charge, formula weight, equilibrium and enthalpy estimates with regard to metal and organic ligands as risks from metal ion concentrations may be overestimated.

The Agency continues to review chemical-specific parameter data. Where appropriate, these data will be incorporated into the DRAS analyses. Currently, MINTEQA2 is used in the EPACMTP. As refinements to metals speciation with regards to groundwater fate and transport become available, they will be incorporated into the EPACMTP model. However, as explained above, in delisting analyses, site specific characteristics (beyond waste constituent concentration and volume) are not incorporated into analyses. Default values are given for many parameters used in risk. The Agency has no way of knowing how release mechanisms and exposure scenarios may be impacted given the final disposal location remains undefined.

The model may estimate fate and transport concentration that exceed water solubility.

It is assumed that this comment refers to the groundwater fate and transport model used by DRAS (i.e., the EPACMTP). Indeed, if waste concentration exceeds soil saturation, free form conditions may occur and the assumptions of the EPACMTP may be compromised. Therefore, soil saturation values have been incorporated into DRAS and the program will notify the user if a waste concentrations exceed soil saturation concentrations. Ambient water concentrations may be influenced by more than chemical solubility (e.g., organic content). Total concentrations that exceed 1% are also highlighted and flagged within the DRAS so that further evaluation can be performed.

The use of the NOAEL in Rfd calculations has been challenged by the Science Advisory Board (SAB). The dose response relationship and the consistency in response level are not identified. Regulatory limits are based more on experimental exposure than on biological relevance.

The EPA still uses the no observed adverse effect levels (NOAEL) in the development of a reference dose (RfD). Until such time that the Agency redefines RfD methodology, delisting will continue to determine hazards based on RfDs recommended by EPA's IRIS (Integrated Risk Information System) database. The Agency continues to support the use of RfDs in delisting determinations in such a manner consistent with EPA risk assessment methodology. The EPA risk assessors and EPA's Office of Research and Development scientists who have peer reviewed the DRAS have not questioned the method in which RfDs are employed in the DRAS analyses.

GM and Delphi both comment that model should be peer reviewed and the public should have the formal opportunity to provide comments.

The model has been peer reviewed by EPA risk assessors and EPA's Office of Research and Development scientists. The public has the opportunity to comment on the DRAS model each time a delisting is proposed which is based on the DRAS model. The Agency is currently using the same level of public review used by the delisting program in the use of new models. The same notice procedures were provided for the use of the EPA Composite Model for Landfills in 1991. The model's use as modified for the delisting program was promulgated in conjunction with its use in the Reynolds Metals Delisting petition See, 56 FR 32993 (July 18, 1991).

GM summarizes its comments on the DRAS by stating that (1) EPA is proposing significant changes to the methodology it uses to evaluate delisting petitions. It appears the changes would apply to all future delisting petitions. (2) The proposed changes are complex. Not enough information has been provided about the various assumptions, methodologies, and interactions between variables used by EPA in its model. (3) It appears that the proposed changes would apply in all EPA Regions, (4) The proposed changes may include elements of the still-draft, unpromulgated, and controversial HWIR waste model. It is inappropriate and contrary to law and the Administrative Procedures Act to use a model prior to

public notice and comment. (5) No **Federal Register** notice has been given to clearly indicate the EPA plans to change the way it reviews and evaluates delisting petitions. Instead, references to the changes in the model have been made as part of proposals to delist specific waste streams. (6) The model should be peer reviewed and if EPA is changing the model it uses to evaluate delisting petitions (from the EPACML to the DRAS model) USEPA should provide specific and clear public notification of this intent. The risk assessment methodology for delisting that has been used since 1991 should still apply until public review period is completed.

The EPA is following the same notice provided for changing from the VHS model to the EPA Composite Model for Landfills (EPACML). See 56 FR 32993, July 18, 1991. The public has the opportunity to comment on the DRAS model each time a delisting is proposed which is based on the DRAS model. General Motors has not stated any reason why the DRAS model is not appropriate for use in evaluating the risk associated with the Tenneco Delisting.

General Motors states that use of model with public review and comment is a violation of the Administrative Procedures Act and law. Opportunity for public review and comment is provided for each delisting petition. Comments are requested for each delisting decision regarding the decision to delist the waste and use of a model to assess the risk posed to human health and the environment. Each time the model is used, just as with the use of the EPACML, the public and interested stakeholders can comment on the appropriateness of the use. In fact, each proposed rule for approving a delisting proposes the use of a model in the evaluation of risk and asks for comment. Examples can be seen in the **Federal Register** for the EPACML as well as the DRAS. See, 56 FR 32993, (July 18, 1991), 64 FR 44867 (August 18, 1999), and 65 FR 75641, (December 4, 2000). Any petitioner or interested party may suggest more appropriate evaluation tools for predicting risk. Thus, EPA believes that adequate public notice has been provided and the APA has not been violated.

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. The final to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to manage its waste as nonhazardous. There is no additional impact therefore, due to this final rule. Therefore, this proposal would not be a significant regulation and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required however if the Administrator or delegated representative certifies that the rule will not have any impact on a small entities.

This rule if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. The EPA finds that this final delisting decision is deregulatory in nature and does not impose any enforceable duty upon State, local, or tribal governments or the private sector. In addition, the final delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

X. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If

the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." This rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

XI. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XII. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XIII. National Technology Transfer and Advancement Act

Under section 12(d) if the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous Waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 27, 2001.

Stephen Gilrein,

Acting Director of Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1, 2, and 3 of Appendix IX, part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Eastman Chemical Company	Longview, Texas	Wastewater treatment sludge, (at a maximum generation of 82,100 cubic yards per calendar year) generated by Eastman (EPA Hazardous Waste Nos. F001, F002, F003, F005 generated at Eastman when disposed of in a Subtitle D landfill. Eastman must implement a testing program that meets the following conditions for the exclusion to be valid: (1) *Delisting Levels:* All concentrations for the following constituents must not exceed the following levels (mg/l). For the wastewater treatment sludge constituents must be measured in the waste leachate by the method specified in 40 CFR 261.24. Wastewater treatment sludge: (i) Inorganic Constituents: Antimony-0.0515; Barium-7.30; Cobalt-2.25; Chromium-5.0; Lead-5.0; Mercury-0.0015; Nickel-2.83; Selenium-0.22; Silver-0.384; Vanadium-2.11; Zinc-28.0

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(ii) Organic Constituents: Acenaphthene-1.25; Acetone—7.13; bis(2-ethylhexylphthalate—0.28; 2-butanone—42.8; Chloroform—0.0099; Fluorene—0.55; Methanol-35.7; Methylene Chloride—0.486; naphthalene-0.0321. (2) *Waste Holding and Handling:* If the concentrations of the sludge exceed the levels provided in Condition 1, then the sludge must be treated in the Fluidized Bed Incinerator (FBI) and meet the requirements of that September 25, 1996 delisting exclusion to be non-hazardous (as FBI ash). If the sludge meets the delisting levels provided in Condition 1, then it's non-hazardous (as sludge). If the waste water treatment sludge is not managed in the manner above, Eastman must manage it in accordance with applicable RCRA Subtitle C requirements. If the levels of constituents measured in the samples of the waste water treatment sludge do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. During the verification period, Eastman must manage the waste in the FBI incinerator prior to disposal. (3) *Verification Testing Requirements:* Eastman must perform sample collection and analyses, including quality control procedures, according to SW–846 methodologies. After completion of the initial verification period, Eastman may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Eastman must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B). (A) *Initial Verification Testing:* At quarterly intervals for one year after the final exclusion is granted, Eastman must collect and analyze composites of the wastewater treatment sludge for constituents listed in Condition (1). (B) *Subsequent Verification Testing:* Following termination of the quarterly testing, Eastman must continue to test a representative composite sample for all constituents listed in Condition (1) on an annual basis (no later than twelve months after the final exclusion). (4) *Changes in Operating Conditions.* If Eastman significantly changes the process which generate(s) the waste(s) and which may or could affect the composition or type of waste(s) generated as established under Condition (1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process or generation of volumes in excess 82,100 cubic yards of waste annually), Eastman must (A) notify the EPA in writing of the change and (B) may no longer handle or manage the waste generated from the new process as nonhazardous until Eastman has demonstrated through testing the waste meets the delisting levels set in Condition (1) and (C) Eastman has received written approval to begin managing the wastes as non-hazardous from EPA. (5) *Data Submittals.* Eastman must submit or maintain, as applicable, the information described below. If Eastman fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Condition (6). Eastman must: (A) Submit the data obtained through Condition (3) to Mr. William Gallagher, Chief, Region 6 Delisting Program, EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–O) within the time specified. (B) Compile records of operating conditions and analytical data from Condition (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the State of Texas request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: (i) Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(ii) As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. (iii) If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) *Reopener Language:* (A) If, anytime after disposal of the delisted waste, Eastman possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in Condition (1), Eastman must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (C) If Eastman fails to submit the information described in Conditions (5),(6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information. (E) Following the receipt of information from the facility described in Condition (6)(D) or (if no information is presented under Condition (6)(D)) the initial receipt of information described in Conditions (5), (6)(A) or (6)(B), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (7) *Notification Requirements.* Eastman must do following before transporting the delisted waste off-site: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the exclusion. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if they ship the delisted waste into a different disposal facility.

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* * *	* * *	* * * * *
Eastman Chemical Company	Longview, Texas	Wastewater treatment sludge, (at a maximum generation of 82,100 cubic yards per calendar year) (EPA Hazardous Waste Nos. K009, K010) *generated at* Eastman. Eastman must implement the testing program described in Table 1. Waste Excluded From Non-Specific Sources for the petition to be valid.

TABLE 3.—WASTE EXCLUDED FROM COMMERCIAL CHEMICAL PRODUCTS, OFF SPECIFICATION SPECIES, CONTAINER RESIDUES, AND SOIL RESIDUES THEREOF

Facility	Address	Waste description
* * *	* * *	* * * * * * *
Eastman Chemical Company	Longview, Texas	Wastewater treatment sludge, (at a maximum generation of 82,100 cubic yards per calendar year) generated by Eastman (EPA Hazardous Waste Nos. U001, U002, U028, U031, U069, U088, U112, U115, U117, U122, U140, U147, U154, U159, U161, U220, U226, U239, U359). Eastman must implement the testing program described in Table 1. Waste Excluded From Non-Specific Sources for the petition to be valid.
* * *	* * *	* * * * * * *

[FR Doc. 01-20262 Filed 8-15-01; 8:45 am]
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ATTACHMENT 3.7

existing Municipal Solid Waste Landfills. The Plan was submitted by the South Carolina DHEC to satisfy certain Federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register**, EPA is approving the South Carolina State Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated by reference herein. If no significant, material, and adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by September 23, 1999.

ADDRESSES: Written comments should be addressed to Gregory Crawford at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960

South Carolina Department of Health and Environmental Control, Bureau of Air Quality Control, 2600 Bull Street, Columbia, South Carolina 29201

FOR FURTHER INFORMATION CONTACT: Gregory Crawford at (404) 562–9046 or Scott Davis at (404) 562–9127.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules section of this **Federal Register** and incorporated by reference herein.

Dated: August 6, *1999.*

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–21824 Filed 8–23–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6426–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to grant a petition submitted by Chaparral Steel Midlothian, L.P. (Chaparral) to exclude (or delist) certain solid wastes generated by its Midlothian, Texas, facility from the lists of hazardous wastes.

Any person may petition the Administrator to modify or revoke any provision of the solid waste regulations. Generators are specifically provided the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude that Chaparral's petitioned waste is nonhazardous with respect to the original listing criteria and that the waste process Chaparral uses will substantially reduce the likelihood of migration of hazardous constituents from this waste. We would also conclude that their process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: We will accept comments until October 8, 1999. We will stamp comments postmarked after the close of the comment period as "late." These "late" comments may not be considered in formulating a final decision.

ADDRESSES: Please send three copies of your comments. Two copies should be sent to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A third copy should be sent to the Texas Natural Resources Conservation Commission (TNRCC), P.O. Box 13087, Austin, Texas, 78711–3087. Identify your comments at the top with this regulatory docket number: "F–99–TXDEL–CHAPARRAL."

You should address requests for a hearing to the Acting Director, Robert Hannesschlager, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

Your requests for a hearing must reach EPA by September 8, 1999. The request must contain the information prescribed in section 260.20(d).

FOR FURTHER INFORMATION CONTACT: William Gallagher at (214) 665–6775.

SUPPLEMENTARY INFORMATION:

The information in this section is organized as follows:

I. Overview Information

A. What Action is EPA Proposing?

The EPA is proposing:

(1) To grant Chaparral's petition to have their Landfill No. 3 leachate, baghouse storm water, and other

wastewater that may have been in contact with the K061 waste excluded, or delisted, from the definition of a hazardous waste; and

(2) To use a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency uses this model to predict the concentration of hazardous constituents released from the petitioned waste once it is disposed.

B. Why is EPA Proposing to Approve This Delisting?

Chaparral petitioned the Agency to exclude, or delist, the landfill leachate, baghouse storm water, and other wastewaters that may have potentially come in contact with K061 waste because they do not believe that the petitioned waste meets the criteria for which EPA listed it. Chaparral also believes no additional constituents or factors could cause the wastes to be hazardous.

Based on our review, described below, EPA has determined that the waste is nonhazardous with respect to the original listing criteria. (If our review had found that the waste remained hazardous based on the factors for which EPA listed the waste, we would have proposed to deny the petition.)

In reviewing this petition, we considered the original listing criteria and the additional factors required by RCRA section 3001(f), 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)-(4). We evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3).

We also evaluated the waste for other factors or criteria to assess whether these additional factors could cause the waste to be hazardous. These factors included: (1) whether the waste is considered acutely toxic, (2) the toxicity of the constituents, (3) the concentration of the constituents in the waste, (4) the waste constituent's tendency to migrate and to bioaccumulate, (5) its persistence in the environment once released from the waste, (6) plausible and specific types of management of the petitioned waste, (7) the quantity of waste produced, and (8) waste variability.

The EPA believes that the petitioned waste does not meet the criteria for which it listed the waste and does meet the criteria for delisting. The EPA's *proposed decision to delist* waste from Chaparral's facility is based on the description of the proposed treatment system and analytical data from the Midlothian facility submitted to support today's rule.

C. How Will Chaparral Manage the Waste if it is Delisted?

The facility would like to manage the waste in their onsite cooling system of which cooling ponds are a part. The wastewater would be substituted for some of the well water presently used for cooling purposes which would help conserve that natural resource. In this case, the requested change in waste management is subject to delisting by EPA and subsequent waste management practices in accordance with TNRCC rules and regulations.

D. When Would the Proposed Delisting Exclusion be Finalized?

The Hazardous and Solid Waste Act specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on today's proposal.

This rule, if finalized, will become effective immediately upon final publication. Section 3010(b) at 42 United States Code Annotated 6930(b) of RCRA allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

The EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How would this action affect states?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received authorization from EPA to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If Chaparral transports the petitioned waste to or manages the waste in any State with delisting authorization, Chaparral must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What is the history of the delisting program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in §§ 261.31 and 261.32.

We list these wastes as hazardous because: (1) they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in §§ 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, sections 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What is a delisting petition, and what does it require of a petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions the Agency because they do not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for the listed wastes. The criteria for which EPA lists a waste are in part 261 and in the background documents for the listed wastes.

In addition, under section 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. See part 261 and the background documents for the listed wastes.

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the wastes.

C. What factors must EPA consider in deciding whether to grant a delisting petition?

Besides considering the criteria in section 260.22(a), in 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous. *See* 3010(b) of the Solid Waste Disposal Act.

The EPA must also consider as hazardous wastes mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. *See* §§ 261.3(a)(2)(iii and iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded.

The "mixture" and "derived-from" rules are now final, after having been vacated, remanded, and reinstated. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to EPA on procedural grounds. *See Shell Oil Co.* v. *EPA.*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues. *See* (57 *FR* 7628) These rules became final on October 30, 1992. *See* (57 *FR* 49278) Consult these references for more information about mixtures derived from wastes.

III. EPA's Evaluation of the Waste Information and Data

A. What wastes did Chaparral petition EPA to delist?

On February 23, 1999, Chaparral Steel petitioned EPA for a conditional exclusion for 500,000 gallons (about 2,500 cubic yards) per year of leachate from its Landfill No. 3 single RCRA landfill unit containing electric arc furnace dust. The furnace dust is captured in the baghouse during the steelmaking process and is a listed hazardous waste classified as K061. The petitioned wastes are largely leachate generated in the landfill's leachate collection system and minor amounts of K061 wastewater from various plant operations including storm water from the baghouse floor areas and the pelletizer sump. These liquid wastes are presently pumped to an onsite storage tank. The resulting waste is also listed under § 261.3(c)(2)(i) (the "derived from" rule), as EPA Hazardous Waste No. K061. The listed constituents of concern for this waste code are hexavalent chromium, lead, and cadmium.

B. What information and analysis did Chaparral submit to support this petition?

To support its petition, Chaparral submitted:

(1) historical analytical data for the Electric Arc Furnace Dust (K061), and leachate analytical data from their Landfill No. 3 containing the Electric Arc Furnace Dust, and analytical data for the liquid from the K061 waste water storage tank;

(2) analytical results of the total constituent list for 40 CFR part 264, appendix IX volatiles, semivolatiles, metals (including hexavalent chromium), pesticides, herbicides, polychlorinated biphenyls, furans, and dioxins;

(3) analytical results of the constituent list derived from appendix IX for identified constituents;

(4) analytical results for reactive sulfide;

(5) analytical results for reactive cyanide;

(6) test results for corrosivity by pH;

(7) analytical results of samples from bench tests of treated leachate/K061 wastewater; and

(8) test results for oil and grease.

C. Who is Chaparral and what process do they use to generate the petitioned waste?

Chaparral Steel operates a steel plant which manufactures primary steel from scrap steel utilizing an electric arc furnace process with continuous casting of billets, and then rolling to finished goods. Electric arc furnace dust, which is captured in the baghouse during the steelmaking process, is a listed hazardous waste (K061). In the past, K061 was landfilled on-site. The on-site landfills have been closed. The baghouse K061 wastes are currently shipped off-site for metals recovery or are reused on site by reintroduction to the electric arc furnace.

Leachate from Landfill No. 3 which also bears the K061 waste classification, is collected from the landfill's leachate collection system and stored in an on-site tank. Small amounts of water from various locations within the facility including storm water from the palletizer sump and storm water from the baghouse floor (which is potentially mixed with electric arc furnace dust and therefore would also be designated as K061) is also placed in the tank occasionally. Also minor amounts of water that has potentially contacted K061 is occasionally added to the tank. However, the amounts of storm water and other potentially contaminated wastewaters are very minor as compared to the leachate. The contents of the leachate tank are presently transported to an offsite injection facility for disposal.

D. How did Chaparral sample and analyze the data in this petition?

Chaparral developed a list of constituents of concern from prior analytical data and by analyzing the first sample for the entire appendix IX list of hazardous constituents found in 40 CFR part 264. More specifically, Chaparral analyzed one treated and one raw leachate composite sample for the total concentrations (i.e., mass of a particular constituent per mass of waste) of the volatiles and semivolatiles, metals, herbicides, pesticides, PCBs, and furans from appendix IX. These two samples were analyzed for the comprehensive list in order to confirm that there were no other constituents of concern in the petitioned waste.

