the Agency with any questions about format.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, 703–235–1910.

SUPPLEMENTARY INFORMATION: On April 9, 1998, MSHA published a proposed rule in the **Federal Register** (63 FR 17492) establishing health standards for underground coal mines that use equipment powered by diesel engines. The proposal is designed to reduce serious health hazards that are associated with exposure to high concentrations of diesel particulate matter (dpm). Dpm is a very small particle in diesel exhaust. Underground miners are exposed to far higher concentrations of this fine particulate than any other group of workers. The best available evidence indicates that exposure to diesel particulate matter puts miners at excess risk of a variety of adverse health effects, including lung cancer.

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et. seq.), requires each Federal agency to consider the environmental effects of proposed actions and to prepare an Environmental Impact Statement on major actions significantly affecting the quality of the human environment. MSHA has reviewed the proposed standard in accordance with the requirements of the NEPA, the regulation of the Council on Environmental Quality (40 CFR Part 1500), and the Department of Labor's NEPA procedures (29 CFR Part 11). As a result of this review, MSHA has preliminarily determined that this proposed standard will have no significant environmental impact.

Commenters are encouraged to submit their comments on this determination on or before August 10, 1998.

Dated: July 8, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 98–18688 Filed 7–13–98; 8:45 am]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–6121–2]

National Primary Drinking Water Regulations: Long Term 1 Enhanced Surface Water Treatment Rule and Filter Backwash Recycling Rule Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; change in location of previous meeting announcement.

SUMMARY: EPA announces a change in location for the meetings on the Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR) and the Filter Backwash Recycling Rule (FBRR), which were announced in the June 23, 1998 **Federal Register** (63 FR 34142).

DATES: The LT1ESWTR public meeting will be held on July 22, 1998. The FBRR public meeting will be held on July 23, 1998. Both public meetings will begin at 8:30 am local time and will conclude at apprximately 4:30 pm local time.

ADDRESSES: The LT1ESWTR and FBRR meetings will be held at the Holiday Inn, 7390 West Hampden Avenue, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: For general information on the LT1ESWTR public meeting, please contact Steve Potts at (202) 260–5015. For the FBRR public meeting, please contact Bill Hamele at (202) 260–2584.

Dated: July 8, 1998

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water, Office of Water.

[FR Doc. 98–18730 Filed 7–13–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6124–3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to grant a petition submitted by McDonnell Douglas Corporation (McDonnell Douglas), a wholly owned subsidiary of The Boeing Corporation, to exclude (or delist) certain solid wastes generated by its U.S. Air Force Plant Number 3 (Air Force Plant No. 3) Tulsa, Oklahoma, facility from the lists of hazardous wastes contained in 40 CFR 261.24 and 261.31 (hereinafter all sectional references are to 40 CFR unless otherwise indicated). This petition was submitted under § 260.20(a), 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(a), 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 excluded from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

DATES: The EPA is requesting public comments on this proposed decision. Comments will be accepted until August 28, 1998. Comments postmarked after the close of the comment period will be stamped ''late,'' and will not be considered in formulating a final decision.

Any person may request a hearing on this proposed decision by filing a request with Acting Director, Robert Hannesschlager, Multimedia Planning and Permitting Division, whose address appears below, by July 29, 1998. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: Send three copies of your comments. Two copies should be sent to the William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A third copy should be sent to the Oklahoma Department of Environmental Quality, 707 North Robinson Street, Oklahoma City, Oklahoma 73102. Identify your comments at the top with this regulatory docket number: ''F–98–OKDEL–AIRFORCEPLANT3.''

Requests for a hearing should be addressed to the Acting Director, Robert Hannesschlager, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

The RCRA regulatory docket for this proposed rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202 and is available for viewing

in the Freedom of Information Act Reviewing Room on the 7th Floor from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this notice, contact David Vogler, Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX 75202, (214)665–7428.

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) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the 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. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are ''delisted'' (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains nonhazardous based on the hazardous waste characteristics.

In addition, mixtures containing listed hazardous wastes are also considered hazardous wastes as are wastes derived from the treatment, storage, or disposal of listed hazardous waste. See § 261.3(a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the ''mixture/derived from'' rules and remanded them to the EPA on procedural grounds. *See Shell Oil Co.* v. *EPA,* 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278). These references should be consulted for more information regarding mixtures and derived from wastes.

B. Approach Used to Evaluate This Petition

McDonnell Douglas' Air Force Plant No. 3 petition requests a one-time delisting for listed hazardous wastes. In making the initial delisting determination, the EPA evaluated the petitioned wastes against the listing criteria and factors cited in §§ 261.11(a)(1), 261.11(a)(2) and (a)(3). Based on this review, the EPA agreed with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the wastes remained hazardous based on the factors for which the wastes were originally listed, EPA would have proposed to deny the petition.) The EPA then evaluated the wastes with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the wastes to be hazardous. The EPA considered whether the wastes are acutely toxic, the toxicity of the constituents, the concentration of the constituents in the wastes, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the wastes, plausible and specific types of management of the petitioned wastes, the quantities of wastes generated, and waste variability.

