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* * * * * AS 2008-010, Exhibits * * * * *

County of Peoria Report regarding RCRA Delisting Adjusted Standard Petition of Peoria Disposal Company

On, April 25, 2008, Peoria Disposal Company (PDC) filed an adjusted standard petition to delist treated electric arc furnace (EAF) dust, classified as hazardous waste K061. The delisting would apply to treated residues following waste stabilization activities at their waste stabilization facility on Southport Road in Peoria County.

The Hazardous Waste Delisting Program

"EPA uses a formal assessment process to determine whether certain industrial wastes should be placed on a list of "hazardous wastes." These determinations include wastes from specific industrial processes or particular chemical formulations. Any waste that meets the listing description (regardless of its specific chemical composition) is a *listed* hazardous waste, and is regulated under RCRA Subtitle C. Those regulations include requirements for specific waste handling procedures, from generation through storage, treatment, and disposal.

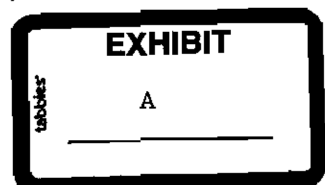
Congress and EPA recognized, however, that listing wastes incurs the possibility of regulating wastes which do not truly pose a threat to human health or the environment. A facility may have a process or raw material that produces a waste with different attributes than others in the listed group.

The RCRA statute and regulations, therefore, also provides for a process to remove, or "*delist*", a waste generated at a facility from the list of hazardous wastes. This delisting process is initiated by the person generating the waste, who prepares a petition for delisting the waste. The petition provides information about the waste, including its chemical composition, to demonstrate the rationale for delisting the waste. The petition is reviewed by the appropriate regulatory agency (either EPA or a state hazardous waste regulatory agency which has been authorized to grant delisting petitions) to determine whether the waste should continue to be listed as hazardous. This determination is subject to notice and comment before a final decision is made." (U.S. Environmental Protection Agency, Office of Solid Waste, "RCRA Hazardous Waste Delisting: The First 20 Years", June, 2002, p 5.)

Administrative Process

The process for this type of request is defined in Section 104.406 of the Illinois Pollution Control Board's (IPCB) procedural regulations. The Illinois Pollution Control Board is the proper agency as the U.S. EPA has authorized some states, Illinois included, to administer a delisting program in place of the federal program to make state delisting decisions. As part of the process, Illinois EPA does provide input on delisting petitions. Staff at Illinois EPA reviewed the petition and submitted their report into the record.

The IPCB will consider many aspects in making a determination. Important factors are environmental impacts; the assurance that delisted wastes do not pose any significant threat to human health or the environment. In addition, the Environmental Protection Act states the Board shall take into account the existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, the nature of



the existing air quality, or receiving body of water and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution. 415 ILCS 5/27(a)

On August 18, 2008, the IPCB will hold a public hearing where interested parties can participate in the process; whether it's listening to testimony, asking questions, or inserting public comment.

Background: What is PDC trying to do?

The following are excerpts from Peoria Disposal Company's Petition in the matter of "RCRA Delisting Adjusted Standard Petition of PDC" submitted to the Illinois Pollution Control Board on April 25, 2008.

In 1989, PDC's waste stabilization facility (the "WSF") was approved for operations under PDC's RCRA Part B Permit, issued by the Illinois Environmental Protection Agency (the "IEPA"). The principal treatment activity currently conducted in the WSF is chemical microencapsulation of RCRA hazardous wastes utilizing reagents designed to reduce the leachability of inorganic hazardous constituents in accordance with the Best Demonstrated Available Technology Standards prescribed by the USEPA and the IEPA.

The largest volume of listed hazardous waste currently being treated at the WSF is K061 electric arc furnace ("EAF") dust generated by steel mills that produce steel using electric arc furnaces. At this time, PDC disposes the K061 EAF dust after treatment in its hazardous waste landfill (the "PDC No. 1 Landfill") in Peoria County, Illinois, which has been operating for over twenty years pursuant to a RCRA Part B permit issued on November 4, 1987. At the present level of operation, the PDC No.-1 Landfill will reach capacity in 2009. When the PDC No. 1 Landfill is full, the WSF will continue operating, but stabilized residue generated by PDC from the treatment of listed hazardous waste, primarily K061 EAF dust, will have to be transported by PDC to another Subtitle C landfill for disposal.

The K061 EAF dust is a listed hazardous waste designated as hazardous waste code K061, specified by 35 Ill. Adm. Code 721.132 for "emission control dust/sludge from the primary production of steel in electric furnaces." The K061 EAF dust must be stabilized to meet applicable land disposal restrictions ("LDR") treatment standards specified for K061 listed hazardous wastes by Subpart D of 35 Ill. Adm. Code Part 728 prior to land disposal. The residue that PDC currently generates from the treatment of K061 EAF dust remains classified as a K061 hazardous waste by virtue of the "derived-from" rule (35 Ill. Adm. Code 721.103(e)) because it is generated from the treatment of a listed hazardous waste. Therefore, at present, the residue from the treatment of K061 EAF dust must be disposed of in a Subtitle C landfill. Excepting the PDC No. 1 Landfill, the nearest operating Subtitle C landfill to the WSF is located in Roachdale, Indiana, nearly 220 miles from the WSF.

During the past year, PDC has developed a new proprietary stabilization technology to treat the K061 EAF dust. PDC has utilized the new proprietary stabilization technology in fullscale

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production at the WSF to conduct nine in-plant trials designed to demonstrate that all applicable criteria for the granting of an adjusted standard to delist K061 EAF dust stabilized residues can be satisfied by the PDC treatment process. Herein, PDC is petitioning the Board for an upfront and conditional delisting for the stabilized residue generated by PDC from the treatment of K061 EAF dust utilizing this new proprietary stabilization technology at the WSF ("EAFDSR").

Potential Subtitle D landfills to which delisted EAFDSR may be shipped include, but are not limited to, the following PDC-affiliated landfills:

Tazewell County Landfill, Inc. d/b/a Indian Creek Landfill No. 2, Hopedale, IL
Clinton Landfill, Inc., Clinton, IL
Pike County Landfill, Inc., Baylis, IL

Indian Creek Landfill No. 2 is the most likely facility that will be used to dispose of the EAFDSR.

PDC's proprietary stabilization technology effectively stabilizes K061 metal constituents and removes the hazard of toxicity, for which the K061 EAF dust received its listing. Representative verification and analytical testing, conducted as part of the full-scale stabilization process trials, demonstrates that the process renders extractable metals below their Land Disposal Restriction standards (LDRs) and proposed delisting levels. Although the EAFDSR contains certain hazardous constituents (i.e., metals listed in Appendix G of 35 Ill. Adm. Code Part 721), these constituents are essentially rendered immobile, such that the concentrations of these hazardous constituents are below: 1) the LDRs applicable to K061 EAF dust, 2) the Characteristic of Toxicity levels established at 35 Ill. Adm. Code 721.124, and 3) risk-based levels established by the USEPA's Delisting Risk Assessment Software ("DRAS") model or other method approved by the USEPA and IEPA to demonstrate that the constituents of concern are at concentrations that are non-threatening to human health and the environment.

The duration of the proposed delisting will be multi-year and will continue for as long as PDC maintains a valid RCRA Part B Permit for the WSF. The proposed Adjusted Standard will require testing of each daily batch of EAFDSR for the metal constituents of concern ("COCs"), to assure compliance with delisting concentrations. In the event the verification analysis results exceed the delisting level concentrations, the treated residues will either be:

1) allowed to continue to cure which will provide additional treatment as the chemical reagents complete their reactions with the waste, followed by another round of verification sampling and analysis,
2) reprocessed through the WSF for additional treatment, followed by another round of verification sampling and analysis, or
3) managed as a K061 hazardous waste at a properly permitted RCRA Subtitle C facility.

Under the proposed Adjusted Standard, the EAFDSR will be excluded from the list of hazardous wastes contained in Subpart D of 35 Ill. Adm. Code 721 and PDC will be able to

transport and dispose of the EAFDSR at a Subtitle D landfill permitted by the IEPA. The K061 EAF dust waste stream will be received from the mills at an approximate average rate of 74,000 tons per year ("tpy") as part of normal WSF operations, with a maximum of 95,000 tpy. The EAFDSR generated by the treatment process will be a maximum of 142,500 tpy.

The cost of compliance with the proposed Adjusted Standard is estimated to be $110 per ton of untreated waste, compared to the current cost of $90 per ton of untreated waste. That increase will result principally due to the higher relative cost of the new chemical treatment regimen.

The WSF currently employs fourteen workers whose duties include operations management, waste treatment, plant cleaning and maintenance, and administrative compliance. The WSF also requires the efforts of eleven additional employees who are at least partially dedicated to the WSF performing waste receiving inspections, equipment maintenance, and permit compliance and auditing duties.

The WSF operates as an area air emissions source under an IEPA lifetime permit which limits emissions from the WSF to a maximum of 33.8 tons per year of particulate matter and 3.9 tons per year of volatile organic materials.

Many variable expenses would remain the same, such as labor, laboratory analysis, utilities, etc. The variable operating costs that would change are the post-treatment transportation to and disposal at an off-site Subtitle C landfill. Presented below are the affected variable costs to ship to the nearest Subtitle C landfill for disposal. PDC, through its Brokerage Services Group, has business relationships with Subtitle C landfills to manage those wastes that the PDC No. 1 Landfill *is* not equipped to manage or is simply too busy to accommodate.

Therefore, the following cost comparison is based on current market price quotations.

Transportation to and Disposal at nearest Subtitle C landfill:

Expense Item	Cost per Ton	Estimated Cost per Year
Transportation for Disposal	$44.00	$4,884,000
Disposal	$97.76	$10,851,360
Total	$141.76	$15,735,360

Alternatively, the next table presents the same line-item expenses if PDC were granted the petitioned Adjusted Standard by the Board and could ship delisted residues to a Subtitle D landfill located in Illinois. These costs are accurate because they are based on experience from the ongoing shipment by PDC of delisted F006 wastes and decharacterized wastes to an affiliated Subtitle D landfill located in Tazewell County, Illinois.

Transportation and Disposal for Subtitle D Landfill:

Expense Item	Cost per Ton	Estimated Cost per Year
Transportation for Disposal	$8.86	$983,460
Disposal	$20.00	$2,220,000
Total	$28.86	$3,203,460

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The costs presented for both alternatives are based on an average of twenty-two tons per shipment as would be hauled by semi-truck and aluminum dump trailer combinations, with an average of 111,000 tons per year shipped.

Other Examples of Delisting K061

PDC's petition to delist K061 is not the first of its kind. The document "RCRA Hazardous Waste Delisting: The First 20 Years" authored by the USEPA states that six waste streams of K061 were delisted between 1980 and 1999. Conversion Systems Inc. in Horsham, Pennsylvania received delisting of K061 from USEPA in 1995. The Illinois Department of Environmental Regulation granted site specific delisting for the Sterling, Illinois plant owned by Conversion Systems Inc.

In 2000, EPA proposed to grant another company, Heritage Environmental Service, LLC, to delist treated electric arc furnace dust produced at Nucor Steel in Indiana.

According to USEPA Region 9's "Fact Sheet: Delisting Petitions and the Petition Review Process" the majority of excluded wastes are metal-bearing wastes (such as F006 and F019 wastewater treatment sludges and treated K061 electric arc furnace dusts). Any treatment residual that meets current BDAT (best demonstrated available technology) levels usually will be a good delisting candidate". (June 1998).

Technical Issues

Having provided engineering services for PDC's siting application review in 2005, the County hired Patrick Engineering to perform a technical review of PDC's petition. Staff at Patrick Engineering is preparing a report that will be distributed at Health & Environmental Issues Committee on August 6, 2008. A draft memorandum is attached at the end of this document.

Policy Questions

- Is waste delisting and subsequent disposal in a Subtitle D landfill hazardous to human health and safety? Who makes the appropriate determination of this hazard?
- Are there other methods of metal recovery prior to disposal of EAF dust? Will delisting EAF dust result in placing recoverable materials in landfills? Are the other methods economical within our region?
- How should the County take into consideration the economic impact of PDC closing its operations on a company like Keystone, and the financial stake Peoria County has in Keystone's continued operations?
- What role does the County have in a technical, regulatory delisting process?

Conclusions

According to the USEPA, "Delisting is a rulemaking procedure by which facilities, if successful, are relieved of the obligation to manage specific wastes as hazardous in accordance with the Resource Conservation and Recovery Act....A specific facility may generate a waste that does not exhibit any hazardous characteristics for which the waste was listed and does not present a hazard to either human health or the environment for any other reason. Therefore, to avoid placing any unnecessary regulatory burden on such facilities, RCRA regulations provide a petition for case-by-case exclusions or 'delistings' of specific wastes from the hazardous waste lists." (USEPA Region 9, Fact Sheet: Delisting Petitions and the Petition Review Process)

Furthermore, the USEPA finds "little reason to believe that these [delisted] streams are causing environmental problems".

Under RCRA, states authorized to administer a delisting program in lieu of the federal program also may exclude wastes from hazardous waste regulations and facilities in those states. Facilities that manage their wastes in states with delisting authorization should petition the state for an exclusion rather than EPA. A facility treats its waste as non-hazardous only after EPA or an authorized state grants a final exclusion. (USEPA Region 9, Fact Sheet: Delisting Petitions and the Petition Review Process)

Illinois is a state that has been delegated the authority to grant delistings through the Illinois Pollution Control Board. Thus, the responsibility for determining whether a waste stream poses a threat to human health and the environment rests with the Illinois Pollution Control Board. In this matter, the Illinois Environmental Protection Agency also reviewed the proposed delisting procedures and stated that "PDC's request for a RCRA waste delisting of treated K061 electric arc furnace dust will likely meet the required level of justification with some additional information" concerning dioxin and fish consumption. (IEPA's Response To RCRA Delisting Adjusted Standard Petition, June 12, 2008, p.1)

The Illinois Pollution Control Board presented PDC with 19 questions to answer by August 11, including but not limited to:

- Treatment operating guidelines based on weather
- Should the treated waste be considered "special waste"?
- Include definition of "significant change" as part of conditions
- Address sampling/analysis of hexachlorophene
- Why specific constituents not listed in constituents of concern (COC)
- Result of using a higher TEQ value in dioxin model
- Resolution with EPA regarding altering the delisting criteria for arsenic
- Delisting level for total mercury
- Site-specific modeling for all potential landfills or use generic values for non site-specific analysis
- Additional information on "another round of verification sampling and analysis"

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The outcome of this petition not only affects the petitioner's future be indirectly impacts other businesses in the community. Keystone is one of PDC's largest customers and Peoria County has a financial interest in seeing the company retain its viability.

In conclusion, the IPCB will have to make a determination based upon the review of the technology presented by the petitioner, regulatory agencies, and interested parties.

Recycling

The Sierra Club states "Delisting enables out-dated and wasteful technologies to continue because of inadequate landfill rate costs and not full RCRA landfilling requirements, rather than maintaining strict standards for toxic wastes that could be hoped to push old industries to more responsible and sustainable practices such as recycling." (Letter, May 15, 2008, p. 2) While land disposal may be the current avenue for handling this waste, the opportunities for recovering metals is a growing industry.

In their filing requesting a hearing on the delisting petition, the Sierra Club identifies the Steel Dust Recycling Center in Millport, Alabama as an example of an emerging business that is removing zinc and lead from electric arc furnace dust. According to the Tuscaloosa News, the plant was built on 66 acres at a cost of $35 million and is in the proximity of roughly 25 electric arc furnaces across the South. ("New Plant and Town Seem To Be A Good Fit", Tuscaloosa News, June 23, 2008) In comparison, PDC has identified 10 mills where K061 electric arc furnace dust is generated and shipped to Peoria. The use of recycling is dependant upon the market price for metals, transportation costs, and the composition of the waste itself.

The arguments both for and against this petition occur at the crossroads between the environment and economics. While the County supports recycling, without a minimum multi-million investment like the Steel Dust Recycling Center, recycling in central Illinois is not feasible. The nearest recycler of electric arc furnace dust is in the Chicago suburbs.

Furthermore, the proposed delisting by PDC could be construed as an innovation in technology that lowers the waste stream's composition of hazardous constituents to levels below their Land Disposal Restriction standards and proposed delisting levels.

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County of Peoria Report regarding
RCRA Delisting Adjusted Standard Petition
of Peoria Disposal Company

DRAFT MEMORANDUM

TO: Mr. Patrick Urich, County Administrator, Peoria County

FROM: Mr. Richard M. Frendt, P.E., Patrick Engineering

SUBJECT: Review of PDC Delisting Petition

DATE: August 6, 2008

At the request of representatives of Peoria County, Patrick has reviewed all of the filings made available by the Illinois Pollution Control Board (IPCB) in the matter of the RCRA Delisting Adjusted Standard Petition of Peoria Disposal Company (PDC). These filings included the original petition dated April 15, 2008, subsequent public comments, the June 12, 2008 response from the Illinois Environmental Protection Agency (Illinois EPA), and subsequent Hearing Officer orders and correspondence. The purpose of this review was to allow Patrick to render an opinion on the technical validity of the petition, and to determine to the best of Patrick's ability on the basis of the available documents whether the delisting requested by PDC is reasonable, appropriate, and meets all of the technical requirements for such a delisting contained in both state and federal law and regulation.

PDC is petitioning the IPCB for an adjusted standard to delist the stabilized residue generated by PDC from the treatment of K061 electric arc furnace (EAF) dust at PDC's waste stabilization facility in Peoria County, Illinois. This waste is a very common waste product generated by steel mills that produce steel using electric arc furnaces. PDC is already treating this K061 EAF dust in its permitted waste stabilization facility (WSF), after which it is landfilled in PDC's hazardous waste landfill (the "PDC No. 1 Landfill").

If the petition is granted, PDC would continue to treat the K061 waste, using a modified stabilization process, in order to reach the treatment standards proposed in the petition (In every case, the proposed treatment standards are at least as stringent as those that PDC is already achieving by their current treatment process). The treated waste would then no longer be considered a hazardous waste, and would be eligible for disposal in a permitted Subtitle D landfill.

K061 EAF dust is one of the most commonly delisted wastes in the United States. The method by which this waste is almost always delisted is via treatment by chemical stabilization, the same process being proposed (and already employed) by PDC. The waste stream was originally listed by the US Environmental Protection Agency as hazardous due to the toxicity of cadmium, hexavalent chromium, and lead. Each of these compounds is still present within the final treated residue. However, the stabilization process fixes these compounds within a rigid chemical and physical matrix, drastically reducing their mobility

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* * * * * AS 2008-010, Exhibits * * * * *

(DRAFT MEMORANDUM, cont.)

and leachability. Thus, testing of the residue after stabilization demonstrates that the residue is no longer characteristically toxic.