Chaparral collected four composite samples from the storage tank over a twenty-five week period. They collected these samples in this manner to ensure that the samples represented the potential time and space variability of the petitioned waste. All samples were analyzed for constituents of concern and were also analyzed to determine whether the waste exhibited ignitable, corrosive, or reactive properties as defined under 40 CFR 261.21, 261.22, and 261.23, including analysis for reactive constituent concentrations of cyanide and sulfide. These samples were not analyzed for TCLP

concentrations (i.e., mass of a particular constituent per unit volume of extract) since the leachate is a liquid and the total analysis concentration is considered to be the TCLP concentration.

Chaparral used these methods	To quantify
SW–846 Method 8260, and 8270.	The total constituent concentrations of 40 CFR, part § 264 Appendix IX Volatiles and Appendix IX Semivolatiles including PCBs, Pesticides, and Herbicides.
SW–846 Methods 6010, 7041, and 7740, and 7196.	Appendix IX Metals.
SW–846 Methods 7470.	Mercury.
9071	Total oil and grease.
9045	pH
9030	Reactive Sulfide.
9010	Reactive Cyanide.
1010	Ignitability.

E. What were the results of Chaparral's analysis?

Tables 1 and 2 present the maximum total constituent leachate concentrations for the raw waste and for the treated waste samples from bench test studies. The bench test study simulated a typical wastewater treatment process. If the raw (untreated) waste does not meet delisting criteria, then Chaparral intends to treat the waste in a wastewater treatment plant to meet the delisting criteria.

The wastewater treatment process would add a coagulant such as ferric chloride to precipitate the metal constituents and then add a cationic polymer to flocculate the metal constituents. A filter unit would remove the precipitated metal constituents which would yield a wastewater with concentrations of constituents of concern well below the delisting criteria concentrations.

Chaparral calculated, based on historical information and the worst case scenario, the maximum petitioned waste to be excluded on a yearly basis will be 500,000 gallons (or about 2500 cubic yards) of petitioned waste. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The EPA reviews a petitioner's estimates and, on occasion, has requested a petitioner to reevaluate the estimated waste volume. The EPA accepted Chaparrals' certified estimates. The EPA does not generally verify submitted test data before proposing delisting decisions. The EPA, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting an exclusion.

TABLE 1.—MAXIMUM ORGANIC TOTAL CONSTITUENT CONCENTRATIONS [1] For Raw Leachate/K061 Wastewater and Treated Leachate/K061 Wastewater from the Storage Tank

Constituents	Total Constituent Analyses for Raw Leachate [1] (mg/l)	Total Constituent Analyses for Treated Leachate [1] (mg/l)
1,2-Dichloroethane	0.004	<0.005
2-Butanone	0.003	0.005
4-Methyl-2-pentanone	0.008	0.005
Acetone	0.08	0.1
Carbon Disulfide	0.003	0.005
Chloromethane	<0.01	0.001
Ethylbenzene	0.004	<0.005
Methyl Iodide	<0.01	0.002
Methylene Chloride	0.001	<0.005
Toluene	0.001	0.004
Xylene	0.03	0.006

< Denotes that the constituent was not detected at the detection limit specified in the table.
[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

F. How did EPA evaluate the risk of delisting this waste?

Chaparral Steel's petition requests a conditional delisting for listed hazardous wastes. In making the initial delisting determination, EPA evaluated the petitioned wastes against the listing criteria and factors cited in §§ 261.11(a)(1), 261.11(a)(2) and 261.11(a)(3). Based on this review, EPA has determined that the waste is *nonhazardous with respect to the* original listing criteria. (If EPA had found, based on this review, that the wastes remained hazardous based on the factors for which the wastes were originally listed, EPA would have proposed to deny the petition.) The EPA then evaluated the wastes with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the wastes to be hazardous. The EPA considered whether the wastes are acutely toxic, the toxicity of the constituents, the concentration of the constituents in the wastes, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the wastes, plausible and specific types of management of the petitioned wastes, the quantities of wastes generated, and waste variability.

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (i.e., ground water, surface water and air) for hazardous constituents present in the petitioned wastes. The EPA determined that disposal in a surface impoundment is the most reasonable, worst-case disposal scenario for Chaparral's petitioned wastes, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, EPA used a particular fate and transport model, EPA Composite Model for Landfills (EPACML), to predict the maximum allowable concentrations of hazardous

constituents that may be released from the petitioned wastes after disposal and to determine the potential impact of the disposal of Chaparral's petitioned wastes on human health and the environment. You can find a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting in 56 *FR* 32993 (July 18, 1991), 56 *FR* 67197 (December 30, 1991) and the RCRA public docket. This model includes both unsaturated and saturated zone transport modules. It uses the reasonable worse-case contaminant levels in ground water at a compliance point (that is, a receptor well serving as a drinking-water supply.)

Specifically, EPA used the maximum estimated waste volumes and the maximum reported concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from a theoretical disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the current Maximum Contaminant Levels (MCLs) promulgated under the Safe Drinking Water Act or health-based levels derived from verified Reference Doses. The values used for lead and copper are action levels for treatment of a water supply in lieu of an MCL (40 CFR 141.80).

The EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned wastes in a surface impoundment, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and gives a high degree of confidence that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. In most cases, because a delisted waste is no longer subject to hazardous waste control (unless conditionally delisted), EPA is generally unable to predict, and does not presently control, how a waste will be managed after delisting. Therefore, EPA normally believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. If however, conditions contained in a delisting indicate that it is necessary to consider site specific factors or otherwise indicate that the model is inappropriate, EPA may consider these factors in applying the model.

The EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. The evaluation of the information submitted indicated that the waste is managed in a tank with secondary containment. Therefore ground water data is not applicable to this petition.

From the evaluation of Chaparral's delisting petition, one of the constituents evaluated, lead, is being proposed as a verification testing condition. Proposed maximum allowable leachable concentrations for this constituent was derived by back-calculating from the delisting health-based levels through the proposed fate and transport model for a surface impoundment management scenario and by comparing results with the Land Disposal Restrictions (LDRs) maximum allowable concentration. The lowest of these two concentrations (i.e., delisting levels) are part of the verification testing conditions of the proposed exclusion. Therefore, delisting levels are less than LDR concentrations and thus the LDRs are met. Details of the evaluation of lead and other constituents of concern is explained in more detail later in this section.

Chaparral's exclusion (if granted) would be contingent upon the facility conducting sampling and analysis of the waste to insure that the delisting conditions are met (i.e., wastes meet EPA's verification testing conditions).

The EPA's proposed decision is based on the information submitted in support of today's rule, i.e., historical data from the Landfill No. 3 leachate, analytical data from recent samples from the leachate storage tank containing leachate and K061 wastewaters, and analytical data from bench tests of the leachate/K061 wastewaters after treatment in a simulated wastewater treatment system.

Finally, RCRA (7004(b)(1)) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

The EPA's evaluation of the raw leachate using a Dilution Attenuation Factor of 68, a maximum waste volume annually of 2500 cubic yards (or 500,000 gallons per calender year), and the maximum reported constituent concentrations (see Tables 1 and 2), yielded compliance point concentrations (see Tables 3 and 4) that are below the current health-based levels except for the constituent lead which is discussed below.

In Table 3, the calculated compliance point concentrations derived from the maximum reported leachate concentrations (see Table 1) of the organic constituents detected in the waste are compared with the levels of concern. The organic constituents are believed to be artifacts from sampling or analysis errors because: (1) the arc furnace process should have destroyed the organic chemicals, (2) the organic constituents are not detected consistently, (3) most detections are near the detection limits, and (4) several of the compounds are common laboratory contaminants. However, in spite of this reasoning, EPA completed the evaluation conservatively using the highest concentration found for each organic constituent in the petitioned waste. As shown in Table 3, the maximum reported leachate concentrations of 1,2-dichloroethane, 2-butanone, 4-methyl-2-pentanone, acetone, carbon disulfide, ethylbenzene, methylene chloride, toluene, and xylene yielded compliance point concentrations below the health-based levels used in delisting decision-making. It should also be noted that the concentrations of the organic constituents found in the raw leachate are below LDR concentration values and therefore the LDRs are met. *See* Table 1.

The EPA also evaluated the mobility of the two remaining organic constituents cloromethane and methyl iodide which were not detected in the leachate but were found in the treated leachate at concentrations of 0.001 and 0.002 mg/l yielding compliance concentrations of 0.00001 and 0.00003 mg/l, in respective order. These concentrations are well below the levels of concern of 0.007 and 0.03 mg/l, respectively. The 0.001 and 0.002 mg/l values are below the LDR concentration values and therefore the LDRs are met.

In Table 4, the calculated compliance point concentrations derived from the maximum reported leachate/K061 wastewater concentrations of the inorganic constituents (see Table 2) detected in the petitioned raw waste are compared with the levels of regulatory concern. The maximum reported or calculated concentrations of arsenic, barium, cadmium, total chromium, copper, mercury, nickel, vanadium, and zinc yielded compliance point concentrations below Levels of Concern.

The EPA did not evaluate the mobility of the constituents beryllium, hexavalent chromium, cobalt, selenium, silver, thallium and cyanide from Chaparral's petitioned waste because

these constituents were not detected in the leachate using the appropriate analytical test methods. See Table 2. The EPA believes that it is inappropriate to evaluate nondetectable concentrations of a constituent of concern in its delisting modeling efforts if the nondetectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), EPA, for delisting purposes, assumes that the constituent is not present and therefore does not present a threat to human health or the environment. In the delisting program EPA believes it is inappropriate to evaluate constituents undetected in the waste samples.

The maximum reported raw leachate concentration for a single sample of lead (2.0 mg/l) yielded a calculated compliance point concentration (0.029 mg/l) slightly above the health-based level (0.015 mg/l) used in the delisting decision-making process.

The lead value (0.029 mg/l) represents the calculated leachate concentrations of lead at a theoretical downgradient ground water monitoring well using the EPACML model and a concentration value of 2.0 mg/l from one raw waste sample. This value was the highest concentration identified for the four analysis completed for lead. The four concentration values for lead as identified in the raw waste were 2.0, 1.3, 0.5 and 0.55 mg/l and the values for the treated waste were 0.081, 0.06, 0.026, and <0.0011 mg/l. Two of the raw waste lead values (0.5 and 0.55 mg/l) and all of the treated samples yield calculated compliance point concentrations below the concentration of concern. For this reason, verification testing for one waste constituent, lead, will be a condition of the delisting.

Lead was the only constituent that did not consistently have calculated compliance point concentrations below the concentrations of concern. As shown in Tables 3 and 4, all other constituents were always below the concentrations of concern at the calculated compliance point. It should also be noted that the concentration values as measured in the raw waste for all other constituents of concern were below the LDR concentration values. Therefore, with the exception of the constituent lead, the petitioned waste meets LDR concentration values even before the compliance point concentrations are calculated. Seven years of historical leachate data also supported the decision that lead was the only Constituent of Concern which should require verification testing.

TABLE 2.—MAXIMUM INORGANIC TOTAL CONSTITUENT CONCENTRATIONS FOR RAW LEACHATE/K061 WASTEWATER AND TREATED LEACHATE/K061 WASTEWATER FROM THE K061 STORAGE TANK

Constituents	Total Constituent Analyses for Raw Leachate [1] (mg/l)	Total Constituent Analyses for Treated Leachate [1] (mg/l)
Antimony	<0.0066	0.008
Arsenic	0.081	0.068
Barium	0.26	0.007
Beryllium	<0.0017	<0.0017
Cadmium	0.019	0.0020
Chromium (Total)	0.17	0.013
Chromium (Hexavalent)	<0.1	<0.02
Cobalt	<0.0016	<0.0016
Copper	0.096	0.029
Lead	2	0.081
Mercury	0.00031	0.00016
Nickel	0.019	0.014
Selenium	<0.01	0.044
Silver	<0.0012	<0.0012
Thallium	<0.0096	<0.0096
Tin	0.025	0.017
Vanadium	0.042	0.038
Zinc	5.6	0.08
Sulfide (Total)	1.3	<1.0
Cyanide (Total)	<0.0018	<0.0018

< Denotes that the constituent was not detected at the noted detection limit.
[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

TABLE 3.—EPACML: CALCULATED COMPLIANCE POINT ORGANIC CONCENTRATIONS FOR RAW LEACHATE AND K061 WASTEWATER FROM THE K061 STORAGE TANK.

Organic Constituents	Compliance Point Concentrations [1] (mg/1)	Levels of Concern [2] (mg/1)
1,2-Dichloroethane	0.00006	0.005
2-Butanone	0.00004	20.
4-Methyl-2-pentanone	0.0001	2.
Acetone	0.001	4.
Carbon Disulfide	0.00004	4.
Ethylbenzene	0.00006	70.
Methylene Chloride	0.00001	0.005
Toluene	0.00001	1.

TABLE 3.—EPACML: CALCULATED COMPLIANCE POINT ORGANIC CONCENTRATIONS FOR RAW LEACHATE AND K061 WASTEWATER FROM THE K061 STORAGE TANK.—Continued

Organic Constituents	Compliance Point Concentrations [1] (mg/l)	Levels of Concern [2] (mg/l)
Xylene	0.0004	10.

<Denotes that the constituent was not detected at the detection limit specified in the table.
[1] Using the maximum leachate level from Table 1 and based on a DAF of 68 calculated using the EPACML for a yearly volume of 2500 cu. yards (or 500,000 gal.).
[2] See Docket Report on Health-Based Levels and Solubilities Used in the evaluation of Delisting Petitions, December 1994 located in the RCRA public docket for today's document.

TABLE 4.—EPACML: CALCULATED COMPLIANCE POINT INORGANIC CONCENTRATIONS FOR RAW LEACHATE/K061 WASTEWATER FROM THE K061 STORAGE TANK.

Inorganic Constituents	Compliance Point Concentrations [1] (mg/l)	Levels of Concern [2] (mg/1)[1]
Arsenic	0.0012	0.05
Barium	0.0038	2.
Cadmium	0.00028	0.005
Chromium (Total)	0.0025	0.1
Copper	0.0014	1.3
Lead	0.03	0.015
Mercury	0.000005	0.002
Nickel	0.00028	0.1
Tin	0.00037	21.
Vanadium	0.00062	0.3
Zinc	0.082	5.

[1] Using the maximum concentration level from Table 2 and based on a DAF of 68 calculated using the EPACML for yearly volume of 2500 cu. yards (or 500,000 gal.).
[2] See *Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions*, December 1994 located in the RCRA public docket for today's document.

C. What did EPA conclude about Chaparral's analysis?

The EPA concluded, after reviewing Chaparral Steel's processes and analytical data that:

(1) no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by-products in Chaparral's wastes, and

(2) the petitioned wastes do not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. *See* §§ 261.21, 261.22, and 261.23, respectively.

H. What other factors did EPA consider in its evaluation?

During the evaluation of Chaparral's petition, EPA also considered the potential impact of the petitioned wastes via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from the petitioned wastes is unlikely as the constituents of concern are not volatile organics which would readily transfer to the ambient air; no appreciable air releases are likely from the petitioned wastes under any likely disposal conditions. Nor does EPA believe that the petitioned waste presents a threat to surface water. Calculations indicate that the concentrations of the constituents of concern would be below drinking water criteria and surface water criteria before reaching the nearest surface water. *See* docket.

I. What is EPA's final evaluation of this delisting petition?

The descriptions of the Chaparral Steel's process and analytical characterization, in conjunction with the proposed verification testing requirement (as discussed later in this document), provide a reasonable basis to grant Chaparral Steel's petition for a conditional exclusion of the petitioned waste. The EPA believes the data submitted in support of the petition show Chaparral Steel's proposed wastewater treatment process can render the raw leachate wastes non-hazardous if the raw leachate does not meet delisting conditions. Treatment is an option if the untreated waste does not meet the delisting criteria. The EPA has reviewed the sampling procedures used by Chaparral Steel and has determined they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations in the petitioned waste. The data submitted in support of the petition show that constituents, with the exception of lead in two samples, in Chaparral Steel's raw leachate waste are presently below health-based levels used in the delisting decision-making. The EPA believes that the facility's information has successfully shown that the petitioned waste is non-hazardous or can be rendered non-hazardous through treatment. The EPA, therefore, proposes to grant a conditional exclusion to Chaparral Steel Midlothian, L.P., located in Midlothian, Texas, for the leachate from their Landfill No. 3, the storm water from their baghouse, and other wastewater that may have come in contact with K061. The EPA's decision to conditionally exclude this waste is based on the historical analytical data associated with the petitioned waste and characterization of the raw and treated waste. If the proposed rule is finalized, the petitioned wastes will no longer be subject to regulation under parts 262 through 268 and the permitting standards of part 270.

IV. Next Steps

A. With what conditions must the petitioner comply?

The petitioner, Chaparral, must comply with the requirements in 40 CFR part 261, appendix IX, Table 2. The text below gives the rational and details of those requirements.

(1) *Delisting Levels:* All concentrations for the constituent total lead in the approximately 2,500 cubic yards (500,000 gallons) per calender year of raw leachate from Landfill No. 3, storm water from the baghouse area, and other K061 wastewaters that is transferred from the storage tank to nonhazardous management must not exceed 0.69 mg/l (parts per million). Constituents must be measured in the waste by the method specified in SW–846.

This paragraph provides the level of lead for which Chaparral Steel must test the raw leachate, baghouse storm water, and other K061 wastewaters combined in the storage tank. This is the level below which this waste would be considered non-hazardous and for which the Agency is proposing to grant an annual conditional exclusion. The EPA selected the lead constituent specified after reviewing information about the composition of the waste, descriptions of Chaparral's treatment process, previous test data provided for the waste, the respective health-based levels used in delisting decision-making, and LDR levels. The EPA established the proposed delisting levels for this paragraph by back-calculating the Maximum Allowable Leachate concentrations from the health-based levels for the constituents of concern using the EPACML chemical-specific DAF of 68. See, previous discussions in Section III.F, i.e., MAL = HBL × DAF or 1.02 mg/l=0.015 mg/l × 68. The EPA selected the more conservative concentration level in considering the calculated health-based value of 1.02 mg/l and the technology based LDR value of 0.69 mg/l. This delisting level corresponds to the allowable levels measured in the waste.

(2) *Waste Holding and Handling:* Chaparral Steel must store as hazardous all leachate waste from Landfill No. 3, storm water from the bag house area, and other K061 wastewaters until verification testing as specified in Condition (3), is completed and valid analyses demonstrate that condition (1) is satisfied. If the levels of constituents measured in the samples of the waste do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed the delisting levels set in Condition (1), the waste volume corresponding to this sample must be treated until delisting levels are met or returned to the original storage tank. Treatment is designated as precipitation, flocculation, and filtering in a wastewater treatment system to remove metals from the wastewater. If the delisting level cannot be met, then the waste must be managed and disposed of in accordance with subtitle C of RCRA.