For this delisting determination, the EPA used such information gathered to identify plausible exposure routes (i.e., ground water, surface water and air) for hazardous constituents present in the petitioned wastes. The EPA determined that disposal in a Subtitle D (solid, nonhazardous waste) landfill is the most reasonable, worst-case disposal scenario for McDonnell Douglas' petitioned wastes, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, the EPA used a particular fate and transport model, the EPA Composite Model for Landfills (EPACML), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned wastes after disposal and to determine the potential impact of the disposal of McDonnell Douglas' petitioned wastes on human health and the environment. Specifically, the EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the current Maximum Contaminant Levels (MCLs) promulgated under the Safe Drinking Water Act (SWDA) or health-based levels derived from verified Reference Doses (RfDs). The values used for lead and copper are action levels for treatment of a water supply in lieu of an MCL (40 CFR 141.80).

The EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned wastes in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and gives a high degree of confidence that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. In most cases, because a delisted waste is no longer subject to hazardous waste control (unless conditionally delisted),

the EPA is generally unable to predict, and does not presently control, how a waste will be managed after delisting. Therefore, EPA normally believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. If however, conditions contained in a delisting indicate that it is necessary to consider site specific factors or otherwise indicate that the model is inappropriate, EPA may consider these factors in applying the model. For modeling purposes it is assumed that a Subtitle D landfill will be unlined.

The EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, the EPA determined that it would be appropriate to review ground water monitoring data since the petitioned wastes generated at McDonnell Douglas' facility were disposed of as part of an onsite surface impoundment which was partitioned by dikes into three lagoons which were closed as a single RCRA landfill. The analytical results from a combination of up to eighteen monitoring wells dating from 1981 until 1997 was reviewed. The data indicated that there has been no significant impact to the ground water from the closed landfill. The evaluation of this information is another indication that the waste has been stabilized and does not leach hazardous constituents in concentrations that are significant to human health and the environment.

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

McDonnell Douglas' exclusion (if granted) would be contingent upon the facility conducting stabilization activities on approximately 5,000 cubic yards of the 85,000 cubic yards of petitioned waste present in the three lagoons jointly closed as a RCRA landfill. Subsequent verification testing of representative samples of the newly stabilized waste would also be required. Analytical data from cores taken from the landfill indicate that about 5,000 cubic yards of waste was not stabilized during the closure process and will need to be stabilized before being transported offsite for disposal in a Subtitle D landfill. These wastes are presently located in the bottom one to three feet of lower portion of the northwest lagoon which is a portion of the surface impoundments closed as a landfill at the Tulsa Air Force Plant No. 3 Facility. The unstabilized wastes are easily identified by color, texture, and general physical appearance. This testing would be necessary to verify that the stabilization system is operating as demonstrated in the petition submitted on November 7, 1997. Specifically, the verification testing requirements of the conditional exclusion (if granted), would be implemented to demonstrate that the stabilization process will generate nonhazardous wastes (i.e., wastes that meet the EPA's verification testing conditions).

Analytical data submitted from cores of the petitioned wastes located in the upper portion of the northwest lagoon, the northeast lagoon, and the south lagoon of the landfill indicated that the waste in those areas was previously stabilized and therefore would not require additional verification testing. The EPA's proposed decision to delist wastes from the Air Force Plant No. 3 facility is based on the information submitted in support of today's rule, i.e., description of the historical wastewater treatment system and analytical data from the Tulsa facility's closed landfill.

Finally, the HSWA specifically require the 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

Air Force Plant No. 3, McDonnell Douglas Corporation, a wholly owned subsidiary of The Boeing Corporation, Tulsa, Oklahoma 74115

A. Petition for Exclusion

McDonnell Douglas petitioned the EPA for a one-time exclusion for 85,000 cubic yards of stabilized and solidified waste located in three surface impoundments that were closed as a single RCRA landfill unit in 1989 at the U. S. Air Force Plant No. 3, located in Tulsa, Oklahoma. Approximately 5,000 cubic yards of the 85,000 cubic yards of petitioned wastes were not previously stabilized and would be required to undergo stabilization and verification testing. The petitioned wastes were generated as a part of the facility's wastewater treatment process which operated from 1953 to 1989. The resulting wastes are presently listed as EPA Hazardous Waste No. F019. The petitioned wastes are believed to also have very small amounts of wastes presently classified as F002, F003, and F005. The listed constituents of concern for these waste codes are listed in Table 1.

TABLE 1.—HAZARDOUS WASTE CODES ASSOCIATED WITH WASTEWATER STREAMS

Waste code	Basis for characteristics/listing
F019	Hexavalent Chromium. Cyanide (complexed).
F002	Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane.
F003	Xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, methanol.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, 2-nitropropane.

McDonnell Douglas (Air Force Plant No. 3) petitioned the EPA to exclude the stabilized treatment wastes because it does not believe that the petitioned wastes meet the criteria for which they were listed. McDonnell Douglas further believes that the wastes are not hazardous for any other reason (i.e., there are no additional constituents or factors that could cause the wastes to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the HSWA. *See* section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the EPA's evaluation of Air Force Plant No.3's petition as submitted by McDonnell Douglas Corporation.

