Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Boylan, (215) 566–2094, at the EPA Region III office or via e-mail at boylan.jeffrey@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 1, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 97–9953 Filed 4–17–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN45–3b; FRL–5698–6]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On September 20, 1996, Indiana submitted a request to incorporate revisions to the definitions of ''nonphotochemically reactive hydrocarbon'' and ''volatile organic compounds'' into the Indiana State Implementation Plan (SIP). In the final rules section of this **Federal Register**, the USEPA is approving these actions as a direct final rule without prior proposal because USEPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed rule must be received on or before May 19, 1997.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Air Programs Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: April 18, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–10129 Filed 4–17–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 71

[FRL–5813–6]

RIN 2060–AG–90

Federal Operating Permits Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of cancellation of public hearing.

SUMMARY: On March 21, 1997 (62 FR 13748), EPA gave notice of the proposed Federal Operating Permits rule and of the opportunity for a public hearing to present oral testimony concerning the proposed rule. Because EPA received no requests for a public hearing, the public hearing scheduled for April 21, 1997 has been canceled.

DATES: Written comments on the proposed rule will continue to be accepted until May 5, 1997. Send the written comments to the address given below.

Public Hearing Cancellation: Notice is hereby given that the public hearing originally scheduled for April 21, 1997, has been canceled.

ADDRESSES: Comments should be mailed (in duplicate if possible) to: EPA Air Docket (Mail Code 6102), Attention: Docket No. A–93–51, Room M–1500, Waterside Mall, 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Candace Carraway (telephone 919–541–3189), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Information Transfer and Program Integration Division, Mail Drop 12, Research Triangle Park, North Carolina 27711.

Dated: April 14, 1997.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 97–10216 Filed 4–16–97; 12:52 pm]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–5813–2]

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

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant a petition submitted by General Motors Corporation, Orion Assembly Center (GM) in Lake Orion, Michigan, to exclude (or ''delist'') certain solid wastes generated by its wastewater treatment plant from the lists of hazardous wastes contained in subpart D of part 261. 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 266, 268 and 273, 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. This proposed decision is based on an evaluation of waste-specific information provided by the petitioner. If this proposed decision is finalized, the petitioned waste will be conditionally excluded from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

DATES: EPA is requesting public comments on this proposed decision. Comments must be received in writing

by June 2, 1997. Comments postmarked after the close of the comment period will be stamped ''late.''

Any person may request a hearing on this proposed decision by filing a request with Norman R. Niedergang, Director, Waste, Pesticides and Toxics Division, at the address listed under **ADDRESSES**, by May 19, 1997. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: Two copies of any comments should be sent to Steven Pak, Waste, Pesticides and Toxics Division, Waste Management Branch (DRP–8J), U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604.

Requests for a hearing should be addressed to Norman R. Niedergang, Director, Waste, Pesticides and Toxics Division (D–8J), U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604.

The RCRA regulatory docket for this proposed rule which contains the complete petition and supporting documents is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Call Steven Pak at (312) 886–4446 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 notice, contact Steven Pak at the address listed under **ADDRESSES** or at (312) 886–4446.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

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

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

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a)(1) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require EPA to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. See § 260.22(a)(2). Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, corrosivity, reactivity, and toxicity), and must present sufficient information for EPA to determine whether the waste contains any other constituents at hazardous levels. Although wastes which are ''delisted'' (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

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

B. Approach Used to Evaluate This Petition

GM's petition requests a delisting for a listed hazardous waste. In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a). Based on this review, EPA tentatively agreed with the petitioner, pending public comment, that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.

EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that other factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, and considered the concentration of the constituents in the waste, the toxicity of the constituents, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (i.e., ground water, surface water, air) for hazardous constituents present in the petitioned waste. EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for GM's petitioned waste, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, EPA used a fate and transport model to predict the maximum concentrations of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the disposal of GM's petitioned waste on human health and the environment. Specifically, EPA used the maximum estimated waste volume and the maximum reported extract concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the health-based levels at an assumed risk of 10^{-6} used in delisting decision-making for the hazardous constituents of concern.

EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C (parts 260 through 266 and 268). The use of a reasonable worst-case scenario results in conservative

values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, should not pose a threat to human health or the environment.

EPA also considers the applicability of on-site ground-water monitoring data during the evaluation of delisting petitions. In this case, EPA determined that it would be inappropriate to request ground-water monitoring data because GM currently disposes of the petitioned waste off-site. For petitioners using off-site management, EPA believes that, in most cases, the ground water monitoring data would not be meaningful. Most commercial land disposal facilities accept waste from numerous generators. Any ground water contamination or leachate would be characteristic of the total volume of waste disposed of at the site. In most cases, EPA believes that it would be impossible to isolate ground water impacts associated with any one waste disposed of in a commercial landfill. Therefore, the EPA did not request ground water monitoring data from GM.

From the evaluation of GM's delisting petition, a list of constituents was developed for annual verification testing. Proposed maximum allowable leachable concentrations for these constituents were derived by back-calculating from the delisting health-based levels through the proposed fate and transport model. These concentrations (i.e., ''delisting levels'') are part of the verification testing conditions of this proposed exclusion.

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

II. Disposition of Delisting Petition

General Motors Corporation, Orion Assembly Center, 4555 Giddings Road, Lake Orion, Michigan 48361–1001.

A. Petition for Exclusion

General Motors Corporation, Orion Assembly Center (GM), located in Lake Orion, Michigan, assembles automobiles from parts and materials supplied by outside sources. The assembly process includes the chemical conversion coating (phosphate coating) of steel, galvanized steel, and aluminum automobile body panels. The wastewater treatment plant (WWTP) filter press sludge generated from this process is presently listed as EPA Hazardous Waste No. F019—''Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.'' The listed constituents of concern for EPA Hazardous Waste No. F019 are hexavalent chromium and cyanide (complexed) (see appendix VII of part 261).

On January 12, 1996, GM petitioned to exclude its WWTP filter press sludge because it believes that the petitioned waste does not meet any of the criteria under which the waste was listed and that there are no additional constituents or factors that could cause the waste to be hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See Section 222 of HSWA, 42 USC 6921(f), and § 260.22.

B. Background

On January 12, 1996, GM petitioned EPA to exclude an annual volume of 1,500 cubic yards of WWTP filter press sludge from the list of hazardous wastes contained in § 261.31, and subsequently provided additional information to complete its petition. In support of its petition, GM submitted detailed descriptions and schematic diagrams of its manufacturing and wastewater treatment processes, and analytical testing results for representative samples of the petitioned waste, including (1) the hazardous characteristics of ignitability, corrosivity, reactivity, and toxicity; (2) total constituent and Extraction Procedure for Oily Wastes (OWEP, SW–846 Method 1330) analyses for the eight toxicity characteristic metals listed in § 261.24, plus antimony, beryllium, cobalt, copper, hexavalent chromium, nickel, tin, thallium, vanadium, and zinc; (3) total constituent and Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311) analyses for 163 volatile and semi-volatile organic compounds; (4) total constituent and TCLP analyses for total sulfide, total cyanide, and complexed cyanide; and (5) total constituent analysis for oil and grease, total organic carbon, and percent solids.

GM's automobile assembly process includes the chemical conversion coating (phosphate coating) of automobile body panels. Prior to phosphate coating, the automobile bodies are cleaned, rinsed, and conditioned to promote phosphate crystal refinement. The automobile bodies are then dipped in a 76,000 gallon tank containing the phosphate coating solution. The phosphate coating provides a micro-crystalline corrosion resistant base required for the application of electro-deposited paint. Following phosphate coating, the automobile bodies are rinsed, sprayed with a trivalent chromium sealer to protect and enhance the phosphate coating, and rinsed. The application of the chromium sealer is a physical process and is not a chemical conversion process. After leaving the phosphate process line, the automobile bodies enter the electro-deposition process line where the automobile bodies are rinsed, dipped in a 68,000 gallon tank where an electro-deposited paint film is applied, rinsed, and then baked in an oven at 350 degrees Fahrenheit for 35 minutes. The automobile body then goes to the paint shop process line where primer paint and basecoats, antichip coats, and clearcoats are applied in spraybooths.

