

Dated: December 16, 1994.

**Felicia Marcus,**

*Regional Administrator.*

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

**PART 70—[AMENDED]**

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by adding the entry for Nevada in alphabetical order to read as follows:

**Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs**

\* \* \* \* \*

**Nevada**

(a) (Reserved)

(b) Washoe County District Health Department: submitted on November 18, 1993; interim approval effective on March 6, 1995; interim approval expires February 5, 1997.

\* \* \* \* \*

[FR Doc. 95-253 Filed 1-4-95; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 261**

[SW-FRL-5130-6]

**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) is granting a final exclusion from the lists of hazardous wastes contained in EPA regulations for certain solid wastes generated at Bethlehem Steel Corporation (BSC), Sparrows Point, Maryland. This action responds to a delisting petition submitted under § 260.20, which 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 under § 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

**EFFECTIVE DATE:** January 5, 1995.

**ADDRESSES:** The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, and is available for viewing (room

M2616) from 9 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-94-B8EF-FFFFF". The public may copy material from any regulatory docket at no cost for the first 100 pages, and at \$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 Shen-yi Yang, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260-1436.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Authority*

Under §§ 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 §§ 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that:

(1) The waste to be excluded is not hazardous based upon the criteria for which it was listed, and

(2) No other hazardous constituents or factors that could cause the waste to be hazardous are present in the wastes at levels of regulatory concern.

*B. History of This Rulemaking*

Bethlehem Steel Corporation, located in Sparrows Point, Maryland, petitioned the Agency to exclude from hazardous waste control its chemically stabilized wastewater treatment filter cake presently listed as EPA Hazardous Waste No. F006. After evaluating the petition, EPA proposed, on March 4, 1994, to exclude BSC's waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (see 59 FR 10352). This rulemaking finalizes the proposed decision to grant BSC's petition.

**II. Disposition of Delisting Petition**

Bethlehem Steel Corporation, Sparrows Point, Maryland.

*A. Proposed Exclusion*

Bethlehem Steel Corporation (BSC), located in Sparrows Point, Maryland, is involved in the production of tin and chromium plated parts and steel strip. BSC petitioned the Agency to exclude, from hazardous waste control, its chemically stabilized wastewater treatment filter cake presently listed as EPA Hazardous Waste No. F006—

"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum". The listed constituents of concern for EPA Hazardous Waste No. F006 waste are cadmium, hexavalent chromium, nickel, and cyanide (complexed) (see Part 261, Appendix VII).

In support of its petition, BSC submitted:

(1) Detailed descriptions of its manufacturing, waste treatment, and stabilization processes, including schematic diagrams;

(2) Material Safety Data Sheets (MSDSs) for all trade name products used in the manufacturing and waste treatment processes;

(3) Results from total constituent analyses for the eight Toxicity Characteristic (TC) metals listed in § 261.24, nickel, cyanide, zinc, and sulfide from representative samples of the dewatered (unstabilized) filter cake and the stabilized filter cake;

(4) Results from the EP Toxicity Test and the Toxicity Characteristic Leaching Procedure (TCLP, SW-846 Method 1311) for the eight TC metals (except for barium and selenium) and nickel from representative samples of the dewatered (unstabilized) filter cake, uncured stabilized filter cake, and the cured stabilized filter cake;

(5) Results from total oil and grease analyses from representative samples of the dewatered (unstabilized) filter cake and stabilized filter cake;

(6) Results from the Multiple Extraction Procedure (MEP, SW-846 Method 1320) for the eight TC metals (except for barium and selenium) and nickel from representative samples of the stabilized filter cake;

(7) Test results and information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity;

(8) Results from the TCLP analyses for the TC volatile and semivolatile organic compounds from representative samples of the dewatered (unstabilized) filter cake; and

(9) Results from total constituent analyses for hexavalent chromium from representative samples of dewatered (unstabilized) filter cake.

The Agency evaluated the information and analytical data provided by BSC in support of its petition and determined that the hazardous constituents found in

the petitioned waste would not pose a threat to human health and the environment. Specifically, the Agency used the modified EPA Composite Model for Landfills (EPACML) to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency determined that the constituents in BSC's petitioned waste would not leach and migrate at levels that would result in groundwater concentrations above the Agency's health-based levels used in delisting decision-making. See 59 FR 10352, March 4, 1994, for a detailed explanation of why EPA proposed to grant Bethlehem Steel Corporation's petition for its chemically stabilized wastewater treatment filter cake.