B. Background

On November 7, 1997, McDonnell Douglas petitioned the EPA to grant a one-time exclusion from the lists of hazardous waste contained in §§ 261.31

and 261.32, a one-time volume of stabilized and solidified wastewater treatment plant sludges which were disposed of in the facility's wastewater surface impoundments which have since been jointly closed as a RCRA landfill unit in accordance with a closure and post-closure plan approved by the Oklahoma Department of Environmental Quality (ODEQ). The wastewater treatment sludges were stabilized with fly ash and then capped with a RCRA cap. Specifically, in its petition, McDonnell Douglas requested that the EPA grant an exclusion for 85,000 cubic yards of stabilized wastewater treatment sludge. The facility characterized the petitioned waste as stabilized with the exception of about 5,000 cubic yards which will require stabilization and verification testing.

In support of its petition, McDonnell Douglas submitted: (1) Descriptions of its wastewater treatment processes and the activities associated with petitioned wastes; (2) results of the total constituent list for 40 CFR part 264, Appendix IX volatiles, semivolatiles, metals, pesticides, herbicides, polychlorinated biphenyls (PCBs), furans, and dioxins; (3) results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for identified constituents; (4) results for total sulfide; (5) results for total cyanide; (6) results for pH; (7) results of the Multiple Extraction Procedure (MEP) for acidic, neutral, and basic extractions; (8) results of ground water monitoring; and (9) results of surface impoundment waste analysis for constituents of concern.

Air Force Plant No. 3 is an inactive plant that was used for maintenance operations on military and commercial aircraft, as well as for manufacturing aerospace and aircraft products. The bulk of the petitioned waste was generated by treatment of wastewater generated by electroplating and metal finishing operations. Analysis indicates that the plant may have treated minor amounts of fuels. Wastes were collected in two separate sewer systems: acid-chrome and alkali-chrome. Wastes were then directed to the onsite industrial wastewater treatment plant. Cyanide was oxidized using chlorine. The chromic wastewater was treated by reduction with sulfur dioxide. The pH was controlled using caustic soda, sulfuric acid, and carbon dioxide. Ferrous sulfate was fed into the clarifier to flocculate solids. The resulting wastewater treatment sludges accumulated in sludge sumps and then were pumped through a pipeline into the system of surface impoundments. In 1989, most of the sludges in the impoundments were stabilized and solidified using fly ash and some clay. Later borings indicated that some of the waste in the lower portion in the northwest section of the impoundments was not completely stabilized. McDonnell Douglas wants to similarly stabilize this waste and delist all waste in all of the impoundments closed as a single RCRA landfill. The waste will then be transported offsite and disposed of in a Subtitle D landfill. It is planned to clean close the Air Force Plant No. 3 landfill under ODEQ authority.

McDonnell Douglas developed a list of constituents of concern from comparing a list of all raw materials used in the plant that could potentially appear in the petitioned waste with those found in 40 CFR part 264. McDonnell Douglas analyzed two composite samples for the total concentrations (i.e., mass of a particular constituent per mass of waste) of the volatiles and semivolatiles, metals, herbicides, pesticides, PCBs, and furans from Appendix IX. These two samples (NW–37 and SE–37) were analyzed for the comprehensive list in order to confirm that there were no other constituents of concern in the surface impoundments.

Twenty-one (21) composite samples were taken from the closed landfill unit. Five of these samples were from the northwest lagoon of the unit where the sludges that are not completely stabilized are located. All samples were analyzed for constituents of concern and were also analyzed to determine whether the waste exhibited ignitable, corrosive, or reactive properties as defined under 40 CFR 261.21, 261.22, and 261.23, including analysis for total constituent concentrations of cyanide and sulfide. These samples were also analyzed for TCLP concentrations (i.e., mass of a particular constituent per unit volume of extract) of all the volatiles, semivolatiles, and metals identified as constituents of concern. The MEP was performed on four samples to test the ability to stabilize eighteen (18) different metals at three different pH's. The procedure was run at three different pH values (2.88, 7, and 13 Standard Units) to determine if a change in pH might significantly alter the leachate concentrations. Historical analytical results from ground water monitoring wells was also submitted for review.

C. EPA Analysis

McDonnell Douglas used SW–846 Methods 8260, 8270, 6010, 7196A, 7471, to quantify the total constituent concentrations of volatiles and semivolatiles (excluding PCBs, pesticides, herbicides) metals, and dioxins/furans. McDonnell Douglas used SW–846 Methods 9045, 9030A, 9012 to quantify pH, total sulfide, and total cyanide. McDonnell Douglas used SW–846 Methods 8260, 8270, 6010, 7196A, 7470 to quantify the constituents from the TCLP extract. The petitioned waste does not meet the definitions for reactivity and corrosivity as defined by §§ 261.22 and 261.23. Tables 2A and 2B present the maximum total constituent and leachate concentrations for the stabilized waste. Tables 3A and 3B present the maximum total constituent and leachate concentrations for the unstabilized sludge waste samples from the bottom of the northwest lagoon of the unit.

McDonnell Douglas calculated, based on a one-time removal and addition of stabilization agents, the maximum petitioned waste to be excluded will be 85,000 cubic yards of stabilized waste.

The EPA reviews a petitioner's estimates and, on occasion, has requested a petitioner to reevaluate the estimated waste volume. The EPA accepted McDonnell Douglas' certified estimates. The EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The EPA, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting an exclusion.