The WWTP treats assembly plant process wastewater and powerhouse process wastewater. The assembly plant process wastewater is composed primarily of car washing and plant clean-up and maintenance water, and wastewater generated by the phosphate and electro-deposition lines. The powerhouse wastewater is composed primarily of boiler blowdown and cooling water. Under normal operating conditions, paint shop process wastewater is not routed to the WWTP.

Treatment at the WWTP is a batch operation. General wastewater from the assembly plant enters one of two solids separators. Each separator is equipped with a surface skimmer, dragout system, and oil skimmer for removing floating and settleable solids as well as floating oil. The wastewater discharges through a bar screen and is mixed with the phosphate process line wastewater, electro-deposition process line wastewater, and powerhouse wastewater, and is discharged to one of three batch process treatment tanks. Reagents such as sodium hydroxide, sulfuric acid, and lime, are added and the wastewater is pumped to the clarifiers after treatment is complete. Two clarifiers are utilized in parallel or series to separate the liquid and solid phases of the wastewater. Lime and a secondary flocculent aid are added to improve coagulation and flocculation. The settled sludge is pumped to the sludge thickener tank and the supernatant is discharged over weirs and flows to the pH adjustment sump. The supernatant pH is adjusted with sulfuric acid, if necessary, and discharged to the Detroit Water and

Sewage Department sewer system. In the sludge thickener tank, the sludge is thickened with a sludge rake and then pumped to the sludge conditioning tank where it is mixed with lime and filter aid. The conditioned sludge is then pumped to one of two filter presses. Filtrate from the filter presses, as well as supernatant generated in the sludge thickener and sludge conditioning tanks, drains to the powerhouse sump and is subsequently pumped back to the WWTP for treatment. After dewatering, the filter press cake falls into 20 cubic yard roll-off boxes beneath the filter presses. Once a roll-off box is filled, the waste is disposed of in a land-based management facility as a hazardous waste.

GM submitted a signed certification stating that, based on projected annual waste generation, the maximum annual generation rate of WWTP filter press sludge will not exceed 1,500 cubic yards per year (this corresponds to a mass of approximately 1,500 tons per year based on a reported sludge density of 75 pounds per cubic foot). The EPA reviews a petitioner's estimates of maximum waste generation and, on occasion, has requested a petitioner to re-evaluate the estimated waste generation rate. EPA accepts GM's estimate.

C. Waste Analysis

GM developed a list of analytical constituents based on a review of facility processes, Material Safety Data Sheets for raw materials and chemical additives used in the manufacturing process, and recommendations contained in EPA delisting guidance. See Petitions to Delist Hazardous Wastes, A Guidance Manual, dated March 1993.

For GM's petition, the WWTP filter press sludge was sampled from four separate roll-off boxes on February 20, 1995. Each roll-off box contained WWTP filter press sludge generated over a period of approximately one week and the four boxes were filled on consecutive weeks. One composite and one grab sample of sludge was collected from each roll-off box. Composite samples consisted of sixteen full-depth core grab samples mixed together to form one sample. Composite samples were analyzed for semi-volatile organic compounds and inorganic constituents. Full-depth core grab samples were analyzed for volatile organic compounds (VOCs). Grab samples were collected for VOC analysis to eliminate the possibility of VOC loss due to volatilization which may occur during preparation of composite samples. Samples were collected with a stainless steel hand auger.

Additional samples were taken in 1996 after a minor change to the phosphate coating solution which added magnesium salts. At the request of EPA, the results of the analyses were submitted on December 3, 1996.