As required by state regulation, PDC has performed a series of demonstration tests of their specifically-proposed stabilization process, and the resulting testing of the treated residue has confirmed that this process is capable of achieving the proposed treatment standards. Based upon Patrick's review of the available documents, it is Patrick's opinion that PDC has met all of the technical and legal criteria needed to successfully delist the K061 waste. The proposed treatment standards have been developed with well-established risk assessment techniques (reviewed by Patrick), and with the acquiescence of the Illinois EPA, which has also reviewed this risk assessment modeling in detail.

PDC has requested an upfront delisting of the K061 waste, contingent upon confirmation sampling that the treatment process is successfully achieving the treatment standards on an ongoing basis. This ongoing sampling is proposed to occur daily, a reasonable sampling frequency in Patrick's opinion.

Overall, Patrick believes that this delisting petition meets all of the applicable criteria for making such a case, and has been supported with a sufficient technical demonstration. Delisting, if granted, will be contingent upon the ongoing confirmation of the successful treatment of the waste on an ongoing basis. Patrick believes that this delisting is therefore reasonable, appropriate, technically defensible, and equally protective of human health and the environment as the currently employed treatment and disposal strategy for this K061 waste.

PDC RCRA Delisting Petition

County of Peoria Report
Karen Raithel, RRC Director
Patrick Urich, County Administrator
August 6, 2008

What is RCRA Hazardous Waste Delisting?

- USEPA hazardous waste management programs provide for a process to "delist" a waste from the list of hazardous wastes – facility specific
- Petitions USEPA or delegated state agency (IPCB) with information about the waste, including its chemical composition, to demonstrate the rationale for delisting the waste
- The appropriate regulatory agency makes the determination

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What is PDC Trying to Do?

- Waste Stabilization Facility permitted in 1989
- Performs microencapsulation of RCRA hazardous waste in accordance with USEPA/IEPA standards
- Largest volume of hazardous waste is K061 electric arc furnace dust (EAF) generated by steel mills
- Currently landfilled in PDC No. 1, until 2009, when the hazardous waste landfill will close

What is PDC Trying to Do?

- K061 EAF dust is a listed hazardous waste by Illinois environmental regulations
- K061 EAF dust must be stabilized to meet the Land Disposal Restrictions (LDR) treatment standards of the Illinois environmental regulations
- When PDC No. 1 is full, the WSF will continue to operate, but the stabilized waste will have to be deposited in another Subtitle C landfill
- Nearest Subtitle C landfill is 187 miles from Peoria in Roachdale, IN

What is PDC Trying to Do?

- PDC has developed a new proprietary stabilization technology to treat the K061 EAF
- PDC performed nine in-plant trials that demonstrate that all applicable criteria for delisting can be satisfied with the new technology
- PDC seeking a upfront and conditional delisting of the stabilized residue to be landfilled in existing Subtitle D landfills PDC owns and operates:
  - Indian Creek Landfill, Hopedale IL
  - Clinton Landfill, Clinton IL
  - Pike County Landfill, Baylis IL

What is PDC Trying to Do?

- The duration of the delisting would be multi-year and continue for as long as PDC maintained a RCRA Part B permit for the WSF
- Each daily batch of treated EAF dust would require testing to assure compliance with delisting concentrations
- If the waste exceeds the appropriate level, it will be:
  - Allowed to continue to cure, followed by more testing
  - Reprocessed for additional treatment, and testing
  - Managed as a hazardous waste and sent to a hazardous waste landfill

What is PDC Trying to Do?

- How much waste would continue to be processed through the WSF?
  - Average rate of 74,000 tons per year
  - Maximum of 95,000 tons per year
- The treated EAF dust would generate approximately 142,500 tons per year

What is PDC Trying to Do?

- Cost of the new treatment standards would increase from $90 to $110 per ton of untreated waste
- PDC employs 14 full time workers and 11 partially responsible for certain aspects of the WSF operations
- WSF limited to 33.8 tons per year of particulate matter and 3.9 tons per year of volatile organic materials. Actual reported emissions for 2007 were 7.7 tons and 0.9 tons respectively

What is PDC Trying to Do?

- Transportation and Disposal Costs to the nearest Subtitle C landfill would be $141.76 per ton or $15,735,360 annually
- Transportation and Disposal costs to a PDC owned and operated landfill in Tazewell County would be $28.86 per ton or $3,203,460 annually
- According to PDC, the cost difference of $12.5 million per year would result in a loss of business to PDC and a cost-burden for its K061-generating customers in the Midwest

What is PDC Trying to Do?

- PDC's regulatory burden is to show that the waste produced:
  - Does not meet any of the criteria for under which the waste was listed as a hazardous waste
  - There is 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 a waste so excluded is not a hazardous waste by virtue of exhibiting one of the characteristics specified in the Illinois environmental regulations

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What Did IEPA Say?

- IEPA met with PDC in pre-filing review, upon submission of their petition, IEPA stated that "PDC's request for a RCRA waste delisting of treated K061 electric arc furnace dust will likely meet the required level of justification with some additional information"
- The additional information included assumptions regarding the migration of dioxan through fish consumption

What Did IPCB Ask?

The Illinois Pollution Control Board presented PDC with 19 questions to answer by August 11, including but not limited to:

- Treatment operating guidelines based on weather
- Should the treated waste be considered "special waste"?
- Include definition of "significant change" as part of conditions
- Address sampling/analysis of hexachlorophene
- Why specific constituents not listed in constituents of concern (COC)
- Result of using a higher TEQ value in dioxin model
- Resolution with EPA re: altering the delisting criteria for arsenic
- Delisting level for total mercury
- Site-specific modeling for all potential landfills or use generic values for non site-specific analysis
- Additional information on "another round of verification sampling and analysis"

Policy Questions

- Is waste delisting and subsequent disposal in a Subtitle D landfill hazardous to human health and safety? Who makes the appropriate determination of this hazard?
- Are there other methods of metal recovery prior to disposal of EAF dust? Will delisting EAF dust result in placing recoverable materials in landfills? Are the other methods economical within our region?
- How should the County take into consideration the economic impact of PDC closing its operations on a company like Keystone, and the financial stake Peoria County has in Keystone's continued operations?
- What role does the County have in a technical, regulatory delisting process?

Regulatory Findings

- USEPA finds "little reason to believe that these [delisted] streams are causing environmental problems.
- IEPA states PDC's petition "will likely meet the required level of justification with some additional information"
- IPCB currently performing its due diligence

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Patrick Engineering Findings

- Patrick Engineering reviewed the petition from a technical perspective and concluded:
  - Based upon Patrick's review of the available documents, PDC has met all of the technical and legal criteria needed to successfully delist the K061 waste
  - The ongoing confirmation sampling is proposed to occur daily, a reasonable sampling frequency in Patrick's opinion
  - Patrick believes that this delisting petition meets all of the applicable criteria for making such a case, and has been supported with a sufficient technical demonstration
  - Patrick believes that this delisting is therefore reasonable, appropriate, technically defensible, and equally protective of human health and the environment as the currently employed treatment and disposal strategy for this K061 waste

Recycling Considerations

- USEPA found that delisting might inhibit recycling in some cases, and promote it in others, but unable to identify clear trends in either direction
- Sierra Club identified a EAF dust recycler in Alabama but high capital costs ($35 million) may be a barrier to entry in the local marketplace
- County and State should encourage commercialization of a EAF dust recycler locally, if the waste stream is strong enough to sustain and transportation costs do not continue to escalate

Conclusions

- Keystone is one of PDC's largest customers and Peoria County has a financial interest in seeing the company retain it viability
- Retaining the WSF operations retains local employment and does not jeopardize steel-making jobs in the area
- This technological innovation will actually lower the cost of landfilling while adhering to the appropriate regulations

Conclusions

- Ultimately this decision is one that will be made by the IPCB:
  - The regulatory scheme is well-tested
  - IEPA states that the petition "will likely meet the required level of justification with some additional information"
  - Patrick believes that this delisting petition meets all of the applicable criteria for making such a case, and has been supported with a sufficient technical demonstration.
  - Jobs and the local manufacturing base are tied to this decision
- Staff recommends not taking a formal position and letting the regulatory process run its course

There will be a Meeting of the County Board, County of Peoria, Illinois on Thursday, August 14, 2008, at six o'clock p.m. the Courthouse, Room 403.

R. Steve Sonnemaker
County Clerk

AGENDA

CALL TO ORDER

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

ROLL CALL BY THE COUNTY CLERK

Approval of July10, 2008, County Board Meeting Minutes
Approval of June 10, 2008, County Board Meeting Executive Session Minutes

PROCLAMATIONS & PRESENTATIONS

- A proclamation from your Chairman congratulating the graduates of Peoria County's Summer 2008 Civic Leadership Class.

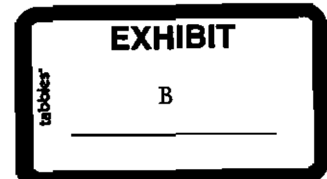
CONSENT AGENDA

C1. A communication from the Illinois Department of Transportation dated July 2, 2008, regarding Motor Fuel Tax allotment and transactions for the County the month of June 2008.

C2. A revenue and expenditure report from the County Auditor and County Treasurer for the month ending July 31, 2008, to receive and file.

C3. Appointments

C4. A resolution (items 1-3) and (items 1-2) from your Tax/EDC Committee recommending that the Chairman of the Peoria County Board be authorized and directed to execute deeds of conveyance of the County's interest to the highest bidder, and be authorized to cancel the appropriate Certificates of Purchase. This resolution shall be effective ninety days from August 14, 2008, and any transaction between the parties involved not occurring within this period shall be null and void.



CITIZENS' REMARKS

(To address the County Board, fill out a card and submit it to the Chairman before the Board Meeting.)

ZONING ORDINANCES & RESOLUTIONS

1. Case #037-08-U (James R. Roepenack)
   The petitioner is requesting a Special Use in the "A-2" Agricultural District to divide 5 acres, with a house, from a 19.95-acre parcel, in order to construct a home on the remaining 14.95 acres. The property is located in Timber Township.

   The Zoning Board of Appeals recommends denial. The Land Use Committee concurs.

2. Case #W04-08 (James & Linda McIntyre)
   A resolution from your Land Use Committee recommending approval of a waiver of compliance from Section 20-4-2.C.2.b. of the Subdivision Ordinance, which requires a minimum of 30 feet of road frontage for parcels of less than 10 acres in size and a minimum of 60 feet of road frontage for parcels of 10 acres or greater. The property is located in Rosefield Township.

3. A resolution from your Land Use Committee recommending approval of a contract with TESKA Associates, Inc., in the amount of $45,000.00 to provide a Market Study of Peoria County (Market Study Bid #18-01-08), with the option for edits to the 2008 Comprehensive Plan.

4. A resolution from your Executive Committee recommending approval of an Elected Officials Referenda pursuant to Article VII, Section 4 of the Illinois Constitution for the November 4, 2008, ballot concerning the manner of whether the Auditor shall be elected or appointed. *(Approved on Voice Vote)*

5. A resolution from your Judicial Committee recommending approval of a grant between the Illinois Department of Healthcare and Family Services and the Tenth Judicial Circuit for the Visitation Program in State FY2009 pursuant to Intergovernmental Agreement #2009-55-024-K1c.

6. A resolution from your Judicial Committee recommending approval of the bid of Bradford Systems, East Peoria, IL, in the amount of $22,766.00 for the provision of file folders for the offices of the Circuit Clerk and the State's Attorney for 2009.

7. A resolution from your Transportation Committee recommending approval of the bid of R.A. Cullinan & Son, Tremont, IL, in the amount of $2,325.759.43 for intersection improvements to Illinois Route 29 and Engine Drive/ Wrench Road at Caterpillar Mossville Plant.

8. A resolution from your Transportation Committee recommending approval of Jubilee Patriots 4-H Club participating in the Adopt-A-Highway Program by adopting County Highway R23 (Brimfield Road) from Shissler Road to Cahill.

9. A resolution from your Transportation Committee recommending approval of an additional appropriation of $218,500.00 for Rural Peoria County Council on Aging FY2008 transportation needs.

10. A resolution from your Facilities Committee authorizing the County Administrator to retain a Commercial Real Estate Broker for the purpose of potentially purchasing real estate.

11. A resolution from your Finance/Legislative Study Committee recommending approval of the use of GovDeals.com and Public Surplus for Online Auction Services.

12. A resolution from your Finance/Legislative Study Committee recommending approval of an additional appropriation for the Shared Savings Program.

13. A joint resolution from your Finance/Legislative Study and Management Services Committees recommending approval of the establishment of a Purchasing Card Program with Illinois National Bank of Springfield, IL.

14. A resolution from your Health and Environmental Issues Committee recommending that the Peoria County Board does not take a formal position regarding PDC's petition for the delisting of EAF dust and that the matter goes through the established regulatory process for the Illinois Pollution Control Board to decide the issue.

15. A joint resolution from your Management Services and Health and Environmental Issues Committees recommending approval of increasing a part-time WIC-Breastfeeding Peer Counselor Position to full time.

16. A resolution from your Management Services Committee recommending approval to purchase a new Jury Management System comprised of software, conversion, implementation services, and training from Courthouse Technologies, Ltd., New Westminister, B.C, Canada at an amount not to exceed $126,668.00 contingent on funding and legal approval.

17. A joint resolution from your Management Services and Judicial Committees recommending approval of a full-time Deputy position and an Agreement with Dunlap School District 323 for the provision of Police Services at the school beginning August 15, 2008 through and including August 31, 2008 for an amount of $3,014.58, and September 1, 2008 through and including May 31, 2009 for an amount of $6,029.17.

18. Executive Session - Personnel Matter

Electronic Filing - Received, Clerk's Office, October 8, 2008
* * * * * **AS 2008-010, Exhibits** * * * * *

19. A resolution from your Management Services Committee authorizing the Administrator to withdraw the pending lien on Worker's Compensation Case #010015-004157-WC-01 in returns for $32,320.05.

SUPPLEMENTAL AGENDA

UNFINISHED BUSINESS

MISCELLANEOUS

ANNOUNCEMENTS

ADJOURNMENT

Electronic Filing - Received, Clerk's Office, October 8, 2008
*** * * * * AS 2008-010, Exhibits * * * * ***

A regular meeting of the County Board, County of Peoria, Illinois was held on Thursday, August 14, 2008, at six o'clock p.m., in the Courthouse, Room 403.

CALL TO ORDER

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

ROLL CALL BY THE COUNTY CLERK

Attendance was taken with the Roll Call-Pro voting system, and the following members of the Board were present: Baietto, Dillon, Elsasser, Hester, Hidden, Mayer, O'Neill, Phelan, Polhemus, Prather, Riggenbach, Salzer, Sous, Thomas, Trumpe, Watkins and Widmer, with Pearson absent.

Approval of July10, 2008, County Board Meeting Minutes
Approval of June 10, 2008, County Board Meeting Executive Session Minutes

Baietto moved for approval of the July 10, 2008 County Board Meeting Minutes and the July 10, 2008, County Board Meeting Executive Session Minutes and Thomas seconded. The minutes were approved by a unanimous roll call vote of 17 ayes.

PROCLAMATIONS & PRESENTATIONS

- A proclamation from your Chairman congratulating the graduates of Peoria County's Summer 2008 Civic Leadership Class.

Pearson entered the meeting.

CONSENT AGENDA

C1. A communication from the Illinois Department of Transportation dated July 2, 2008, regarding Motor Fuel Tax allotment and transactions for the County the month of June 2008.

C2. A revenue and expenditure report from the County Auditor and County Treasurer for the month ending July 31, 2008, to receive and file.

C3. Appointments

C4. A resolution (items 1-3) and (items 1-2) from your Tax/EDC Committee recommending that the Chairman of the Peoria County Board be authorized and directed to execute deeds of conveyance of the County's interest to the highest bidder, and be authorized to cancel the appropriate Certificates of Purchase. This resolution shall be effective ninety days from August 14, 2008, and any transaction between the parties involved not occurring within this period shall be null and void.

Polhemus moved to approve the Consent Agenda and Pearson seconded. The Consent Agenda was approved by a unanimous roll call vote of 18 ayes.

CITIZENS' REMARKS

Wilson C. Washkuhn, Attorney, Suite 400, 416 Main Street, addressed the Board with regard to Zoning Case #037-08-U. He asked the Board to consider the County's Zoning Ordinance and guard against the exception becoming the rule.

Bryan J. Vaughn, 3604 S. Geber Road, addressed the Board with regard to Case #037-08-U and stated that he just wanted to split the land so he could build a house.

Joyce Blumenshine, 2419 East Reservoir, addressed the Board with regard to Peoria Disposal Company's petition to de-list treated electric arc furnace dust. PDC wishes to have one of its largest waste streams de-listed so it can be put into municipal waste landfills. The issue is the long term safety and welfare of the public. The dioxins never biodegrade; testing on the process was very limited. She asked the Board to consider PDC's petition as another effort to circumvent the Board's decision on the landfill's expansion.

Tom Edwards, 902 W. Moss Avenue, addressed the Board with regard to PDC's petition. Five years ago a campaign was started to prevent disposal of toxic waste over our water aquifer. He stated that we have one window to close the landfill, let's close it.

Bob Jorgensen, 212 Sunnybrook Dr., Heart of Illinois Sierra Club, addressed the Board with regard to PDC's petition. He stated that the Board took the correct stance two years ago. Now PDC has put the Board back into the same position; they've had two years to make a strategy to keep their landfill open. They're saying that mixing the waste with concrete and a secret ingredient will make it a non-pollutant. They're also trying to reframe this as a union jobs issue rather than a dangerous chemical pollutant issue. Problems with a dangerous toxic pollutant and the health problems it may cause will not go away because PDC hires teamsters. He urged the Board to vote against the petition.

Brian Meginnes, Attorney, 2602 W. Chartwell, addressed the Board with regard to PDC's petition. He explained that the PDC No. 1 Landfill has three activities: the landfill, a waste water treatment plant and a waste stabilization facility. The landfill will be full sometime in 2009. The landfill will not be closed because space will be maintained primarily to serve the treatment plant. The waste stabilization

facility is a huge multi-million dollar facility that treats hazardous waste. Waste is treated to certain levels required by law, then the waste is deposited in the landfill. Once the landfill is full in 2009, the waste will not be deposited in the Pottstown landfill. Therefore, PDC filed the current petition to de-list K061 dust which is their largest waste stream. This is nothing new for PDC; right now they treat characteristic hazardous waste and dispose of the treated waste in the Indian Creek landfill. They do the same with F006 waste which was de-listed in the early 90's. The Pollution Control Board will determine whether the treatment process works. As far as the secret ingredient mentioned by Ms. Blumenshine, all of that information has been provided to the Pollution Control Board. The Illinois Environmental Protection Agency has no objections to the petition. Normally with a de-listing, waste is tested quarterly or semi-annually to make sure it's meeting the treatment level. PDC has proposed in its petition to test every batch of waste everyday to make sure it meets the de-listing standards. PDC would like the County Board to support their petition.