TABLE 2A.—MAXIMUM ORGANIC TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1]

[Stabilized Wastewater Treatment Sludge]

Constituents	Total constituent analyses (mg/kg)	Leachate analyses (mg/l)
Acetone	0.53	NA
Benzene	0.003	<0.1
Ethylbenzene ..	0.004	NA
Toluene	0.035	NA
Xylenes	0.019	NA
Phenol	0.39	NA

< Denotes that the constituent was not detected at the detection limit specified in the table.

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

NA Denotes that the constituent was not analyzed.

TABLE 2B.—MAXIMUM INORGANIC TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1]

[Stabilized Wastewater Treatment Sludge]

Constituents	Total constituent analyses (mg/kg)	Leachate analyses (mg/l)
Antimony	0.42	0.0145
Arsenic	31.7	0.057
Barium	2860	3.4
Beryllium	2.4	0.0195
Cadmium	39.8	0.323
Chromium (Total)	9710	9.79
Chromium (Hexavalent)	0.42	0.06
Cobalt	16.1	0.0673
Copper	163	0.301

TABLE 2B.—MAXIMUM INORGANIC TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1]—Continued

[Stabilized Wastewater Treatment Sludge]

Constituents	Total constituent analyses (mg/kg)	Leachate analyses (mg/l)
Lead	89	0.0422
Mercury	0.09	0.00025
Nickel	64.4	0.28
Selenium	11.3	0.0691
Silver	0.4	0.03
Thallium	0.47	0.005
Tin	35.9	<0.014
Vanadium	228	0.141
Zinc	229	0.519
Sulfide (Total)	<50	NA
Cyanide (Total)	7	NA

TABLE 2B.—MAXIMUM INORGANIC TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1]—Continued

[Stabilized Wastewater Treatment Sludge]

Constituents	Total constituent analyses (mg/kg)	Leachate analyses (mg/l)
pH (Standard Units)	6.19	—

< Denotes that the constituent was not detected at the detection limit specified in the table.

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

NA Denotes that the constituent was not analyzed.

TABLE 3A.—MAXIMUM ORGANIC TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1] UNSTABILIZED WASTEWATER TREATMENT SLUDGE

Constituents	Total Constituent Analyses (mg/kg)	Leachate Analyses (mg/l)
Acetone	0.15	NA
Benzene	0.185	<0.1
Ethylbenzene	158	NA
Toluene	3000	NA
Xylenes	792	NA
trans-1,2-Dichloroethene	0.212	NA
Tetrachloroethene	0.64	<0.1
Trichloroethylene	1090	17.3
m-Cresol	<0.38	0.09
p-Cresol	<0.38	0.09

<Denotes that the constituent was not detected at the detection limit specified in the table.

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

NA Denotes that the constituent was not analyzed.

D. EPA Evaluation

The EPA considered the appropriateness of alternative waste management scenarios for McDonnell Douglas' stabilized wastewater treatment waste from the closed impoundments. The EPA decided, based on the information provided in the petition, that disposal of the petitioned waste in a municipal or industrial solid waste landfill is the most reasonable, worst-case scenario.

TABLE 3B.—MAXIMUM INORGANIC TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1] Unstabilized Wastewater Treatment Sludge

Constituents	Total Constituent Analyses (mg/kg)	Leachate Analyses (mg/l)
Antimony	5.4	0.0952
Arsenic	43	0.0873
Barium	3060	3.58
Beryllium	2.3	0.0093
Cadmium	52.2	0.411
Chromium (Total)	3820	1.36
Chromium (Hexavalent)	<0.25	<0.05
Cobalt	19.4	0.0478
Copper	157	0.2
Lead	220	0.0737
Mercury	0.25	0.00015
Nickel	40.7	0.21
Selenium	5.8	0.028
Silver	1.2	<0.001
Thallium	0.3	<0.005
Tin	8.4	<0.014
Vanadium	138	0.111
Zinc	535	1.25

TABLE 3B.—MAXIMUM INORGANIC TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1] Unstabilized Wastewater Treatment Sludge—Continued

Constituents	Total Constituent Analyses (mg/kg)	Leachate Analyses (mg/l)
Sulfide (Total)	<50	NA
Cyanide (Total)	4	NA
pH (Standard Units)	06.89–9.43 range	

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

Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The EPA, therefore, evaluated the petitioned wastes using the modified EPACML which predicts the potential for ground water contamination from wastes that are landfilled. *See* 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991) and the RCRA public docket for these notices for a detailed description of the EPACML model, 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.

For the evaluation of McDonnell Douglas' petitioned wastes, the EPA used the EPACML to evaluate the mobility of the hazardous constituents detected in the extract of samples of McDonnell Douglas' Stabilized Wastewater Treatment Sludge. Typically, the EPA uses the maximum annual waste volume to derive a petition-specific DAF. The DAFs are currently calculated assuming an ongoing process generates wastes for 20 years. Since the petitioned waste would be a one-time disposal, the waste volume is divided by twenty to correctly determine a DAF. Therefore, the DAF for the waste volume of 85,000 cubic yards is 56.