To quantify the total constituent and leachate concentrations, GM used SW–846 Method 6010 for antimony, barium, beryllium, cadmium, chromium, cobalt, copper, nickel, silver, thallium, vanadium, and zinc; Method 7060 for arsenic; Method 7421 for lead; Method 7471 for total mercury and Method 7470 for leachate mercury; Method 7740 for selenium; Method 7870 for tin; Method 7196 for hexavalent chromium; Method 9010 for cyanide (total and complexed); Method 9030 for sulfide; Method 8240 for volatile organic compounds; and Method 8270 for semi-volatile organic compounds. Along with these methods, GM used the Extraction Procedure for Oily Wastes (OWEP, SW–846 Method 1330) and the Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311), as described below, to determine leachate concentrations.

Using SW–846 Method 9071, GM determined that the samples of the petitioned waste had oil and grease contents ranging from 25,000 mg/kg to 41,000 mg/kg. Consistent with EPA delisting guidance, GM used OWEP to quantify the leachable levels of metals and TCLP to quantify the leachable levels of cyanide, sulfide, volatile organic compounds, and semi-volatile organic compounds.

Characteristic testing of the samples included analysis of reactive cyanide (SW–846 Method 7.3.3.2) and reactive sulfide (SW–846 Method 7.3.4.2), ignitability (SW–846 Method 1010), and corrosivity (SW–846 9045).

Table 1 presents the maximum total and leachate concentrations for 18 metals, total cyanide, complexed cyanide, and total sulfide. Table 1 also includes maximum total concentrations for reactive cyanide and reactive sulfide.

The detection limits presented in Table 1 represent the lowest concentrations quantifiable by GM when using the appropriate SW–846 methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, i.e., the ''cleanliness'' of waste matrices varies and ''dirty'' waste matrices may cause interferences, thus raising detection limits.)

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1]

[WWTP Filter Press Sludge]

Inorganic constituents	Total constituent analyses (mg/kg)	OWEP/TCLP leachate analyses (mg/l)
Antimony	5.0	<0.025
Arsenic	1.1	0.027
Barium	620	0.14
Beryllium	0.29	<0.001
Cadmium	1.9	<0.003
Chromium (total)	580	0.009
Chromium (hexavalent)	<1.1	<0.02
Cobalt	2.0	0.004
Copper	550	0.47
Lead	1300	<0.024
Mercury	0.54	<0.0002
Nickel	1900	13
Selenium	0.58	<0.002
Silver	<0.6	<0.003
Thallium	<0.4	<0.01
Tin	220	<0.053
Vanadium	1.7	0.004
Zinc	7400	0.74

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1]—Continued

[WWTP Filter Press Sludge]

Inorganic constituents	Total constituent analyses (mg/kg)	OWEP/TCLP leachate analyses (mg/l)
Cyanide (total)	2.2	<0.01
Cyanide (complexed)	2.2	<0.01
Sulfide (total)	18	5.3
Cyanide (reactive)	<0.25	NA
Sulfide (reactive)	<4	NA

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
< Denotes that the constituent was not detected at the detection limit specified in the table.
NA Denotes that the constituent was not analyzed.

GM analyzed the samples of petitioned waste for 163 volatile and semi-volatile organic compounds. Table 2 presents the maximum total and leachate concentrations for all detected organic constituents in GM's waste samples.

TABLE 2.—Maximum Total Constituent and Leachate Concentrations [1]

[WWTP Filter Press Sludge]

Organic constituents	Total constituent analyses (mg/kg)	TCLP leachate analyses (mg/l)
Benzene	0.01	<0.025
2-Butanone	0.11	<0.05
Chlorobenzene	0.025	<0.025
Chloroform	0.013	<0.025
1,1-Dichloroethane	0.015	<0.025
1,2-Dichloroethane	0.024	0.013
Ethylbenzene	0.45	0.009
4-Methylphenol	<170	0.063
Naphthalene	<170	0.001
Phenol	<170	0.029
Tetrachloroethene	0.02	<0.025
Toluene	0.39	<0.025
1,1,1-Trichloroethane	0.018	<0.025
Xylene	0.63	0.009

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
< Denotes that the constituent was not detected at the detection limit specified in the table.