#### *B. Response to Public Comments*

The Agency did not receive any comments on the proposed rule.

#### *C. Final Agency Decision*

For the reasons stated in the proposal and in this final rule, the Agency believes that BSC's chemically stabilized wastewater treatment filter cake should be excluded from listing as a hazardous waste. The Agency, therefore, is granting a final exclusion to Bethlehem Steel Corporation, located in Sparrows Point, Maryland for its chemically stabilized wastewater treatment filter cake, described in its petition as EPA Hazardous Waste No. F006.

This exclusion only applies to the processes and waste volume (a maximum of 1,100 cubic yards generated annually in stabilized filter cake form) covered by the original demonstration. The facility would require a new or amended exclusion if there is an adverse change in composition of treated waste such that levels of hazardous constituents increase significantly (e.g., from changes to manufacturing or treatment processes). (Note, however, that changes in the stabilization process are allowed as described in Condition (4).) Continued evaluation for levels of hazardous constituents will be achieved by the annual verification testing specified in Condition (1)(C). Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated either in excess of 1,100 cubic yards per year or from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction by this final exclusion, the generator of a delisted

waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a state to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation (see 40 CFR part 260, appendix I).

#### **III. Limited Effect of Federal Exclusion**

The final exclusion being granted today is being 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 both Federal and State programs, petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

#### **IV. Effective Date**

This rule is effective January 5, 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 Procedures 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. This rule to grant an exclusion is not significant, since its effect, is to reduce the overall costs and economic impact

of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional economic impact due to today's rule. Therefore, this rule is not a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

#### **VI. Regulatory Flexibility Act**

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

This amendment will not have any adverse economic impact on any small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and it is limited to one facility. 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 USC § 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

#### **List of Subjects in 40 CFR Part 261**

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

Dated: December 19, 1994.

**Elizabeth A. Cotsworth,**  
*Acting 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**

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

alphabetical order by facility to read as follows:

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

2. In Table 1 of Appendix IX of Part 261, add the following wastestream in

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

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

| Facility                          | Address                        | Waste description   |
|-----------------------------------|--------------------------------|---|
| *<br>Bethlehem Steel Corporation. | *<br>Sparrows Point, Maryland. | <p>* * * * *</p> <p>Stabilized filter cake (at a maximum annual rate of 1100 cubic yards) from the treatment of wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after [insert date of publication in FEDERAL REGISTER]. Bethlehem Steel (BSC) must implement a testing program that meets the following conditions for the exclusion to be valid:</p> <p>(1) <i>Testing:</i> Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW-846 methodologies. If EPA judges the stabilization process to be effective under the conditions used during the initial verification testing, BSC may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). BSC must continue to test as specified in Condition (1)(A) until and unless notified by EPA in writing that testing in Condition (1)(A) may be replaced by Condition (1)(B) (to the extent directed by EPA).</p> <p>(A) <i>Initial Verification Testing:</i> During at least the first eight weeks of operation of the full-scale treatment system, BSC must collect and analyze weekly composites representative of the stabilized waste. Weekly composites must be composed of representative grab samples collected from every batch during each week of stabilization. The composite samples must be collected and analyzed, prior to the disposal of the stabilized filter cake, for all constituents listed in Condition (3). BSC must report the analytical test data, including a record of the ratios of lime kiln dust and fly ash used and quality control information, obtained during this initial period no later than 60 days after the collection of the last composite of stabilized filter cake.</p> <p>(B) <i>Subsequent Verification Testing:</i> Following written notification by EPA, BSC may substitute the testing condition in (1)(B) for (1)(A). BSC must collect and analyze at least one composite representative of the stabilized filter cake generated each month. Monthly composites must be comprised of representative samples collected from all batches that are stabilized in a one-month period. The monthly samples must be analyzed prior to the disposal of the stabilized filter cake for chromium, lead and nickel. BSC may, at its discretion, analyze composite samples more frequently to demonstrate that smaller batches of waste are non-hazardous.</p> <p>(C) <i>Annual Verification Testing:</i> In order to confirm that the characteristics of the treated waste do not change significantly, BSC must, on an annual basis, analyze a representative composite sample of stabilized filter cake for all TC constituents listed in 40 CFR § 261.24 using the method specified therein. This composite sample must represent the stabilized filter cake generated over one week.</p> <p>(2) <i>Waste Holding and Handling:</i> BSC must store, as hazardous, all stabilized filter cake generated until verification testing (as specified in Conditions (1)(A) and (1)(B)) is completed and valid analyses demonstrate that the delisting levels set forth in Condition (3) are met. If the levels of hazardous constituents measured in the samples of stabilized filter cake generated are below all the levels set forth in Condition (3), then the stabilized filter cake is non-hazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any weekly or monthly composite sample equal or exceed any of the delisting levels set in Condition (3), the stabilized filter cake generated during the time period corresponding to this sample must be retreated until it is below these levels or managed and disposed of in accordance with Subtitle C of RCRA.</p> <p>(3) <i>Delisting Levels:</i> All concentrations must be measured in the waste leachate by the method specified in 40 CFR § 261.24. The leachable concentrations for the constituents must be below the following levels (ppm): arsenic—4.8; barium—100; cadmium—0.48; chromium—5.0; lead—1.4; mercury—0.19; nickel—9.6; selenium—1.0; silver—5.0.</p> <p>(4) <i>Changes in Operating Conditions:</i> After completing the initial verification test period in Condition (1)(A), if BSC decides to significantly change the stabilization process (e.g., stabilization reagents) developed under Condition (1), then BSC must notify EPA in writing prior to instituting the change. After written approval by EPA, BSC may manage waste generated from the changed process as non-hazardous under this exclusion, provided the other conditions of this exclusion are fulfilled.</p> <p>(5) <i>Data Submittals:</i> Two weeks prior to system start-up, BSC must notify in writing the Section Chief, Delisting Section (see address below) when stabilization of the dewatered filter cake will begin. The data obtained through Condition (1)(A) must be submitted to the Section Chief, Delisting Section, OSW (5304), U.S. EPA, 401 M Street, SW, Washington, DC 20460 within the time period specified. The analytical data, including quality control information and records of ratios of lime kiln dust and fly ash used, must be compiled and maintained on site for a minimum of five years. These data must be furnished upon request and made available for inspection by EPA or the State of Maryland. 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 the Agency, 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:</p> |