The purpose of this paragraph is to ensure that any waste located in the storage tank which might contain hazardous levels of lead are managed and disposed of in accordance with subtitle C of RCRA. Holding the leachate waste from Landfill No. 3, the storm water from the baghouse area, and other K061 wastewaters until characterization is complete will protect against improper handling of hazardous material. If EPA determines that the data collected under this condition do not support the data provided for the petition or Chaparral Steel is not meeting the terms of its exclusion, the exclusion will not cover the petitioned wastes.

(3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies. Chaparral Steel must analyze one composite sample from each batch of untreated wastewater transferred from the hazardous waste storage tank to non-hazardous waste management. Each composited batch sample must be analyzed, prior to non-hazardous management of the waste in the batch represented by that sample, for the constituent lead as listed in Condition (1). Chaparral may treat the waste as specified in Condition (2).

If EPA judges the treatment process to be effective during the operating conditions used during the initial verification testing, Chaparral Steel may replace the testing requirement in Condition (3)(A) with the testing requirement in Condition (3)(B). Chaparral must continue to test as specified in (3)(A) until and unless notified by EPA or designated authority that testing in Condition (3)(A) may be replaced with by Condition (3)(B).

(A) Initial Verification Testing: Representative composite samples from the first eight (8) full-scale treated batches of wastewater from the K061 leachate/wastewater storage tank must be analyzed for the constituent lead as listed in Condition (1). Chaparral must report to EPA the operational and analytical test data, including quality control information, obtained from these initial full scale treatment batches within 90 days of the eighth treatment batch.

(B) Subsequent Verification Testing: Following notification by EPA, Chaparral Steel may substitute the testing conditions in (3)(B) for (3)(A). Chaparral Steel must analyze representative composite samples from the treated full scale batches on an annual basis. If delisting levels for any constituent listed in Condition (1) are exceeded in the annual sample, Chaparral must reinstitute complete testing as required in Condition (3)(A). As stated in Condition (3) Chaparral must continue to test all untreated batches to determine if delisting criteria are met before managing the wastewater from the K061 tank as nonhazardous.

(4) *Changes in Operating Conditions:* If Chaparral Steel significantly changes the treatment process established under Condition (3) (*e.g.*, use of new treatment agents), Chaparral Steel must notify the Agency in writing. After written approval by EPA, Chaparral Steel may handle the wastes generated as non-hazardous, if the wastes meet the delisting levels set in Condition (1).

(5) *Data Submittals:* Records of operating conditions and analytical data from Condition (3) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, or both, and be made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and Comprehensive Environmental Response, Compensation, and Liability Act obligations premised upon the company's reliance on the void exclusion.

To provide appropriate documentation that Chaparral Steel's facility is properly managing the waste, all analytical data obtained through Condition (3), including quality control information, must be compiled, summarized, and maintained on site for a minimum of five years. Condition (5) requires that these data be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Texas.

If made final, the proposed conditional exclusion will apply to 2500 cubic yards (500,000 gallons) per calender year of petitioned waste. Although management of the wastes covered by this petition would not be subject to subtitle C jurisdiction upon final promulgation of an exclusion, Chaparral must ensure that the onsite management of the delisted waste is in accordance with TNRCC rules and regulations or the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

(6) *Reopener Language*

(A) If, anytime after disposal of the delisted waste, Chaparral Steel possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data.

(B) If Chaparral fails to submit or maintain the data requested in paragraphs (5), or (6)(A) or if any information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

(C) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or delegate's notice to present such information.

(D) Following the receipt of information from the facility described in paragraph (6)(C) or (if no information is presented under paragraph (6)(C)) the initial receipt of information described in paragraph (5) or (6)(A), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise.

The purpose of paragraph (6) is to require Chaparral Steel to disclose new or different information related to a condition at the facility or disposal of the waste if it had or has bearing on the delisting. This paragraph will allow EPA to reevaluate the exclusion if new or additional information is provided to the Agency from any source which indicates that information which EPA's decision was based was incorrect or circumstances have changed such that information is no longer correct or would cause EPA to deny the petition if then presented. Further, although this provision expressly requires Chaparral to report differing site conditions or assumptions used in the petition within 10 days of discovery, if EPA discovers such information itself or from a third party, it can act on it as appropriate. The language is similar to these provisions found in RCRA regulations governing no-migration petitions located at section 268.6.

The EPA believes that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978), *et seq.*, to reopen a delisting decision if new information is received that calls into question the assumptions underlying the delisting and believes that a clear statement of its authority in the context of delistings is merited in light of Agency experience. See, e.g., Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste did not leach in the actual disposal site as it had been modeled thus leading the Agency to repeal the delisting. In the meantime, in the event that an immediate threat to human health and the environment presents itself, EPA will continue to address such situations on a case-by-case basis and where necessary, will make a good cause finding to justify emergency rulemaking. *See* APA section 553(b).

(7) *Notification Requirements:* Chaparral Steel must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activity. The one-time written notification must be updated if the delisted waste is shipped to a different disposal facility. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

B. What happens if Chaparral violates the terms and conditions?

If Chaparral violates the terms and conditions established in the exclusion, the Agency will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the Agency will continue to evaluate these events on a case-by-case basis. The Agency expects Chaparral to conduct the appropriate waste analysis and comply with the criteria explained above in terms and conditions of the exclusion.

V. Public Comments

A. How may I as an interested party submit comments?

The EPA is requesting public comments on this proposed decision and on the applicability of the fate and transport model used to evaluate the petition.

Please send three copies of your comments: Send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Send the third copy to the Texas Natural Resource Conservation Commission (TNRCC), 12100 Park 35 Circle, Austin, Texas 78753. Identify your comments at the top with this regulatory docket number: F–99–TXDEL–CHAPARRAL.

You should address requests for a hearing to the Acting Director, Robert E. Hannesschlager, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How may I review the docket or obtain copies of the proposed exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in EPA Freedom of Information Act Review Room from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

Under Executive Order (E.O.) 12866, EPA must conduct an "assessment" of the potential costs and benefits for all "significant" regulatory actions. The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to manage its waste as nonhazardous. There is no additional impact therefore, due to today's proposed rule. Therefore, this proposal would not be a significant regulation and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of E.O. 12866.

VII. Children's Health Protection

Under E.O. 13045, for all "significant" regulatory actions as defined by E.O. 12866, EPA must provide a evaluation of the environmental health or safety affect of a proposed rule on children and an explanation of why the proposed rule is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This proposal is not a significant regulatory action and is exempt from E.O. 13045.

VIII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This rule, if promulgated, will not have any adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

IX. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

X. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local or tribal governments or the private sector. The EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon state, local or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

XI. Intergovernmental Partnership

Under E.O. 12875, EPA may not promulgate any regulation which creates an unfunded mandate upon State, local or tribal governments. The EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon state, local or tribal governments (see Section X. UMRA above) and accordingly, this action is exempt from the requirements of E.O. 12875.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Dated: August 6, 1999.

Robert Hannesschlager,

Acting Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of appendix IX of part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to part 261—Wastes Excluded Under sections 260.20 and 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	* *	* * * *
Chaparral Steel Midlothian, L.P.	Midlothian, Texas	Leachate from Landfill No. 3, storm water from the baghouse area, and other K061 wastewaters which have *been* pumped to tank storage (at a maximum generation of 2500 cubic yards or 500,000 gallons per calender year) (EPA Hazardous Waste No. K061) generated at Chaparral Steel Midlothian, L.P., Midlothian, Texas, and is managed as nonhazardous solid waste after [publication date of final rule]. Chaparral Steel must implement a testing program that meets the following conditions for the exclusion to be valid: (1) *Delisting Levels:* All concentrations for the constituent total lead in the approximately 2,500 cubic yards (500,000 gallons) per calender year of raw leachate from Landfill No. 3, storm water from the baghouse area, and other K061 wastewaters that is transferred from the storage tank to nonhazardous management must not exceed 0.69 mg/1 (ppm). Constituents must be measured in the waste by the method specified in SW–846. (2) *Waste Holding and Handling:* Chaparral Steel must store as hazardous all leachate waste from Landfill No. 3, storm water from the bag house area, and other K061 wastewaters until verification testing as specified in Condition (3), is completed and valid analyses demonstrate that condition (1) is satisfied. If the levels of constituents measured in the samples of the waste do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed the delisting levels set in Condition (1), the waste volume corresponding to this sample must be treated until delisting levels are met or returned to the original storage tank. Treatment is designated as precipitation, flocculation, and filtering in a wastewater treatment system to remove metals from the wastewater. If the delisting level cannot be met, then the waste must be managed and disposed of in accordance with subtitle C of RCRA. (3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies. Chaparral Steel must analyze one composite sample from each batch of untreated wastewater transferred from the hazardous waste storage tank to non-hazardous waste management. Each composited batch sample must be analyzed, prior to non-hazardous management of the waste in the batch represented by that sample, for the constituent lead as listed in Condition (1). Chaparral may treat the waste as specified in Condition (2). If EPA judges the treatment process to be effective during the operating conditions used during the initial verification testing, Chaparral Steel may replace the testing requirement in Condition (3)(A) with the testing requirement in Condition (3)(B). Chaparral must continue to test as specified in (3)(A) until and unless notified by EPA or designated authority that testing in Condition (3)(A) may be replaced with by Condition (3)(B). (A) Initial Verification Testing: Representative composite samples from the first eight (8) full-scale treated batches of wastewater from the K061 leachate/wastewater storage tank must be analyzed for the constituent lead as listed in Condition (1), Chaparral must report to EPA the operational and analytical test data, including quality control information, obtained from these initial full scale treatment batches within 90 days of the eighth treatment batch. (B) Subsequent Verification Testing: Following notification by EPA, Chaparral Steel may substitute the testing conditions in (3)(B) for (3)(A). Chaparral Steel must analyze *repre*sentative composite samples from the treated full scale batches on an annual basis. If delisting levels for any constituent listed in Condition (1) are exceeded in the annual sample, Chaparral must reinstitute complete testing as required in Condition (3)(A). As stated in Condition (3) Chaparral must continue to test all batches of untreated waste to determine if delisting criteria are met before managing the wastewater from the K061 tank as nonhazardous. (4) *Changes in Operating Conditions:* If Chaparral Steel significantly changes the treatment process established under Condition (3) (e.g., use of new treatment agents), Chaparral Steel must notify the Agency in writing. After written approval by EPA, Chaparral Steel may handle the wastes generated as non-hazardous, if the wastes meet the delisting levels set in Condition (1).

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) *Data Submittals:* Records of operating conditions and analytical data from Condition (3) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, or both, and be made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) *Reopener Language* (A) If, anytime after disposal of the delisted waste, Chaparral Steel possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraphs (5), or (6)(A) and any other information received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or delegate's notice to present such information. (D) Following the receipt of information from the facility described in paragraph (6)(C) or (if no information is presented under paragraph (6)(C)) the initial receipt of information described in paragraph (5) or (6)(A), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (7) *Notification Requirements:* Chaparral Steel must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activity. The one-time written notification must be updated if the delisted waste is shipped to a different disposal facility. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

[FR Doc. 99-21941 Filed 8-23-99; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL 6427-3]

North Carolina; Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative determination on application of State of North Carolina for final approval, public hearing and public comment period—correction.

SUMMARY: The State of North Carolina has applied for approval of its underground storage tank program for petroleum and hazardous substances under subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) reviewed the North Carolina application and has made the tentative decision that the North Carolina underground storage tank program for petroleum and hazardous substances satisfies all of the requirements necessary to qualify for approval. The **Federal Register** document announcing EPA's tentative decision and requesting public comment was published in August 10, 1999 (64 FR 43336-43338). In that **Federal Register** document the date for EPA to determine if there is sufficient interest to hold a public hearing, and for the public to contact EPA to find out if a public hearing would be held, was incorrectly listed. The correct information should read: EPA will determine by September 10, 1999, whether there is sufficient interest to hold the public hearing. Anyone who wishes to learn whether or not the public hearing on the State's application has been canceled should telephone the contact listed under the heading **FOR FURTHER FURTHER INFORMATION CONTACT.**

DATES: Written comments on the North Carolina program approval application, as well as requests to present oral testimony, must be received by the close of business September 9, 1999. A public hearing is scheduled for September 13, 1999, unless insufficient public interest is expressed in holding a hearing. EPA reserves the right to cancel the public hearing if sufficient public interest is not communicated to EPA in writing by September 9, 1999. EPA will determine by September 10, 1999, whether there is significant interest to hold the public hearing. The State of North Carolina will participate in the public hearing held by EPA on this subject.

ADDRESSES: Written comments should be sent to Mr. John K. Mason, Chief of Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303, telephone (404) 562-9277. Copies of the North Carolina approval application are available for inspection and copying during the hours of 9:00 am to 5:00 pm at the following addresses: North Carolina Department of Environment and Natural Resources, Underground Storage Tank Section, 2728 Capital Boulevard, Parker-Lincoln Building, Raleigh, North Carolina 27604, Phone: (919) 733-8486; U.S. EPA Docket Clerk, Office of Underground Storage Tanks, 1235 Jefferson Davis Highway-1rst Floor, Arlington, Virginia 22202, Phone: (703) 603-9231; and, U.S. EPA Region 4, Underground Storage Tank Section, Atlanta Federal Center, 15th Floor, 61 Forsyth Street, SW, Atlanta, Georgia 30303, Phone: (404) 562-9277.

Unless insufficient public interest is expressed, EPA will hold a public hearing on the State of North Carolina's application for program approval on September 13, 1999, at 7:00 pm at the North Carolina Department of Environment and Natural Resources Archedale Building, Ground Floor Hearing Room, 512 North Salisbury Street, Raleigh, North Carolina 27604-1148. Anyone who wishes to learn whether or not the public hearing on the State's application has been cancelled should telephone the following contacts on or after September 10, 1999: Mr. John K. Mason, Chief, Underground Storage Tank Section, US EPA Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303, Phone: (404) 562-9277; or Mr. Burrie Boshoff, Chief, Underground Storage Tank Section, North Carolina Department of Environment and Natural Resources, Post Office Box 29578, Raleigh, North Carolina 27626-0578, Phone: (919) 733-8486.

FOR FURTHER INFORMATION CONTACT: Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303, phone: (404) 562-9277.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This document is issued under the authority of section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 13, 1999.

A. Stanley Meiburg,

Acting Regional Administsrator, Region 4.

[FR Doc. 99-21940 Filed 8-23-99; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

42 CFR Part 84

National Institute for Occupational Safety and Health; Approval of Respiratory Devices Used to Protect Workers in Hazardous Environments

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of priorities for rulemaking.

SUMMARY: NIOSH is announcing a change in priority order and projected dates for publication of proposed rule amendments (modules) for respiratory devices used to protect workers in hazardous environments. The priority order of the planned modules is provided to help the respirator community plan for potential changes.

FOR FURTHER INFORMATION CONTACT: Roland Berry Ann, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505-2888, telephone (304) 285-5907.

Availability and access of copies: Additional copies of this notice can be obtained by calling the NIOSH toll-free information number (1-800-35-NIOSH, option 5, 9 a.m.-4 p.m. ET); the electronic bulletin board of the Government Printing Office, (202) 512-1387; and the NIOSH Home Page on the World-Wide Web (http://www.cdc.gov/niosh/homepage.html).

SUPPLEMENTARY INFORMATION: NIOSH is currently in the process of developing modules to be proposed in the priority order below:

1. Administrative/Quality Assurance Module

Areas for potential modification in this module are: Upgrade of Quality Assurance requirements; Ability to use private sector quality auditors and private sector testing laboratories in the approval program; Revised approval label requirements; Validated approval fit tests; Updated and restructured fee schedule; and Fee retention in the Respirator program.

docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 ote). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 15, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In § 180.284, by amending paragraph (b) by revising the entries for alfalfa (forage) and alfalfa (hay) to read as follows:

§ 180.284 Zinc phosphide; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Alfalfa (forage)	1.0	12/31/02
Alfalfa (hay)	1.0	12/31/02
* * *	*	* *

* * * * *

[FR Doc. 00–4239 Filed 2–22–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6541–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is granting a petition submitted by Chaparral Steel Midlothian, L.P.(Chaparral Steel) to exclude from hazardous waste control (or delist) a certain solid waste. This action responds to the petition submitted by Chaparral Steel Midlothian, L.P., to delist the leachate from its Landfill No. 3 containing K061 electric arc furnace dust and minor amounts of K061 wastewater from various plant operations including storm water from the baghouse floor areas and the pelletizer sump on a "generator specific" basis from the lists of hazardous waste.

After careful analysis, we have concluded that the petitioned waste is

not hazardous waste when disposed of in the surface impoundments. This exclusion applies to leachate from Landfill No. 3 containing K061 electric arc furnace dust and minor amounts of K061 wastewater at Chaparral Steel's Midlothian, Texas, facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in surface impoundments but imposes testing conditions to ensure that the future-generated wastes remain qualified for delisting.

EFFECTIVE DATE: February 23, 2000.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Freedom of Information Act review room on the 7th floor from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is "F–99–TXDEL–CHAPARRAL." The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact Bill Gallagher, at (214) 665–6775. For technical information concerning this notice, contact David Vogler, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, (214) 665–7428.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

A. What Action is EPA Finalizing?

The EPA is finalizing the decision to grant Chaparral Steel's petition to have their leachate and minor amounts of waste water excluded, or delisted, from the definition of a hazardous waste.

After evaluating the petition, EPA proposed, on August 24, 1999, to exclude the Chaparral Steel waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (see 64 FR 46166).

B. Why is EPA Approving This Delisting?

Chaparral Steel petitioned to exclude the landfill leachate and other wastewaters because it does not believe that the petitioned waste meets the criteria for which it was listed.

Chaparral Steel also believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. *See*, section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4).

For reasons stated in both the proposal and this notice, EPA believes that Chaparral Steel's landfill leachate and other K061 wastewaters should be excluded from hazardous waste control. The EPA therefore is granting a final exclusion to Chaparral Steel, located in Midlothian, Texas, for its leachate from its Landfill No. 3 containing K061 electric arc furnace dust and minor amounts of K061 wastewater from various plant operations including storm water from the baghouse floor areas and the pelletizer sump.

C. What are the Limits of This Exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in Table 1 are met. The waste described in the petition is leachate from Landfill No. 3 containing K061 electric arc furnace dust and minor amounts of K061 wastewater from various plant operations including storm water from the baghouse floor areas and the pelletizer sump.

D. How Will Chaparral Steel Manage the Waste if it is Delisted?

The leachate is currently sent to an offsite underground injection well facility for disposal. Although management of the wastes covered by this petition would not be subject to subtitle C jurisdiction upon final promulgation of an exclusion, Chaparral Steel must ensure that the onsite management of the delisted wastes is in accordance with the Texas Natural Resource Conservation Commission (TNRCC) rules and regulations or the waste is delivered to an off-site storage, treatment, or disposal facility, either which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

The facility would like to manage the waste in their onsite cooling system of which cooling ponds are a part. The wastewater would be substituted for some of the well water used for cooling purposes which would help conserve that natural resource. In this case, the requested change in waste management is subject to delisting by EPA and subsequent waste management practices in accordance with TNRCC rules and regulations.