Ron Edwards, 4700 N. Sterling Avenue, Peoria Disposal Company, addressed the Board with regard to the treatment process. The purpose of the petition is specifically for treatment of the waste residue that is left after the electric arc furnace dust, such as Keystone brings to the landfill, is treated. PDC has been treating hazardous waste for 20 years to limit the leachability of the contaminants. It's not the concentration of the contaminants in the waste that determines whether a waste is hazardous. It's how many of those contaminants can get into the environment. That's the entire basis of the regulations. Once PDC treats the waste, it's rendered such that it has much lower levels of contaminants that could potentially get into the environment than even non-hazardous waste.

Riggenbach and Phelan left the meeting and returned.

Thomas asked how many other facilities have de-listed K061. Mr. Edwards replied somewhere between 15-18. Thomas then asked if there is any information with regard to leachate problems. Mr. Edwards replied that there have been many studies on landfill leachate although you can't say of that leachate how much of it is attributable to electric arc furnace dust. In general, as the landfill continues to age you see an improvement in the quality of leachate.

Baietto asked whether other companies which have received de-listings have a secret formula in their process. Mr. Edwards replied that the majority are either proprietary or patented to protect their specific recipe.

Bernie Lee, Secretary-Treasurer Teamsters Local 627, addressed the Board with regard to PDC's petition. Mr. Lee stated that he represents approximately 70 members who work at PDC. He urged the Board to support the Committee's and staff's recommendation and let the Pollution Control Board do its job. Do not let the passion of the siting from a few years ago spill over into this decision.

Jim Rasins, President of the Illinois Association of County Auditors and DuPage County Auditor, addressed the Board with regard to the Auditor Referendum. A Gallup study shows that two out of three people prefer to vote for local officials rather than have them appointed. Three out of four people stated that elected

officials do a better job of managing local tax dollars than appointed officials. And four out of five people stated that elected officials are more responsive to the needs of the public than appointed officials. In Illinois, given the choice of having an appointed auditor rather than elected, the public has consistently demonstrated its preference for having an elected auditor. To his knowledge, only one county appoints its auditor and that is Cook County. By putting this issue on the ballot, the Board will indicate that it can select a better auditor than the voters.

ZONING ORDINANCES & RESOLUTIONS

1. Case #037-08-U (James R. Roepenack)
   The petitioner is requesting a Special Use in the "A-2" Agricultural District to divide 5 acres, with a house, from a 19.95-acre parcel, in order to construct a home on the remaining 14.95 acres. The property is located in Timber Township.

   The Zoning Board of Appeals recommends denial. The Land Use Committee concurs.

   Trumpe moved to approve the ordinance to deny the special use and Hester seconded. Trumpe explained that the request involves A-2 ground which allows one dwelling per 25 acres. Mr. Roepenack wants to sell 14.95 acres to Bryan Vaughn who wants to build a home on the ground. The opponents who live in the area object because they want to preserve hunting in the area and the large tract character of the neighborhood. Mayer asked whether the motion is to deny. Mr. Atkins confirmed that a yes vote is a vote to deny the request. Phelan asked for the basis of the denial. Trumpe replied that the neighbors are opposed on the basis that the Board should not approve parcels of less than 25 acres in this neighborhood because it is not in keeping with the character of the area.

   Polhemus asked whether the current property owner is related to Mr. Vaughn; Trumpe replied no. Elsasser stated that there is a lot of hunting on the adjacent property and there was a great deal of discussion about the distance the gun would shoot.

   The ordinance to deny the special use passed by a roll call vote of 15 ayes and 3 nays, with Hidden, O'Neill and Polhemus voting nay.

2. Case #W04-08 (James & Linda McIntyre)
   A resolution from your Land Use Committee recommending approval of a waiver of compliance from Section 20-4-2.C.2.b. of the Subdivision Ordinance, which requires a minimum of 30 feet of road frontage for parcels of less than 10 acres in size and a minimum of 60 feet of road frontage for parcels of 10 acres or greater. The property is located in Rosefield Township.

   Trumpe moved to approve the resolution and Hester seconded. Trumpe explained that Eden Road ends at this property, so there is only 33 feet. The property owners will share the entrance. Thomas asked if the owners share the access and the property is sold whether a right-of-way will go with

the property sold. Mr. Wahl explained that the 33 foot section will be split into 16 foot sections. Phelan asked why the ordinance requires a minimum amount of public frontage. Mr. Wahl explained the minimum is based on average lot width and safety concerns. It's also to discourage flagpole lots. The resolution passed by a roll call vote of 17 ayes and one nay, with Phelan voting nay.

3. A resolution from your Land Use Committee recommending approval of a contract with TESKA Associates, Inc., in the amount of $45,000.00 to provide a Market Study of Peoria County (Market Study Bid #18-01-08), with the option for edits to the 2008 Comprehensive Plan.

   Trumpe moved to approve the resolution and Elsasser seconded. Trumpe noted that there was only one bid for this project, which is complex. Mr. Wahl explained that the service area study is designed to allow for an economic review of projects which will enable the county to determine whether a project will carry its own weight from a tax vs. service expenditure perspective. It's a smart growth tool. The market study looks more at retail and industrial issues and identifies gaps in the market. This information is useful from a planning perspective. Hidden asked if there are other organizations doing this type of project that the County could work with, and Mr. Wahl replied that this will be the only project of its kind in the Midwest.

   The resolution passed by a unanimous roll call vote of 18 ayes.

4. A resolution from your Executive Committee recommending approval of an Elected Officials Referendum pursuant to Article VII, Section 4 of the Illinois Constitution for the November 4, 2008, ballot concerning the manner of whether the Auditor shall be appointed rather than elected.

   Thomas moved to approve the resolution and Pearson seconded.
   O'Neill asked for a clarification on the effect of a yes vote. Mr. Atkins replied that a yes vote is a vote to put this referendum on the ballot. Widmer asked if this goes on the ballot whether the county is taking a position that the auditor should be appointed rather than elected. Mr. Atkins replied that as a legal matter a vote to put this on the ballot is simply that. Widmer asked how many counties in Illinois have finance officers. Mr. Urich replied that several counties do have them. There is no predominate form of government structure in Illinois. Baietto asked for confirmation that 85 counties in Illinois do not have an auditor. Mr. Urich replied that although the law does not mandate those counties have an auditor, he does not know whether there is someone performing that function in those counties.

   Thomas stated that the last time the Board studied its goals and objectives this issue was discussed; the subject has been brought for years. He disagreed that a vote to put this on the ballot indicates the Board's position either for or against election or appointment. This is not a matter of personalities. The Board has not had the length of discussion on the offices of the coroner and the recorder that it has had on the auditor. Widmer stated that the Board is not voting on whether to abolish the office of auditor. The

vote is whether the office is elected or appointed by the administrator. Mr. Atkins clarified that the appointment would be made by the Board.

Thomas left the meeting and returned.

Mayer clarified that the external auditors look at financial statements to determine there are no material misstatements. They do not perform the same function as the internal auditor who checks internal controls and matters of compliance. As Mr. Thomas pointed out, there is no savings to the taxpayers. Someone still has to perform the functions. He urged a no vote on the resolution. Elsasser noted that he would never support taking this position away from someone who had held the office for a long time and had given up other career opportunities to serve the public. So when Mr. Sonnemaker was elected County Clerk two years ago, Elsasser said this is the time to look at this issue. The citizens of Peoria County are interested and educated, and they deserve the right to make this decision at the ballot box in November.

Riggenbach noted that a year ago when changes were made to the finance structure, the issue came up that the auditor needs to audit. Changes were made to empower the auditor to audit in accordance with state mandates. There hasn't been time to see whether the changes the Board made are working. The County has made huge strides in its finance department and given the auditor specific mandates which were lacking in the past, and he urged a no vote. Trumpe noted she does not want to start down the path of removing elected offices and replacing them with appointments. Salzer noted that he was opposed to putting any of the offices on the ballot. The voters can petition to put this on the ballot which has not happened. With early voting beginning on October 13th, there will be little time to educate the voters, and he urged a no vote.

The resolution failed to pass by a roll call vote of 5 ayes and 13 nays with Baietto, Elsasser, Pearson, Thomas and Widmer voting aye.

O'Neill left the meeting.

5. A resolution from your Judicial Committee recommending approval of a grant between the Illinois Department of Healthcare and Family Services and the Tenth Judicial Circuit for the Visitation Program in State FY2009 pursuant to Intergovernmental Agreement #2009-55-024-K1c.

   Baietto moved approve the resolution and Elsasser seconded. The resolution passed by a unanimous roll call vote of 17 ayes.

6. A resolution from your Judicial Committee recommending approval of the bid of Bradford Systems, East Peoria, IL, in the amount of $22,766.00 for the provision of file folders for the offices of the Circuit Clerk and the State's Attorney for 2009.

   Baietto moved to approve the resolution and Pearson seconded. The

resolution passed by a unanimous roll call vote of 17 ayes.

7. A resolution from your Transportation Committee recommending approval of the bid of R.A. Cullinan & Son, Tremont, IL, in the amount of $2,325.759.43 for intersection improvements to Illinois Route 29 and Engine Drive/ Rench Road at Caterpillar Mossville Plant.

   Elsasser moved to approve the resolution and Watkins seconded. The resolution passed by a unanimous roll call vote of 17 ayes.

   O'Neill returned to the meeting.

8. A resolution from your Transportation Committee recommending approval of Jubilee Patriots 4-H Club participating in the Adopt-A-Highway Program by adopting County Highway R23 (Brimfield Road) from Shissler Road to Cahill.

   Elsasser moved to approve the resolution and O'Neill seconded. The resolution passed by a unanimous roll call vote of 18 ayes.

9. A resolution from your Transportation Committee recommending approval of an additional appropriation of $218,500.00 for Rural Peoria County Council on Aging FY2008 transportation needs.

   Polhemus moved to approve the resolution and O'Neill seconded. The resolution passed by a unanimous roll call vote of 18 ayes.

10. A resolution from your Facilities Committee authorizing the County Administrator to retain a Commercial Real Estate Broker for the purpose of potentially purchasing real estate.

    Salzer moved to approve the resolution and Watkins seconded. The resolution passed by a unanimous roll call vote of 18 ayes.

11. A resolution from your Finance/Legislative Study Committee recommending approval of the use of GovDeals.com and Public Surplus for Online Auction Services.

    Riggenbach moved to approve the resolution and Mayer seconded. Riggenbach noted that this is a one year program during which time the County can evaluate which service it wants to use for a longer term. Vehicles and some of the larger ticket items will still be auctioned live, but this system will allow the County to get rid of other items on a more timely basis. The resolution passed by a unanimous roll call vote of 18 ayes.

    Dillon left the meeting.

12. A resolution from your Finance/Legislative Study Committee recommending approval of an additional appropriation for the Shared Savings Program.

Riggenbach moved to approve the resolution and Mayer seconded. The resolution passed by a unanimous roll call vote of 17 ayes.

13. A joint resolution from your Finance/Legislative Study and Management Services Committees recommending approval of the establishment of a Purchasing Card Program with Illinois National Bank of Springfield, IL.

    Dillon returned to the meeting.

    Riggenbach moved to approve the resolution and Mayer seconded. Riggenbach noted that this will be a six month pilot program. Phelan stated that he appreciated the added controls, but he was not going to support this because of things that have happened with cards in other counties. He is also opposed because this was not opened up to other banks. Mayer noted that this program will increase the County's control so that the problems experienced in other counties are less likely to happen. The resolution passed by a roll call vote of 17 ayes and one nay, with Phelan voting nay.

14. A resolution from your Health and Environmental Issues Committee recommending that the Peoria County Board does not take a formal position regarding PDC's petition for the delisting of EAF dust and that the matter goes through the established regulatory process for the Illinois Pollution Control Board to decide the issue.

    Pearson moved to approve the resolution and Trumpe seconded. Mayer stated that all the financial data submitted makes it clear that there is a real opportunity for a recycling facility to handle some of this, and he hopes that will be considered. He clarified that the Board's siting decision was not a matter of saying that they didn't want the facility in Peoria County but was a matter of evaluating the application against established statutory criteria which the facility did not meet. He congratulated PDC on their support of the Teamsters Union and hoped they would remain neutral when the Teamsters try to organize in other locations.

    Phelan asked Mr. Urich if he felt this petition has anything to do with the siting appeals process or any future application for expansion. Mr. Urich replied that this issue falls within the crossroads between the environment and economics. Keystone came to the Health Committee and spoke about the impact of this decision on their operations. The County has a financial stake in Keystone's success because they still owe the County $8,000,000.00. But looking at everything, staff decided that it would be best not to weigh in on this issue. Phelan noted these economic and environmental issues were present during the siting process, and staff made a recommendation then. Mr. Urich noted that in this instance staff did not have the same vantage point as last time; they did not have the non-disclosed information. Phelan stated that the Board looks to staff for recommendations especially in technical areas.

    Baietto stated that this is a regulatory issue which the Board should not be

discussing. At this time he could not take a position because he needs more information. Without more information, leave it to the Pollution Control Board. Thomas stated that no matter what the Board does, the decision will be made by the Pollution Control Board. He does not see a problem with the Board weighing in on the broader policy issues and on what the community needs in the long run. Riggenbach stated it's important not to lose sight of the fact that PDC is making an effort to find ways to reduce the hazardous waste going into landfills. Widmer agreed with Riggenbach and stated that he is going to support this resolution. Elsasser agreed with Baietto on the need for more information to make the right decision. He moved to table the motion. No second was received, and the Chairman announced that the motion to table failed for lack of a second. Mayer stated that he hopes if PDC receives the de-listing it will drop its siting appeal.

Salzer stated that he doesn't know why this matter has been brought before this Board. He thinks it should be left to the experts to decide. Dillon stated that if this was a normal business, this resolution would not be in front of the Board. The Board needs to separate the siting from this motion.

The resolution passed by a roll call vote of 13 ayes and 5 nays, with Elsasser, Mayer, Pearson, Phelan and Thomas voting nay.

Mr. Atkins advised the Board that even after this vote, the Board members can give their own opinions on this matter.

15. A joint resolution from your Management Services and Health and Environmental Issues Committees recommending approval of increasing a part-time WIC-Breastfeeding Peer Counselor Position to full time.

    Thomas moved to approve the resolution and Pearson seconded. The resolution passed by a unanimous roll call vote of 18 ayes.

16. A resolution from your Management Services Committee recommending approval to purchase a new Jury Management System comprised of software, conversion, implementation services, and training from Courthouse Technologies, Ltd., New Westminister, B.C, Canada at an amount not to exceed $126,668.00 contingent on funding and legal approval.

    Thomas moved to approve the resolution and Pearson seconded. The resolution was approved by a unanimous roll call vote of 18 ayes.

17. A joint resolution from your Management Services and Judicial Committees recommending approval of a full-time Deputy position and an Agreement with Dunlap School District 323 for the provision of Police Services at the school beginning August 15, 2008 through and including August 31, 2008 for an amount of $3,014.58, and September 1, 2008 through and including May 31, 2009 for an amount of $6,029.17.

    Sous moved to approve the resolutions and Watkins seconded. The resolution passed by a unanimous roll call vote of 18 ayes.

Pearson asked if the Board could go into Unfinished Business and the rest before executive session.

MISCELLANEOUS

Riggenbach noted that he would have a written report on the workshops he attended at the NACO conference in Kansas City. They were very good, and it was a great opportunity to network on issues common to counties around the country. He then commended Dillon and Sheriff McCoy and for another successful St. Jude run.

Salzer noted that it is Watkins' 65th birthday whereupon the Board serenaded Watkins with a moving chorus of "Happy Birthday."

Pearson stated that she met someone from Franklin County yesterday who commented favorably on the County's website. Franklin County is thinking of starting their own, and Peoria County's website really left an impression on them.

Polhemus stated that he has talked to the neighbors of the Hanna City Work Camp, and he will be giving the Board a summary of their thoughts on what should be done with this property.

ANNOUNCEMENTS

Trumpe announced the Indo-American Society of Peoria benefit for the homeless shelter program of the South Side Mission, and asked the Board members to take the flyers she had.

Baietto noted that the Board will be getting a survey from the Administrator and the Rules Committee needs their input.

18. Executive Session - Personnel Matter and Potential Acquisition of Property

Thomas moved to go into executive session to discuss pending litigation and Baietto seconded. Mr. Atkins stated there is a need to go into executive session only to discuss pending litigation.

Dillon, Hidden, Mayer and Trumpe left the meeting.

The motion passed by a unanimous roll call vote of 14 ayes.

Riggenbach left the meeting.

Polhemus left the meeting after executive session.

19. A resolution from your Management Services Committee authorizing the Administrator to withdraw the pending lien on Worker's Compensation Case #010015-004157-WC-01 in return for $32,320.05.

Thomas moved to approve the resolution and Pearson seconded. The resolution passed by a unanimous roll call vote of 16 ayes.

ADJOURNMENT

Mayer moved to adjourn and Dillon seconded. The motion passed by a unanimous voice vote.

Electronic Filing - Received, Clerk's Office, October 8, 2008
* * * * * AS 2008-010, Exhibits * * * * *

COMMITTEE REPORT

Mr. Chairman and Members of the Tazewell County Board:

Your Special Waste Review Committee has considered the following RESOLUTION and recommends that it be adopted by the Board:

RESOLUTION

WHEREAS, Tazewell County Landfill, Inc. (TCL) has requested to dispose of non-hazardous special waste generated by PDC – Peoria Waste Stabilization Facility PDC #1 Landfill of Peoria; and

WHEREAS, in order for TCL to dispose of this De-Listed, De-Characterized Stabilized Residues as a non-hazardous waste at Indian Creek Landfill, it must first receive approval from the Special Waste Review Committee as outlined under Article 32 of the Host Community Agreement dated October 1, 2003 between Tazewell County and Tazewell County Landfill, Inc. (TCL); and

WHEREAS, on May 24, 2007, the Special Waste Review Committee met with TCL to discuss and review the internal approval procedures for the non-hazardous waste generated by PDC – Peoria Waste Stabilization Facility PDC #1 Landfill; and

WHEREAS, the Special Waste Review Committee voted to recommend to the County Board to approve the disposal of the non-hazardous special waste at Indian Creek Landfill.

THEREFORE BE IT RESOLVED that the County Board approve this recommendation.

BE IT FURTHER RESOLVED that the County Clerk notifies the County Board Office, the Health Department Administrator Amy Tippey, the Director of the Solid Waste Management Program Ray Corey and the Auditor of this action.

PASSED THIS 30TH DAY OF MAY, 2007.