The EPA's evaluation of the stabilized wastewater treatment sludges using a DAF of 56, a maximum one-time disposal waste volume estimate of 85,000 cubic yards, and the maximum reported TCLP concentrations (see Tables 2A and 2B), yielded compliance point concentrations (see Tables 4A and 4B) that are below the current health-based levels except for the constituent cadmium which is discussed below.

TABLE 4A.—EPACML: CALCULATED COMPLIANCE-POINT ORGANIC CONCENTRATIONS STABILIZED WASTE

Organic Constituents	Compliance Point Concentrations [1] (mg/l)	Levels of Concern [2] (mg/l)
Acetone	0.00946	4.0
Benzene	0.0000536	0.005
Ethyl Benzene	0.0000714	0.7
Toluene	0.000625	1.0
Xylenes	0.000339	10
Phenols	0.00696	20
Cyanide	0.125	0.2

< Denotes that the constituent was not detected at the detection limit specified in the table.
[1] Using the maximum TCLP leachate level from Table 2A and based on a DAF of 56 calculated using the EPACML for a one-time volume of 85,000 cu. yards. Waste concentrations in the northwest lagoon were not included as the bottom waste must be stabilized to be excluded.
[2] *See* Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions, December 1994 located in the RCRA public docket for today's notice.

In Table 4A, the maximum reported leachate concentrations of the organic constituents detected in the stabilized waste are compared with the levels of concern. For this comparison, EPA conservatively used available total values and assumed the total concentration would leach. The maximum reported leachate concentrations of acetone, benzene, ethylbenzene, toluene, and xylene yielded compliance point concentrations below the health-based levels used in delisting decision-making. The EPA did not evaluate the mobility of the remaining organic constituents (e.g., trans-1,2-dichloroethene, tetrachloroethylene, trichloroethylene, vinyl chloride, m-cresol, and p-cresol) from McDonnell Douglas' stabilized waste because they were not detected in the leachate or total chemical analysis using the appropriate analytical test methods. The EPA believes that it is inappropriate to evaluate nondetectable concentrations of a constituent of concern in its delisting modeling efforts if the nondetectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), the EPA, for delisting purposes, assumes that the constituent is not present and therefore does not present a threat to human health or the environment. In the delisting program EPA believes it is inappropriate to evaluate constituents undetected in the waste samples. This procedure is consistent with other programs.

In Table 4B, the maximum reported or calculated leachate concentrations of the inorganic constituents detected in the stabilized waste are compared with the levels of regulatory concern. The maximum reported or calculated

leachate concentrations of antimony, barium, beryllium, total chromium, hexavalent chromium, cobalt, copper, lead, mercury, nickel, selenium, silver, thallium, vanadium, and zinc yielded compliance point concentrations below the health-based levels used in the delisting decision-making. The EPA did not evaluate the mobility of the inorganic constituent tin from McDonnell Douglas' stabilized waste because it was not detected in the leachate using the appropriate analytical test methods (see Table 2B). The maximum reported leachate concentration for a single sample of cadmium yielded a calculated compliance point concentration (0.00577 mg/l) slightly above the health-based level (0.005 mg/l) used in the delisting decision-making process.

The cadmium value (0.00577 mg/l) represents the calculated leachate concentrations of cadmium at a theoretical downgradient ground water monitoring well using the EPACML model and a concentration value of 0.323 mg/l TCLP from one stabilized waste sample. This value was the highest concentration identified for the sixteen (16) TCLP analyses or the eighty-one (81) MEP analyses completed for cadmium. The 0.323 mg/l value was the first extraction for an acidic extraction. The second extract from the same sample yielded a value of 0.213 mg/l which would in turn produce a calculated compliance point concentration of 0.0038 mg/l which is below the level of regulatory concern.

TABLE 4B.—EPACML: CALCULATED INORGANIC COMPLIANCE-POINT CONCENTRATIONS STABILIZED WASTE

Inorganic Constituents	Compliance Point Concentrations [1] (mg/l)	Levels of Concern [2] (mg/l)
Antimony	0.000259	0.006
Arsenic	0.001	0.05
Barium	0.0607	2.0
Beryllium	0.000348	0.004
Cadmium	0.00577	0.005
Chromium (total)	0.175	37
Chromium, hexavalent	0.00107	0.1
Cobalt	0.0012	2.1
Copper	0.0054	1.3
Lead	0.00075	0.015
Mercury	0.00000446	0.002
Nickel	l0.005	0.1
Selenium	0.00123	0.05
Silver	0.000536	0.2
Thallium	0.0000893	0.002
Vanadium	0.00252	0.2
Zinc	0.00927	10.0

[1] Using the maximum TCLP leachate level from Table 2B and based on a DAF of 56 calculated using the EPACML for an one-time volume of 85,000 cu. yards. Waste concentrations in the northwest lagoon were not included as the bottom waste must be stabilized to be excluded.
[2] See *Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions*, December 1994 located in the RCRA public docket for today's notice.