E. When is the Final Delisting Exclusion Effective?

This rule is effective February 23, 2000. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010(b) of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How Does This Action Affect States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA

requirements and their own requirements, and States who have received our authorization to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If Chaparral Steel transports the petitioned waste to or manages the waste in any State with delisting authorization, Chaparral Steel must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What is a Delisting Petition?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude from the list of hazardous wastes, wastes the generator does not consider hazardous under RCRA.

B. What Regulations Allow Facilities to Delist a Waste?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260, through 266, 268, and 273 of Title 40 of the Code of Federal Regulations. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

C. What Information Must the Generator Supply?

Petitioners must provide sufficient information to EPA to allow the EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

III. EPA's Evaluation of the Waste Data

A. What Waste did Chaparral Steel Petition EPA to Delist?

Chaparral Steel Midlothian, L.P., petitioned the EPA to exclude from hazardous waste control leachate from its Landfill No. 3 containing K061 electric arc furnace dust and minor amounts of K061 wastewater from various plant operations including storm water from the baghouse floor areas and the pelletizer sump. The listed constituents of concern for K061 are chromium, lead, and cadmium.

B. How Much Waste did Chaparral Steel Propose to Delist?

Specifically, in its petition, Chaparral Steel requested that EPA grant an exclusion for leachate from its Landfill No. 3 containing K061 electric arc furnace dust and minor amounts of K061 wastewater from various plant operations including storm water from the baghouse floor areas and the pelletizer sump in the amount of 2,500 cubic yards (500,000 gallons) generated per calender year.

C. How did Chaparral Steel Sample and Analyze the Waste Data in This Petition?

To support its petition, Chaparral submitted:

(1) Historical analytical data for the Electric Arc Furnace Dust (K061), and leachate analytical data from their Landfill No. 3 containing the Electric Arc Furnace Dust, and analytical data for the liquid from the K061 waste water storage tank;

(2) Analytical results of the total constituent list for 40 CFR part 264, appendix IX volatiles, semivolatiles, metals (including hexavalent chromium), pesticides, herbicides, polychlorinated biphenyls, furans, and dioxins;

(3) Analytical results of the constituent list derived from appendix IX for identified constituents;

(4) Analytical results for reactive sulfide;

(5) Analytical results for reactive cyanide;

(6) Test results for corrosivity by pH;

(7) Analytical results of samples from bench tests of treated leachate/K061 wastewater; and

(8) Test results for oil and grease.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

i. One commenter supported the delisting but was concerned that the rule implies that storm water from melt shop baghouse areas at similar facilities would be required to be considered K061 waste water. The EPA does not intend to imply that this would be the case. Chaparral Steel removes its storm water from the baghouse area and places it in a tank containing K061 leachate and manages the waste as K061. Other generators must characterize their own storm water based on relevent circumstances involved with the generation, management, and disposal of the water.

ii. Two commenters from the same address submitted concerns that their private ground water well and the creek on their property would become contaminated because of the approval of the delisting. A public hearing was requested by these two requestors but not granted.

B. Is the Delisting of Chaparral Steel's Waste a Threat to Ground Water?

No, as explained in the proposed exclusion (delisting), EPA concluded that the constituents in the raw leachate, with the exception of lead, if released directly to the groundwater would not reach levels of concern at a down gradient well. The EPA added as a condition or requirement of delisting the waste that the maximum concentration level of lead in the leachate could not exceed 0.69 mg/l. *See* 64 FR 46176. The 0.69 mg/l concentration value is the Land Disposal Restriction (LDR) value for lead. This concentration is below the health-based value of 1.02 mg/l which is a value calculated for a theoretical down gradient well. The more conservative value was selected as a delisting limit.

Other assumptions made by EPA in the evaluation process were also very conservative. The value for largest amount of leachate generated on a per year basis was used in evaluation. Typically, the amount of leachate generated on a yearly basis is much less than the maximum and the amount generated is decreasing over time. Also, EPA evaluated the waste at the highest concentrations found in analyzing the waste or worst case concentrations. Actually, concentrations of constituents in the waste are less if the average value is used for evaluation purposes. If the leachate is added to the cooling system

as proposed by the facility, the concentrations of the constituents in the leachate would be reduced by the well water in the approximately eight million gallon cooling system. According to facility information, nearly 240 million gallons of well water is added to the system annually. The EPA conservatively evaluated a release of raw leachate to the ground water and not the leachate diluted by the cooling system water. The EPA also conservatively assumed a significant release of raw leachate would occur. However, the proposed management scenario for the raw leachate is in an above ground tank with secondary containment. Therefore, it is very unlikely a significant release to the environment would occur.

Because of the conservative assumptions made above (or reasonable worst case scenario), EPA concludes that granting the delisting adds no significant threat to contamination of ground water wells in general even if not managed as proposed in the onsite cooling pond system. As previously stated, although management of the wastes covered by this petition would not be subject to subtitle C jurisdiction upon final promulgation of an exclusion, Chaparral Steel must ensure that the onsite management of the delisted wastes is in accordance with the TNRCC rules and regulations or the waste is delivered to an off-site storage, treatment, or disposal facility, either which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

The EPA concludes that granting the delisting adds no significant threat to the contamination of the ground water of the commenter's well specifically. The commenter's well is about one mile away from the cooling water ponds and 500 foot in depth. The soils and geologic formations in the area have a low hydraulic conductivity. The combination of the distance to the well, the depth to the well, and the low hydraulic conductivity make it very unlikely that the commenter's well can be contaminated from the delisted waste.

C. Is the Delisting of Chaparral Steel's Waste a Threat to Surface Water?

No, the impact of the petitioned wastes via the surface water route is not a threat. If the leachate is added to the cooling system and associated holding ponds as proposed by the facility, an overflow is an unlikely event and would not ever occur under reasonable circumstances. A release to surface water would most potentially occur only if the plant was shut down and there was a large rainfall event at the same time. In the unlikely event of a release, the facility is required to meet applicable storm water permit concentration levels to protect human health and the environment.

Even though release to surface water is unlikely, EPA evaluated a 100-year, 24 hour rainfall event with the cooling ponds at no freeboard capacity which are also unlikely events. Under normal conditions the ponds would have enough additional capacity (freeboard) to catch all precipitation without an overflow occurring. If such a worst case scenario were to occur, calculations indicate that the concentrations of the constituents of concern would be below drinking water criteria and surface water criteria before reaching the stream at the facility's outfall. See regulatory docket for "Docket Report on Evaluation of Contaminant Releases to Surface Water Resulting Form Chaparral Steel Midlotian, L.P.'s, Petitioned Waste" document. Because of these reasons, EPA concludes that approving the delisting will not significantly impact the stream at the facility's outfall nor at the commenter's location which is approximately one mile downstream. The delisting is protective of human health and the environment.

D. Are There Any Typographical and Data Transfer Errors From the Proposed Delisting Publication?

The EPA is correcting the maximum organic total constituent concentration values for 2-butanone and carbon disulfide found in Table 1. of the proposed exclusion (64 FR 46169, August 24, 1999). The value for 2-butanone total constituent analysis for raw leachate (mg/l) should be 0.005 and not 0.003. The value for carbon disulfide total constituent analysis for treated leachate (mg/l) should be <0.005 and not 0.005.

The EPA is also making a change in Paragraph (5) of the Table 2 language to be consistent with Paragraph (6). The sentence which states "Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA" has been altered to read "Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to reopen the exclusion as described in Paragraph (6)."

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. The final to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to manage its waste as nonhazardous. There is no additional impact due to today's final rule. Therefore, this proposal would not be a significant regulation and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required however if the Administrator or delegated representative certifies that the rule will not have any impact on a small entities.

This rule if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this final rule have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA must prepare a written statement for rules

with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty upon State, local, or tribal governments or the private sector. In addition, the delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

X. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

XI. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines: (1) Is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XII. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XIII. National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: February 2, 2000.

Carl E. Edlund,

Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, 40 CFR part 261 is to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of appendix IX of part 261 the following waste stream is added in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Chaparral Steel Midlothian, L.P.	Midlothian, Texas	Leachate from Landfill No. 3, storm water from the baghouse area, and other K061 wastewaters which have been pumped to tank storage (at a maximum generation of 2500 cubic yards or 500,000 gallons per calender year) (EPA Hazardous Waste No. K061) generated at Chaparral Steel Midlothian, L.P., Midlothian, Texas, and is managed as nonhazardous solid waste after February 23, 2000. Chaparral Steel must implement a testing program that meets the following conditions for the exclusion to be valid: (1) *Delisting Levels:* All concentrations for the constituent total lead in the approximately 2,500 cubic yards (500,000 gallons) per calender year of raw leachate from Landfill No. 3, storm water from the baghouse area, and other K061 wastewaters that is transferred from the storage tank to nonhazardous management must not exceed 0.69 mg/l (*ppm*). Constituents must be measured in the waste by the method specified in SW–846. (2) *Waste Holding and Handling:* Chaparral Steel must store as hazardous all leachate waste from Landfill No. 3, storm water from the bag house area, and other K061 wastewaters until verification testing as specified in Condition (3), is completed and valid analyses demonstrate that condition (1) is satisfied. If the levels of constituents measured in the samples of the waste do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed the delisting levels set in Condition (1), the waste volume corresponding to this sample must be treated until delisting levels are met or returned to the original storage tank. Treatment is designated as precipitation, flocculation, and filtering in a wastewater treatment system to remove metals from the wastewater. Treatment residuals precipitated will be designated as a hazardous waste. If the delisting level cannot be met, then the waste must be managed and disposed of in accordance with subtitle C of RCRA. (3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies. Chaparral Steel must analyze one composite sample from each batch of untreated wastewater transferred from the hazardous waste storage tank to non-hazardous waste management. Each composited batch sample must be analyzed, prior to non-hazardous management of the waste in the batch represented by that sample, for the constituent lead as listed in Condition (1). Chaparral may treat the waste as specified in Condition (2). If EPA judges the treatment process to be effective during the operating conditions used during the initial verification testing, Chaparral Steel may replace the testing requirement in Condition (3)(A) with the testing requirement in Condition (3)(B). Chaparral must continue to test as specified in (3)(A) until and unless notified by EPA or designated authority that testing in Condition (3)(A) may be replaced with by Condition (3)(B). (A) Initial Verification Testing: Representative composite samples from the first eight (8) full-scale treated batches of wastewater from the K061 leachate/wastewater storage tank must be analyzed for the constituent lead as listed in Condition (1), Chaparral must report to EPA the operational and analytical test data, including quality control information, obtained from these initial full scale treatment batches within 90 days of the eighth treatment batch. (B) Subsequent Verification Testing: Following notification by EPA, Chaparral Steel may substitute the testing conditions in (3)(B) for (3)(A). Chaparral Steel must analyze representative composite samples from the treated full scale batches on an annual basis. If delisting levels for any constituent listed in Condition (1) are exceeded in the annual sample, Chaparral must reinstitute complete testing as required in Condition (3)(A). As stated in Condition (3) Chaparral must continue to test all batches of untreated waste to determine if delisting criteria are met before managing the wastewater from the K061 tank as nonhazardous. (4) *Changes in Operating Conditions:* If Chaparral Steel significantly changes the treatment process established under Condition (3) (*e.g.*, use of new treatment agents), Chaparral Steel must notify the Agency in writing. After written approval by EPA, Chaparral Steel may handle the wastes generated as non-hazardous, if the wastes meet the delisting levels set in Condition (1). (5) *Data Submittals:* Records of operating conditions and analytical data from Condition (3) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, or both, and be made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to reopen the exclusion as described in Paragraph (6). All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) *Reopener Language* (A) If, anytime after disposal of the delisted waste, Chaparral Steel possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraphs (5), or (6)(A) and any other information received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or delegate's notice to present such information. (D) Following the receipt of information from the facility described in paragraph (6)(C) or (if no information is presented under paragraph (6)(C)) the initial receipt of information described in paragraph (5) or (6)(A), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (7) *Notification Requirements:* Chaparral Steel must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activity. The one-time written notification must be updated if the delisted waste is shipped to a different disposal facility. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

* * * * *

[FR Doc. 00–4231 Filed 2–22–00; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–248; MM Docket No. 99–164; RM–9598; MM Docket No. 99–165; RM–9599; MM Docket No. 99–166, RM–9600]

Radio Broadcasting Services; Mitchell, NE, Lovelock, NV, Elko, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission at the request of Mountain West Broadcasting, allots Channel 257A to Mitchell, NE, as the community's first local aural service; at the request of Mountain West Broadcasting and Lovelock Broadcasting Company, allots Channel 292C1 to Lovelock, NV, as the community's first local aural service; and at the request of Mountain West Broadcasting and Elko Broadcasting Company, allots Channel 248C1 to Elko, NV, as the community's fifth local aural service. *See* 64 FR 28426, May 26, 1999. Channel 257A can be allotted to Mitchell, NE, without the imposition of a site restriction, at coordinates 41–56–36 NL; 103–48–30 WL. Channel 292C1 can be allotted to Lovelock, NV, without the imposition of a site restriction, at coordinates 40–10–48 NL; 118–28–24 WL. Channel 248C1 can be allotted to Elko, NV, without the imposition of a site restriction, at coordinates 40–49–48 NL; 115–45–36 WL. A filing window for these channels will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report* and Order, MM Docket Nos. 99–164, 99–165 and 99–166, adopted February 2, 2000, and released February 11, 2000.

ATTACHMENT 3.8

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2000–NM–79–AD.

Applicability: Model A330 and A340 series airplanes, certificated in any category; excluding those on which Airbus Modification 43021 has been installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking at the rib 1/center spar angle and bottom corner fitting, which could result in reduced structural capability of the wing, accomplish the following:

Modification

(a) Modify the rib 1/wing center spar attachment, as specified by paragraph (a)(1) or (a)(2), as applicable, of this AD.

(1) For Model A330 series airplanes: Modify before the accumulation of 9,600 total flight cycles or 29,900 total flight hours, whichever occurs first. Do the modification in accordance with Airbus Service Bulletin A330–57–3017 including Appendix 01, Revision 02, dated October 11, 1999.

(2) For Model A340 series airplanes: Modify before the accumulation of 9,300 total flight cycles or 37,200 total flight hours, whichever occurs first. Do the modification in accordance with Airbus Service Bulletin A340–57–4022 including Appendixes 01 and 02, dated October 8, 1999.

Note 2: Modification prior to the effective date of this AD in accordance with Airbus Service Bulletin A330–57–3017, dated October 14, 1998, or Revision 01, dated April 9, 1999, is acceptable for compliance with the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directives 2000–073–111(B) and 2000–074–136(B), both dated February 23, 2000.

Issued in Renton, Washington, on September 21, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–24753 Filed 9–26–00; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6878–3]

Hazardous Waste Management System; Proposed Exclusion for Identification and Listing Hazardous Waste

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also, "the Agency" or "we" in this preamble) is proposing to grant a petition submitted by USG Corporation (USG), Chicago, Illinois, to exclude (or "delist"), on a one-time basis, certain solid wastes that are interred at an on-site landfill at its American Metals Corporation (AMC) facility in Westlake, Ohio from the lists of hazardous wastes contained in Subpart D of 40 Code of Federal Regulations (CFR) Part 261. This landfill was used exclusively by Donn Corporation, the original site owner, for disposal of its wastewater treatment plant (WWTP) sludge from 1968 to 1978.

USG submitted the petition under 40 CFR 260.20 and 260.22(a). Section 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273. Section 260.22(a) specifically provides a generator the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists.

The Agency has tentatively decided to grant the petition based on an evaluation of waste-specific information provided by USG. This proposed decision, if finalized, conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

We conclude that USG's petitioned waste is nonhazardous with respect to the original listing criteria or factors which could cause the waste to be hazardous.

DATES: *Comments.* We will accept public comments on this proposed decision until November 13, 2000. We will stamp comments postmarked after the close of the comment period as "late." These "late" comments may not be considered in formulating a final decision.

Request for Public Hearing. Your request for a hearing must reach EPA by October 12, 2000. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: *Comments.* Please send two copies of your comments to Todd Ramaly, Waste Management Branch (DW–8J), Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, IL 60604.

Request for Public Hearing. Any person may request a hearing on this proposed decision by filing a request with Robert Springer, Director, Waste, Pesticides and Toxics Division, Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Todd Ramaly at the address above or at 312–353–9317. The RCRA regulatory docket for this proposed rule is located at the EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. Call Todd Ramaly at (312) 353–9317 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

SUPPLEMENTARY INFORMATION:

I. Overview Information

A. What Action Is EPA Proposing?

The EPA is proposing to grant USG's petition to have its wastewater treatment sludge excluded, or delisted, from the definition of a hazardous waste. We evaluated the petition using a fate and transport model to predict the concentration of hazardous constituents which could be released from the petitioned waste after it is disposed.

B. Why Is EPA Proposing To Approve This Delisting?

USG petitioned EPA to exclude, or delist, the wastewater treatment sludge because USG believes that the petitioned waste does not meet the criteria for which EPA listed it. USG also believes there are no additional constituents or factors which could cause the wastes to be hazardous. Based on our review described below, we agree with the petitioner that the waste is nonhazardous.

In reviewing this petition, we considered the original listing criteria and the additional factors as required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(2) through (4). We evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (3) and in the background documents.

We also evaluated the waste for other factors including (1) the toxicity of the constituents; (2) the concentration of the constituents in the waste; (3) the tendency of the hazardous constituents to migrate and to bioaccumulate; (4) persistence in the environment of any constituents released from the waste; (5) plausible and specific types of management of the petitioned waste; (6) the quantity of waste produced; and (7) waste variability.

We believe that the petitioned waste does not meet the criteria for which the waste was listed, and have tentatively decided to delist waste from the AMC Westlake landfill.

C. How Will USG Manage the Waste If It Is Delisted?

If the petitioned waste is delisted, USG must dispose of it in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste. This exclusion does not change the regulatory status of the landfill in Westlake, Ohio where the waste has been disposed.

D. When Would EPA Finalize the Proposed Delisting Exclusion?

HSWA specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not make a final decision or grant an exclusion until it has addressed all timely public comments (including those at public hearings, if any) on today's proposal.

Since this rule would reduce the existing requirements for persons generating hazardous wastes, the regulated community does not need a six-month period to come into compliance in accordance with section 3010 of RCRA as amended by HSWA. Therefore, the exclusion would become effective upon finalization.

E. How Would This Action Affect the States?

Because EPA is issuing today's exclusion under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. This exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements, or in states which have received our authorization to make their own delisting decisions.

Under section 3009 of RCRA, EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If USG transports the petitioned waste to or manages the waste in any state with delisting authorization, USG must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

II. Background

A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA. The EPA has amended this list several times and published it in 40 CFR 261.31 and 261.32.

We list wastes as hazardous because: (1) they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (3).

Individual waste streams may vary depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be.

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows a person to demonstrate that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does It Require of a Petitioner?

A delisting petition is a request from a facility to EPA or an authorized state to exclude waste generated at a particular facility from the list of hazardous wastes.

In a delisting petition, the petitioner must show that wastes generated does not meet any of the criteria for listed wastes and does not exhibit any of the hazardous waste characteristics in 40 CFR Part 261, Subpart C. The criteria for which EPA lists a waste are in 40 CFR 261.11 and in the background documents. The petitioner must also present sufficient information to determine whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See § 260.22, 42 U.S.C. 6921(f) and the background documents for the listed wastes.)

A generator remains obligated under RCRA to confirm that its waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the wastes.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

EPA must also consider as a hazardous waste, a mixture containing listed hazardous wastes and wastes derived from treating, storing, or disposing of a listed hazardous waste. See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded.

The "mixture" and "derived-from" rules are now final, after having been vacated, remanded, and reinstated.

III. EPA's Evaluation of the Waste Information and Data

A. What Wastes Did USG Petition EPA To Delist?

On May 22, 1997, USG petitioned EPA to exclude the estimated total landfill volume of the WWTP sludge (estimated at 12,400 cubic yards) from the list of hazardous wastes contained in 40 CFR 261.31 in order to facilitate ongoing corrective action at the AMC site. The WWTP sludge is described in USG's petition as a mixture of (1) EPA Hazardous Waste Number F019 wastewater treatment sludge that was generated from the chemical coating of aluminum, (2) other nonhazardous wastewater treatment sludges derived from the chemical coating of steel and galvanized steel, and (3) various nonhazardous solid wastes. F019 is defined as "Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process." The constituents of concern for which F019 is listed are hexavalent chromium and complexed cyanide.

B. What Information and Analyses Did USG Submit To Support This Petition?

To support its petition, USG submitted (1) descriptions and schematic diagrams of its manufacturing and wastewater treatment processes, including historical information on past waste generation and management practices; (2) detailed chemical and physical analysis of the landfilled sludge (see Section III.D.); and (3) environmental monitoring data from recent studies of the facility, including groundwater data from wells located in and around the on-site landfill.

C. How Did USG Generate the Petitioned Waste?

AMC began generating wastewater treatment sludge in 1965 with the start of its metal coil coating line. After 1967, AMC cleaned, chemically coated, painted, and slit large coils of steel, galvanized steel, and aluminum, into metal strips that were fabricated into the structural components for suspended ceiling panels. Wastewater from the coil coating line contained dissolved metals and vegetable oils that were treated in the AMC WWTP. As part of the wastewater treatment process, oils were removed in an oil/water separator and metals were precipitated in a "lime" sludge. The AMC wastewater treatment system received process water from the coil coating process line from the initial wash and rinse phase and from the chemical processing phase. The pH was adjusted and the solid materials were precipitated. When steel or galvanized coils were processed, wastewater treatment sludges were generated which were not listed RCRA hazardous waste. The F019 listed wastes were generated when aluminum coils were processed. Both the listed and the non-listed sludges were commingled and pumped into several on-site surface impoundments for settling and drying. In 1965 and 1966, sludges were transferred to surface impoundments for settling and drying. From 1968 to 1978, this sludge was transferred from the surface impoundments to the landfill or were disposed of off-site. Sludges that were placed in the landfill were co-mingled with other waste debris. The landfill was covered with a layer of clay soils obtained from an off-site highway construction project. In 1978, the use of the landfill was discontinued and the landfill was covered with approximately 1 to 5 feet of fill soils.

The AMC WWTP would batch treat process wastewater from the coil coating final hot rinse step in order to reduce hexavalent chromium to trivalent chromium. The wastewater was treated with sodium metabisulfite and emptied once a week into the chemical sump for further treatment in the WWTP.

D. How Did USG Sample and Analyze the Data in This Petition?

USG analyzed the landfilled sludge and groundwater samples from the monitoring well network for hazardous constituents listed in 40 CFR Part 264, Appendix IX and for other parameters.

USG's sampling strategy consisted of dividing the landfill surface area into four equal quadrants. One boring was drilled near the center of each quadrant. One composite sample representing the total depth of the landfill was collected and submitted. The Agency evaluated the petitioned waste using these four samples in combination with data from the RCRA Facility Investigation (up to 20 additional samples) and subsequent waste designation studies (up to 13 additional samples).

To quantify the total constituent and leachate concentrations, USG used the following SW–846 Methods: 6010/7000 series for antimony, arsenic, barium, beryllium, cadmium, chromium, hexavalent chromium, cobalt, copper, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, tin, vanadium, and zinc; 8240 for Appendix IX Volatile Organic Compounds (VOCs); 8270 for Appendix IX Semi-Volatile Organic Compounds (SVOCs); 8080 for organochlorine pesticides and polychlorinated biphenyls (PCBs); 8140 for organochlorine pesticides; 8150 for chlorinated herbicides. USG used these methods along with the Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311) to determine leachate concentrations of metals, herbicides, pesticides, PCBs, VOCs, and SVOCs. Characteristic testing of the filter cake samples also included analysis of ignitability (SW–846 Method 1010) and corrosivity (SW–846 Method 9095). Historical analysis for dioxins and furans was done using method 8280. More recent dioxins and furans data was submitted using EPA Method 8290.

E. What Were the Results of USG's Analysis?

The maximum total and leachate concentrations for 17 metals, total cyanide and all detected organic

constituents in USG's waste samples are summarized in the table found in section VI.A. below. We believe it is inappropriate to evaluate a constituent in our modeling efforts if the constituent was not detected using an appropriate analytical method. EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with the petition binds the petitioner to present truthful and accurate results. USG submitted a signed Certification of Accuracy and Responsibility statement presented in 40 CFR 260.22(i)(12).

IV. Methodology for Risk Assessment

A. How Did EPA Evaluate the Risk of Delisting This Waste?

For this delisting determination, we used information gathered to identify plausible exposure routes (*i.e.*, groundwater, surface water, air) to hazardous constituents present in the petitioned waste. We estimated the risk posed by the waste if disposed of in an unlined Subtitle D landfill which, under a plausible mismanagement scenario, did not receive daily cover for 30 days at a time. Constituents of concern are assumed to migrate to a receptor through groundwater, air, and surface water routes. We used a Windows based software tool, the Delisting Risk Assessment Software Program (DRAS) developed by Region 6, to estimate the potential releases of waste constituents and to predict the risk associated with those releases. A detailed description of DRAS and the fate, transport and risk models it uses follows.

1. Introduction

During a delisting determination, the Agency uses risk assessment methodologies to predict the concentration of hazardous constituents released from the petitioned waste after disposal to determine the potential impact on human health and the environment. The DRAS Program has been used to estimate the potential releases of waste constituents to waste management units. The program also predicts the risk associated with exposure to those releases using fate and transport mechanisms to predict releases and risk assessment algorithms to estimate adverse effects from exposure to those chemical releases. The DRAS computes chemical-specific exit values or "delisting levels." The *delisting levels are calculated using* modeled, medium-specific chemical concentrations and standard EPA exposure assessment and risk characterization algorithms. We detailed all chemical release, exposure, and risk characterization methodologies in the EPA Region 6 RCRA Delisting Technical Support Document.

The Agency has used the maximum estimated annual waste volume and the maximum reported leachate and total waste constituent concentrations as the input data into the DRAS program to generate compliance point concentrations and estimate risk. The compliance point is the location of an individual exposed to potential releases of delisted wastes for the purpose of evaluating risk. Compliance point concentrations are generated in a two-part process. First, the DRAS back-calculates a waste constituent concentration that an individual (receptor) may be exposed to without unacceptable risk. Then, knowing the maximum concentration permitted at the compliance point, the fate and transport models are used to back-calculate the maximum permissible concentration at the waste management unit that could be disposed of without exceeding the compliance point concentration.

The risk assessment performed by the DRAS program which underlies the proposed rule is based upon a comprehensive approach to evaluating the movement of waste constituents from their waste management units, through different routes of exposure or pathways, to the points where human and ecological receptors are potentially exposed to these constituents. This risk assessment is being used in today's proposed rule to determine whether the petitioned RCRA listed waste can be defined as "low-risk" waste, able to exit the Subtitle C system and be managed in Subtitle D units. Low risk wastes are generally defined by Region 5 as wastes with a cancer risk of no more than 1×10^{-6} or a hazard quotient of no more than 1.0. A cancer risk of 1×10^{-6} indicates a one in 1,000,000 probability of an individual developing cancer over a lifetime. For noncarcinogenic chemicals, a hazard quotient of one represents potential exposure equal to the safe toxicity threshold value. The program back-calculates allowable waste constituent concentrations at the selected risk levels.

Although the pathway of ingestion of contaminated groundwater may be appropriate to propose exit levels for some wastes and constituents, it may not be protective for others, depending on the physical and chemical properties of each waste constituent. Some constituents have a high potential to bioaccumulate or bioconcentrate in living organisms. Pathways in which these constituents come in contact with fish would be important to evaluate.

The DRAS program performs an extensive risk assessment that examines numerous exposure pathways, rather than just the groundwater ingestion pathway. The DRAS program evaluates exposures associated with managing wastes in Subtitle D landfills or surface impoundments. Elements of the risk assessment procedure performed by the DRAS that support this proposal have undergone review by the Science Advisory Board and EPA's Office of Research and Development. The use of CMTP as used in the DRAS was favorably received by the SAB. ORD reviewed all other aspects of the DRAS program and responded favorably with comments. All ORD comments were addressed and incorporated into the DRAS program.

2. What Conditions Does the Agency Use in Determining Whether a Waste May Be Delisted?

The EPA's approach in RCRA delisting risk analyses has typically been to represent a reasonable worst-case waste disposal scenario for the petitioned waste rather than use of site-specific factors. The Agency believes that a reasonable worst-case scenario results in conservative values for the compliance point concentrations and is appropriate when determining whether a waste should be relieved of the management constraints of RCRA Subtitle C. Site-specific factors (*e.g.*, site hydrogeology) are not considered because a delisted waste is no longer subject to hazardous waste control, and therefore, the Agency is generally unable to predict and does not control where and how a waste will be managed after delisting.

3. How Is the Risk Assessment in the DRAS Program Structured?

The assessment estimated the risk associated with constituent-specific concentrations in the petitioned waste at the management unit that could be expected to result in an acceptable exposure to human or ecological receptors (determined through using the toxicity benchmarks such as reference doses—RfDs). The risk assessment took into account the various pathways by which waste constituents may move through the environment from the waste management unit to a receptor. The DRAS uses the fate and transport mechanisms to predict waste constituent movement. The potential exposure pathways considered in the assessment are not all-inclusive but were selected to reflect those *that might* be commonly associated with the management of wastes in Subtitle D units. The management units could

potentially be located in the range of environments that exist across the United States. Various environments have differing characteristics (*e.g.*, meteorological conditions, soil type) with some environments more conducive for the movement of certain constituents in certain pathways. Conditions resulting in a conservative evaluation were used for each pathway, regardless of whether or not these conditions are likely to occur simultaneously at any one location. The assessment was structured using a deterministic approach. A deterministic approach uses a single, point estimate of the value of each input or parameter and calculates a single result based on those point estimates. The assessment used the best data available to select typical (*i.e.*, approximately 50th percentile) and high-end (*i.e.*, approximately 90th percentile) values for each parameter or parameter. The DRAS code which performs the assessment is constructed as a set of calculations that begin with an acceptable exposure level for a constituent to a receptor, and back-calculates to a waste constituent concentration in the management unit that corresponds to the acceptable risk level.

The steps of the assessment which provide estimates of acceptable constituent-specific concentrations in waste include the following:

Step 1—Specify acceptable risk levels for each constituent and each receptor.

Step 2—Specify the exposure medium. Using the toxicity benchmarks as a starting point and the exposure equations, the assessment back calculates the concentration of contaminant in the medium (*e.g.*, air, water, soil) that corresponds to "acceptable" exposure at the specified risk level. The exposure equations coded into the DRAS software include a quantitative description of how a receptor comes into contact with the contaminant and how much the receptor takes in through specific mechanisms (*e.g.*, ingestion, inhalation, dermal adsorption) over some specified period of time.

Step 3—Calculate the point of release concentration from the exposure concentration. Based on the back-calculated concentration in the exposure medium (from Step 2), the concentration in the medium to which the contaminant is released to the environment (*i.e.*, air, soil, groundwater) for each pathway/receptor was modeled. The end result of this calculation is a waste constituent concentration at the point of release from the waste management unit (where the exempted waste is disposed) that will not result in adverse effects to human health and the environment.

4. When Assessing the Risk of the Exempted Waste, Where Does the DRAS Assume the Waste is Deposited?

The DRAS risk assessment evaluates risks associated with petitioned RCRA wastes deposited to two waste management scenarios: landfills and surface impoundments. A landfill waste management scenario is used for the evaluation of solid wastes, while a surface impoundment waste management scenario is used for the evaluation of liquid wastes. The determination of whether a waste is a liquid waste is made using EPA approved Test Method 9095, referred to as the Paint Filter Test. Data to characterize landfills were obtained from a 1987 nationwide survey of industrial Subtitle D landfills. For releases to groundwater, EPA's Composite Model for leachate migration with Transformation Products (EPACMTP) fate and transport model was used by DRAS. The model assumes that solid wastes remain uncovered for thirty days after disposal and that the landfill will finally be covered with a 2-foot-thick native soil layer. The Subtitle D landfill is assumed to be unlined or if lined, that any liner at the base of the landfill will eventually completely fail.

The DRAS assumes that liquid industrial wastes are disposed of in an unlined surface impoundment with a sludge or sediment layer at the base of the impoundment and that releases of contaminants originate from the surface impoundment. The surface impoundment is taken to have a 20-year operational life. After this period, the impoundment may be filled in, or simply abandoned. In either case, the remaining waste in the impoundment will leach into the unsaturated zone relatively quickly. Therefore, the duration of the leaching period in the modeling analysis is set equal to 20-years.

5. What Types of Chemical Releases From the Waste Management Units Does the DRAS Evaluate?

The DRAS evaluates chemical releases of waste constituents from the waste management units to air, surface runoff and ground water. Using the EPACMTP fate and transport model, DRAS evaluates the potential release of waste contaminants to the ground water. In this evaluation, the differences between waste management units are represented by different values or frequency distributions of the source-specific parameters. Source-specific parameters used by the EPACMTP predict releases to the ground water from landfills include:

- Capacity and dimensions of the waste management unit;
- Leachate concentration;
- Infiltration and recharge rates;
- Pulse duration;
- Fraction of hazardous waste in the waste management unit;
- Density of the waste and;
- Concentration of the chemical constituent in the hazardous waste.

The source-specific parameters used by the model for surface impoundments include:

- The area;
- The ponding depth (such as the depth of liquid in the impoundment) and;
- The thickness and hydraulic conductivity of the sludge or sediment layer at the bottom of the impoundment.

Data on the areas, volumes, and locations of waste management units were obtained from the 1987 EPA Survey of Industrial Subtitle D waste facilities in the United States. Derivation of the parameters for each type of waste management unit is described in the EPACMTP Background Document and User's Guide.

For finite-source scenarios, simulations are performed for transient conditions, and the source is assumed to be a pulse of finite duration. In the case of landfills, the pulse duration is based on the initial amount of contaminant in the landfill, infiltration rate, landfill dimensions, waste and leachate concentration, and waste density. For surface impoundments, the duration of the leaching period is determined by the waste management unit's lifetime (the default value is 20 years). For a finite-source scenario, the model can calculate either the peak receptor well concentration for noncarcinogens or an average concentration over a specified period for carcinogens. The finite-source methodology in the EPACMTP is discussed in detail in the background document.

The DRAS evaluates releases of waste constituents from the waste management to the air. Releases of chemicals to the air may be in the form of either particulates or volatile concentrations. Inhalation of particulates and their absorption into the lungs at the point of exposure (POE) and air deposition of particulates and subsequent ingestion of the soil-waste mixture at the POE are a function of particulate releases. The DRAS calculates particulate emissions resulting from wind erosion of soil-waste surfaces, from vehicular traffic, and from waste loading and unloading. To estimate the respirable particulate

emissions resulting from wind erosion of surfaces with an infinite source of erodible particles, DRAS uses the methodology documented in Rapid Assessment of Exposure to Particulate Emissions from Surface Contamination Sites (RAEPE). The methodologies documented in Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources (AP–42) were employed to calculate the dust and particulate emissions resulting both from vehicular traffic and from waste loading and unloading operations at a facility.

Particulate emission rates computed using these methodologies were summed and entered in the Ambient Air Dispersion Model, a steady-state, Gaussian plume dispersion model developed by EPA to predict the concentrations of constituents 1,000 feet downwind of a hypothetical land disposal facility. For a complete description and discussion, refer to the 1985 Ambient Air Dispersion Model (AADM). The model assumes that:

1—the emission rate is constant over time;

2—the emissions arise from an upwind virtual point source with emissions occurring at ground level and;

3—no atmospheric destruction or decay of the constituent occurs.

The DRAS assumes typical or conservative values for all variables that are likely to influence the potential for soil erosion, including wind velocity and vegetative cover. The AADM unit dimension assumptions were modified to more closely resemble a landfill's. The DRAS equations compute emissions resulting from wind erosion, vehicular traffic, and waste loading and unloading. These equations are thoroughly described in the Region 6 Delisting Technical Support Document. For the landfill waste disposal scenario, the DRAS assumed that no vegetative cover is present, thereby assuming enhanced erodability of soil or waste. The mean annual wind speed is assumed to be 4 meters per second. This value represents the average of the wind speeds registered at U.S. climatological stations as documented in Table 4–1 of RAEPE. The DRAS assumes a month's (30 days') worth of waste would be uncovered at any one time.

Although particulates greater than 10 micrometers (μm) in size generally are not considered respirable, the DRAS calculates the emission rate for particle sizes up to 30 μm in order to assess the potential impact of deposition and ingestion of such particulates using the distributions of wind-eroded particulates presented in RAEPE. Specifically, these distributions indicate that the release rate for particulates up to 30 μm in size should be approximately twice the release rate calculated for particulates 10 μm in size. The DRAS calculates the total annual average emissions of respirable particulates by summing for wind erosion, for vehicle travel, and for waste loading and unloading operations. The DRAS evaluates air deposition of the annual total emissions of particulates less than or equal to 30 μm in size to soil 1,000 feet from the edge of a disposal unit. DRAS calculates the resulting soil concentration after one year of accumulation, conservatively assuming no constituent removal (no leaching, volatilization, soil erosion, or degradation).

The DRAS also evaluates the atmospheric transport and inhalation of volatile constituents which was developed by EPA's Office of Air Quality Planning and Standards (OAQPS) and has been recommended for use in risk assessments conducted under the Superfund program. The DRAS program, is currently being revised to incorporate Shen's modification of Farmer's equation which will result in a better estimate of volatile emissions. Since the maximum concentration of volatiles in USG's waste is low, this pathway will not be reevaluated using the revised approach, unless the revised version of DRAS becomes available. Estimates of emissions of VOCs from disposal of wastewaters in surface impoundments are computed with EPA's Surface Impoundment Modeling System (SIMS). SIMS was developed by EPA's OAQPS. Further information can be found in the Background Document for the Surface Impoundment Modeling System Version 2.0. The volatile emission rates derived from the respective waste management scenario are used by the AADM steady-state Gaussian plume dispersion model to predict the concentrations of constituents 1,000 feet downwind of a hypothetical disposal facility.