ATTEST:

County Clerk

County Board Chairman

EXHIBIT
C

HOPEDALE TOWNSHIP RESOLUTION

PC 9

WHEREAS, Tazewell County Landfill, Inc. ("TCL") is the owner and operator of Indian Creek Landfill located in Hopedale Township, Tazewell County, Illinois;

WHEREAS, on October 1, 2003, TCL and the County of Tazewell entered into a Host Community Agreement which was amended by a First Amendment to Host Community Agreement effective September 27, 2006 ("Host Community Agreement");

WHEREAS, on September 12, 2006, TCL and Hopedale Township entered into a Host Township Agreement ("Host Township Agreement");

WHEREAS, on March 28, 2007, the County of Tazewell granted local siting approval for an approximate 10,000,000 ton expansion of Indian Creek Landfill;

WHEREAS, in accordance with the procedures set forth in Section 32 of the Host Community Agreement, on May 30, 2007, the County of Tazewell authorized TCL to accept for disposal at Indian Creek Landfill De-Listed and De-Characterized Stabilized Residues from the Waste Stabilization Facility owned and operated by Peoria Disposal Company ("PDC"), an affiliate of TCL, located in Peoria County, Illinois;

WHEREAS, on April 25, 2008, PDC filed with the Illinois Pollution Control Board ("Board") a RCRA Delisting Adjusted Standard Petition petitioning for an upfront and conditional delisting for the stabilized residues generated by PDC from the treatment of K061 electric arc furnace dust generated by steel mills that produce steel using electric arc furnaces ("Treated K061 Residues");

WHEREAS, PDC would like to dispose of the Treated K061 Residues in Indian Creek Landfill;

WHEREAS, other than the County of Tazewell, Hopedale Township is the only local governmental entity having jurisdiction over Indian Creek Landfill;

RESOLVED, that Hopedale Township supports the RCRA Delisting Adjusted Standard Petition filed by PDC with the Board petitioning for an upfront and conditional delisting for the Treated K061 Residues;

FURTHER RESOLVED, that Hopedale Township supports the disposal of the Treated K061 Residues by TCL at Indian Creek Landfill.

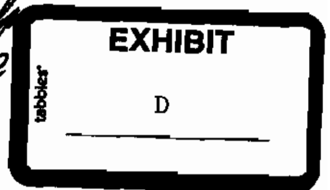
ADOPTED on August 12, 2008.

Linda J Slager Trustee
Bill Baker Road Commissioner
Deb Alden Trustee
Don Siemsens
108-1607
Daryl W. Birky Trustee

HOPEDALE TOWNSHIP

By: Jens Slager
Its: Supervisor

Harold Lee Schiff
TOWNSHIP CLERK



SECOND AMENDMENT TO HOST COUNTY AGREEMENT

THIS SECOND AMENDMENT TO HOST COUNTY AGREEMENT ("Agreement") is made and effective October __/__, 2008, between Clinton Landfill, Inc., an Illinois corporation ("CLI"), and the County of DeWitt, Illinois (the "County").

WHEREAS, CLI and the County entered into a certain Host County Agreement effective April 20, 2001, as amended by a First Amendment to Host County Agreement effective August 24, 2007 (the "Host County Agreement");

WHEREAS, on April 25, 2008, Peoria Disposal Company, of which CLI is an affiliate, filed an RCRA Delisting Adjusted Standard Petition with the State of Illinois Pollution Control Board, file number AS 08-10, requesting that the Illinois Pollution Control Board grant an adjusted standard to delist the stabilized residue generated by Peoria Disposal Company from the treatment of K061 electric arc furnace dust (a hazardous waste) at Peoria Disposal Company's waste stabilization facility in Peoria County, Illinois;

WHEREAS, the County has considered requesting a second public hearing on said petition be convened in DeWitt County, Illinois;

WHEREAS, Peoria Disposal Company is desirous of having only one public hearing on said petition in order to expedite matters for both them and their customers who have a vested interest in the granting of said petition;

WHEREAS, CLI continues to be desirous of earning the goodwill of the citizens of the County by demonstrating that its landfill operations are, have been and will continue to be conducted in an environmentally sound manner;

WHEREAS the County continues to be desirous of protecting the health, safety and welfare of its citizens;

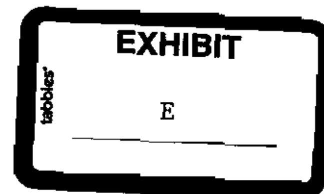
WHEREAS, CLI and the County desire to amend the Host County Agreement to effectuate certain changes and revisions thereof;

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual agreements contained in this Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, CLI and the County hereby amend the Host County Agreement as follows:

1. Paragraph 36 is added to the Host County Agreement as follows:

    36. STABILIZED RESIDUE

    That CLI hereby agrees not to accept stabilized residue from the treatment of K061 electric arc furnace dust, whether or not it has



Oct 08 08 09:01a DeWitt County 217-935-4592 p.1

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*** * * * * AS 2008-010, Exhibits * * * * ***

been delisted by the Illinois Pollution Control Board as a hazardous waste, for disposal at any of CLI's present or future disposal sites located in DeWitt County, Illinois, without first receiving approval for the same from the County. The County may require a public hearing on any future request by CLI for permission to accept disposal of stabilized residue from the treatment of K061 electric arc furnace dust at any of CLI's present or future disposal sites located in DeWitt County, Illinois. The County and CLI hereby agree that the County may deny any said request to accept disposal of stabilized residue from the treatment of K061 electric arc furnace dust for any reason.

2. That Paragraph 33 of the Host County Agreement is deleted in its entirety and the following is substituted in lieu thereof:

33. CHEMICAL WASTE LANDFILL

The County supports CLI in its endeavors to provide safe and secure landfill disposal services at its Clinton Landfill No. 3 facility. Furthermore, the County recognizes that evaluating the protectiveness of the Chemical Waste Landfill permit application prepared by CLI involves highly technical, multi-disciplinary analysis, and such analysis is best performed by the Illinois Environmental Protection Agency and the United States Environmental Protection Agency. As a result, the County neither supports nor opposes the permitting, development, construction, and operation of the Chemical Waste Landfill proposed by CLI at Clinton Landfill No. 3.

3. Except as hereinabove set forth, the Host County Agreement effective April 20, 2001; together with the First Amendment to Host County Agreement effective August 24, 2007, shall remain unmodified and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers or representatives on the date first above written.

COUNTY OF DEWITT	CLINTON LANDFILL, INC.
By: [signature]	By: [signature]
Steve Lobb, Chairman	Royal J. Coulter, President

Oct 08 08 09:01a DeWitt County 217-935-4592 p.2

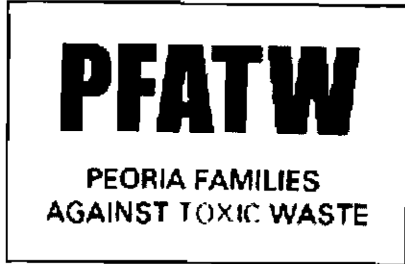
Attest:

By: ______________________
DeWitt County Clerk

Attest:

By: ______________________
Ron L. Edwards, Secretary

108-2096



Illinois Pollution Control Board Clerk
100 W. Randolph
Suite 11-500
Chicago, IL 61601-3233

September 4, 2008

Dear Friend,

Peoria Disposal Company (PDC) is continuing its quest to expand its hazardous waste operations in Central Illinois. This time, PDC is asking the Illinois Pollution Control Board (IPCB) to delist electric arc furnace dust, one of the main waste streams into its Pottstown facility. When a waste stream is delisted, it is no longer subject to hazardous waste disposal regulations and can be deposited in a municipal landfill. PDC is hoping to use its waste stabilization facility in Pottstown to treat this toxic-laden dust and then truck it to its municipal landfills in Tazewell, Dewitt, and Pike counties.

Peoria Families Against Toxic Waste (PFATW) opposes this delisting for a variety of reasons. First, the delisting effectively circumvents earlier rulings denying PDC's request to expand the landfill. Waste will still be trucked across Central Illinois and all the air pollution impacts of treating it will continue for another ten years. Ongoing operation of the waste stabilization facility, and included provisions allowing some use of the existing hazardous waste landfill to dispose of waste deemed "untreatable," means that the Pottstown hazardous waste landfill will not be closed for another ten years. The waste stabilization process itself will involve dragging large bins of treated waste on and off of the existing hazardous waste disposal areas as the treated waste "cures." No analysis of these impacts was included with PDC's proposal.

Second, PFATW is concerned about the process itself. PDC is proposing to treat waste via a proprietary process. In a request to the IPCB, PDC asked that no technical details be disclosed to keep the process a trade secret. Limited testing of the process occurred over a short three-month period and was conducted by a consulting group hired by PDC. PFATW does not believe the IPCB should allow the delisting based on secret processes, closed to scrutiny by outside experts, and results that cannot be independently verified.

Finally, PFATW believes there is no long-term assurance that the "treated" wastes will be stable enough to withstand the unregulated mix of substances in a municipal landfill. The disposal site at Indian Creek near Hopewell in Tazewell County is situated over the Mahomet aquifer, as is the site in Dewitt county. No on-site testing whatsoever has been performed at either site. One of the major concerns about the Pottstown facility was its location atop the San Koty aquifer, Peoria County's main source of drinking water. Now PDC proposes replacing that risk with an equivalent one—storing waste over another community water supply.

Please help us send a strong message to the IPCB using the attached pre-addressed postcard. To send an even stronger message, write your own letter and send it to the address on the postcard. To review PDC's complete proposal, visit www.ipcb.state.il.us/Cool/External/cases_full.asp and type "AS 2008-010" in the search field. **Comments are due by September 11, 2008.** Thanks for your continuing support.

Peoria Families Against Toxic Waste

Please respond by September 11, 2008.

PFATW
PEORIA FAMILIES
AGAINST TOXIC WASTE

Dear Illinois Pollution Control Board,

I am writing asking you to deny Peoria Disposal Company's request to delist electric arc furnace dust (AS 2008-010). The delisting is a back door expansion of the landfill, an expansion both Peoria County and the IPCB have already denied. The safety of what PDC is proposing cannot be assured—PDC conducted no assessment of the impact on its existing landfill, the process details are not available for review, the testing was very limited, no independent labs verified the results, and no on-site testing was conducted at the landfills where the material will be disposed. PDC's proposal simply shifts the risks to safe drinking water to communities over the Mahomet aquifer instead of the San Koty. Please work with the citizens of Central Illinois to begin the process of truly closing this unwanted legacy and eliminating further risks to the health and safety of our community.

____
(Name)

____
(Address)

What's Up?

As you probably guessed, Peoria Disposal Company (PDC) is making another attempt at expansion.

- Peoria County said no to expansion. The Illinois Pollution Control Board (IPCB) agreed. PDC is appealing that decision.
- PDC tried to get itself classified as a waste generator, exempt from regulation. IPCB said no. PDC is appealing that decision.
- PDC got its operating permit renewed. IPCB heard citizen concerns but allowed the permit to stand.

There's just one hitch. PDC will run out of space early next year.

So, with nowhere to dispose of hazardous waste, PDC is now proposing that we just quit calling the waste "hazardous" and let them treat it and dispose of it somewhere else!

John R. LaPayne
316 Miller Road
Edelstein, IL 61526-9740

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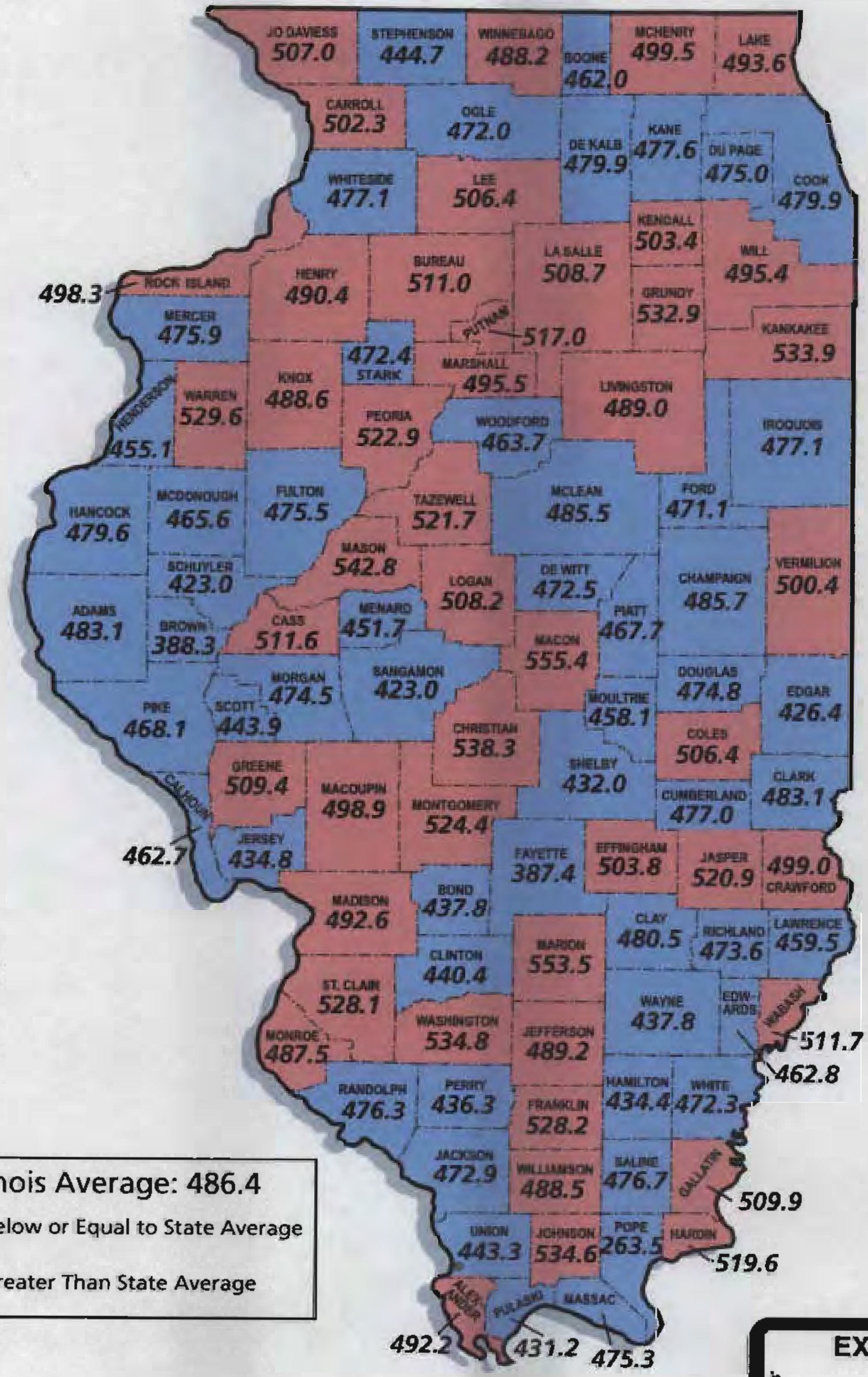
Illinois Cancer Incidence Rates

by County, 1999–2003



Rates are per 100,000 and age-adjusted to the 2000 U.S. standard population.

Source: Illinois Department of Public Health, Illinois State Cancer Registry, public data as of November 2005.

EXHIBIT G

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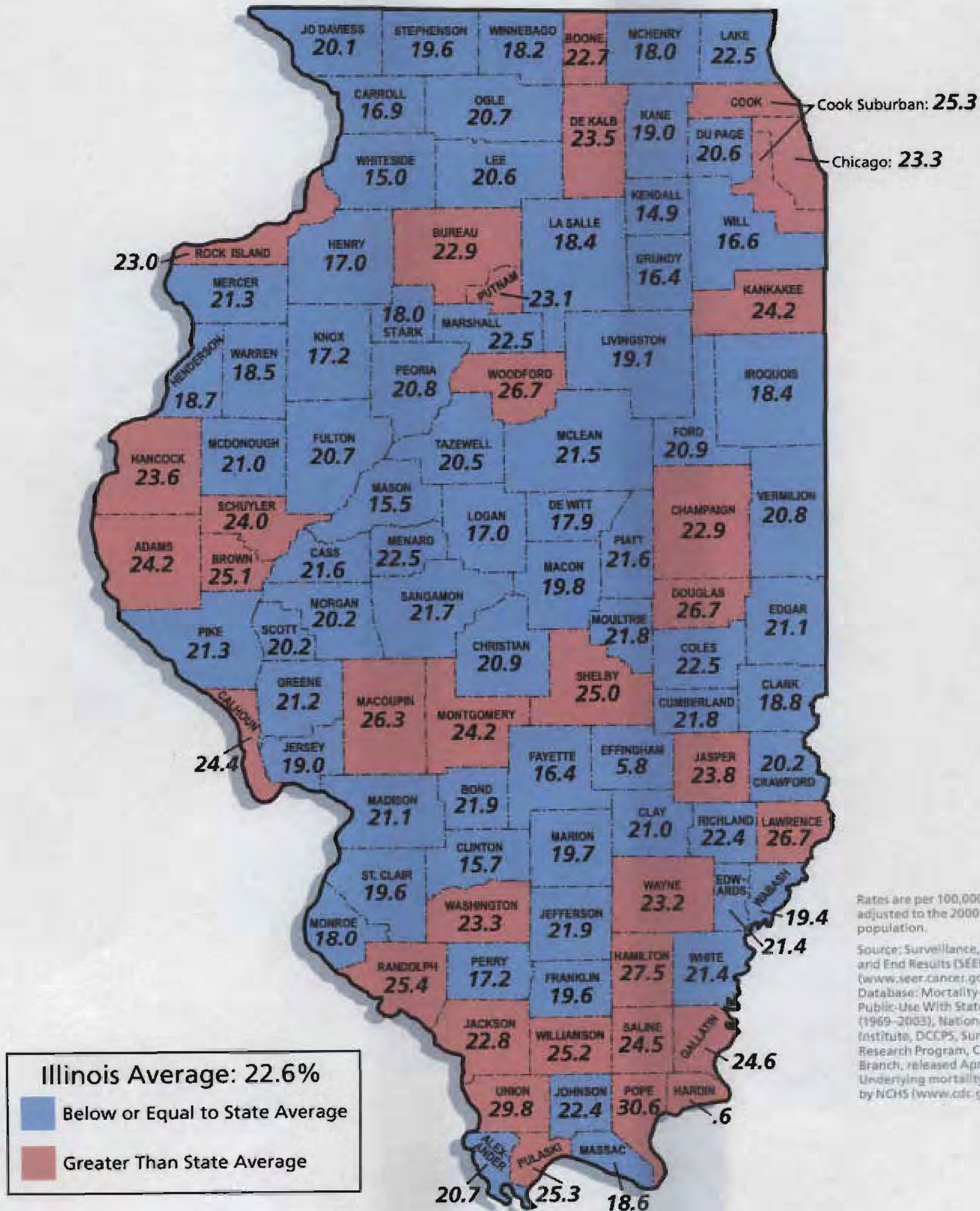
* * * * * AS 2008-010, Exhibits * * * * *

Illinois Cancer Mortality Rates

by County, 1999–2003



Rates are per 100,000 and age-adjusted to the 2000 U.S. standard population.