The concentration values for this sample continued a steady decline to 0.0022 mg/l for the ninth extraction in the MEP. The steady decline in concentration is an indication that the waste will not leach more hazardous constituents over time and therefore is stabilized. The next highest cadmium TCLP or MEP value for another sample of stabilized waste is a concentration of 0.14 mg/l which would yield a compliance point concentration of 0.0025 mg/l compared to the level of regulatory concern value of 0.005 mg/l. This sample and all other stabilized samples (14 samples, 86 analyses) of stabilized waste exhibit lower cadmium values. The concentration value for the 95 per cent upper confidence level of the mean is calculated at a concentration of 0.0236 mg/l which yielded a calculated compliance point concentration of 0.00042 mg/l which is well below the health-based level of 0.005 mg/l for cadmium used in the delisting decision-making. Ground water monitoring data submitted by the facility also indicated that the waste was not leaching as constituents of concern have not been detected by the monitoring program in concentrations of regulatory concern. Therefore, after further detailed evaluation, EPA does not consider the cadmium concentrations to be above health-based levels for purposes of delisting.

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

During the evaluation of McDonnell Douglas' petition, the EPA also considered the potential impact of the petitioned wastes via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, the EPA believes that exposure to airborne contaminants from the petitioned wastes is unlikely; no appreciable air releases are likely from the petitioned wastes under any likely disposal conditions. The EPA evaluated, however, the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from the petitioned wastes in an open landfill. The results of this worst case analysis indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from the stabilized wastes. A description of the EPA's assessment of the potential impact of McDonnell Douglas' wastes, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for today's proposed rule.

The EPA also considered the potential impact of the petitioned wastes via a

surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (*See* 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the run-off will tend to be lower than the levels in the TCLP leachate analyses reported in today's notice due to the aggressive acidic medium used for extraction in the TCLP. The EPA believes that, in general, leachate derived from the wastes is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as ground water.

Based on the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, the EPA evaluated the potential impacts on surface water if McDonnell Douglas' waste were released from a municipal solid waste landfill through runoff and erosion. See the RCRA public docket for today's proposed rule. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below the EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that McDonnell Douglas' stabilized waste is not a substantial present or potential hazard to human health and the environment via the surface water exposure pathway.

E. Conclusion

The EPA believes that the descriptions of the McDonnell Douglas' chemical hazardous waste process and analytical characterization, in conjunction with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis to grant McDonnell Douglas' petition for a standard one-time exclusion of the stabilized waste and a conditional one-time exclusion for the unstabilized wastes in the bottom of the northwest lagoon of the landfill unit. The EPA believes the data submitted in support of the petition show McDonnell Douglas' process can render the wastes in the northwest quadrant of the surface impoundment which was closed as a landfill non-hazardous. The EPA has reviewed the sampling procedures used by McDonnell Douglas and has determined they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations in the petitioned waste. The data submitted in support of the petition show that constituents in McDonnell Douglas' stabilized waste are presently below health-based levels used in the delisting decision-making. The EPA believes that McDonnell Douglas has successfully shown that the stabilized waste is non-hazardous. The EPA, therefore, proposes to grant a standard one-time exclusion to the McDonnell Douglas Corporation, located in Tulsa, Oklahoma, for the stabilized waste in the landfill and a conditional one-time exclusion for the unstabilized waste in the bottom of the northwest lagoon of the unit as described in its petition. The EPA's decision to exclude this waste is based on descriptions the historical wastewater treatment activities associated with the petitioned waste and characterization of the stabilized and unstabilized waste. If the proposed rule is finalized, the petitioned wastes will no longer be subject to regulation under parts 262 through 268 and the permitting standards of part 270.

F. Verification Testing Conditions

(1) *Delisting Levels:* All leachable concentrations for the following constituents in the approximately 5,000 cubic yards of unstabilized waste in the bottom portion of the northwest lagoon of the surface impoundments closed as a landfill must not exceed the following levels (ppm) after the stabilization process is completed as according to Condition (3). Constituents must be measured in the waste leachate by the method specified in 40 CFR 261.24. Cyanide extractions must be conducted using distilled water in the place of the leaching media per 40 CFR 261.24.

(A) Inorganic Constituents

Antimony-0.336; Cadmium-0.280; Hexavalent Chromium-5.0; Lead-0.84; Cyanide-11.2;

(B) Organic Constituents

Benzene-0.28; Ethylbenzene-39.2; Toluene-56.; Xylenes-560.; trans-1,2-Dichloroethene-5.6; Tetrachloroethylene-0.280; Trichloroethylene-0.280

The approximately 80,000 cubic yards of previously stabilized waste in the upper northwest lagoon, entire northeast lagoon, and entire south lagoon of the surface impoundments which were closed as a landfill requires no verification testing.

This paragraph provides the levels of constituents for which McDonnell Douglas must test the leachate from the wastes in the bottom of the northwest lagoon after completion of a stabilization process similar to that was used in other portions of the surface impoundments which were closed as a single landfill. These are the levels below which this waste would be considered non-hazardous and for which the Agency is proposing to grant a one time conditional exclusion. The EPA selected the set of inorganic and organic constituents specified after reviewing information about the composition of the waste, descriptions of McDonnell Douglas' historical wastewater treatment process, previous test data provided for the waste, and the respective health-based levels (HBL) used in delisting decision-making. The EPA established the proposed delisting levels for this paragraph by back-calculating the Maximum Allowable Leachate (MALs) concentrations from the health-based levels for the constituents of concern using the EPACML chemical-specific DAF of 56 (See, previous discussions in Section D—*Agency Evaluation*) i.e., MAL = HBL x DAF). These delisting levels correspond to the allowable levels measured in the TCLP extract of the waste. The TCLP for the cyanide constituent would be modified to test the waste by substitution of deionized water for the extraction fluid. The hexavalent chromium concentration was set a value not to exceed 5.0 mg/l TCLP concentration in order not to exceed regulatory levels found in 40 CFR 261.24. The modeled value would be at a concentration of 5.6 mg/l TCLP concentration. The stabilized wastes in the landfill have been demonstrated as meeting the delisting levels and therefore will require no further verification testing. A standard one-time exclusion for those wastes is proposed.