The DRAS evaluates potential releases of waste constituents to accessible surface waters. Exposure through the surface water pathway results from erosion of hazardous materials from the surface of a solid waste landfill and transport of these constituents to nearby surface water bodies. The DRAS uses the universal soil loss equation (USLE) to compute long-term soil and waste erosion from a landfill in which delisted waste has been disposed of. The USLE is used to calculate the amount of waste that will be eroded from the landfill. In addition, the size of the landfill is computed using the waste volume estimate provided by the petitioner. The volume of surface water into which runoff occurs is determined by estimating the expected size of the stream into which the soil is likely to enter. The amount of soil delivered to surface water is calculated using a sediment delivery ratio. The sediment delivery ratio determines the percentage of eroded material that is delivered to surface water based on the assumption that some eroded material will be redeposited between the landfill and the surface water body. A distance of 100 meters (m) to the nearest surface water body is assumed. The DRAS program as used here is currently being revised to account for partitioning between water and suspended solids when the eroded waste enters the stream. Due to the significant impact of this pathway in the evaluation of USG's petition, the risk posed through this pathway was reevaluated manually using the same partitioning approach which is being incorporated into the next version of the DRAS program (See the Docket Report on Evaluation of Contaminant Releases to Surface Water Resulting from American Metals' Petitioned Waste). Conservative values are used in the manual recalculation for variables likely to influence the potential for soil erosion and subsequent discharge to surface water. Rainfall erosion factor values range from 20 to 550 per year. Values greater than 300 occur in only a small proportion of the southeastern United States. A value of 300 was chosen as a conservative estimate ensuring that a reasonable worst-case scenario is provided for most possible landfill locations. Soil erodibility factors range from 0.1 to 0.69 ton per acre. A value of 0.3 was selected for the analysis, which is estimated to exceed 66% of all values assuming a normal distribution. One month's worth of waste is assumed to be left uncovered at any one time and thus would be readily transportable by surface water runoff. Other variables used by the DRAS and in the manual calculation to evaluate releases to surface waters employed conservative assumptions. Both the DRAS and the manual recalculation multiply the total annual mass of eroded material by the sediment delivery ratio to determine the mass of soil and waste delivered to surface water.

The predicted erosion capacity is gradually diluted as it mixes with nearby surface waters. DRAS selects a representative volume or flux rate of surface water based on stream order, which is a system of taxonomy for streams and rivers. A stream that has no other streams flowing into it is referred to as a first-order stream. Where two

first-order streams converge, a second-order stream is created. Where two second-order streams converge, a third-order stream is created. Data indicate that second-order streams have an estimated flow rate of 3.7 cubic feet per second. The second-order stream was selected for analysis as the smallest stream capable of supporting recreational fishing. Fifth-order streams were also chosen for analysis as the smallest streams capable of serving as community water supplies. Fifth-order stream flow is estimated to be 380 cubic feet per second.

6. By What Means May an Individual Be Exposed to the Proposed Exempted Waste?

An exposure scenario is a combination of exposure pathways through which a single receptor may be exposed to a waste constituent. Receptors may be human or other animal in an ecosystem. There are many potential exposure scenarios. The DRAS evaluated the risks of the proposed waste associated with the exposure scenarios most likely to occur as a result of releases from the waste management unit. Receptors may come into contact with delisted waste constituent releases from a waste management unit via two primary exposure routes, either (1) directly via inhalation or ingestion of water or (2) indirectly via subsequent ingestion of soil and foodstuffs (such as fish) that become contaminated by waste constituents through the food chain. Receptors may also be exposed to waste constituents released from a waste management unit to surface media (via volatilization to air or via windblown particulate matter) or to groundwater (via ingestion of groundwater). The exposure scenarios assessed by DRAS are generally conservative in nature and are not intended to be entirely representative of actual scenarios at all sites. Rather, they are intended to allow standardized and reproducible evaluation of risks across most sites and land use areas. Conservatism is incorporated to ensure protection of potential receptors not directly evaluated, such as special subpopulations. The recommended exposure scenarios and associated assumptions assessed by DRAS are reasonable and conservative and they represent a scientifically sound approach that allows protection of human health and the environment.

7. What Receptors Are Assessed for Risk From Exposure to the Proposed Exempted Waste?

Adult and child residents are the two receptors evaluated in this analysis. The adult resident exposure scenario is evaluated to account for the combination of exposure pathways to which an adult receptor may be exposed in an urban or rural (nonfarm) setting. The adult resident is assumed to be exposed to waste constituents from an emission source through the following exposure pathways:

1—Direct inhalation of vapors and particles;

2—Ingestion of fish;

3—Ingestion of drinking water from surface water sources;

4—Ingestion of drinking water from groundwater sources;

5—Dermal absorption from groundwater sources via bathing;

6—Inhalation from groundwater sources via showering.

DRAS evaluates two exposure pathways for children: (1) dermal absorption while bathing with potentially contaminated groundwater and (2) the ingestion of soil containing contaminated particulates which have need emitted from the landfill and deposited on the soil. Child residents (1 to 6 years old) were not selected as receptors for the groundwater ingestion and inhalation pathways, the surface water pathways, or the direct air inhalation pathways because the adult resident receptor scenario has been found to be protective of children with regard to these pathways. There is no indication that children consume more drinking water or inhale more air per unit of body weight, factoring in the recognized exposure duration, than adults. Therefore, average daily exposure normalized to body weight would be identical for adults and children. Likewise, a child receptor was not included for the freshwater fish ingestion pathway because there is no evidence that children consume more fish relative to their body weight, factoring in exposure duration, than do adults. The dermal absorption while bathing with groundwater exposure pathway is evaluated differently for child residents than it is for adult residents because of the following considerations: (1) The ratio of exposed skin surface area to body weight is slightly higher for children than for adults, resulting in a slightly larger average daily exposure for children than for adults; and (2) the exposure duration for such children is limited to 6 years, thus lowering the lifetime average exposure to carcinogens. Typically, the adult scenario is more protective with regard to carcinogens (because of the longer exposure duration), and the child scenario is more protective with regard to noncarcinogens (because of the greater skin surface area to body weight ratio).

8. Where Does the DRAS Assume That Receptors Are Located When Performing the Risk Evaluation?

The EPACMTP, a probabilistic groundwater fate and transport model, was used to predict groundwater constituent concentrations at a hypothetical receptor well located downgradient from a waste management unit. This receptor well represents the POE. That is, the predicted waste constituent concentration at the POE is used to assess the risk of the proposed exempted waste. The distance to the well is based on the results of the 1987 nationwide survey of landfills conducted by EPA's Office of Solid Waste (OSW) which determined the distance to the nearest drinking water well downgradient from municipal landfills. The survey data are entered in the EPACMTP model as an empirical distribution: minimum = 0 m, median = 427 m, and maximum = 1,610 m (approximately 1 mile). In contrast to the 1990 Toxicity Characteristic (TC) Rule (55 FR 11798), there is no requirement that the well lie within the leachate plume.

For carcinogenic waste constituents, the exposure concentration is defined as the maximum 30 year average receptor well concentration; for noncarcinogens, the exposure concentration is taken to be the highest receptor well concentration during the modeled 10,000 year period. A 10,000 year limit was imposed on the exposure period; that is, the calculated exposure concentration is the peak or highest 30 year average concentration occurring within 10,000 years following the initial release from the waste management unit. The fate and transport simulation within the CMTP provided a probability distribution of receptor well concentrations as a function of expected leachate concentration. Using the receptor well concentrations as a function of the waste constituent concentration, the EPACMTP derived chemical-specific dilution attenuation factors (DAFs) which convert a leachate concentration in the landfill to a groundwater concentration at the receptor well.

Human exposure routes for surface water include ingestion of surface water used as drinking water and ingestion of fish from nearby surface water bodies. For the surface water ingestion exposure route, the surface water POE modeled is a fifth-order stream 100 m from the waste management unit. Fifth-order streams were chosen for analysis because EPA assumes that a fifth-order

stream is the smallest stream capable of serving as a community water supply. The assumption of a 100 m distance to the nearest surface water body is a conservative assumption based on available data. An EPA survey of municipal landfill facilities showed that 3.6 percent of the surveyed facilities are located within 1 mile of a river or stream and that the average distance from these facilities to the closest river or stream is 586 m. For the fish ingestion exposure route, a second-order stream was chosen for analysis. This stream segment was determined to be the smallest stream capable of supporting fisheries. The POE in the surface water body for collection of fish is assumed to be 100 m downgradient from the disposal facility. Human exposure to emissions of windblown particulates from landfills and to emissions of volatiles from landfills and surface impoundments is assessed by the DRAS. For the air pathway, the DRAS assumes the POE is 305 m (1,000 feet) downwind of the waste management unit.

9. How Does DRAS Determine Rates of Exposure?

The calculation of constituent-specific exposure rates for each exposure pathway evaluated were based on:

1—The estimated concentration in a given medium as calculated in DRAS;

2—The contact rate;

3—Receptor body weight, and;

4—The frequency and duration of exposure.

This calculation is repeated for each constituent and for each exposure pathway included in an exposure scenario. Exposure to hazardous constituents is assumed to occur over a period of time. To calculate an average exposure per unit of time, the DRAS divides the total exposure by the time period. Exposures are intended to represent reasonable maximum exposure (RME) estimates for each applicable exposure route. The RME approach is intended to combine upper-bound and mid-range exposure factors so that the result represents an exposure scenario that is both protective and reasonable, not the worst possible case.

10. What Rate of Contact With a Contaminated Media Does the DRAS Use?

The contact rate is the amount of *contaminated medium contacted* per unit of time or event. Contact rates for subsistence food types (fish for the fish ingestion pathway) are assumed to be 100 percent from the hypothetical assessment area (surface water body). The following sections describe exposure pathway-specific contact rates.

11. What Are the Contact Rates at Which Individuals Are Exposed to Contaminated Media?

For groundwater and surface water ingestion, the intake rate is assumed to be 2.0 liters per day (l/day), the average amount of water that an adult ingests. This value, which is currently used to set drinking water standards, is close to the current 90th percentile value for adult drinking water ingestion (2.3l/day) reported in the EPA Exposure Factors Handbook. This value approximates the 8 glasses of water per day historically recommended by health authorities. The contact for the dermal exposure pathway is assumed to occur while bathing with contaminated groundwater. In this analysis, the DRAS assumes that the average adult resident is in contact with groundwater during bathing for 0.25 hour per event and that the average child resident is in contact with groundwater during bathing for 0.33 hour per event, with one event per day. For dermal bathing exposure to contaminated groundwater, the selected receptors are an adult and a young child (1 to 6 years old). During bathing, generally all of the skin surface is exposed to water. The total adult body surface area can vary from about 17,000 to 23,000 square centimeters (cm^2). The EPA Exposure Factors Handbook (EFH) reports a value of 20,000 cm^2 as the median value for adult skin surface area. A value of 6,900 cm^2 has been commonly used for a child receptor in EPA risk assessments; this value is approximately the average of the median values for male children aged 2 to 6. The EFH presents a range of recommended values for estimates of the skin surface area of children by age. The mean skin surface area at the median for boys and girls 5 to 6 years of age is 0.79 square meters (m^2) or 7,900 cm^2. Given that the age for children is defined as 0 to 6 years (see EFH Section 3.3.4), a skin surface area value for ages 5 to 6 years would be a conservative estimate of skin surface area for children. For calculation of dermal exposure to waste constituents, the DRAS uses a value of 7,900 cm^2 for the skin surface area of children and a value of 20,000 cm^2 for the skin surface area of adults.

For the groundwater pathway of inhalation exposure during showering, the contact with water is assumed to occur principally in the shower and in the bathroom. The DRAS analysis assumes that the average adult resident spends 11.4 minutes per day in the shower and an additional 48.6 minutes per day in the bathroom. Daily inhalation rates vary depending on activity, gender, age, and so on. Citing a need for additional research, the EFH does not recommend a reasonable upper-bound inhalation rate value. The EFH recommended value for the average inhalation rate is 15.2 cubic meters per day (m^3/day) for males and 11.3 m^3/day for females. The EPA established an upper-bound value for an individual's inhalation rate at 20 m^3/day which has been commonly used in past EPA risk assessments. This value is used by the DRAS for assessment of inhalation exposure.

The DRAS assesses the ingestion of soil contaminated with air-deposited particulates from a nearby landfill. The potential for exposure to constituents via soil ingestion is greater for children because they are more likely to ingest more soil than adults as a result of behavioral patterns present during childhood. Therefore, exposure to waste constituents through ingestion of contaminated soils is evaluated for the child in a delisting risk assessment. The mean soil ingestion values for children range from 39 to 271 milligrams per day (mg/day), with an average of 146 mg/day for soil ingestion and 191 mg/day for soil and dust ingestion (see EPA EFH). Based on the EFH statement that 200 mg/day may be used as a conservative estimate of the mean, the DRAS uses 200 mg/day as the soil ingestion rate for children.

Fish consumption rates vary greatly, depending on geographic region and social or cultural factors. The recommended value for fish consumption for all fish is 0.28 grams of fish per kilogram body weight per day for an average adult (see EPA EFH). This value equates with a fish consumption rate of 20.1 grams per day (g/day) for all fish. The DRAS estimated that an exposed individual eats 20 g of fish per day, representing one 8-ounce serving of fish approximately once every 11 days.

A consumption rate of 57.9 g/day was used in the manual reevaluation of risk posed through fish ingestion. This higher consumption rate, corresponding to a high-risk subpopulation present in Region 5 (low income minority sport fisherman) was added to the evaluation for USG's waste at the request of Regional risk assessors.

12. At What Frequency Does the DRAS Assume That Receptors Are Exposed to Contaminated Media?

An exposure frequency of 350 days per year is applied to all exposure scenarios (see EPA EFH). Until better data become available, the common assumption that residents take 2 weeks

of vacation per year is used to support a value of 15 days per year spent away from home, leaving 350 days per year spent at home and susceptible to exposure.

13. For What Duration Does the DRAS Assume Receptors Are Exposed to Contaminated Media?

The exposure duration reflects the length of time that an exposed individual may be expected to reside near the constituent source. For the adult resident, this value is taken to be 30 years, and for the child resident, this value is taken to be 6 years (see EPA EFH). The adult resident is assumed to live in one house for 30 years, the approximate average of the 90th percentile residence times from two key population mobility studies. For the child resident, the exposure duration is assumed to be 6 years, the maximum age of the young child receptor. For carcinogens, exposures are combined for children (6 years) and adults (24 years). For noncarcinogenic constituents, the averaging time (AT) equals the exposure duration in years multiplied by 365 days per year. For an adult receptor, the exposure duration is 30 years, and for a child receptor, the exposure duration is 6 years. For carcinogenic constituents, the AT has typically been 25,550 days, based on a lifetime exposure of 70 years at 365 days per year. The life expectancy value in the EFH is 75 years. Given this life expectancy value, the AT for a delisting risk assessment is 27,375 days, based on a lifetime exposure of 75 years at 365 days per year.

14. What Body Weights Are Assumed for Receptors in the DRAS Evaluation?

Risk Assessment Guidance for Superfund defines the body weight of the receptor as either adult weight (70 kilograms (kg)) or child weight (1 to 6 years, 15 kg). The EFH recommended value of 71.8 kg for an adult differs from the 70-kg value commonly used in EPA risk assessments. In keeping with the latest EFH recommendation, the DRAS used a 72-kg adult weight and a 15-kg child weight for the proposed delisting determination.

B. What Risk Assessment Methods Has the Agency Used in Previous Delisting Determinations That Are Being Revised in This Proposal?

1. Introduction

The fate and transport of constituents in leachate from the bottom of the waste unit through the unsaturated zone and to a drinking water well in the saturated zone was previously estimated using the EPA Composite Model for Landfill (EPACML) (See 55 FR 11798). The EPACML accounts for:

- One-dimensional steady and uniform advective flow;
- Contaminant dispersion in the longitudinal, lateral, and vertical directions;
- Sorption.

However, advances in groundwater fate and transport have been made in recent years and the Agency proposes the use of a more advanced groundwater fate and transport model for RCRA exclusions.

2. What Fate and Transport Model Does the Agency Use in the DRAS for Evaluating the Risks to Groundwater From the Proposed Exempted Waste?

The Agency proposes to use the EPACMTP in this delisting determination. The EPACMTP considers the subsurface fate and transport of chemical constituents. The EPACMTP is capable of simulating the fate and transport of dissolved contaminants from a point of release at the base of a waste management unit, through the unsaturated zone and underlying groundwater, to a receptor well at an arbitrary downstream location in the aquifer. The model accounts for the following mechanisms affecting contaminant migration: transport by advection and dispersion, retardation resulting from reversible linear or nonlinear equilibrium adsorption onto the soil and aquifer solid phase, and biochemical degradation processes.

3. Why Is the EPACMTP Fate and Transport Model an Improvement Over the EPACML?

The modeling approach used for this proposed rulemaking includes three major categories of enhancements over the EPACML. The enhancements include:

1—Incorporation of additional fate and transport processes (*e.g.*, degradation of chemical constituents);

2—Use of enhanced flow and transport solution algorithms and techniques (*e.g.*, three-dimensional transport) and;

3—Revision of the probabilistic methodology (*e.g.*, site-based implementation of available input data) A discussion of the key enhancements which have been implemented in the EPACMTP is presented here and the details are provided in the proposed 1995 Hazardous Waste Identification Rule (HWIR) background documents (60 FR 66344–December 21, 1995).

The EPACML was limited to conditions of uniform groundwater flow. It could not handle accurately the conditions of significant groundwater mounding and non-uniform groundwater flow due to a high rate of infiltration from the waste units. These conditions increase the transverse horizontal as well as the vertical spreading of a contaminant plume. The EPACMTP accounts for these effects directly by simulating groundwater flow in the vertical as well as horizontal directions.

The EPACMTP can simulate fate and transport of metals, taking into account geochemical influences on the mobility of metals. The EPA's MINTEQA2 metals speciation model is used to generate effective sorption isotherms for individual metals, corresponding to a range of geochemical conditions. The transport modules in EPACMTP have been enhanced to incorporate the nonlinear MINTEQ sorption isotherms. This enhancement provides the model with capability to simulate, in the unsaturated and in the saturated zones, the impact of pH, leachate organic matter, natural organic matter, iron hydroxide and the presence of other ions in the groundwater on the mobility of metals. The saturated zone module implemented in the EPACML was based on a Gaussian distribution of concentration of a chemical constituent in the saturated zone. The module also used an approximation to account for the initial mixing of the contaminant entering at the water table underneath the waste unit. The approximate nature of this mixing factor could sometimes lead to unrealistic values of contaminant concentration in the groundwater close to the waste unit, especially in cases of a high infiltration rate from the waste unit. The enhanced model incorporates a direct linkage between the unsaturated zone and saturated zone modules which overcomes these limitations of the EPACML.

To enable a greater flexibility and range of conditions that can be modeled, the analytical saturated zone transport module has been replaced with a numerical module, based on the highly efficient state-of-the-art Laplace Transform Galerkin (LTG) technique. The enhanced module can simulate the anisotropic, non-uniform groundwater flow, and transient, finite source, conditions. The latter requires the model to calculate a maximum receptor well concentration over a finite time horizon, rather than just the steady state concentration which was calculated by the EPACML. The saturated zone modules have been implemented to provide either a fully three-dimensional solution, or a highly efficient quasi-3D solution. The latter has been implemented for probabilistic

applications and provides nearly the same accuracy as the fully three dimensional option, but is more computationally efficient. Both the unsaturated zone and the saturated zone transport modules can accommodate the formation and the transport of parent as well as of the transformation products.