Source: Surveillance, Epidemiology and End Results (SEER) Program (www.seer.cancer.gov) SEER*Stat Database: Mortality—All COD, Public-Use With State, Total U.S. (1969–2003), National Cancer Institute, DCCPS, Surveillance Research Program, Cancer Statistics Branch, released April 2006. Underlying mortality data provided by NCHS (www.cdc.gov/nchs).

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* * * * * AS 2008-010, Exhibits * * * * *

Section III CONTAINMENT BUILDING

A. SUMMARY

A Waste Stabilization Facility is authorized for storage and treatment of hazardous and non-hazardous wastes that contain free liquids or require treatment. Four storage bays for incoming waste contain a maximum of eighty-eight (88) cubic yards. After treatment in a mixer (description in Section II of this permit), the waste is moved to the curing area, which can contain a maximum of 658 cubic yards of treated waste. The containment building is constructed with a liner system, leachate collection sumps, and a leak detection system. In addition, treatment using macro encapsulation in containers is allowed inside the containment building.

B. WASTE IDENTIFICATION

1. The Permittee may store the hazardous waste identified in Attachment C to this permit. The Permittee may store non-hazardous waste in these units if the wastes are managed in accordance with the conditions of this permit that apply to hazardous waste placed in the same unit.

2. The Permittee may store and treat the following wastes in the containment building, subject to the terms of this permit:

Description of Units	Capacity (cubic yards)
Receiving Bays	
B-1	22
B-2	22
B-3	22
B-4	22
Curing Area	658
Mix Cell A	168
Mix Cell B	56

3. The Permittee is prohibited from storing or treating waste in the permitted units not identified in Condition B. 2. of this Section.

4. The treatment (microencapsulation) unit(s) shall not accept wastes containing over 2% (by weight) of mercury.

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* * * * * AS 2008-010, Exhibits * * * * *

Hazardous Waste Management System; Identification and Listin: Federal Register: EPA

[Federal Register: June 13, 1995 (Volume 60, Number 113)]
[Rules and Regulations]

[Page 31107-31115]

>From the Federal Register Online via GPO Access [wais.access.gpo.gov]

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

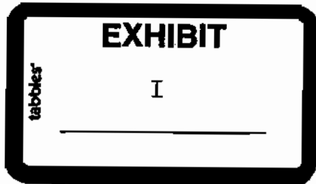
[SW-FRL-5219-5]

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 Conversion Systems, Inc. (``CSI'') to exclude from hazardous waste control (or ``delist'') certain solid wastes. The wastes being delisted consist of electric arc furnace dust (``EAFD'') that has been treated by a specific chemical stabilization process. This action responds to CSI's petition to delist these treated wastes on a ``generator-specific'' basis from the hazardous waste lists. After careful analysis, the Agency has concluded that the petitioned waste is not hazardous waste when disposed of in Subtitle D landfills. This exclusion applies to chemically stabilized EAFD generated at CSI's Sterling, Illinois facility as well as to similar wastes that CSI may generate at future facilities. 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 waste remains qualified for delisting.



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EFFECTIVE DATE: June 13, 1995.

[[Page 31108]] ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, and is available for viewing [Room M2616] from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260-9327 for appointments. The reference number for this docket is ``F-95-CSEF-FFFFF.'' 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 Chichang Chen, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260-7392.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in Secs. 261.31 and 261.32. Specifically, Sec. 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; and Sec. 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a ``generator-specific'' basis from the hazardous waste lists. Petitioners must provide sufficient information to EPA to allow the Agency 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 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.

B. History of This Rulemaking

Conversion Systems, Inc., (CSI), Horsham, Pennsylvania, petitioned the Agency to exclude from hazardous waste control its stabilized waste generated at electric arc furnace dust (EAFD) treatment facilities across the nation. After evaluating the petition, EPA proposed, on November 2, 1993 to exclude CSI's waste from the lists of hazardous wastes under Secs. 261.31 and 261.32 (see 58 FR 58521). Subsequently, in response to a commenter's request, the Agency published a notice extending the comment period until January 3, 1994 (see 58 FR 67389, December 21, 1993).

This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to grant CSI's petition.

II. Disposition of Petition

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AS 2008-010, Exhibits

Conversion Systems, Inc., Horsham, Pennsylvania

A. Proposed Exclusion

CSI petitioned the Agency for a multiple-site exclusion for chemically stabilized electric arc furnace dust (CSEAFD) resulting from the Super Detox™ treatment process as modified by CSI. (The original Super Detox™ treatment process was developed by Bethlehem Steel Corporation and used at its Johnstown and Steelton, Pennsylvania facilities.) Specifically, CSI requested that the Agency grant a multiple-site exclusion for CSEAFD generated by CSI using its modified Super Detox™ process at the existing Sterling, Illinois facility at Northwestern Steel and future facilities to be constructed (CSI initially is planning to construct 12 other facilities nationwide). The resulting CSEAFD is classified as a K061 hazardous waste by virtue of the ``derived from'' rule (Sec. 261.3(c)(2)(i)), because it is generated from the treatment of a hazardous waste (electric arc furnace dust) which is currently listed as EPA Hazardous Waste No. K061--``Emission control dust/sludge from the primary production of steel in electric furnaces.'' The listed constituents of concern for EPA Hazardous Waste No. K061 are cadmium, hexavalent chromium, and lead. CSI petitioned to exclude Super Detox™ treatment residues because it does not believe that the CSEAFD meets the criteria for which K061 was listed. CSI also believes that the Super Detox™ process, as modified by CSI, generates a nonhazardous waste because the constituents of concern, although present in the waste, are in an essentially immobile form. CSI further believes that the waste is not hazardous for any other reason (i.e., there are no additional constituents or factors that could cause the waste to be hazardous). Lastly, CSI believes that a multiple-site delisting will save both EPA and CSI the cost and administrative burden of multiple petitions each providing essentially the same, duplicative information of a process already well known and accepted by the Agency as effective in treating EAFD wastes (see final exclusions for Bethlehem Steel Corporation's Johnstown and Steelton, Pennsylvania facilities in 54 FR 21941, May 22, 1989). 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).

In support of its petition, CSI submitted: (1) Detailed descriptions and schematics of the Super Detox™ treatment process for both wet and dry electric arc furnace dust [1]; (2) total constituent analyses results for the eight Toxicity Characteristic (TC) metals listed in Sec. 261.24 and six other metals from representative samples of the untreated (non-stabilized) EAFD; (3) Toxicity Characteristic Leaching Procedure (TCLP, SW-846 Method 1311) results for the eight TC metals from a representative sample of untreated EAFD; (4) TCLP results for the eight TC metals and six other metals from representative samples of the uncured CSEAFD; (5) Multiple Extraction Procedure (MEP, SW-846 Method 1320) results for the TC metals and six other metals from representative samples of the uncured CSEAFD; (6) total oil and grease (TOG), total cyanide, and total sulfide results from representative samples of the untreated EAFD; (7) information and test results regarding the hazardous waste characteristics of ignitability, corrosivity, and reactivity for the CSEAFD; and (8) ground-water monitoring data from the landfill containing the CSEAFD generated from CSI's Sterling, Illinois Super Detox™ facility.

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AS 2008-010 Exhibits

\1\ CSI has claimed some treatment process descriptions, including information on how they improved the original Super Detox[TM] treatment process, as confidential business information (CBI). This information, therefore, is not available in the RCRA public docket for today's notice.

B. Request for Public Hearing

During the comment period, Horsehead Resource Development Company, Inc. (``HRD'') and one Congressman requested a formal public hearing to allow interested parties a sufficient opportunity to comment on the November 2, 1993 proposed rulemaking. HRD also indicated its desire to cross-examine EPA and CSI witnesses. Following review of the issues raised by the commenters, the Agency found no compelling need for a public hearing and, therefore, notified the commenters of its decision not to [[Page 31109]] hold a hearing. See the docket for proposed notice for the related correspondences. In its comments on the proposed rule, HRD claimed that EPA's denial of its hearing request violates the Administrative Procedure Act.

The Agency notes that the applicable regulations (40 CFR Sec. 260.20(d) and Sec. 25.5) specify only that EPA hold an informal hearing at its discretion. The Agency believes that given the highly technical nature of the proposal, written documentation is a more appropriate medium for the issues raised. In addition, even if a hearing were held, such process would not encompass the formal testimony of EPA staff and expert witnesses HRD was seeking; the Agency would merely use this procedure to gather oral comments for the record. The Agency believes a hearing was unnecessary, and that the Agency's procedures were consistent with the Administrative Procedure Act. In any event, the Agency has met with HRD, the primary commenter opposing this delisting, a number of times since the time of the proposal to hear its views in person.

C. Summary of Responses to Public Comments

The Agency received public comments on the November 2, 1993 proposal from 18 interested parties. Eight of these commenters, consisting chiefly of steelmaking concerns, clearly supported the Agency's proposed decision to grant CSI's petition. One commenter had questions about the RCRA permit requirements for CSI's future facilities, and about the effective date of the proposed delisting in a State not authorized to administer the Federal delisting program. Of the nine remaining commenters, one commenter (HRD) strongly opposed the Agency's proposed decision, and presented discussions on a variety of issues. The remaining eight out of these nine commenters consisted of Congressmen and Senators reiterating concerns about the proposed delisting. Detailed Agency responses to all significant comments are provided in a ``Response to Comments'' document, which is in the public docket for today's rule. The following discussion is a summary of both the most significant issues raised by HRD and EPA's responses.

Impact of This Delisting Upon Recycling of K061

Comment: A number of commenters, including HRD, claimed that the proposed delisting would inappropriately and illegally allow for the landfilling of chemically stabilized K061 that is currently being recycled by high-temperature metals recovery (``HTMR'') facilities. The commenters' assertions on this issue can be summarized as follows: (1) Both RCRA and the Pollution Prevention Act of 1990 express a general preference for resource recovery and reclamation over conventional waste treatment and disposal. Accordingly, EPA is required by law to promulgate regulations that encourage recycling over treatment and disposal whenever possible. The CSI delisting violates these statutory requirements because it encourages the landfilling of otherwise recoverable materials. (2) EPA's delisting regulations require compliance with these RCRA and PPA mandates. Specifically, the regulations require EPA to consider factors in addition to those for which the waste was originally listed as a hazardous waste if such factors could cause the waste to be listed as a hazardous waste (40 CFR 260.22(a)(2) and 261.11(a)(3)(xi)). EPA must consider, as one of these factors, the impact of the CSI delisting on the overarching mandates of RCRA and the PPA, and must conclude that the CSI delisting is inconsistent with these statutes. (3) The delisting would violate EPA's own regulatory strategy and prior policies and rulemaking precedents favoring resource conservation and recovery over stabilization. These policies and precedents appear in the Agency's RCRA implementation strategy, land disposal regulations and waste minimization guidance. (4) The CSI delisting would also violate the Administration's stated policy to encourage recycling technologies and a ``green'' economy.

On the other hand, one commenter supporting the proposed delisting stated that the delisting must be granted as a matter of law because

EPA has determined that the chemically stabilized EAFD residues do not ``pose a substantial hazard to human health or the environment'' and therefore are not ``hazardous wastes'' subject to RCRA regulation, citing RCRA section 1004(5) and 40 CFR 260.22 (a), (b) and 261.11(a). This commenter claimed that the delisting is consistent with the waste management objectives of RCRA and the PPA, which encourage EPA to promote various alternatives to the untreated land disposal of hazardous waste.

Response: After careful evaluation of the characteristics and nature of the K061 residues produced by CSI's stabilization process, EPA is today finalizing a determination that these residues do not constitute RCRA hazardous waste. Specifically, EPA has found that these chemically stabilized K061 wastes do not meet any of the criteria for which K061 wastes were listed as hazardous and that there is no reason to believe that any factors other than those for which K061 wastes were listed (including additional constituents) could cause these CSI wastes to be hazardous. See 40 CFR 260.22(a) and RCRA section 3001(f).

In light of EPA's determination that CSI's treated K061 waste is not hazardous, the Agency has no authority to retain this waste as a listed hazardous waste simply because doing so would effectively promote HTMR recycling and reclamation of K061 wastes over the treatment and disposal of CSI's chemically stabilized, non-hazardous waste. RCRA's general statements of Congressional findings, objectives and national policy addressing the subject of minimizing hazardous waste generation and disposal do not supersede the specific hazardous waste listing and delisting scheme established under RCRA. Here, under that scheme, EPA has determined that CSI's treated waste does not meet the criteria for being considered hazardous waste. Nothing in the general objectives and policy provisions of RCRA generally favoring resource recovery over conventional waste treatment and disposal requires, or indeed authorizes, EPA to forego or reverse this determination. See Hazardous Waste Treatment Council v. EPA, 861 F.2d 270, 276-77 (D.C. Cir. 1988).

Similarly, EPA cannot agree with the commenter's conclusion that this delisting conflicts with the mandates of the Pollution Prevention Act of 1990 (``PPA''). Section 6602(b) of the PPA (42 U.S.C. 13101(b)) declares it to be the national policy that pollution control should follow a hierarchy which prefers pollution prevention at the source over recycling and prefers recycling over treatment and disposal in an environmentally safe manner. EPA fully supports this hierarchy and believes it sets forth a desirable general order of preferences for pollution control. Again, however, this policy is not a statutory or regulatory mandate. Nothing in the PPA requires or even contemplates that EPA must retain on the list of hazardous wastes materials that the Agency finds to be non-hazardous simply because there exists an ability to perform resource recovery on these materials.

EPA also disagrees with the commenter's claim that the delisting regulations require this delisting to be denied. 40 CFR 260.22(a)(2) focuses on factors that ``could cause the waste to be a hazardous waste''. The factor cited by the commenter does not fit this description. In addition, EPA finds that [[Page 31110]] today's delisting decision is fully consistent with the Agency's and the Administration's own regulatory strategy and policies, as explained in the Response to Comments document.

In any event, EPA believes that today's delisting decision does harmonize with the overall intent and purposes of RCRA and the PPA. While these two statutes generally encourage resource recovery where appropriate, they do not require it in every conceivable case, regardless of the nature of the waste. Indeed, the commenter's interpretation would have the effect of contravening Congressional intent to allow for delistings where appropriate.

EPA also notes that the effect of this delisting on K061 recycling practices is speculative in any event. As explained in the Response to Comments document, the extent to which steelmakers may stop using recycling technologies upon today's delisting in favor of managing EAFD through CSI's Super Detox^{TM} process is unclear.

EPA's response on these issues is further explained in the Response to Comments document for this rulemaking.

Multiple Site Nature of the Delisting

Comment: One commenter (HRD) stated that the multiple-site nature of the delisting for CSI is precedent-setting but the Agency has offered no legal justification for it. The commenter believed that 40 CFR 260.22 and RCRA section 3001(f) limit the scope of delisting petitions to wastes generated at a single facility. This commenter also claimed that this delisting violates the notice and comment requirements of the Administrative Procedure Act because there will be no opportunity for comment on any of the CSEAFD delistings at future CSI sites.

Another commenter, however, believed that the multiple-site nature of the delisting would avoid duplicative delisting petitions and save the steel industry the unnecessary costs and administrative burdens of multiple petitions.

Response: The statute and regulations do not limit the availability of delisting decisions to wastes generated at a single facility. The commenter has misinterpreted the language of section 3001(f) of RCRA

and 40 CFR 260.22, which both provide that parties may seek delistings for wastes generated at a ``particular facility.'' The term ``particular facility'' refers to a specific qualifying facility and there is no bar to a delisting covering more than one particular, and qualifying, facility. The language limits delistings to an identified and qualifying facility or facilities; it does not limit them to a ``single'' facility. The intent of this language is to indicate that, because delistings are granted only to specific qualifying facilities, a facility may not manage its waste as non-hazardous based solely on a delisting granted to another facility for the same listed waste.

Today's multiple-site delisting is fully consistent with the purposes of RCRA's listing and delisting scheme. If CSI has more than one facility treating the same wastes with the same process, and EPA is assured (through verification testing) that these wastes meet the requirements for being nonhazardous, the statute, its legislative history and the regulations support their removal from the list of hazardous wastes. No part of the statute or regulations purports to limit the number of facilities that a delisting may cover. As to the ``up-front'' nature of this delisting, the Agency in fact has a longstanding policy and practice of granting delistings to facilities not yet constructed, provided that their waste, once produced, meets specified criteria.

In any event, today's delisting decision appears to be consistent even with the commenter's incorrect interpretation of the statute and regulations. Today's action does not automatically grant a delisting to a multiple number of CSI's facilities. Instead, although EPA has reviewed the Super Detox™ treatment process itself on a generic basis, EPA is requiring verification testing at each specific facility before the Agency grants a delisting. Thus, the Agency is, in fact, considering each CSEAFD facility separately. The focus of the commenter's criticism would seem to be that EPA is not requiring the company to submit a separate delisting petition for each new facility. It would make no sense to require a company to submit multiple individual petitions for similar wastes generated from similar process and feed materials when the only difference between petitions is the name and location of the specific facility; to do so would be an unnecessary administrative burden and waste of resources for both EPA and the petitioner.

The commenter also alleged an inconsistency with EPA's 1993 publication, ``Petitions to Delist Hazardous Wastes: A Guidance Manual'' (second edition). The Manual states that ``separate petitions must be submitted for wastes generated at different facility locations, even if the contributing processes and raw materials are similar. This requirement is necessary because an amendment to 40 CFR part 261 for an exclusion only applies to a waste produced at a particular facility.'' This provision was originally included in the draft of the Manual at a point before EPA contemplated the type of multiple-site delisting requested by CSI, and it has been inadvertently carried over in later revisions of the guidance document. EPA has accepted CSI's petition for a multiple-site delisting because of the efficiencies created and in light of the protections afforded by future verification testing. To the extent this provision in the guidance document is viewed as inconsistent with today's delisting, the guidance document should be considered superseded by the notice of proposed rulemaking and this final rulemaking for the CSI delisting to permit appropriate multiplesite petitions here and in the future. In any event, EPA's practice has evolved beyond the provision originally included in this non-binding guidance document and today's action is fully consistent with that practice.

EPA also disagrees with the commenter's claim that today's delisting violates the notice and comment requirements of the Administrative Procedure Act (``APA'') since there will be no opportunity for comment on additional CSI facilities producing CSEAFD that may be added to the scope of this delisting in the future. There has been sufficient opportunity for meaningful comment on the current and potential future delistings of CSI facilities producing CSEAFD since all issues the Agency will possibly consider in granting the future delistings have already been aired for comment.

EPA's response on these issues is further explained in the Response to Comments document for this rulemaking.

Executive Order 12866

Comment: One commenter (HRD) alleged that EPA did not conduct the complete regulatory review required by Executive Order 12866 for significant regulatory actions having an annual effect on the economy of $100 million or more. By HRD's account, the economic impact of this delisting would exceed $100 million/year because electric arc furnace (``EAF'') steelmakers will choose to abandon the existing high temperature metals recovery (HTMR) operations and give all K061 waste treatment business to CSI. The commenter also alleged that EPA failed to consider the other principles of regulatory development stipulated in the Executive Order.

Response: The Agency determined that the effect of the proposed rule, [[Page 31111]] unlike regulations imposing tighter control requirements, would be to reduce the overall costs and economic impact of the RCRA regulations. Therefore, this rule is unlikely to have an adverse annual effect on the economy of $100 million or more. The extent to which EAF steelmakers may change from one waste management alternative such as recycling to other methods after today's delisting

is speculative in any event.

In addition, the Agency did not fail to consider the other principles of regulatory development stipulated in the Executive Order. See the Response to Comments document for a further discussion of these issues.

Waste Management

Comment: One commenter (HRD) noted that CSI may develop products from CSEAFD, that the delisted waste may be delivered to a facility that beneficially uses or reuses the material and that the waste may be disposed of in any acceptable manner under Federal or State law. As such, this commenter believed that the assumption of disposal in a Subtitle D landfill is not the reasonable worst-case disposal scenario for CSI's petitioned waste. In support of its argument, the commenter submitted an excerpt of a paper presented by a CSI employee at a trade meeting held in February 1995. This excerpt reflects two alternative concepts that are being developed'' for recycling EAFD, including use of stabilized EAFD as ingredients in the production of Portland cement.

Response: CSI indicated in its petition that the CSEAFD will be disposed of at non-hazardous waste landfills. EPA does not have any specific information that CSI has developed its CSEAFD into any viable product that would allow for use or reuse of this material instead of disposal. Therefore, it is unclear if, when, or how potential CSEAFDderived products may be used in the future. EPA's assumption that CSI's petitioned waste, if delisted, will be disposed of in a Subtitile D landfill is conservative and represents a reasonable worst-case management scenario for this delisting for the decision that CSI's CSEAFD may safely be disposed of as a non-hazardous ``waste''.

Nevertheless, as the commenter pointed out and as the petition also indicates, CSI is working on different ways to reuse the CSEAFD as a feedstock or product (see Page 17 of CSI's petition). It is unclear if the effectiveness of CSI's stabilization process could be somewhat compromised as a result of certain product-use applications; or if the levels of total constituents in the CSEAFD could become a concern due to certain exposure scenarios not considered in the delisting evaluation. Because EPA was not provided with any detailed information and data from CSI on how its waste might be used in products, EPA believes it is appropriate to limit the scope of today's final rule to exclude CSI's CSEAFD only where it is disposed of in Subtitle D landfills. EPA does not reach a decision today on whether CSI's CSEAFD that is not disposed of in Subtitile D landfills qualifies for exclusion from the list of hazardous wastes. In the future, if CSI has successfully developed uses for CSEAFD and seeks an exclusion for such uses, it must submit pertinent information in a petition to EPA and await further decision by the Agency on that matter.

Potential Deterioration of CSI's Stabilized K061

Comment: One commenter (HRD) stated that the petition relied on the TCLP and MEP chemical testing procedures to determine the efficacy of CSI's stabilization process, but largely failed to address the longterm physical durability (or structural integrity) of the stabilized EAFD. The commenter believed that the stabilized EAFD will deteriorate over time once disposed of in landfills or elsewhere, which could result in airborne or waterborne exposure which was not evaluated. The commenter presented a list of applicable physical test methods, and suggested that at a minimum, freeze-thaw and wet-dry durability tests be performed, and that EPA should apply ``deterioration models.''

Response: This rulemaking adequately addresses the potential deterioration of CSI's CSEAFD and the resulting leachability of the material. The MEP was developed to predict the long-term leachability of stabilized wastes, consisting of ten sequential extractions that simulate approximately 1,000 years of acid rainfall. This method requires that the sample of stabilized material be first crushed and ground so that the sample material can pass through a 9.5-mm sieve (as part of the TCLP extraction incorporated in the MEP). The use of particles less than 9.5 mm is comparable to a worst-case assumption of degradation of the stabilized material. EPA also conservatively assumed that the total constituents in the waste would be readily available for release into air (ignoring that they are contained in the solidified waste matrix). Therefore, this evaluation also addressed the potential deterioration and airborne transmission of the waste.

Use of EPA's Composite Model for Landfills (EPACML)

Comment: One commenter (HRD) claimed that the EPACML model was not adequate for evaluating CSI's petitioned waste for several reasons. First, more accurate models, such as MINTEQ, must be used to quantify the migration and mobility of metals from land disposal units. Second, the Monte Carlo simulation mode implemented in the model is inappropriate for multiple site delistings because it does not account for site-specific variability. The commenter felt that only numerical models can account for such variability. Third, the model does not check for unrealistic combinations of input parameters, thereby resulting in inaccurate dilution and attenuation factors (DAFs). The commenter felt that the combination of input parameters should have

been made public to allow for review and comment. Lastly, the commenter stated that the Agency did not clearly identify and justify the specific options used in the EPACML model for the delisting evaluation.

Response: The Agency disagrees with the commenter's contention that the EPACML model is inadequate for evaluating CSI's petitioned waste. First, the EPACML fate and transport model consists of an unsaturated zone module and a saturated zone module, both of which were reviewed and endorsed by EPA's Science Advisory Board for use for regulatory purposes. See 56 FR 32993 (July 18, 1991) and the EPACML Background Document [2] for a complete discussion of the EPACML model, assumptions and input parameters, and their use in delisting decisionmaking. EPA believes that the EPACML reasonably estimates the subsurface fate and transport of metals from land disposal units.

\2\ ``Background Document for EPA's Composite Model for Landfills (EPACML)'', available in the RCRA public docket for the November 2, 1993 proposed rule.

For prior cases, the MINTEQ model has not been found appropriate for use for delisting evaluations. To use it would require a large amount of additional information regarding the speciation of the metals present in the waste and the disposal site. EPA has discussed its finding that the EPACML model is adequate and conservative for delistings. Indeed, incorporation of results of MINTEQ in the EPACML model would only be less conservative if anything--i.e., it would likely serve only to increase the output DAFs [[Page 31112]] because speciation reactions between metallic ions in the leachate and the soil particles may cause further attenuation of metal concentrations in the subsurface. These higher DAFs would result in even higher allowable leachable levels of metals in CSI's waste.

In addition, the Agency disagrees with the commenter's claim that the Monte Carlo simulation mode implemented in the EPACML is inappropriate for multiple site delistings and disagrees with the commenter's remaining contentions regarding the use of the EPACML model. See the Response to Comment document for a further discussion of all of these issues.

Verification Testing Conditions

Comment: One commenter (HRD) stated that the proposed initial and subsequent testing conditions are insufficient. The commenter believed that these testing conditions will result in over-compositing of the samples collected from each batch, as they require only a minimum of four composite samples during the 20-day initial verification testing period and thereafter a minimum of one monthly composite sample.

Response: Although the concentrations of metals in the CSEAFD are expected to be somewhat variable over time (e.g., as the source and type of scrap charged to the EAF changes over time), EPA does not expect these variations to be significant on a day-to-day basis (i.e., most steel mills procure large volumes of scrap and their EAF operations do not vary widely on a daily basis). Also, at any given facility, the daily variations in EAFD metals concentrations are dampened where the EAFD is mixed together within the pneumatic EAFD transport system, baghouse, electrostatic precipitator, and/or storage silos. The Agency, therefore, believes that the proposed initial verification testing requirement is sufficient.

In addition, the data demonstrate that CSI's Super Detox™ process can effectively immobilize the constituents of concern, and justify the Agency's proposal to require less frequent, but long-term, verification testing (monthly or more frequently at CSI's discretion) subsequent to the initial verification testing.

Delisting Levels

In the proposed rule EPA solicited comments on the proposed maximum allowable leachable concentrations for a specific set of inorganic constituents (the ``delisting levels'') that CSI would need to meet during verification testing. In this respect, the Agency also requested comments on the option of applying the generic exclusion levels for K061 HTMR nonwastewater residues set under Sec. 261.3(c)(2)(ii)(C) to CSI's CSEAFD for the sake of national consistency. No comments were received on which of these two approaches should be chosen. The Agency has now concluded that the delisting levels applying to CSI's CSEAFD should be at least as stringent as the K061 HTMR generic exclusion levels. Therefore, the Agency is finalizing the delisting levels by using the lesser of the proposed levels for CSI's CSEAFD and the respective generic exclusion levels for HTMR residues, as shown below (in ppm): Antimony--0.06; arsenic--0.50; barium--7.6; beryllium--0.010; cadmium--0.050; chromium--0.33; lead--0.15; mercury--0.009; nickel--1; selenium--0.16; silver--0.30; thallium--0.020; vanadium--2; and zinc--70.

Economics and Related Issues

Comment: A number of commenters raised issues concerning the economic and related implications of this delisting. First, the Steel Manufacturers Association (``SMA'') claimed that this delisting is

necessary in order to increase the number of cost-effective alternatives for managing K061 waste. Because of the high cost of HTMR, SMA stated, steelmakers ultimately may be forced to substitute greater tonnages of direct reduced iron as feedstock instead of using scrap metal. Direct reduced iron contains only pure iron, so any EAFD generated from it would not contain hazardous metals (obviating the need to use HTMR processes). By granting the delisting, EPA will be promoting the continued resource recovery of iron and other valuable metals from scrap metal (of which, SMA claimed, about 40 million tons per year are currently used as EAF steelmaking feedstock).

Another commenter (HRD) disagreed with the above claims. It pointed out that the cost of managing EAFD by either HTMR or chemical stabilization and disposal is less than one percent of the steel production cost, and that the savings from switching to chemical stabilization would amount to only cents per ton of production. HRD claimed that direct reduced iron is much more expensive than scrap metal, affecting the cost of steelmaking 10 times as much as the cost of EAF dust management. Hence, HRD disputed the claim that steel makers might discontinue the use of scrap feedstock if this delisting is not granted. HRD also stated that the steel industry in fact has a number of EAFD management options, including HTMR processing by HRD and other firms, treatment and disposal as a hazardous waste, use as a fertilizer ingredient, and export for processing.

Response: The focus of today's delisting decision is on whether or not CSI's stabilized EAFD should continue to be listed as hazardous waste in light of the relevant statutory and regulatory criteria. As explained above, EPA has found that CSI's chemically stabilized K061 wastes do not meet any of the criteria for which K061 wastes were listed as hazardous and there is no reason to believe that any factors other than those for which K061 wastes were listed (including additional constituents) could cause these wastes to be hazardous. Therefore, today's rule finalizes EPA's determination to exclude these residues from the RCRA Subtitle C regulatory regime. See 40 CFR Sec. 260.22(a) and RCRA Section 3001(f).

EPA explained above that the effect of today's delisting decision on K061 recycling (i.e., whether granting this delisting effectively promotes treatment and disposal of K061 wastes over HTMR recycling of these wastes) is irrelevant to the delisting determination. Similarly, the economic and related issues that have been raised by the commenters are not relevant to today's delisting decision because they bear no nexus to the issue of whether the stabilized K061 wastes remain hazardous. See the Response to Comments document for a further discussion of these issues.

D. Final Agency Decision

For the reasons stated in both the proposal and this notice, the Agency believes that CSI's chemically stabilized electric arc furnace dust, upon meeting certain verification testing requirements, should be excluded from hazardous waste control. The Agency, therefore, is granting a final conditional exclusion to Conversion Systems, Inc., Horsham, Pennsylvania, for its treatment residue (CSEAFD) generated at its Sterling, Illinois facility and other facilities yet to be constructed nationwide, described in its petition as EPA Hazardous Waste No. K061.

This exclusion applies initially to only CSI's Super Detox^{TM} treatment facility located at Northwestern Steel in Sterling, Illinois. As stated in Condition (5), CSI must notify EPA at least one month prior to operation of a new Super Detox^{TM} treatment facility in order to provide EPA with sufficient time to initiate the process to amend CSI's exclusion. CSEAFD generated from a new Super Detox^{TM} treatment facility will not be excluded until the Agency [[Page 31113]] publishes a notice amending CSI's exclusion as specified in Condition (1)(B). CSI will require a new exclusion if the treatment process specified for any Super Detox^{TM} treatment facility is significantly altered beyond the changes in operating conditions described in Condition (4). Accordingly, the facility would need to file a new petition for a changed process. The facility must manage wastes generated from a changed process as hazardous until a new exclusion is granted.

Although the CSEAFD wastes covered by this petition are excluded from regulation as listed hazardous wastes under Subtitle C upon today's final exclusion, this exclusion applies only where these wastes are disposed of in Subtitle D landfills.

III. Limited Effect of Federal Exclusion

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 State. 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 authority to determine the current status of their wastes under State law.

Furthermore, some States (e.g., Georgia, Illinois) 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 CSEAFD will be transported to and managed in any State with delisting authorization, CSI must obtain delisting authorization from that State before the CSEAFD may be managed as non-hazardous in the State.

IV. Effective Date

This rule is effective on June 13, 1995. 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. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date of 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 rule should be effective immediately upon publication. 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).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an ``assessment of the potential costs and benefits'' for all ``significant'' regulatory actions. The effect of this rule is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. The reduction is achieved by excluding waste from EPA's lists of hazardous wastes, thereby enabling a facility to treat its waste as nonhazardous. As discussed in the Agency response to public comments, this rule is unlikely to have an adverse annual effect on the economy of $100 million or more. Therefore, this rule does not represent a significant regulatory action under the Executive Order, and no assessment of costs and benefits is necessary. The Office of Management and Budget (OMB) has 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 any small entities.

This regulation will not have an adverse impact on any small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation 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 (Pub. 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''), Pub. 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, 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

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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 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, today's 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.

Lists of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling, Reporting and recordkeeping requirements.

[[Page 31114]] Dated: May 30, 1995.
Michael H. Shapiro,

Director, Office of Solid Waste.

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 2 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 2.--Wastes Excluded From Specific Sources

Facility	Address	Waste description

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Conversion Systems, Inc.	Horsham, Pennsylvania	Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) that is generated by Conversion Systems, Inc. (CSI) (using the Super Detox™ treatment process as modified by CSI to treat EAFD (EPA Hazardous Waste No. K061)) at the following sites and that is disposed of in Subtitle D landfills: Northwestern Steel, Sterling, Illinois after June 13, 1995. CSI must implement a testing program for each site that meets the following conditions for the exclusion to be valid: (1) Verification Testing Requirements: Sample collection and analyses, including quality control procedures, must be performed according to SW-846 methodologies. (A) Initial Verification Testing: During the first 20 operating days of full-scale operation of a newly constructed Super Detox™ treatment facility, CSI must analyze a minimum of four (4) composite samples of CSEAFD representative of the full 20-day period. Composites must be comprised of representative samples collected from every batch generated. The CSEAFD samples must be analyzed for the constituents listed in Condition (3). CSI must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 60 days after the generation of the first batch of CSEAFD. (B) Addition of New Super Detox™ Treatment Facilities to Exclusion: If the Agency's review of the data obtained during initial verification testing indicates that the CSEAFD generated by a specific Super Detox™ treatment facility consistently meets the delisting levels specified in Condition (3), the Agency will publish a notice adding to this exclusion the location of the new Super Detox™ treatment facility and the name of the steel mill contracting CSI's services. If the Agency's review of the data obtained during initial verification testing indicates that the CSEAFD generated by a specific Super Detox™ treatment facility fails to consistently meet the conditions of the exclusion, the Agency will not publish the notice adding the new facility. (C) Subsequent Verification Testing: For the Sterling, Illinois facility and any new facility subsequently added to CSI's conditional multiple-site exclusion, CSI must collect and analyze at least one composite sample of CSEAFD each month. The composite samples must be composed of representative samples collected from

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AS 2008-010, Exhibits

all batches treated in each month. These monthly representative samples must be analyzed, prior to the disposal of the CSEAFD, for the constituents listed in Condition (3). CSI may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.

(2) Waste Holding and Handling: CSI must store as hazardous all CSEAFD generated until verification testing as specified in Conditions (1)(A) and (1)(C), as appropriate, is completed and valid analyses demonstrate that Condition (3) is satisfied. If the levels of constituents measured in the samples of CSEAFD do not exceed the levels set forth in Condition (3), then the CSEAFD is non-hazardous and may be disposed of in Subtitle D landfills. If constituent levels in a sample exceed any of the delisting levels set in Condition (3), the CSEAFD generated during the time period corresponding to this sample must be retreated until it meets these levels, or managed and disposed of in accordance with Subtitle C of RCRA. CSEAFD generated by a new CSI treatment facility must be managed as a hazardous waste prior to the addition of the name and location of the facility to the exclusion. After addition of the new facility to the exclusion, CSEAFD generated during the verification testing in Condition (1)(A) is also non-hazardous, if the delisting levels in Condition (3) are satisfied.

(3) Delisting Levels: All leachable concentrations for those metals must not exceed the following levels (ppm): Antimony--0.06; arsenic--0.50; barium--7.6; beryllium--0.010; cadmium--0.050; chromium--0.33; lead--0.15; mercury--0.009; nickel--1;

selenium--0.16; silver--0.30; thallium--0.020; vanadium--2; and zinc--70. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR 261.24.

(4) Changes in Operating Conditions: After initiating subsequent testing as described in Condition (1)(C), if CSI significantly changes the stabilization process established under Condition (1) (e.g., use of new stabilization reagents), CSI must notify the Agency in writing. After written approval by EPA, CSI may handle CSEAFD wastes generated from the new process as non-hazardous, if the wastes meet the delisting levels set in Condition (3).

[[Page 31115]]

(5) Data Submittals: At least one month prior to operation of a new Super Detox™ treatment facility, CSI must notify, in writing, the Chief of the Waste Identification Branch (see address below) when the Super Detox™ treatment facility is scheduled to be on-line. The data obtained through Condition (1)(A) must be submitted to the Branch Chief of the Waste Identification Branch, OSW (Mail Code 5304), U.S. EPA, 401 M Street, SW, 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 five years. These records and data must be furnished upon request by EPA, or the State in which the CSI facility is located, and 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

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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.

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[FR Doc. 95-14338 Filed 6-12-95; 8:45 am]
BILLING CODE 6560-50-P

Notices For 2008 2007 2006 2005 2004 2003 2002 2001 2000 1999 1998 1997 1996 1995 1994

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

[Federal Register: January 15, 2002 (Volume 67, Number 10)]
[Rules and Regulations]
[Page 1888-1896]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr15ja02-5]

ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 261
[SW-FRL-7125-1]

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 delisting to Heritage Environmental Services, LLC (Heritage) to exclude treated Electric Arc Furnace Dust (EAFD) produced at Nucor Steel, Division of Nucor Corporation (Nucor) located in Crawfordsville, Indiana from the lists of hazardous wastes.