(2) *Waste Holding and Handling*: McDonnell Douglas must store as hazardous all stabilized waste from the bottom portion of the northwest lagoon area of the closed landfill as generated until verification testing as specified in Condition (3), is completed and valid analyses demonstrate that condition (1) is satisfied. If the levels of constituents measured in the samples of the stabilized waste do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in a Subtitle D landfill in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed any of the delisting levels set in Condition (1), the waste generated during the time period corresponding to this sample must be restabilized until delisting levels are met or managed and disposed of in accordance with Subtitle C of RCRA.

The purpose of this paragraph is to ensure that any unstabilized waste located in the bottom of the northwest lagoon area of the closed surface impoundments which might contain

hazardous levels of inorganic and organic constituents are managed and disposed of in accordance with Subtitle C of RCRA. Holding the unstabilized waste from the northwest area until characterization is complete will protect against improper handling of hazardous material. If the EPA determines that the data collected under this condition do not support the data provided for the petition or McDonnell Douglas is not meeting the terms of its exclusion, the exclusion will not cover the petitioned wastes.

(3) *Verification Testing Requirements*: Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies. McDonnell Douglas must stabilize the previously unstabilized waste from the bottom portion of the northwest lagoon of the surface impoundment (which was closed as a landfill) using fly ash, kiln dust or similar accepted materials in batches of 500 cubic yards or less. McDonnell Douglas must analyze one composite sample from each batch of 500 cubic yards or less. A minimum of four grab samples must be taken from each waste pile (or other designated holding area) of stabilized waste generated from each batch run. Each composited batch sample must be analyzed, prior to disposal of the waste in the batch represented by that sample, for constituents listed in Condition (1). There are no verification testing requirements for the stabilized wastes in the upper portions of the northwest lagoon, the entire northeast lagoon, and the entire south lagoon of the surface impoundments which were closed as a landfill.

(4) *Changes in Operating Conditions*: If McDonnell Douglas significantly changes the stabilization process established under Condition (3) (*e.g.*, use of new stabilization agents), McDonnell Douglas must notify the Agency in writing. After written approval by EPA, McDonnell Douglas may handle the wastes generated as non-hazardous, if the wastes meet the delisting levels set in Condition (1).

(5) *Data Submittals*: Records of operating conditions and analytical data from Condition (3) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Oklahoma, or both, and be made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:

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

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the 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.

To provide appropriate documentation that McDonnell Douglas' facility is properly stabilizing the waste, all analytical data obtained through Condition (3), including quality control information, must be compiled, summarized, and maintained on site for a minimum of five years. Condition (5) requires that these data be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Oklahoma.

If made final, the proposed exclusion will apply to 85,000 cubic yards of petitioned waste. The facility would be required to submit a new petition if the stabilization process specified for the northwest lagoon area of the closed landfill is significantly altered.

Although management of the wastes covered by this petition would not be subject to Subtitle C jurisdiction upon final promulgation of an exclusion, McDonnell Douglas must 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.

(6) *Reopener*

(a) If McDonnell Douglas discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then McDonnell Douglas must report any information relevant to that condition, in writing, to the Regional Administrator or his delegate within 10 days of discovering that condition.

(b) Upon receiving any information including that described in paragraph (a) regardless of its source, the Regional Administrator or his delegate will determine whether the reported condition requires further action. Further action may include revoking the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment.

The purpose of paragraph (6) is to require McDonnell Douglas to disclose new or different information related to a condition at the facility or disposal of the waste if it had or has bearing on the delisting. This paragraph will allow EPA to reevaluate the exclusion if new or additional information is provided to the Agency from any source which indicates that information which EPA's decision was based was incorrect or circumstances have changed such that information is no longer correct or would cause EPA to deny the petition if then presented. Further, although this provision expressly requires McDonnell Douglas to report differing site conditions or assumptions used in the petition within 10 days of discovery, if EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to these provisions found in RCRA regulations governing no-migration petitions located at § 268.6.

The EPA believes that it has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978), *et seq.*, to reopen a delisting decision if new information is received that calls into question the assumptions underlying the delisting and believes that a clear statement of its authority in the context of delistings is merited in light of Agency experience. (See, e.g., Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste did not leach in the actual disposal site as it had been modeled thus leading the Agency to repeal the delisting.) In the meantime, in the event that an immediate threat to human health and the environment presents itself, EPA will continue to address such situations on a case-by-case basis and where necessary, will make a good cause finding to justify emergency rulemaking. *See* APA § 553(b).