Hazardous waste characteristic testing found that reactive cyanide and reactive sulfide were not detected in the samples (see Table 1). The flash point of the samples was found to be greater than 212 degrees Farenheit. The pH of the samples ranged from 8.28 to 9.40.

EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with the petition binds the petitioner to present truthful and accurate results.

D. EPA Evaluation

EPA has reviewed the sampling procedures used by GM and has determined that they satisfy EPA criteria for collecting representative samples.

EPA considered the appropriateness of alternative waste management scenarios for GM's WWTP filter press sludge and decided, based on the information provided in the petition, that disposal in a Subtitle D landfill is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. EPA, therefore, evaluated GM's petitioned waste using the modified EPA Composite Model for Landfills (EPACML) which predicts the potential for ground water contamination from wastes that are landfilled. See 56 FR 32993 (July 18, 1991) and 56 FR 67197 (December 30, 1991) for a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worst-case contaminant levels in ground water at a compliance point (i.e., a receptor well serving as a drinking-water supply). Specifically, the model estimated the dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from ground-water recharge for a specific volume of waste. The DAFs generated using the EPACML vary from a maximum of 100 for smaller annual volumes of waste (i.e., less than 1,000 cubic yards per year) to DAFs approaching ten for larger volume wastes (i.e., 400,000 cubic yards per year).

Typically, EPA uses the maximum annual waste volume to derive a petition-specific DAF. GM's maximum waste volume of 1,500 cubic yards per year corresponds to a DAF of 90. EPA's evaluation, using a DAF of 90 and the maximum reported leachate concentrations (see Tables 1 and 2), yielded compliance-point concentrations (see Table 3) that are below the current health-based levels used in delisting decision-making.

TABLE 3.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS

[WWTP Filter Press Sludge]

Inorganic and organic constituents	Compliance point concentrations (mg/l)	Health-based levels [1] (mg/l)
Arsenic	0.0003	0.05
Barium	0.0016	2
Chromium (total)	0.0001	0.1
Cobalt	0.00004	[3] 2.1
Copper	0.0052	[3] 1.4
Nickel	0.14	[2, 3] 0.7
Vanadium	0.00004	0.2
Zinc	0.0082	10
1,2-Dichloroethane	0.0001	0.005
Ethylbenzene	0.0001	0.7
4-Methylphenol	0.0007	[3] 0.18
Naphthalene	0.00001	1
Phenol	0.00032	20
Xylene	0.0001	10

[1] See ''Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions,'' December 1994, located in the RCRA public docket for today's notice.

[2] The Maximum Contaminant Level promulgated under the Safe Drinking Water Act was vacated and remanded and subsequently removed from the Code of Federal Regulations on June 29, 1995 (60 FR 33926).

[3] Based on the oral reference dose from ''Risk-Based Concentration Table, January–June 1996,'' March 7, 1997, and the equation used for calculating delisting health-based levels found in the document referenced in footnote.

Note: See the RCRA public docket for today's notice for the specific reference doses and the calculation of the health-based levels.

For inorganic constituents, the maximum reported leachate concentrations of arsenic, barium, chromium (total), cobalt, copper, nickel, vanadium, and zinc in the WWTP filter press sludge yielded compliance point concentrations well below the health-based levels used in delisting decision-making. EPA did not evaluate the mobility of the remaining inorganic constituents (i.e., antimony, beryllium, cadmium, chromium (hexavalent), lead, mercury, selenium, silver, thallium, tin, reactive cyanide, and reactive sulfide) from GM's waste because they were not detected in the leachate using the appropriate analytical test methods (see Table 1). EPA also evaluated the potential hazards of the organic constituents detected in the TCLP extract of GM's samples (i.e., 1,2-dichloroethane, ethylbenzene, 4-methylphenol, naphthalene, phenol, and xylene). The calculated compliance point concentrations are significantly below the respective health-based levels. EPA believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), EPA assumes that the constituent is not present and therefore does not present a threat to human health or the environment.

After reviewing GM's processes, EPA accepts GM's analysis that no other hazardous constituents, other than those tested for, are likely to be present in the waste, and that any migration of hazardous constituents from the waste would result in concentrations below delisting health-based levels of concern. In addition, on the basis of test results and information provided by GM pursuant to § 260.22, EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity.

In its evaluation of GM's petition, EPA also considered the potential impact of the petitioned waste via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersal, EPA believes that no appreciable air releases are likely from GM's waste under any likely disposal conditions. Therefore, there is no substantial hazard to human health from airborne exposure to constituents from GM's petitioned waste.

EPA also considered the potential impact of the petitioned wastes via a surface water route. EPA believes that containment structures at municipal solid waste landfills can effectively control surface water run-off, as the Subtitle D regulations (see 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents in the run-off will tend to be lower than the extraction procedure test results reported in today's notice because of the aggressive acidic media used for extraction in the TCLP and OWEP. EPA believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution/attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of the solubility of a toxic constituent in water, and are indicative of the fraction of the constituent that may be mobilized in surface water, as well as ground water. The reported TCLP and OWEP data shows that the constituents that might be released from GM's waste to surface water would be likely to leach in concentrations that would be below the health-based levels of concern. EPA, therefore, concludes that GM's waste is not a significant hazard to human health or the environment via the surface water exposure pathway.

E. Conclusion

Based on descriptions of the process from which the petitioned waste is derived, descriptions of GM's wastewater treatment process, and analytical characterization of the petitioned waste, EPA believes that GM has successfully demonstrated that the petitioned waste is not hazardous. EPA, therefore, proposes to grant an exclusion to GM for its WWTP filter press sludge described in its petition as EPA Hazardous Waste No. F019. If made final, the proposed exclusion will apply to 1,500 tons (or 1,500 cubic yards) of petitioned waste generated annually, on a calendar year basis. The facility must treat waste generated in excess of 1,500 tons (or 1,500 cubic yards) per year as

hazardous. If either the manufacturing or treatment processes are significantly altered such that an adverse change in waste composition occurs (e.g., significantly higher levels of hazardous constituents), this exclusion would no longer be valid.

Although management of the waste covered by this petition would be removed from Subtitle C jurisdiction upon final promulgation of an exclusion, this exclusion applies only where this waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

F. Verification Testing Conditions

EPA is proposing to require GM to demonstrate on an annual basis that the constituents of concern in the petitioned waste do not exceed the levels of concern in paragraph 1 below. These levels are based on delisting health-based values and a DAF of 90. GM must analyze a minimum of four representative samples of the WWTP filter press sludge on an annual, calendar-year basis using methods with appropriate detection levels and quality control procedures. If the level of any constituent measured in any sample of WWTP filter press sludge exceeds the levels set forth in paragraph 1 below, then the waste is hazardous and must be managed in accordance with Subtitle C of RCRA.

1. Delisting Levels

Concentrations measured in the TCLP (or OWEP, where appropriate) extract of the waste of the following constituents must not exceed the following levels (mg/l).

Arsenic—4.5; Barium—180.; Chromium (total)—9.; Cobalt—189.; Copper—126.; Nickel—63.; Vanadium—18.; Zinc—900.; 1,2-Dichloroethane—0.45; Ethylbenzene—63.; 4-Methylphenol—16.2; Naphthalene—90.; Phenol—1800.; Xylene—900. These levels are derived by back-calculating from the delisting health-based levels and a DAF of 90 for all constituents detected in the TCLP and OWEP extract of the petitioned waste.

2. Changes in Operating Conditions

If GM significantly changes the manufacturing or treatment process or the chemicals used in the manufacturing or treatment process, GM may handle the WWTP filter press sludge generated from the new process under this exclusion after the facility has demonstrated that the waste meets the levels set in paragraph 1 and that no new hazardous constituents listed in appendix VIII of part 261 have been introduced.

3. Data Submittals

The data obtained through annual verification testing or paragraph 2 must be submitted to U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, within 60 days of sampling. Records of operating conditions and analytical data must be compiled, summarized, and maintained on site for a minimum of five years and must be made available for inspection. All data must be accompanied by a signed copy of the certification statement in § 260.22(i)(12).