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?
    B. What Regulations Allow a Waste to Be Delisted?
II. Heritage's Delisting Petition
    A. What Waste Did Heritage Petition EPA to Delist?
    B. What Information Must the Petitioner Supply?
    C. What Information Did Heritage Submit to Support This Petition?
III. EPA's Evaluation and Final Rule
    A. What Decision Is EPA Finalizing and Why?
    B. What Are the Terms of This Exclusion?
    C. When Is the Delisting Effective?
    D. How Does This Action Affect the States?
IV. Public Comments Received on the Proposed Exclusion
    A. Comments and Responses from EPA
V. Regulatory Impact
VI. Congressional Review Act
VII. Executive Order 12875

I. Background

A. What Is a Delisting Petition?

A delisting petition is a request from to exclude waste from the

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* * * * * AS 2008-010, Exhibits * * * * *

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 us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste.

A petitioner remains obligated under RCRA to confirm that the waste remains nonhazardous based on the hazardous waste characteristics even if EPA has ``delisted'' the waste.

B. What Regulations Allow a Waste To Be Delisted?

Under 40 CFR 260.20 and 260.22, a person may petition the EPA to remove

[[Page 1889]]

waste at a particular generating facility from hazardous waste control by excluding the waste from the lists of hazardous wastes contained in Secs. 261.31 and 261.32. Specifically, Sec. 260.20 allows any person to petition the EPA 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 a person the opportunity to petition the EPA to exclude a waste on a ``generator specific'' basis from the hazardous waste lists.

II. Heritage's Delisting Petition

A. What Waste Did Heritage Petition EPA to Delist?

On August 3, 1999, Heritage petitioned EPA to exclude an annual volume of 30,000 cubic yards of K061 EAFD generated at Nucor Steel Corporation located in Crawfordsville, Indiana from the list of hazardous wastes contained in 40 CFR 261.32. K061 is defined as ``emission control dust/sludge from the primary production of steel in electric arc furnaces.''

B. What Information Must the Petitionor Supply?

Petitioners 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 EPA must determine that such factors do not warrant retaining the waste as hazardous.

C. What Information Did Heritage Submit To Support This Petition?

To support its petition, Heritage submitted descriptions and schematic diagrams of the EAFD treatment system; and detailed chemical and physical analyses of the treated EAFD.

III. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

Today the EPA is finalizing an exclusion to Heritage for a 30,000 cubic yards annual volume of K061 EAFD generated at the Nucor Steel facility in Crawfordsville, Indiana and treated by Heritage from the list of hazardous wastes.

Heritage petitioned EPA to exclude, or delist, the treated EAFD because Heritage believes that the petitioned waste does not meet the RCRA criteria for which it was listed 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 December 5, 2000, EPA proposed to exclude or delist Heritage's treated EAFD from the list of hazardous wastes in 40 CFR 261.32 and accepted public comment on the proposed rule (65 FR 75897). EPA considered all comments received, and for reasons stated in both the proposal and this document, we believe that the treated waste generated at the Nucor facility should be excluded from hazardous waste control.

B. What Are the Terms of This Exclusion?

Heritage must dispose of the treated EAFD in a Subtitle D landfill which has groundwater monitoring and which is permitted, licensed, or registered by a state to manage industrial waste. This exclusion is valid for a maximum annual rate of 30,000 cubic yards per year. Any amount exceeding this volume is not delisted under this exclusion. This exclusion is effective only if all conditions contained in today's rule

Electronic Filing - Received, Clerk's Office, October 8, 2008
* * * * * AS 2008-010, Exhibits * * * * *

are satisfied.

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 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 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 Heritage transports the petitioned waste to or manages the waste in any state with delisting authorization, Heritage must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

IV. Public Comments Received on the Proposed Exclusion

A. Comments and Responses From EPA

Comment: The DRAS is a more realistic model than any of its predecessors.

Response: EPA agrees with the comment.

Comment: EPA has stated that it believes the CML model is appropriate when evaluating whether to delist a waste, and has used the CML model as recently as the proposed delisting of August 8, 2000 and the final delisting of May 16, 2000.

Response: Region 5 believes that the delisting risk assessment software (DRAS) is a more sophisticated and more appropriate model and is now applying this model to all petitions currently under review.

Comment: The September 27, 2000 and December 5, 2000 Federal Registers did not indicate that the DRAS has been adopted by all EPA Regions, nor that it would be used in the future.

Response: At this time all Regions are using the DRAS model.

Comment: The model should be peer reviewed and the public should have the opportunity to provide adequate and meaningful comment.

Response: The model has been peer reviewed. The public has the opportunity to submit comments on the DRAS model during the comment period each time a delisting is proposed which is based on the DRAS model.

Comment: EPA is continuing to use the model before completing its own review of comments received. The DRAS may not be appropriate since it is currently being commented upon & revised.

Response: The Agency is continually striving to improve the tools available

[[Page 1890]]

for assessing risk. The Agency believes that at this time the DRAS model is the best available tool for estimating risk. Revisions and improvements to the model are always possible in the future.

Comment: The DRAS model assumes that the landfill is unlined and that leaching occurs from the beginning, which is counter to the 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.

Response: There are existing solid waste landfills which have no liner. Over time, liners may fail and delistings currently have no expiration date. Therefore it is reasonable to consider scenarios for liner failure or to assume that no liner exists.

Comment: The DRAS model assumption of minimal cover increases estimates of volatilization and particulate emissions, which may not be reasonable.

Response: We must consider the worst case scenario of minimal requirements for daily cover. Regulations requiring daily cover on municipal landfills do not necessarily apply to industrial solid waste landfills.

Electronic Filing - Received, Clerk's Office, October 8, 2008
* * * * * AS 2008-010, Exhibits * * * * *

Comment: The DRAS model is inflexible because site specific factors like hydrogeology, climate, ecology, and population density cannot be incorporated. The model should be modified to allow for the input of site and contaminant specific criteria. State or regional modeling criteria may be more stringent than the CMTP and have been ignored.

Response: At this time the Agency is not able to consider such site specific factors. The DRAS model is based on national averages of these factors and is intended to model a reasonable worst case. A State may always impose more stringent requirements based on site-specific factors.

Comment: DRAS is complex and EPA must explain the models and risk processes used in establishing regulatory limits including the assumptions, methodologies, pathways and variables used in the DRAS model.

Response: The DRAS Technical Support Document (DTSD) explains the risk algorithms used in the model including the methodologies, variables, pathways and assumptions. The DTSD is available on line at http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dtsd.htm.

Comment: 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 are 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 parameter estimates including 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.

Response: (1,2) The DRAS employs standard risk assessment default parameters that are accepted throughout the Agency in risk analyses (i.e., residential exposure 350 days/yr, and selection of the 90th percentile). 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. (3) The Agency has no way of knowing the direction of media flow and must assume that all media flow may move toward the receptor. (4) The Agency has no data to indicate that the landfill volume data and other data from the 1987 landfill survey report are not valid. When updated data are available, they will be incorporated into the analyses. (5) To maximize the impact of the waste, the model assumes uniform placement of the waste. (6) 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 and selects the most sensitive pathway for each constituent. (7,8) The groundwater fate and transport model used by the Agency to determine first order decay is EPA's Composite Model for Leachate Migration with Transformation Products (CMTP). The information used to develop the first order decay rate for different chemicals in CMTP is based on studies in which the separate processes of oxidation, biodegradation and hydrolysis could not be further isolated. The transformation rates cannot be easily adjusted because they are based on these empirical studies rather than on theoretical modeling in which variables can be altered at will. This model has been peer reviewed and received an excellent review from the Science Advisory Board (SAB). The Agency will continue to support the use of EPACMTP until a better assessment tool becomes available. (9) The Kow and pKa (octonal water partition coefficient and ionization constant) are not used in the development of leaching estimates because the DRAS relies on test data from leach testing to estimate the leaching potential of the waste. The Henry's law constant, although used in other aspects of the DRAS, is not used in the estimate of leaching and fate in groundwater. At this time, the CMTP does not account for volatilization of constituents from the groundwater as it moves through the subsurface.

(10) EPA assumed that all streams of sufficient size are fishable. This assumption is conservative, but not unreasonable as the final landfill location is not known. (11) 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.

Comment: Current science suggests that the skin and respiratory tract are targets for soluble nickel salts, yet the model literature states that the critical effects are decreased organ and/or body weights.

Response: 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. (1976) 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/kg/day) 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 observable

Electronic Filing - Received, Clerk's Office, October 8, 2008
* * * * * AS 2008-010, Exhibits * * * * *

adverse effects level (NOAEL), whereas 35 mg/kg/day was a lowest observable adverse effects level (LOAEL) for decreased body and organ weights. For further information, please refer to the Agency's IRIS database.

Comment: The bioconcentration factor (BCF) of 307 for nickel in fish is unsupported in EPA's own documents. Literature values are much less. BCF should not be used for predicting chronic toxicity. Some organs can regulate internal concentrations. Nickel has a low order of toxicity. Nickel does not bioaccumulate due to incomplete adsorption and rapid excretion. It is

[[Page 1891]]

Ni+2 , not the parent, that is persistent and bioavailable and determines toxicity.

Response: The 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). The studies used to derive the BCF for nickel are based on soluble nickel, which is present as the Ni+2 ion. The nickel concentration in the waste was assumed to be present as the Ni+2. The assumption is conservative, but not unreasonable since the nickel from the waste could be present as the Ni+2 ion at the point of exposure.

Comment: In aquatic environs, much of the nickel is present as both ionic and stable organic complexes. Hence much of the nickel is insoluble with minimal bioavailability. Also, soil which contains high organic matter will adsorb nickel and limit its mobility.

Response: The Agency agrees that some nickel may be insoluble, and have minimal bioavailability, since its mobility is dependent on the organic content of the soil. However, 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, has established a conservative estimate of pertinent variables.

Comment: MINTEQA2 has been reported to contain outdated and inaccurate thermodynamic estimates (e.g., for complexation of metals like cadmium that are dependent on disolved oxygen content (DOC and pH). Hence the model may not reasonably estimate speciation and mobility. 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.

Response: The Agency continues to review chemical-specific parameter data. Where appropriate, these data will be incorporated into the DRAS analyses.

Comment: The model may estimate fate and transport concentrations that exceed water solubility.

Response: 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 waste concentrations exceed soil saturation concentrations. Ambient water concentrations may be influenced by more than chemical solubility (e.g., organic content).

Comment: The use of the NOAEL in Rfd calculations has been challenged by the SAB. The dose response relationship and the consistency in response level are not identified. Use of the NOAEL for regulatory limits is based more on experimental exposure design than on biological relevance.

Response: The EPA still uses the NOAEL in Rfd. The SAB did not review the entire DRAS. The EPA risk assessors who peer reviewed the DRAS did not question the use of the NOAEL in Rfd. Until such time that the Agency redefines RfD methodology, the delisting program will continue to determine hazards based on RfDs recommended by EPA's IRIS database. The Agency continues to use RfDs in delisting determinations in a manner consistent with EPA risk assessment methodology. The EPA risk assessors and EPA ORD scientists who have peer reviewed the DRAS have not questioned the method in which RfDs are employed in the DRAS analyses.

Comment: Terms 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?

Response: No occurrences of Cw could be found in the DTSD or in the proposed exclusion. The term Cwaste is used twice in Chapter 4 of the DTSD to refer both to the total constituent concentration in a solid matrix in a landfill and to the total constituent concentration in a liquid in a surface impoundment.

Comment: USEPA cited various regulatory and statutory sections such as Secs. 261.11(a)(3)(i) thru (xi) describing factors to consider in listing/delisting waste, but there was very little analysis of those factors. This prompts the conclusion that the USEPA is arbitrarily proposing to grant the HES petition.

Response: All criteria in 40 CFR 261.11(a)(3) were considered in accordance with Sec. 260.22(d). The DRAS program was developed in consideration of all of the factors presented in 40 CFR 261.11(a)(3). Consitituent specific toxicology, chemical, and physical data are in

Electronic Filing - Received, Clerk's Office, October 8, 2008
* * * * * AS 2008-010, Exhibits * * * * *

the database used in the DRAS software as are appropriate models for evaluating migration and exposure. The DRAS is not currently capable of evaluating degradation products as described in 40 CFR 261.11(a)(3)(iii) through (vi) and the risk posed by degradation products would typically be evaluated independently. The petitioned waste, however, did not contain any chemicals which have known degradation products and therefore this additional analysis was not necessary. EPA considered plausible types of improper management in accordance with Sec. 261.11(a)(3)(vii) when it assumed that contaminants will migrate from the landfill to a receptor well, uncontrolled erosion of exposed wastes will migrate into a stream, and long-term absence of daily cover will expose the waste to the atmosphere. Operating a facility in this manner is considered improper management as it violates the proper management standards and requirements promulgated for licensed Subtitle D landfills set forth in 40 CFR parts 257 and 258.

Comment: DRAS does not evaluate important ecological receptors which may significantly impact the back calculated maximum permissible waste concentrations derived from DRAS.

Response: The DRAS model does include consideration of ecological impacts. A complete description of the screening for ecological impact is in Chapter 4 of the DTSD available on the internet at http:// www.epa.gov/earth1r6/6pd/ rcra--c/pd-o/dtsd.htm.> The maximum observed lead and zinc in the petitioned waste exceeded the surface water screening values, indicating the need to examine the possible ecological impact more closely. The DRAS model does not account for the fact that some of the constituents in the eroded waste will not be dissolved. Since water quality criteria used for lead and zinc are based on dissolved concentrations, the total water concentration predicted by DRAS was conservative. Using conservative values published by EPA's Office of Water to convert total water concentrations to dissolved concentrations (30% for zinc and 20 % for lead), the surface water quality criteria were not exceeded.

Comment: How does the model distinguish metals that are important for some animals?

Response: If the commenter is referring to metals as micronutrients, delisting levels for metals far exceed any micronutrient levels.

Comment: What criteria determine whether the allowable leachate concentration is set by the Safe Drinking Water Act (SDWA) Maximum Contaminant Level (MCL), DRAS calculation, treatment technology or toxicity characteristic level?

Response: The allowable level is the most conservative of the DRAS

[[Page 1892]]

calculations, a calculation based on the SDWA MCL or the toxicity characteristic level. The exception to this is the level for arsenic which is frequently calculated based on the concentration allowed by the MCL.

Comment: Does EPA policy require that MCL or surface water criteria be met? Does this policy apply at all downgradient distances or just those corresponding to the DAF?

Response: 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.

Comment: 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.

Response: The Agency does not usually consider background levels when establishing delisting levels. The maximum allowable levels of nickel in the waste and in the TCLP leachate are not less than the values mentioned in the comment.

Comment: The pH of landfill leachate is generally higher than the pH of the extraction fluid used in the TCLP which affects the leachability of the metals.

Response: The leachability of this waste was measured using three different extraction fluids with pH values of 2.88, 6.5, and 12.0 to evaluate whether the waste leachability will be affected by the pH of various environments.

Comment: The duration of leaching 18 minutes or 18 hours may over or underestimate the leachability of some constituents. TCLP does not account for variations in time to equilibrium for different species. The TCLP under predicts the maximum concentation of some anions and does not account for a variety of processes that can affect leachate quality, quantity and migration.

Response: It is impossible to determine the optimum time or other factors necessary to maximize the leaching of each constituent in every matrix in any environmental condition. A considerable amount of time and effort went into the development of the TCLP and the Agency believes that it is a reasonable laboratory test and that the TCLP results generally correlate well with environmental measurements.

Comment: Does the TCLP account for DOC? DOC in the leachate affects the mobility of metals in the aquifer.

Response: The TCLP does not account for DOC. However, in performing

Electronic Filing - Received, Clerk's Office, October 8, 2008
* * * * * AS 2008-010, Exhibits * * * * *

the TCLP procedure using alternative extraction fluids, Heritage took steps to remove dissolved oxygen from the neutral and basic extraction fluids. See proposed rule, 65 FR 75900, December 5, 2000.

Comment: It may be appropriate for the Agency to consider data from the SPLP.

Response: The Agency would consider any additional data that the petitioner chooses to submit. At this time the Agency requires leach testing for stabilized waste using the TCLP procedure at three different pHs. The Agency also evaluates data from the multiple extraction procedure. During the development of the sampling and analysis plan for a delisting petition, the Agency and petitioner discuss which analytical methods are appropriate for characterizing the waste.

Comment: For chemicals not previously modeled with the EPACMTP, what is the effect of assuming a DAF of 18?

Response: The Dilution Attenuation Factor (DAF) of 18 is a conservative value determined by the EPACMTP fate and transport model for the landfill waste management scenario. The DAF of 18 represents the class of organic chemicals with 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.

Comment: What is the effect of using one half detection level or zero for non detects?

Response: The use of one half the detection level is a compromise between the use of zero and the use of the detection limit. Using one half of the detection level protects against inappropriately high detection levels.

Comment: The model does not account for the uncertainty or sensitivity estimate. Without a sensitivity analysis it is impossible to determine if a single pathway or a small number of pathways dominate the risk estimate. If data for most sensitive parameter is uncertain or limited, confidence in the result will be poor.

Response: The DRAS provides the forward-calculated risk level and back-calculated allowable waste concentration for each exposure pathway. The user is thereby able to determine which pathway or pathways dominate the estimate of risk for each chemical. These analyses are currently provided on the Chemical-Specific Results screen.

Comment: The model determines that ground concentrations and a theoretical drinking water well that is 90th percentile of all predicted concentrations from Monte Carlo analysis. What is the sensitivity of using the 50th percentile on release and risk estimates?

Response: The DRAS assessment always defaults to high-end values from the 90th percentile. The model was not run using the 50th percentile, so it is not possible to determine the sensitivity at the 50th percentile.

Comment: Does a hazard index (HI) of greater than one mean that the waste cannot be delisted, or does it indicate that the model is overly conservative?

Response: An HI of one does not mean that the waste cannot be delisted, but a more thorough evaluation of the waste will be necessary. In cases where the HI of the waste exceeds one, the Agency will 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.

Comment: EPA has rationalized the exceedance of its own delisting program target risk level of 1 x 10-6 by reference to the cancer risk range of 1 x 10-4 to 1 x 10-6 acceptable in other programs. Although this risk range may be appropriate in the context of corrective action, it may not be warranted in the delisting program where the waste is yet to be generated and placed into the environment.

Response: This risk is within the target risk range in the delisting program of 1 x 10-4 to 1 x 10-6. The commentor is referred to chapter 4 of the DRAS DTSD which states that the target risk range is 1 x 10-4 to 1 x 10-6. Attachment A of the RCRA Delisting Program Guidance Manual for the Petitioner also states that the target risk range is 1 x 10-4 to 1 x 10-6.

Comment: Definition of the criteria used to determine de minimis risk levels and risk estimates should be provided. De minimis risk is usually considered to be a risk of less than 10-6 or 1 in a million.

Response: The term de minimis risk is used to refer to a risk that is sufficiently low that it need not be considered. The commentor is correct that a de minimis risk is usually considered by regulatory agencies to be a risk at or below 10-6 over a 70 year life time.

[[Page 1893]]

Comment: Long term variation, waste characterization procedures

Electronic Filing - Received, Clerk's Office, October 8, 2008
* * * * * AS 2008-010, Exhibits * * * * *

used by Heritage, and specific information used in the fate & transport model are lacking.

Response: Temporal variability and waste characterization procedures used by Heritage were evaluated. The fate and transport data used by the delisting risk assessment model is based on national averages for a reasonable worst case scenario, not on site specific information.

Comment: It may be more appropriate to set standards using statistical procedures from empirical data from TCLP analyses rather than generic risk assessment and fate and transport.

Response: Empirical data is not a reliable predictor of future risk. We believe that the DRAS model is a more appropriate tool than empirical data for determining acceptable levels based on risk.

Comment: Is 30,000 cubic yards the untreated or the treated K061? Will any amount over 30,000 cubic yards be regulated as K061? What information was provided to determine annual volume?

Response: The proposed delisting is for 30,000 cubic yards of treated waste. Any treated K061 in excess of 30,000 yds is not delisted. The Agency accepts the facility's assessment and certification of data submitted.

Comment: What is a mixing device?

Response: A mixing device is a unit in which mixing occurs.

Comment: Much of the relevant information was confidential business information, such as what treatment reagents were used or specifications of a mixing device.

Response: Heritage has claimed information which it submitted on equipment, reagents, and process as confidential. Heritage believes that such information in the public domain could be injurious.

Comment: No details were given on and what dust characteristics were evaluated.

Response: Information on dust characteristics of the treated dust is provided in section 3.0 of the petition.

Comment: Are the larger particles that are removed in the dropout chamber ever reintroduced into the EAFD for treatment? Would these larger particles meet the definition of K061? Are the silos in which EAFD is accumulated considered accumulation tanks since the exclusion is only for EAFD that has been treated.

Response: The material in the dropout box is not K061 and is not reintroduced into the EAFD for treatment. The silos are part of the production unit and not RCRA regulated tanks. Baghouse silos that are directly connected via piping to the baghouse are an integral part of the EAFD emission control system. Furthermore, the waste is accumulated in the silos for less than 90 days, and the silos are part of the treatment equipment. The point of generation does not occur until the treatment is complete and the waste exits the unit. Therefore, the silos are not accumulation tanks and are not subject to RCRA.

Comment: US EPA should re-evaluate the waste treatment process and QA criteria to assure variations in the treated EAFD are minimized.

Response: If future verification samples indicate excessive variations, the waste will be re-evaluated.

Comment: There are no details on the fingerprinting procedures or the quality control measures used to assure proper and consistent treatment of the waste.

Response: The sampling strategy addressed the waste exiting the unit. Fingerprinting would not be appropriate since the waste does not undergo further treatment after it exits. The quality control measures are set forth in the sampling and analysis plan. The required verification sampling is intended to assure that the treated waste remains within acceptable limits. Verification samples which exceed the delisting levels set forth in this rule may invalidate this delisting.

Comment: The composite sampling procedure in the initial month may not be sufficient to describe the variation of metals from different mixes of scrap steel. No comparison of the variability of the metals is given. EPA should adopt statistical sampling and analytical procedures from process and quality control engineering methodology. The limited amount of sampling does not provide for waste variability.

Response: A statistical approach based on extensive data would be welcomed in future petitions. Since the K061 dust is generated at a single facility, the Agency believes that the samples taken represent a reasonable range of both spacial and temporal varibility. Some confidential data was submitted demonstrating waste variability at this site.

Comment: The presence of VOCs, SVOCs and PCBs is considered unlikely. However, one sample is insufficient to determine the presence or absence of these compounds. Verification should require that a limited number of samples be analyzed for these constituents.

Response: Based on an understanding of the process, the Agency believes that these constituents are not likely to be present in the waste. Generator knowledge also supports the absence of these constituents in the waste. In this case, a single sample is considered sufficient to verify the absence of these compounds.

Comment: The commenter recommends that split samples should be taken by EPA.

Response: EPA does not sample wastes in support of delisting petitions. The signed certification is accepted as proof that all analyses were done properly and the results are reported correctly.

Comment: Listed waste needs to meet technology based LDRs prior to disposal. The delisting level for lead has been set at 2.4 mg/L TCLP

Electronic Filing - Received, Clerk's Office, October 8, 2008
* * * * * AS 2008-010, Exhibits * * * * *

which is above the LDR standard of .75 mg/L TCLP. Why weren't LDRs considered in setting the delisting standard?

Response: The proposed exclusion for this waste would be effective at the point of generation. Since LDRs attach at the point of generation this waste would not be considered hazardous and therefore is not subject to LDRs.

Comment: There are no criteria listed for what constitutes a significant change to the treatment process or a change in the chemicals used.

Response: A change either to the treatment process or in the chemicals used is significant if it results in a change in the composition of the waste.

Comment: In most cases where samples are required to support decision-making under RCRA, grab samples are required. Samples taken in support of this petition were composite samples. EPA should explain why results based on composite sampling were allowed and accepted and why these samples do not render the decision to grant the HES petition inappropriate due to inconsistent information.

Response: In the delisting program, composite samples are preferred, except in the case of volatile constituents. Multiple composite samples provide a better profile of the waste.

Comment: There should be recognition that a single grab sample taken by a regulating authority would be sufficient for a determination of legitimacy of the exclusion. The proposed delisting seems to indicate that only the monthly sampling done by Heritage could cause the exclusion to be suspended.

Response: The Agency always has the right to take samples to verify compliance. Such samples taken by the Agency could provide a basis for revoking a delisting.

Comment: A more rigorous initial sample was used to characterize the

[[Page 1894]]

variability for EAFD at USX Steel Corporation in Gary Indiana. Is it appropriate to have two different standards for USX and Heritage?

Response: All delisting decisions, including the initial sampling for delisting proposals are site specific. There will be variations.

Comment: In the ANPRM, 65 FR 37932, June 19, 2000, EPA has reservations about the effectiveness of using stabilization to immobilize metal wastes. Stabilization has not been scientifically proven to be reliable over the long term for disposal of such wastes. Allowing this waste to be placed in general purpose landfills which have fewer engineered features to prevent leaching and migration of heavy metals into groundwater ignores sound science. EPA needs to explain why disposing of a hazardous waste in this less protective manner should be allowed, absent any evidence confirming that it will work.

Response: At this time, stabilization is considered to be the best available treatment for metal bearing wastes. We have no evidence that constituents of concern have ever leached from this stabilized waste. To assure that the waste continues to meet the levels established here, we are requiring periodic testing of the waste and placement of the waste in a solid waste landfill which has ground water monitoring.

Comment: A similar process used in Ohio has caused concern because of possible leaching of substances which were supposedly stabilized. EPA cited Envirosafe Services in Ohio as having high leachate levels of various metals.

Response: Envirosafe Services in Ohio was not cited by US EPA for high levels of metals in the leachate. The facility was cited by Ohio EPA for excessive volume of leachate, although this citation may be attributed to be an error in measurement. Although the commentor did not define what constitutes high levels of metals in the leachate, the leachate must be treated as necessary to meet regulated standards before disposal. In addition, the concentrations of metals in the groundwater are monitored and regulated. While EPA may consider the experiences at other locations, petitioned wastes are evaluated on a site specific basis. The petitioned waste meets the criteria for delisting when the levels set forth in the notice are met.

Comment: EPA has concluded that over the long term, the actual leachate concentrations suggest that significant groundwater contamination may result after the eventual failure of liner and other contaminant controls.

Response: The DRAS model calculates risk assuming a worst case scenario of no liner at all. Under this scenario, the waste can be delisted.

Comment: An independent engineering expert has warned that the massive weight of stabilized K061 on the liner could produce hundreds of high pressure points which will burst and result in leakage of the liner and seepage of groundwater into and through the cell. The problem of groundwater leaching out the heavy metals in a Class C landfill cannot be ignored, but EPA did not analyze it.

Response: Currently a liner is the best available technology for landfills, regardless of whether it is a hazardous waste landfill (Subtitle C) or a solid waste landfill (Subtitle D). However, the model used to assess the risk of a delisted waste assumes that no liner is present.

Comment: It is scientifically established that lead can actively

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* * * * * AS 2008-010, Exhibits * * * * *

affect hydration of the concrete ingredients of the stabilization process. Lead tends to locate near the surface of cement-like materials and is easily leached into water. This is a concern in a less-secure Class C landfill which is not built to withstand the immense weight of stabilized K061.

Response: There is no evidence that lead has leached from this waste in the past and therefore we cannot assume that it will do so in the future. Since the model assumes no liner, the weight of the stabilized K061 and its possible effect on a liner is not relevant. It is assumed that the commentor is concerned about disposal in a Subtitle D landfill, since a Subtitle C landfill which the commentor referred to is more secure, not less secure as stated in the comment.

Comment: Arsenic and cadmium have been most frequently found in hazardous concentrations on both a total and dissolved constituent basis.

Response: Only very low concentrations of these constituents leach from the petitioned waste in a TCLP analysis. EPA believes that at these low concentrations, these constituents do not pose a risk.

Comment: EPA has expressed concern over migration of metals from stabilized waste to groundwater, yet EPA proposed to grant the Heritage petition without reviewing any groundwater monitoring information. In fact, Heritage submitted no groundwater monitoring information.

Response: HES has submitted groundwater monitoring data for their Subtitle C landfill where the waste is currently being disposed. The data does not indicate the presence of any constituent above health based levels.

V. 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 final 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.

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

[[Page 1895]]

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

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* * * * * AS 2008-010, Exhibits * * * * *

recordkeeping requirements.

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

Dated: December 12, 2001.
Gerald Phillips,
Acting 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 2 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 Secs. 260.20 and 260.22.

* * * * *

Table 2.--Wastes Excluded From Specific Sources

Facility	Address	Waste description
* *	* * *	* *
Heritage Environmental Services, LLC., at the Nucor Steel facility.	Crawfordsville, Indiana...........	Electric arc furnace dust (EAFD) that has been generated by Nucor Steel at its Crawfordsville, Indiana facility and treated on site by Heritage Environmental Services, LLC (Heritage) at a maximum annual rate of 30,000 cubic yards per year and disposed of in a Subtitle D landfill which has groundwater monitoring, after January 15, 2002. (1) Delisting Levels: (A) The constituent concentrations measured in either of the extracts specified in Paragraph (2) may not exceed the following levels (mg/L): Antimony--0.206; Arsenic--0.0936; Barium--55.7; Beryllium--0.416; Cadmium--0.15; Chromium (total)--1.55; Lead--5.0; Mercury--0.149; Nickel--28.30; Selenium--0.58; Silver--3.84; Thallium--0.088; Vanadium--21.1; Zinc--280.0. (B) Total mercury may not exceed 1 mg/kg. (2) Verification Testing: On a monthly basis, Heritage or Nucor must analyze two samples of the waste using the TCLP method, the TCLP procedure with an extraction fluid of pH 12 ± 0.05 standard units and SW-846 Method 7470 for mercury. The constituent concentrations measured must be less than the delisting levels established in Paragraph (1). (3) Changes in Operating Conditions: If Nucor significantly changes the manufacturing process or chemicals used in the manufacturing process or Heritage significantly changes the treatment process or the chemicals used in the treatment process, Heritage or Nucor must notify the EPA of the changes in writing. Heritage and Nucor must handle wastes generated after the process change as hazardous until Heritage or Nucor has demonstrated that the wastes continue to meet the delisting levels set forth in Paragraph (1) and that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced and Heritage and Nucor have received written approval from EPA. (4) Data Submittals: Heritage must submit the data obtained through monthly verification testing or as

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* * * * * AS 2008-010, Exhibits * * * * *

required by other conditions of this rule to U.S. EPA Region 5, Waste Management Branch (DW-8J), 77 W. Jackson Blvd., Chicago, IL 60604 by February 1 of each calendar year for the prior calendar year. Heritage or Nucor must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. Heritage or Nucor 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).

(5) Reopener Language--(A) If, anytime after disposal of the delisted waste, Heritage or Nucor 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 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 maximum allowable point of exposure concentration predicted by the CMTP model, then Heritage or Nucor 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 (5)(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 Heritage and Nucor 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 Heritage and Nucor with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. Heritage and Nucor shall have 30 days from the date of the Regional Administrator's notice to present the information.

[[Page 1896]]

(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.

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Notices For 2008 2007 2006 2005 2004 2003 2002 2001 2000 1999 1998 1997 1996 1995 1994

EXHIBIT B

PEORIA DISPOSAL COMPANY

RESPONSE TO INFORMATION REGARDING PM10 EMISSIONS

Peoria Families Against Toxic Waste (PFATW) and Sierra Club Heart of Illinois Group submitted on March 27, 2006 as Exhibit A an Evidentiary Summary. Contained in that Exhibit on Page 13 of 51 are statements regarding PM-10 emissions from PDC. Included in support of this is PFATW Exhibit B dated 3/25/2006. PFATW asserts that PDC "exceeded the annual allowable emissions established by permit for the waste processing facility by the Illinois EPA". This is false. This is another example of PFATW misrepresenting the facts regarding PDC's facility. First, the air emissions for PDC's waste treatment facilities are not a part of PDC's landfill application and do not apply to the expansion landfill. However, in PDC's interest to provide the County Board all information relative to PDC's facility, PDC has discussed thoroughly the air emissions from the treatment facilities. PFTAW asserts that PDC is violating its air permit regarding PM-10. This is in direct conflict with PFATW's own submittal in its Exhibit B of our air permit inspection which supports that PDC is in full compliance. The PFATW Evidentiary Summary (PES) is factually incorrect regarding PM10 emissions from PDC #1. The reported emissions appearing on the PES are accurate as they were reported in the respective annual reports to the IEPA. It is inaccurate, however, for the PES to state that the reported emission rates exceed those established in our permit since our facility permit, with which we are in full compliance as verified by the IEPA through its 2004 inspection, does not regulate PM10 emissions.

The allowable emissions cited in the PES are not permit limits, but rather meaningless data that are generated by the IEPA computer program and appear each year on our reporting forms, notwithstanding the fact that they have no basis in reality, or applicability to facility emissions. We have discussed this with the Agency several times over the years and have been instructed to disregard those numbers and they are not data we are obligated to correct. John Steffen of IEPA Air Division again verified in a phone conversation on March 28, 2006 with Ron Welk, PDC Director of Operations, that this understanding is still true. He said if there is no number (in the permit system), "the computer grabs a number." He also said that their database program hasn't changed since 1992, and likely will not be upgraded anytime soon due to budget issues.

The facts are that PM-10 is dust. PDC has performed stack testing of its pollution control system in 2006. As a result of this testing, and if the 2006 actual stack test data was used to develop the 2004 report, PDC's reported emissions from the waste treatment baghouse for 2004 would have been 8.08 tons. Of these 8.08 tons, it is estimated that 6.4 tons would be PM-10. It is also notable that the 8 metals analyzed were only 1.02% of the total as was testified to at the siting hearing. The remainder would represent reagents used in the process such as Portland cement.

In summary, PDC has authorization to emit 33.8 tons of total particulate matter. As there is no permit limit on PM-10, PM-10 may be emitted up to the total particulate matter level of 33.8. PDC has been reporting well below that total and is in full compliance.

106-853

EXHIBIT F

PEORIA DISPOSAL COMPANY

RESPONSE TO ALLEGATIONS THAT PDC LANDFILL IS LEAKING

The Peoria Families Against Toxic Waste (PFATW) Evidentiary Summary dated March 27, 2006 contains a statement on Page 14 of 51 which reads as follows: "Experts on both sides agree that low levels of contaminants from PDC No. 1 have already penetrated into the aquifer system below it". This statement is false and completely contrary to the application, testimony and the record. The support for this "purported evidence" is a Peoria Journal Star article dated 2/25/2006. However, the evidence provided under direct testimony and subject to cross examination actually shows that no impact on groundwater has occurred as a result of either the closed or active portions of PDC's landfill.

Kenneth Liss of Andrews Environmental Engineering provided written and oral evidence regarding the groundwater quality at PDC's landfill. The written and oral testimony based on a very in-depth and complete review of all the site specific groundwater data available to Mr. Liss led him to conclude that there has been no impact on groundwater from either the closed or active landfill units downgradient of PDC's landfill. Further, Dr. Larry Barrows of Andrews Environmental Engineering supported this view in his testimony. Therefore, no expert witness for the applicant ever stated in the application, testimony, or the record that PDC's landfill is impacting groundwater.

Furthermore, the opponent's only expert witness, Mr. Chuck Norris, did not state under oath that PDC's landfill is impacting groundwater. Page 210 of the Friday, February 24, 2006 testimony provides testimony under oath and under cross examination as to Mr. Norris' testimony regarding impact on groundwater from PDC's activities. Mr. Mueller asked in cross examination of Mr. Norris, "Did I also hear you correctly to say that you're not saying that any disposal unit, opened, closed or otherwise at this site, is leaking; rather you're saying there are man-made chemicals in the aquifer and we don't know where they came from? Mr. Norris' responded, "We do not know with certainty where they came from. We do know they are there". Mr. Mueller asked, "So you're not saying that they're coming from PDC?" Mr. Norris responded, "No I'm not. The comments I'm making are independent of the source, independent of the relative concentrations."

Therefore, the facts and the evidence show that experts for the applicant all agreed that groundwater has not been impacted by PDC's landfill units and the one expert for the opponents had no opinion on the source of any man-made chemicals in the groundwater. Specifically, he stated he is not testifying as to the contaminants coming from the PDC landfill, either closed or active.

The confusion regarding this issue appears to be the reported detection of very low levels of certain volatile organic compounds in wells that are hydraulically upgradient of the PDC facility. The compounds are below the Practical Quantitation Limit (PQL) with the exception of one instance. The PQL is the lowest level that can be routinely quantified and reported by a laboratory. This is why IEPA established PQL as the level at which PDC must determine compliance. The PDC permits established 2 times PQL as an event which must be investigated, or 2 parameters beyond 1 times PQL. Therefore, these detections below PQL do not necessarily show with certainty that the compounds are even present.

More importantly, however, these compounds were detected in monitoring wells upgradient to the facility, not down gradient the facility. As stated in Mr. Liss' testimony, the most obvious potential source of these is from an old unregulated landfill located due north of the PDC property. This landfill was located in direct connection with the unsaturated sand unit and flows toward PDC's northern boundary. PDC does not and has not owned this property. It is believed that opponents are confused that the discussion regarding this off site landfill not owned by PDC was misunderstood to be PDC's closed landfill units.

In summary, no evidence is in the application, testimony or record that concludes that PDC's landfill units have impacted groundwater.

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