(7) *Notification Requirements*: McDonnell Douglas must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activity. The one-time written notification must be updated if the delisted waste is shipped to a different disposal facility. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

III. Effective Date

The EPA intends that this rule should become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow

rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for 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 USC § 553(d).

IV. 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, thereby enabling this facility to manage its waste as nonhazardous. There is no additional impact therefore, due to today's proposed rule. Therefore, this proposal would not be a significant regulation and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

V. Children's Health Protection

Under EO 13045, for all ''significant'' regulatory actions as defined by EO 12866, EPA must provide an evaluation of the environmental health or safety effect of a proposed rule on children and an explanation of why the proposed rule is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This proposal is not a significant regulatory action and is exempt from EO 13045.

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

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

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (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. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local or tribal governments or the private sector. The EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon state, local or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

IX. Intergovernmental Partnership

Under EO 12875, EPA may not promulgate any regulation which creates an unfunded mandate upon State, local or tribal governments. The EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon state, local or tribal governments (*See,* Section IX. (UMRA) above) and accordingly, this action is exempt from the requirements of EO 12875.

List of Subjects in 40 CFR Part 261

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

Dated: June 18, 1998.

William N. Rhea,

Acting Division Director of Multimedia Planning and Permitting.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

2. In Tables 1, 2, and 3 of Appendix IX of part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

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

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* *	*	* * * *
McDonnell Douglas Corporation	Tulsa, Oklahoma	Stabilized wastewater treatment sludges from surface impoundments previously closed as a landfill (at a maximum generation of 85,000 cubic yards on a one-time basis). (EPA Hazardous Waste No. F019, F002, F003, and F005) generated at U.S. Air Force Plant No. 3, Tulsa, Oklahoma and is disposed of in Subtitle D landfills after [insert publication date of final rule]. McDonnell Douglas must implement a testing program that meets the following conditions for the exclusion to be valid: (1) *Delisting Levels:* All leachable concentrations for the following constituents in the approximately 5,000 cubic yards of unstabilized waste in the bottom portion of the northwest lagoon of the surface impoundments which are closed as a landfill must not exceed the following levels (ppm) after the stabilization process is completed in accordance with Condition (3). Constituents must be measured in the waste leachate by the method specified in 40 CFR 261.24. Cyanide extractions must be conducted using distilled water in the place of the leaching media per 40 CFR 261.24. (A) Inorganic Constituents Antimony-0.336; Cadmium-0.280; Hexavalent Chromium-5.0; Lead-0.84; Cyanide-11.2; (B) Organic Constituents Benzene-0.28; Ethylbenzene-39.2; Toluene-56.; Xylenes-560.; trans-1,2–Dichloroethene-5.6; Tetrachloroethylene-0.280; Trichloroethylene-0.280 The approximately 80,000 cubic yards of previously stabilized waste in the upper northwest lagoon, entire northeast lagoon, and entire south lagoon of the surface impoundments which were closed as a landfill requires no verification testing. (2) *Waste Holding and Handling:* McDonnell Douglas must store as hazardous all stabilized waste from the bottom portion of the northwest lagoon area of the closed landfill as generated until verification testing as specified in Condition (3), is completed and valid analyses demonstrate that condition (1) is satisfied. If the levels of constituents measured in the samples of the stabilized waste do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in a Subtitle D landfill in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed any of the delisting levels set in Condition (1), the waste generated during the time period corresponding to this sample must be restabilized until delisting levels are met or managed and disposed of in accordance with Subtitle C of RCRA. (3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies. McDonnell Douglas must stabilize the previously unstabilized waste from the bottom portion of the northwest lagoon of the surface impoundment (which was closed as a landfill) using fly ash, kiln dust or similar accepted materials in batches of 500 cubic yards or less. McDonnell Douglas must analyze one composite sample from each batch of 500 cubic yards or less. A minimum of four grab samples must be taken from each waste pile (or other designated holding area) of stabilized waste generated from each batch run. Each composited batch sample must be analyzed, prior to disposal of the waste in the batch represented by that sample, for constituents listed in Condition (1). There are no verification testing requirements for the stabilized wastes in the upper portions of the northwest lagoon, the entire northeast lagoon, and the entire south lagoon of the surface impoundments which were closed as a landfill. (4) *Changes in Operating Conditions:* If McDonnell Douglas significantly changes the stabilization process established under Condition (3) (e.g., use of new stabilization agents), McDonnell Douglas must notify the Agency in writing. After written approval by EPA, McDonnell Douglas may handle the wastes generated as non-hazardous, if the wastes meet the delisting levels set in Condition (1). (5) *Data Submittals:* Records of operating conditions and analytical data from Condition (3) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Oklahoma, or both, 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:

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

Facility	Address	Waste description
		Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 USC § 1001 and 42 USC § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) *Reopener Language* (a) If McDonnell Douglas discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then McDonnell Douglas must report any information relevant to that condition, in writing, to the Regional Administrator or his delegate within 10 days of discovering that condition. (b) Upon receiving information described in paragraph (a) from any source, the Regional Administrator or his delegate will determine whether the reported condition requires further action. Further action may include revoking the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment. (7) *Notification Requirements:* McDonnell Douglas must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activity. The one-time written notification must be updated if the delisted waste is shipped to a different disposal facility. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.
* *	*	* * * * *

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7250]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.