A highly efficient semi-analytical unsaturated zone transport module has been incorporated to handle the transport of metals in the unsaturated zone and can use MINTEQA2 derived linear or nonlinear sorption isotherms. Conventional numerical solution techniques are inadequate to handle extremely nonlinear isotherms. An enhanced method-of-characteristic based solution has been implemented which overcomes these problems and thereby enables the simulation of metals transport in the probabilistic framework. Non-linearity in the metals sorption isotherms is primarily of concern at higher concentration values; for low concentrations, the isotherms are linear or close to linear. Because of the attenuation in the unsaturated zone, and the subsequent dilution in the saturated zone, concentrations in the saturated zone are usually low enough so that properly linearized isotherms are used by the model in the saturated zone without significant errors.

The internal routines in the model which determine placement of the receptor well relative to the areal extent of the contaminant plume have been revised and enhanced to eliminate bias which was present in the implementation in the EPACML. The calculation of the areal extent of the plume has been revised to take into consideration the dimensions of the waste unit. The logic for placing a receptor well inside the plume limits has been improved to eliminate a bias towards larger waste unit areas and to ensure that the placement of the well inside these limits, for a given radial distance from the unit, is truly randomly uniform. However, for this proposal, the closest drinking water well is located anywhere on the downgradient side of the waste unit.

The data sources from which parameter distributions for nationwide probabilistic assessments are obtained have been evaluated, and where appropriate, have been revised to make use of the latest data available for modeling. Leachate rates for Subtitle D waste units have been revised using the *latest version of the Hydrologic* Evaluation of Landfill Performance (HELP) model with the revised data inputs. Source specific input parameters (*e.g.*, waste unit area and volume) have been developed for various different types of industrial waste units besides landfills. Input values for the groundwater related parameters have been revised to utilize information from a nationwide industry survey of actual contaminated sites. The original version of the model was implemented for probabilistic assessments assuming continuous source (infinite source) conditions only. This methodology did not take into account the finite volume and/or operational life of waste units. The EPACMTP model has been implemented for probabilistic assessments of either continuous source or finite source scenarios. In the latter scenario, predicted groundwater impact is not only based on the concentrations of contaminants in the leachate, but also on the amount of constituent in the waste unit and/or the operational life of the unit.

The landfill is taken to be filled to capacity and covered when leaching begins. The time period during which the landfill is filled-up, usually assumed to be 20 years, is considered to be small relative to the time required to leach all of the constituent mass out of the landfill. The model simulation results indicate that this assumption is not unreasonable; the model calculated leaching duration is typically several hundred years. The leachate flux, or infiltration rate, is determined using the HELP model. The net infiltration rate is calculated using a water balance approach, which considers precipitation, evapo-transpiration, and surface run-off. The HELP model was used to calculate landfill infiltration rates for a representative Subtitle D landfill with 2-foot earthen cover, and no liner or leachate collection system, using climatic data from 97 climatic stations located throughout the US. These correspond to the reasonable worst case assumptions as explained in the HWIR Risk Assessment Background Document for the HWIR proposed notice (60 FR 66344–December 21, 1995). Additional details on the methodologies used by the EPACMTP to derive DAFs for waste constituents modeled for the landfill scenario are presented in the Background Documents for the proposed HWIR docket (60 FR 66344–December 21, 1995). The fraction of waste in the landfill is assigned a uniform distribution with lower and upper limits of 0.036 and 1.0, respectively, based on analysis of waste composition in Subtitle D landfills. The lower bound assures that the waste unit will always contains a minimum amount of the waste of concern. The waste density is assigned a value based on reported densities of hazardous waste, and varies between 0.7 and 2.1 grams per cubic centimeter (g/cm^3.

The area of the surface impoundment and the impoundment depth used by the EPACMTP are obtained from the OSW Subtitle D Industrial Survey and were entered into the probabilistic analyses as distributions. The sediment layer at the base of the impoundment is taken to be 2 feet thick, and have an effective equivalent saturated conductivity of 10^{-7} centimeters per second (cm/s). These values were selected in recognition of the fact that most non-hazardous waste surface impoundments do have some kind of liners in place. Additional details on the methodologies used by the EPACMTP to derive DAFs for waste constituents modeled for the surface impoundment waste management scenario are presented in the Background Documents for the 1995 proposed HWIR docket (60 FR 66344–December 21, 1995).

4. Has the EPACMTP Methodology Been Formally Reviewed?

The Science Advisory Board (SAB), a public advisory group that provides information and advice to the EPA, reviewed the EPACMTP model as part of a continuing effort to provide improvements in the development and external peer review of environmental regulatory models. Overall, the SAB commended the Agency for making significant enhancements to the EPACMTP's predecessor (EPACML) and for responding to previous SAB suggestions. The SAB also concluded that the mathematical formulation incorporating transformation or degradation products into the model appeared to be correct and that the site-based approach using hydrogeologic regions is superior to the previous approach used in EPACML. The model underwent public comment during the 1995 proposed HWIR (60 FR 66344–December 21, 1995).

5. Has the Agency Modified the EPACMTP as Utilized in the HWIR Proposal?

The EPACMTP, as developed for HWIR, determined the DAF using a probabilistic approach that selected, at random, a waste volume from a range of waste volumes identified in EPA's 1987 Subtitle D landfill survey. In delisting determinations, the waste volume of the petitioner is known. Therefore, application of EPACMTP to the delisting program has been modified to evaluate the specific waste volume. The Agency modified the DAFs determined under the HWIR proposal to account for a known waste volume. To generate waste volume-specific DAFs, EPA

developed "scaling factors" to modify DAFs developed for HWIR (based on the entire range of disposal unit areas) to DAFs for delisting waste volumes. This was accomplished by computing a 90th percentile DAF for a conservative chemical for 10 specific waste volumes (ranging from 1,000 cu. yds. to 300,000 cu. yds.) for each waste management scenario (landfill and surface impoundment). The Agency assumed that DAFs for a specific waste volume are linearly related to DAFs developed by EPACMTP for the HWIR. DAF scaling factors were computed for the ten increment waste volumes. Using these ten scaling factor DAFs, regression equations were developed for each waste management scenario to provide a continuum of DAF scaling factors as a function of waste volume.

The regression equations are coded into the DRAS program which then automatically adjusts the DAF for the waste volume of the petitioner. The method used to verify the scaling factor approach is presented in Application of EPACMTP to Region 6 Delisting Program: Development of Volume-adjusted Dilution Attenuation Factors. For the landfill waste management scenario, the DAF scaling factors ranged from 9.5 for 10,000 cu. yard to approximately 1.0 for waste volumes greater than 200,000 cu. yards. Therefore, for solid waste volumes greater than 200,000 cu. yds., the waste volume-specific DAF is the same as the DAF computed for the proposed HWIR. The regression equation that can be used to determine the DAF scaling factor (DSF) as a function of waste volume (in cubic yards) for the landfill waste management unit is: DSF = 6152.7 * (waste volume)—0.7135. The correlation coefficient of this regression equation is 0.99, indicating a good fit of this line to the data points. DAF scaling factors for surface impoundment waste volumes ranged from 2.4 for 2,000 cu. yards to approximately 1.0 for 100,000 cu. yds. For liquid waste volumes greater than 200,000 cu. yds., the waste volume-specific DAF is the same as the DAF computed for the proposed HWIR. The regression equation for DSF as a function of waste volume for surface impoundment wastes is: DSF = 14.2 * (waste volume)—0.2288. The correlation coefficient of this regression equation is also 0.99, indicating an extremely good fit of this line to the data points.

V. Evaluation of This Petition

A. What Other Factors Did EPA Consider in Its Evaluation?

We also consider the applicability of ground-water monitoring data during the evaluation of delisting petitions where the waste in question is or has ever been placed on land. In this case, a substantial record of groundwater analysis from monitoring wells in and around the existing landfill which contains the waste was available and submitted as part of the petition. Historical data showed elevated levels of hazardous constituents in the groundwater and indicated that the landfilled waste was a possible source. Additional groundwater analysis became available utilizing a more sophisticated EPA recommended sampling technique. The new data could not establish that hazardous substances were currently leaching from the landfill sludge at levels exceeding those predicted by the EPACMTP model in the DRAS program. The evaluation was based on a statistical analysis conducted in accordance with *Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities—Interim Final Guidance, EPA, April 1989 and Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities—Addendum to Interim Final Guidance,* EPA, July 1992. Leachate analysis of sludge samples generally supported the conclusion that the landfilled sludge was not currently a source of groundwater contamination above health-based levels.

Specifically, the landfilled sludge did not appear to be leaching arsenic, cadmium, lead, or nickel to groundwater at this time. Cadmium and nickel in groundwater appear to be a concern at the facility, but the cadmium and nickel contamination could not be attributed to the landfilled sludge based only on the recent data. The landfilled sludge could be contributing chromium, zinc and/or thallium to the groundwater, but currently at levels below concern. The elevated thallium was detected in upgradient wells and all detections were very close to the detection levels. Based on most recent data, the landfilled sludge does not appear to currently leach hazardous constituents to groundwater at significantly different levels than predicted by leachate analysis and subsequent modeling (See Docket Report for Statistical Analysis of Recent Groundwater Analysis).

B. What Did EPA Conclude About USG's Analysis?

The total cumulative risk posed by the waste, including the revised dioxin risk through fish ingestion is approximately 9.69×10^{-6}. EPA believes that this risk is acceptable because the value is within a generally acceptable range of 1×10^{-4} to 1×10^{-6} and a large portion of the estimated risk is associated with a single contaminant/pathway which may be evaluated in more than one way. Specifically, ingestion of carcinogenic arsenic in groundwater contributes 8.39×10^{-6}, or 86.5% of the total risk. Total arsenic levels in the landfilled waste were not statistically different than arsenic levels in soils not associated with the landfill and recent ground-water monitoring at the facility did not detect arsenic at a detection level of 0.005 milligrams per liter (mg/L). Furthermore, if the POE target concentration was set at the Safe Drinking Water Act (SWDA) Maximum Contaminant Level (MCL), the maximum allowable waste leachate concentration would be 7.09 mg/L TCLP arsenic, over 100 times higher than the maximum observed leachate concentration in the waste. EPA's July 1996 *Soil Screening Guidance: User's Guide*, EPA/540/R--96/018, states that acceptable levels of contaminants in soils for the ground-water pathway should be derived from SWDA Maximum Contaminant Level Goals (MCLG) or MCLs. Health-based limits as used in the DRAS program can be used if MCLs are not available. Given that the difference between the MCL for arsenic and the health-based POE concentration is three orders of magnitude, we believe that some allowance can be exercised in setting the allowable level for arsenic in the leachate. EPA proposes to set the allowable arsenic leachate level at a concentration which corresponds to a total waste cancer risk of 1×10^{-4} which is still within the generally acceptable range of 1×10^{-4} to 1×10^{-6}. Delisting levels for constituents other than arsenic will still be set at concentrations corresponding to the original Region 5 target of 1×10^{-6}. By this method, the delisting level for leachable arsenic in this proposed exclusion will be set at a value which corresponds to a POE concentration of approximately one tenth of the existing MCL. The EPA has recently proposed to lower the arsenic MCL to one tenth its current value and thus, if finalized, would correspond well with the delisting level we are setting.

After reviewing USG's processes, the EPA concludes that (1) hazardous constituents of concern are present in USG's waste, but not at levels which are likely to pose a threat to human health and the environment when placed in a solid waste landfill; and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

C. What is EPA's Final Evaluation of This Delisting Petition?

The descriptions of the USG hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this document, provide a reasonable basis for EPA to grant the exclusion.

We have reviewed the sampling procedures used by USG and have determined they satisfy EPA criteria for collecting representative samples of constituent concentrations in the wastewater treatment sludge.

We believe the data submitted in support of the petition show that USG's waste will not pose a threat when disposed of in a Subtitle D landfill regulated by a state. We therefore, propose to grant USG an exclusion for its WWTP sludge.

If we finalize the proposed rule, the Agency will no longer regulate the petitioned waste under 40 CFR Parts 262 through 268 and the permitting standards of Part 270.

VI. Conditions for Exclusion

A. What Are the Maximum Allowable Concentrations of Hazardous Constituents in the Waste?

The following table summarizes maximum observed total and TCLP concentrations in USG's waste, maximum allowable leachate levels for USG's waste, and the level of regulatory concern at the point of exposure for groundwater. The EPA calculated delisting levels for most constituents detected.

Maximum allowable leachate concentrations (expressed as a result of the TCLP test) were calculated for all constituents for which leachate was analyzed. Most of the allowable leachate concentrations were derived from the health-based calculation within the DRAS program. The remaining maximum allowable leachate levels were derived from MCLs, SDWA Treatment Technique (TT) action levels, or toxicity characteristic levels from 40 CFR 261.24 if they resulted in a more conservative delisting level. The singular exception is arsenic which was discussed in section V.B. The maximum allowable point of exposure groundwater concentrations correspond to the lesser of the health-based values calculated within the DRAS program or the MCLs or TT action levels. MCLs were used for maximum point of exposure groundwater concentrations for constituents which were not analyzed for in leachate extracts.

A statistical review of some of the data indicates that the maximum values used in the modeling and risk estimation correspond to a very high confidence interval (See *Docket Report on Degree of Characterization of Existing Landfilled Sludge at the American Metals Corporation Facility, Westlake, Ohio*). Assuming that the distribution of the data is adequately defined, future samples are likely to exhibit concentrations which are less than the maximum values used in this evaluation. All of the maximum waste concentrations observed are less than the corresponding delisting levels assigned. The maximum observed concentration of PCBs was close to the delisting level. However, PCBs were not detected in most samples.

Constituent	Maximum [1] observed total concentration (mg/kg)	Maximum [1] observed leachate concentration (mg/L TCLP)	Maximum allowable leachate concentration (mg/L TCLP)	Maximum allowable point of exposure concentration (mg/L in groundwater)
Inorganic Constituents				
Antimony	1.2	<0.023	[2] 1.52	[2] 0.006
Arsenic	19.0	0.058	0.691	0.005
Barium	120	0.215	[3] 100	[2] 2.0
Beryllium	0.86	0.003	[2] 3.07	[2] 0.004
Cadmium	2.8	0.013	[3] 1.0	[2] 0.005
Chromium (total)	3660	0.277	[3] 5.0	[2] 0.1
Chromium (hexavalent)	0.60	NR	NA	[2] 0.1
Cobalt	142	0.223	166	2.25
Copper	31.9	0.010	[2] 67,300	[2] 1.3
Lead	130	0.036	[3] 5	[2] 0.015
Mercury	0.23	0.012	[3] 0.2	[2] 0.002
Nickel	76.9	0.128	209	0.75
Selenium	5.1	0.053	[3] 1	[2] 0.05
Silver	0.5	<0.018	[3] 5	[2] 0.188
Thallium	1.5	<0.002	[2] 0.65	[2] 0.002
Tin	12.1	0.025	1,660	22.46
Vanadium	75.5	0.014	156	0.263
Zinc	104000	70.9	2,070	11.25
Cyanide (total)	<1.0	NR	NA	[2] 0.2
Cyanide (amenable)	NA	NR	NA	NA
Organic Constituents				
Acetone	0.16	NR	NA	NA
Benzene	0.009	<0.025	0.089	0.00067
Bis(2-ethylhexyl) phthalate	1.6	NR	NA	[2] 0.006
Fluoranthene	0.2	NR	NA	NA
Methyl ethyl ketone	0.071	<0.250	[3] 200	22.57
Methylene chloride	0.019	NR	NA	[2] 0.005
Phenanthrene	0.17	<0.010	NA	NA
Polychlorinated biphenyls	0.22	NR	NA	[2] 0.0005
Pyrene	0.29	<0.010	9.12	0.065
Tetrachlorethylene	0.034	<0.025	0.197	0.0014
Xylenes	0.051	NR	NA	[2] 10

Constituent	Maximum [1] observed total concentration (mg/kg)	Maximum [1] observed leachate concentration (mg/L TCLP)	Maximum allowable leachate concentration (mg/L TCLP)	Maximum allowable point of exposure concentration (mg/L in groundwater)
Dioxins and furans				
2,3,7,8-TCDD	0.000008	NR	NA	NA
1,2,3,7,8-PeCDD	0.0000026	NR	NA	NA
1,2,3,4,7,8-HxCDD	0.0000052	NR	NA	NA
1,2,3,6,7,8-HxCDD	0.0000074	NR	NA	NA
1,2,3,7,8,9-HxCDD	0.000011	NR	NA	NA
1,2,3,4,6,7,8-HpCDD	0.00109	NR	NA	NA
OCDD	0.159	NR	NA	NA
2,3,7,8-TCDF	0.0000017	NR	NA	NA
1,2,3,7,8-PeCDF	<0.0000082	NR	NA	NA
2,3,4,7,8-PeCDF	<0.000088	NR	NA	NA
1,2,3,4,7,8-HxCDF	<0.0000086	NR	NA	NA
1,2,3,6,7,8-HxCDF	<0.0000074	NR	NA	NA
2,3,4,6,7,8-HxCDF	<0.0000086	NR	NA	NA
1,2,3,7,8,9-HxCDF	<0.0000097	NR	NA	NA
1,2,3,4,6,7,8-HpCDF	0.0000062	NR	NA	NA
1,2,3,4,7,8,9-HpCDF	<0.000013	NR	NA	NA
OCDF	0.000052	NR	NA	NA
2,3,7,8-TCDD TEQ[4]	0.000182	NR	NA	NA

[1] These levels represent the highest constituent concentration found in any one sample, not necessarily the specific levels found in one sample.
[2] The concentration is based on the MCL or TT action level.
[3] The concentration is based on the toxicity characteristic level in 40 CFR 261.24.
[4] Concentrations of individual dioxin and furan congeners in a given sample were combined into a single concentration representing the equivalent concentration of 2,3,7,8-TCDD based on toxicity.
< The constituent was not detected at the stated concentration.
NA Not Applicable.
NR Analysis not run.

In addition to the delisting values in the table, several delisting levels based on total concentrations were also established for USG's waste. Total arsenic is limited to 9,280 mg/kg. Total mercury is limited to 94 mg/kg. Total PCBs are limited to 0.265 mg/kg. Since all of the dioxin and furan congeners exhibit a toxicity which can be related to 2,3,7,8-TCDD, delisting levels were not calculated for each congener. Since the dioxin and furan congeners also bioaccumulate at different rates than 2,3,7,8-TCDD, the cumulative risk varies among all dioxin and furan congeners. The Docket Report on Evaluation of Contaminant Releases to Surface Water Resulting from American Metal's Petitioned Waste contains congener specific factors which, when multiplied by the congener concentration in the waste, provides the individual risk posed by each congener. These risks were summed and compared to the target risk level of 1×10^{-6}. None of the samples analyzed for dioxins and furans exceeded the target level. The congener-specific factors for the combined 2,3,7,8-TCDD delisting level are as follows:

2,3,7,8-TCDD—3.8×10^{-2};
1,2,3,7,8-PeCDD—1.8×10^{-2};
1,2,3,4,7,8-HxCDD—1.2×10^{-3};
1,2,3,6,7,8-HxCDD—4.9×10^{-4};
1,2,3,7,8,9-HxCDD—5.43×10^{-4}
1,2,3,4,6,7,8-HpCDD—2.09×10^{-5};
OCDD—5×10^{-7};
2,3,7,8-TCDF—2.72×10^{-3};
1,2,3,7,8-PeCDF—4.17×10^{-4};
2,3,4,7,8-PeCDF—3.04×10^{-2};
1,2,3,4,7,8-HxCDF—2.99×10^{-4};
1,2,3,6,7,8-HxCDF—7.33×10^{-4};
2,3,4,6,7,8-HxCDF—2.46×10^{-3};
1,2,3,7,8,9-HxCDF—2.66×10^{-3};
1,2,3,4,6,7,8-HpCDF—4.38×10^{-6};
1,2,3,4,7,8,9-HpCDF—$1.55\times10-4$; and
OCDF—$6.7\times10-7$.

The sum of the products of dioxin and furan congener concentrations (mg/kg) and these factors may not exceed $1\times10-6$.

B. What Are the Conditions of the Exclusion?

The proposed exclusion only applies to the 12,400 cubic yards of landfilled sludge described in the petition. Any amount exceeding this volume cannot be considered delisted under this exclusion. Furthermore, USG must dispose of this sludge in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste.

USG must also complete additional verification sampling in order to ensure that the landfilled sludge meets delisting requirements. The Docket Report on Degree of Characterization of Existing Landfilled Sludge at the American Metals Corporation Facility, Westlake, Ohio describes additional characterization of the landfilled sludge needed to provide a more adequate delineation of the spatial distribution of constituents of concern in the landfilled sludge. The verification sampling was evaluated based on the total number of samples taken thus far, their location, and the importance of the analytes based on risk. Composite samples comprising the vertical extent of the landfilled sludge at each individual boring location are to be collected from six different boring locations within the landfilled sludge areas. The samples are to be analyzed for TCLP metals including antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver, thallium, tin, vanadium, and zinc. Five of the borings are to be located within the larger of the two landfilled sludge deposits and placed in a manner that compliments the existing seven samples identified as WD–1 through WD–4 and LB1 through LB3. The remaining verification sample must be collected from a single boring placed within the smaller of the two landfilled sludge deposits.

If, anytime after disposal of the delisted waste, USG possesses or is otherwise made aware of any environmental or waste data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in Section VI.A. is at a level

higher than the delisting level established in Section VI.A. or is at a level in groundwater that exceeds the point of exposure concentration established in Section VI.A., then USG must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data.

Based on any information provided by USG and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

C. What Happens if USG Fails To Meet the Conditions of the Exclusion?

If USG violates the terms and conditions established in the exclusion, the Agency may start procedures to withdraw the exclusion.

The EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978) *et seq.* (APA), to reopen a delisting decision if we receive new information indicating that the conditions of this exclusion have been violated.

If the Regional Administrator determines that information reported by USG as described in Section VI.B., or information received from any other source, does require Agency action, the Regional Administrator will notify USG in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing USG with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. USG shall have 10 days from the date of the Regional Administrator's notice to present the information.

If after 10 days, USG presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, *unless the Regional Administrator* provides otherwise.

VII. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from today's proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, the Agency certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

IX. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

X. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with federal mandates that may result in estimated costs to state, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any state, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

XI. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments; the nature of their concerns; copies of written communications from the governments; and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of

regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

XII. Executive Order 13045

Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XIII. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects that communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XIV. National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, business practices, *etc.*) that are developed or adopted by voluntary consensus standard bodies. Where EPA does not use available and potentially applicable voluntary consensus standards, the Act requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards, and thus the Agency has no need to consider the use of voluntary consensus standards in developing this proposed rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: September 19, 2000.

Joseph M. Boyle,

Acting Director, Waste, Pesticides and Toxics Division.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of Part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
American Metals Corporation	Westlake, Ohio	Wastewater treatment plant (WWTP) sludges from the chemical conversion coating (phosphating) of aluminum (EPA Hazardous Waste No. F019) and other solid wastes previously disposed in an on-site landfill. This is a one-time exclusion for 12,400 cubic yards of landfilled WWTP sludge. This exclusion was published on (insert publication date of the final rule). 1. Delisting Levels: (A) The constituent concentrations measured in the TCLP extract may not exceed the following levels (mg/L): antimony—1.52; arsenic—0.691; barium—100; beryllium—3.07; cadmium—1; chromium—5.0; cobalt—166; copper—67,300; lead—5; mercury—0.2; nickel—209; selenium—1; silver—5; thallium—0.65; tin—1,660; vanadium—156; and zinc—2,070. (B) The total constituent concentrations in any sample may not exceed the following levels (mg/kg): arsenic—9,280; mercury—94; and polychlorinated biphenyls—0.265. (C) The sum of the products of dioxin and furan congener concentrations (mg/kg) and the factors defined in Section VI. A. of the preamble may not exceed 1×10^{-6}. 2. Verification Sampling—Composite samples comprising the vertical extent of the landfilled sludge at individual boring locations are to be collected from six different boring locations within the landfilled sludge areas. The samples are to be analyzed for TCLP metals including antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver, thallium, tin, vanadium, and zinc. Five of the borings are to be located within the larger of the two landfilled sludge deposits and placed in a manner that compliments the existing seven samples identified as WD–1 through WD–4 and LB1 through LB3. The remaining verification sample must be collected from a single boring placed within the smaller of the two landfilled sludge deposits. The results are to be compared to the delisting levels in Condition (1)(a). Sludge from which samples collected exceed delisting levels are not delisted. Additional sampling can be conducted with the approval of U.S. EPA Region 5 in order to isolate the sludge which exceeds the delisting levels from sludge that meets the delisting levels.

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		3. Reopener Language— (a) If, anytime after disposal of the delisted waste, USG possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in Condition (1) is at a level higher than the delisting level established in Condition (1), or is at a level in the groundwater at a level exceeding the point of exposure groundwater levels established in Section VI.A. of the preamble, then USG must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify USG in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing USG with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. USG shall have 10 days from the date of the Regional Administrator's notice to present the information. (d) If after 10 days USG presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. 3. Notifications—USG must provide a one-time written notification to any State Regulatory Agency to which or through which the waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

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[FR Doc. 00–24790 Filed 9–26–00; 8:45 am]
BILLING CODE 6560–50–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 00–7794]

Federal Motor Vehicle Safety Standards (FMVSS); Small Business Impacts of School Bus Safety

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of regulatory review; extension of comment period.

SUMMARY: This document grants a request to extend the comment period on an agency request for comments on the economic impact of its regulations on small entities. As required by Section 610 of the Regulatory Flexibility Act, we are attempting to identify rules that may have a significant economic impact on a substantial number of small entities. We also request comments on ways to make these regulations easier to read and understand. The focus of this notice is rules that specifically relate to school bus safety.

DATES: Extended comment closing date: Comments on the September 13, 2000 notice, 65 FR 55212, Docket No. 00–7794, must be received by the agency on or before close of business on November 13, 2000.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. Alternatively, you may submit your comments electronically by e-mail at http://dms.dot.gov.

You may call the Docket at 202–366–9324, and visit it from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Nita Kavalauskas, Office of Regulatory Analysis and Evaluation, Office of Plans and Policy, National Highway Traffic Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366–2584. Facsimile (fax): (202) 366–2559.

SUPPLEMENTARY INFORMATION: On September 13, 2000, NHTSA published a notice announcing a review of Federal Motor Vehicle Safety Standards (FMVSS) relating to school bus safety. Section 610 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (Pub. L. 104–121), requires agencies to conduct periodic reviews of

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(D) If after 30 days Heritage or Nucor presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.
*	*	* * * * *

[FR Doc. 02–953 Filed 1–14–02; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7124–9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA (also, "the Agency" or "we" in this preamble) is granting a petition submitted by USG Corporation (USG), Chicago, Illinois, to exclude (or "delist"), on a one-time basis, certain solid wastes that are interred at an on-site landfill at its American Metals Corporation (AMC) facility in Westlake, Ohio from the lists of hazardous wastes. This landfill was used exclusively by Donn Corporation, the original site owner, for disposal of its wastewater treatment plant (WWTP) sludge from 1968 to 1978.

After careful analysis, the EPA has concluded that the petitioned waste is not a hazardous waste when disposed of in a Subtitle D landfill. Today's action conditionally excludes the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) only if the waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste.

EFFECTIVE DATE: This rule is effective on January 15, 2002.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call Todd Ramaly at (312) 353–9317 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Todd Ramaly at the address above or at (312) 353–9317.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a petitioner to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in 40 CFR 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste.

Petitioners remain obligated under RCRA to confirm that their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the wastes.

B. What Regulations Allow a Waste To Be Delisted?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding it from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273 of Title 40 of the Code of Federal Regulations. Section 260.22 provides any person with the opportunity to petition the Administrator to exclude a waste at a particular generating facility from the hazardous waste lists.

II. USG's Delisting Petition

A. What Waste Did USG Petition EPA To Delist?

On May 22,1997, USG petitioned EPA to exclude 12,400 cubic yards of previously disposed WWTP sludge from the list of hazardous wastes contained in 40 CFR 261.31. The WWTP sludge is a mixture of EPA Hazardous Waste Number F019 wastewater treatment sludge from the conversion coating of aluminum and other nonhazardous wastes.

B. What Information Must the Petitioner Supply?

A petitioner must provide sufficient information to allow the EPA to determine that the waste does not meet any of the criteria for which it was listed as a hazardous waste. In addition, where there is a reasonable basis to believe that factors other than those for which the waste was listed (including additional constituents) could cause the waste to be hazardous, the Administrator must determine that such factors do not warrant retaining the waste as hazardous.

C. What Information Did USG Submit To Support This Petition?

To support its petition, USG submitted (1) descriptions and schematic diagrams of its manufacturing and wastewater treatment processes, including historical information on past

waste generation and management practices; (2) detailed chemical and physical analysis of the landfilled sludge; and (3) environmental monitoring data from recent studies of the facility, including groundwater data from wells located in and around the on-site landfill.

III. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

Today the EPA is finalizing an exclusion to USG for 12,400 cubic yards of WWTP sludge interred at the AMC facility in Westlake, Ohio.

USG petitioned EPA to exclude, or delist, the WWTP sludge because USG believes that the petitioned waste does not meet the RCRA criteria for which it was listed it and that there are no additional constituents or factors which could cause the waste to be hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 222 of HSWA, 42 United States Code (U.S.C.) 6921(f), and 40 CFR 260.22 (d)(2)–(4).

On September 27, 2000, EPA proposed to exclude or delist USG's WWTP sludge from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (65 FR 58015). EPA considered all comments received, and for reasons stated in both the proposal and this document, we believe that USG's waste should be excluded from hazardous waste control.

B. What Are the Terms of This Exclusion?

USG must dispose of the estimated total landfill volume of the WWTP sludge, 12,400 cubic yards, in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste. Any amount exceeding this volume is not considered delisted under this exclusion. This exclusion is effective only if all conditions contained in today's rule are satisfied. This rule does not change the regulatory status of the landfill in Westlake, Ohio where the waste currently resides.

C. When Is the Delisting Effective?

This rule is effective January 15, 2002. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the States?

Because EPA is issuing today's exclusion under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. This exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements, or in states which have received EPA authorization to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA programs) may regulate a petitioner's waste, EPA urges the petitioner to contact the state regulatory authority to establish the status of its wastes under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If USG transports the petitioned waste to or manages the waste in any state with delisting authorization, USG must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

IV. Response to Public Comments Received on the Proposed Exclusion

Comment: The commenter stated that although the Agency reviewed and commented on the DRAS model, the public has not had the opportunity to do so.

Response: The proposed rule of September 27, 2000 discussed the DRAS model. The comment period provided an opportunity to comment on the DRAS model itself as well as its use in this proposed delisting. Each proposed delisting must explicitly reference the risk model used. Therefore, comments on the DRAS may always be submitted during the comment period for any future delisting for which the DRAS was used. Also, for comments on future delistings which used the DRAS model, the technical support document for the DRAS model may be accessed on-line at *<http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dtsd.htm>*.

Comment: It is not clear the Agency intends to use this model and that all Regions will be using this methodology to evaluate all delisting petitions in the future.

Response: At this time the Agency anticipates that the DRAS model will become the standard tool for evaluating future delisting petitions although there is no regulation requiring the use of this model. For each petition, each Region will select the risk model it considers to be the most appropriate.

Comment: It is inappropriate for the DRAS model to incorporate elements of the not yet finalized Hazardous Waste Identification Rule (HWIR) model.

Response: The risk assessment procedure performed by the DRAS model has been reviewed by the Science Advisory Board as well as by EPA's Office of Research and Development. Finalizing HWIR will not impact the use of this model in delisting decisions.

Comment: Why were several additional exposure pathways added to the delisting evaluation?

Response: Most of the exposure pathways used in this delisting evaluation have been used in previous delisting evaluations. The expanded list of exposure pathways is consistent with the exposure pathways used by the Agency in recent listing determinations as well as in the proposed HWIR.

Comment: The detection level for 2,3,4,7,8-PeCDF in Table 1 is higher than the target risk level for this compound although detection levels in the most recent analysis are much lower.

Response: The highest detection level in any sample is displayed in the table, however EPA relied on the actual quantitative results from the more recent and more sensitive analysis in evaluating the petitioned waste.

Comment: The petitioner requested that the calculation of the risk factor for 2,3,4,7,8-PeCDF be verified because it was comparable to 2,3,7,8-TCDD which is known to be more toxic.

Response: Although, 2,3,4,7,8-PeCDF is less toxic, it is more bioaccumulative in fish tissue so that its lower toxicity is offset by increased exposure.

Comment: The petitioner requested clarification on how non-detects are treated when determining delistable levels for dioxins and furans.

Response: Non-detects are not evaluated or included if the sample was analyzed by a method sufficiently sensitive to detect the constituent at the level of concern.

Comment: The commenter expressed concern that DAF scaling factors were

not linearly related to waste volumes at annual waste volumes less than 20,000 cubic yards, while the proposed exclusion implied the relationship was linear.

Response: The commenter is correct in that the DAF scaling factors are not linearly related to annual waste volume for volumes less than 20,000 cubic yards. The relationship is approximated by EPA as an exponential function. References to linearity and DAF scaling factors in the proposed rule were misleading. The DAF scaling factors of one constituent are assumed to be directly proportional to DAF scaling factors of other constituents, not linearly related to volume.

Additional corrections to the proposed exclusion:

The delisting factors for dioxin and furan congeners in the proposed rule have been corrected to reflect the increased rate of fish ingestion attributed to high-risk subpopulations in Region 5, as intended in the proposed exclusion. The correct congener-specific factors are as follows: 2,3,7,8-TCDD -7.46×10^{-2}; 1,2,3,7,8-PeCDD -7.18×10^{-2}; 1,2,3,4,7,8-HxCDD -2.41×10^{-3}; 1,2,3,6,7,8-HxCDD -9.82×10^{-4}; 1,2,3,7,8,9-HxCDD -1.09×10^{-3}; 1,2,3,4,6,7,8-HpCDD -4.20×10^{-5}; OCDD -1.01×10^{-7}; 2,3,7,8-TCDF -5.08×10^{-3}; 1,2,3,7,8-PeCDF -8.17×10^{-4}; 2,3,4,7,8-PeCDF -5.97×10^{-2}; 1,2,3,4,7,8-HxCDF -5.97×10^{-4}; 1,2,3,6,7,8-HxCDF -1.46×10^{-3}; 2,3,4,6,7,8-HxCDF -4.90×10^{-3}; 1,2,3,7,8,9-HxCDF -5.30×10^{-3}; 1,2,3,4,6,7,8-HpCDF -8.78×10^{-6}; 1,2,3,4,7,8,9-HpCDF -3.11×10^{-4}; and OCDF -1.35×10^{-7}.

The congener specific factors multiplied by the congener concentration in the waste provide the individual risk posed by each congener. The sum of these risks must not exceed the target risk level of 1×10^{-6}.

V. Regulatory Impact

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a "regulatory action" subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive Order 13084 (63 FR 27655, May 10, 1998). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non agency parties (5 U.S.C. 804(3)). This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

VII. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: October 26, 2001.

Robert Springer,

Director, Waste, Pesticides and Toxics Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX of part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * * *
American Metals Corporation.	Westlake, Ohio	Wastewater treatment plant (WWTP) sludges from the chemical conversion coating (phosphating) of aluminum (EPA Hazardous Waste No. F019) and other solid wastes previously disposed in an on-site landfill. This is a one-time exclusion for 12,400 cubic yards of landfilled WWTP sludge. This exclusion is effective on January 15, 2002. 1. *Delisting Levels:* (A) The constituent concentrations measured in the TCLP extract may not exceed the following levels (mg/L): antimony—1.52; arsenic—0.691; barium—100; beryllium—3.07; cadmium—1; chromium—5; cobalt—166; copper—67,300; lead—5; mercury—0.2; nickel—209; selenium—1; silver—5; thallium—0.65; tin—1,660; vanadium—156; and zinc—2,070. (B) The total constituent concentrations in any sample may not exceed the following levels (mg/kg): arsenic—9,280; mercury—94; and polychlorinated biphenyls—0.265. (C) Concentrations of dioxin and furan congeners cannot exceed values which would result in a cancer risk greater than or equal to 10^{-6} as predicted by the model. 2. *Verification Sampling*—USG shall collect six additional vertically composited samples of sludge from locations that compliment historical data and shall analyze the samples by TCLP for metals including antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver, thallium, tin, vanadium, and zinc. If the samples exceed the levels in Condition (1)(a), USG must notify EPA. The corresponding sludge and all sludge yet to be disposed remains hazardous until USG has demonstrated by additional sampling that all constituents of concern are below the levels set forth in condition 1. 3. *Reopener Language*—(a) If, anytime after disposal of the delisted waste, USG possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in Condition (1) is at a level higher than the delisting level established in Condition (1), or is at a level in the groundwater exceeding maximum allowable point of exposure concentration referenced by the model, then USG must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify USG in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing USG with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. USG shall have 10 days from the date of the Regional Administrator's notice to present the information. (d) If after 10 days USG presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. 4. *Notifications*—USG must provide a one-time written notification to any State Regulatory Agency to which or through which the waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.
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GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 100]

RIN 3090–AH52

Federal Travel Regulation; Maximum Per Diem Rates

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: To improve the ability of the per diem rates to meet the lodging demands of Federal travelers to high cost travel locations, the General Services Administration (GSA) has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the per diem rate-setting process.

An analysis of FPLP contracting actions and the lodging rate survey data reveals that the maximum per diem rate for the State of New York, city (borough) of Manhattan, should be increased and the maximum per diem rate for the State of New York, city (boroughs) of The Bronx, Brooklyn, and Queens, should be decreased to provide for the