III. Effect on State Authorizations

This proposed exclusion, if promulgated, would be issued under the Federal (RCRA) delisting program. States, however, may impose more stringent regulatory requirements than EPA, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (i.e., to make their own delisting decisions). Therefore, this proposed exclusion, if promulgated, would not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, GM must obtain delisting authorization from that State before the waste may be managed as nonhazardous in the State.

IV. Effective Date

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

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is ''major'' and therefore subject to the requirement of a Regulatory Impact Analysis. The proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to manage its waste as non-hazardous. There is no additional impact, therefore, due to today's proposed rule. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

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). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

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

VII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (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), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local or tribal governments or the private sector. EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon State, local or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

List of Subjects in 40 CFR Part 261

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

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

Dated: April 1, 1997.

Norman R. Niedergang,

Director, Waste, Pesticides and Toxics Division.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

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

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

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * *	* * *	* * *
General Motors Corporation	Lake Orion, Michigan	Wastewater treatment plant (WWTP) sludge from the chemical conversion coating (phosphate coating) of aluminum (EPA Hazardous Waste No. F019) generated at a maximum annual rate of 1,500 tons per year (or 1,500 cubic yards per year), after (insert publication date of the final rule), and disposed of in a Subtitle D landfill. (1) *Verification Testing:* GM must implement an annual testing program to demonstrate, based on the analysis of a minimum of four representative samples, that the constituent concentrations measured in the TCLP extract (or OWEP, where appropriate) of the waste do not exceed the following levels (mg/l). Arsenic—4.5; Barium—180.; Chromium (total)—9.; Cobalt—189.; Copper—126.; Nickel—63.; Vanadium—18.; Zinc—900.; 1,2-Dichloroethane—0.45; Ethylbenzene—63.; 4-Methylphenol—16.2; Naphthalene—90.; Phenol—1800.; Xylene—900. These levels are derived by back-calculating from the delisting health-based levels and a DAF of 90 for all constituents detected in the TCLP and OWEP extract of the petitioned waste. (2) *Changes in Operating Conditions:* If GM significantly changes the manufacturing or treatment process or the chemicals used in the manufacturing or treatment process, GM may handle the WWTP filter press sludge generated from the new process under this exclusion after the facility has demonstrated that the waste meets the levels set forth in paragraph 1 and that no new hazardous constituents listed in appendix VIII of part 261 have been introduced. (3) *Data Submittals:* The data obtained through annual verification testing or paragraph 2 must be submitted to U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, within 60 days of sampling. Records of operating conditions and analytical data must be compiled, summarized, and maintained on site for a minimum of five years and must be made available for inspection. All data must be accompanied by a signed copy of the certification statement in § 260.22(i)(12).
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[FR Doc. 97–10110 Filed 4–17–97; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 95–91; GEN Docket No. 90–357; FCC 97–70]

Satellite Digital Audio Radio Service

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: After carefully reviewing the comments and information the Commission received following issuance of the Notice of Proposed Rulemaking, the Commission issued this Further Notice of Proposed Rulemaking (FNPRM) to seek comment on its proposal to permit deployment of satellite Digital Audio Radio Service (''DARS'') terrestrial repeaters, or ''gap-fillers'', on an as-needed basis by satellite DARS licensees to meet their service requirements. The intended effect of the Commission's action in issuing the NPRM is to seek comment on whether to adopt the Commission's proposed rules for terrestrial repeaters which are based upon proposals suggested by comments from CD Radio. The Commission also seeks comment on its tentative conclusion to prohibit the use of terrestrial repeaters to transmit locally originated programming which would be inconsistent with the allocation of the DARS spectrum.

DATES: Comments must be submitted on or before May 2, 1997. Reply comments must be submitted on or before May 23, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Rosalee Chiara at (202) 418–0754 or Ron Repasi at (202) 418–0768 with the International Bureau, or Amy Zoslov or Christina Eads Clearwater at (202) 418–0660 with the Auctions Division of the Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Further Notice of Proposed Rulemaking in the Report and Order and Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 62 FR 11083 (March 11, 1997), IB Docket No. 95–91; GEN Docket No. 90–357; RM No. 8610; PP–24; PP–86; and PP–87, FCC 97–70 (adopted and released March 3, 1997). The complete text of the Report and Order and Memorandum Opinion and Order and Further Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Synopsis of the Further Notice of Proposed Rulemaking in the Report and Order and Memorandum Opinion and Order and Further Notice of Proposed Rulemaking

Further Notice of Proposed Rulemaking on Terrestrial Repeaters

1. As discussed in the Report and Order and Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, the Commission is not mandating a specific service link margin that satellite DARS operators must provide in a given geographic area, such as urban areas. It is important, however, for the satellite DARS systems to maintain sufficient service link margin to reproduce the original information transmitted by the satellite. In the NPRM, 60 FR 35166 (July 6, 1995), the Commission noted that some satellite DARS applicants intend to implement, as necessary, terrestrial repeaters, or ''gap-fillers'', in urban canyons and other areas where it may be difficult to receive DARS signals transmitted by a satellite. These terrestrial gap-fillers would re-transmit the information from the satellite to overcome the effects of signal blockage and multipath interference. Since the Commission had no information in the record on the specifics of operation of these terrestrial gap-fillers, it sought comment on their operation to determine what rules should govern their use.

2. Some commenters expressed concern about use of terrestrial repeaters to complement satellite DARS. Tichenor Media Systems, for example, contends that satellite DARS should not be permitted to originate local programming through the use of terrestrial repeaters. Similarly, NAB and WFAN express concern that the use of terrestrial gap fillers would transform satellite DARS into a terrestrial based service. Indeed, in the NPRM the Commission proposed to prohibit the operation of terrestrial gap-fillers except in conjunction with an operating satellite DARS system to ensure its complementary nature and so that there would be no transformation of satellite DARS into an independent terrestrial DARS network.

3. Satellite DARS applicants provided additional information on how terrestrial gap-fillers will be used with their satellite DARS systems. The commenters agree that terrestrial repeaters would be used to improve satellite DARS service in the authorized satellite coverage areas only and on the same frequencies, and that they would not be used to extend the satellite coverage area or be used to originate programming. CD Radio and DSBC maintain that terrestrial gap-fillers will only be complementary to the satellite DARS systems because they will operate on the same frequency as the satellite transmission and only re-transmit the signals of operating satellite DARS space stations to improve service link margin in difficult propagation environments, especially in urban areas. Additional spectrum is therefore unnecessary for satellite DARS gap-fillers. Primosphere asserts further that no commercial inserts or local programming would be permitted over terrestrial gap-fillers. Furthermore, terrestrial gap-fillers will not extend satellite DARS coverage outside of the systems' already authorized service area. AMRC asserts that they will be used only to fill in coverage gaps within the authorized service area caused by various signal obstructions. Terrestrial gap-fillers will also be transparent to the end users because the receiver will automatically select the stronger of the satellite or repeater signal.

4. Several commenters suggest that regulation of terrestrial gap-fillers be as unrestrictive as possible. CD Radio favors rules to permit flexible deployment of terrestrial gap fillers without prior Commission approval or notification. Primosphere contends that it will be important for the Commission to provide a flexible scheme to implement terrestrial gap-fillers without the necessity to seek separate licenses. DSBC notes that the use of terrestrial gap-fillers for satellite DARS comports with the Commission's authorization of ''boosters'' as defined in Part 22 of the Commission's rules. The comments of all applicants appear to be reflected in a proposal by CD Radio, seen for the first time in its Comments to the NPRM.

5. The Commission did not set forth a specific proposal for authorizing terrestrial repeaters in the NPRM. The Commission now seeks comment on the proposal to permit deployment of satellite DARS gap-fillers, on an as-needed basis by satellite DARS licensees to meet their service requirements. To accomplish the following important objectives, the Commission seeks