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

| Facility | Address | Waste description   |
|----------|---------|---|
| *        | *       | <p>“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.</p> <p>As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.</p> <p>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.”</p> |
| *        | *       | *   |

[FR Doc. 95–255 Filed 1–4–95; 8:45 am]

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 231 and 242

#### Defense Federal Acquisition Regulation Supplement; Restructuring Costs

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Director of Defense Procurement has issued an interim rule which amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) concerning the reimbursement of restructuring costs associated with business combinations.

**DATES:** *Effective date:* December 29, 1994.

*Comment date:* Comments on the interim rule should be submitted in writing at the address shown below on or before March 6, 1995, to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Mr. Eric R. Mens, PDUSD(A&T)DP/DAR, IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 94–D316 in all correspondence.

**FOR FURTHER INFORMATION CONTACT:** Mr. Eric R. Mens, (703) 602–0131.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) restricts the Department of Defense from reimbursing restructuring costs associated with a business combination undertaken by a defense contractor unless certain conditions are met. This interim DFARS rule provides policies and procedures for allowing appropriate contractor costs which involve external restructuring activities. A proposed DFARS rule addressing the allowability of contractor costs associated with internal restructuring activities will be published separately.

##### B. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Compelling reasons exist to promulgate this rule without prior opportunity for public comment because section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) requires the Secretary of Defense to prescribe regulations no later than January 1, 1995. However, comments received in response to the publication of this rule will be considered in formulating the final rule.

##### C. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because most small entities are not subject to the contract cost principles in FAR part 31 or DFARS part 231. The contract cost principles normally apply where contract award exceeds \$500,000 and the price is based on certified cost

or pricing data. This interim DFARS rule applies only to defense contractors which incur restructuring costs coincident to a business combination and are subject to the contract cost principles. Most contracts awarded to small entities are awarded on a competitive, fixed-price basis. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small business entities and other interested parties. Comments from small entities concerning the affected DFARS subparts will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 94–D316 in correspondence.

##### D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the interim rule does not impose any additional reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

##### List of Subjects in 48 CFR Parts 231 and 242

Government procurement.

**Claudia L. Naugle,**

*Deputy Director, Defense Acquisition Regulations Council.*

Therefore, 48 CFR parts 231 and 242 are amended as follows:

1. The authority citation for 48 CFR parts 231 and 242 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR chapter 1.

##### PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205 is amended by adding a new subsection 231.205–70 to read as follows: