

existing Municipal Solid Waste Landfills. The Plan was submitted by the South Carolina DHEC to satisfy certain Federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register**, EPA is approving the South Carolina State Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated by reference herein. If no significant, material, and adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by September 23, 1999.

ADDRESSES: Written comments should be addressed to Gregory Crawford at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency,
Region 4, Air Planning Branch, 61
Forsyth Street, SW, Atlanta, Georgia
30303-8960

South Carolina Department of Health
and Environmental Control, Bureau of
Air Quality Control, 2600 Bull Street,
Columbia, South Carolina 29201

FOR FURTHER INFORMATION CONTACT:
Gregory Crawford at (404) 562-9046 or
Scott Davis at (404) 562-9127.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules section of this **Federal Register** and incorporated by reference herein.

Dated: August 6, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.
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**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 261

[SW-FRL-6426-6]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to grant a petition submitted by Chaparral Steel Midlothian, L.P. (Chaparral) to exclude (or delist) certain solid wastes generated by its Midlothian, Texas, facility from the lists of hazardous wastes.

Any person may petition the Administrator to modify or revoke any provision of the solid waste regulations. Generators are specifically provided the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists.

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

If finalized, we would conclude that Chaparral's petitioned waste is nonhazardous with respect to the original listing criteria and that the waste process Chaparral uses will substantially reduce the likelihood of migration of hazardous constituents from this waste. We would also conclude that their process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: We will accept comments until October 8, 1999. We will stamp comments postmarked after the close of the comment period as "late." These "late" comments may not be considered in formulating a final decision.

ADDRESSES: Please send three copies of your comments. Two copies should be sent to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD-O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A third copy should be sent to the Texas Natural Resources Conservation Commission (TNRCC), P.O. Box 13087, Austin, Texas, 78711-3087. Identify

your comments at the top with this regulatory docket number: "F-99-TXDEL-CHAPARRAL."

You should address requests for a hearing to the Acting Director, Robert Hanneschlager, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

Your requests for a hearing must reach EPA by September 8, 1999. The request must contain the information prescribed in section 260.20(d).

FOR FURTHER INFORMATION CONTACT:
William Gallagher at (214) 665-6775.

SUPPLEMENTARY INFORMATION:

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I. Overview Information

A. What Action is EPA Proposing?

The EPA is proposing:
(1) To grant Chaparral's petition to have their Landfill No. 3 leachate, bargehouse storm water, and other

wastewater that may have been in contact with the K061 waste excluded, or delisted, from the definition of a hazardous waste; and

(2) To use a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency uses this model to predict the concentration of hazardous constituents released from the petitioned waste once it is disposed.

B. Why is EPA Proposing to Approve This Delisting?

Chaparral petitioned the Agency to exclude, or delist, the landfill leachate, baghouse storm water, and other wastewaters that may have potentially come in contact with K061 waste because they do not believe that the petitioned waste meets the criteria for which EPA listed it. Chaparral also believes no additional constituents or factors could cause the wastes to be hazardous.

Based on our review, described below, EPA has determined that the waste is nonhazardous with respect to the original listing criteria. (If our review had found that the waste remained hazardous based on the factors for which EPA listed the waste, we would have proposed to deny the petition.)

In reviewing this petition, we considered the original listing criteria and the additional factors required by RCRA section 3001(f), 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)-(4). We evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3).

We also evaluated the waste for other factors or criteria to assess whether these additional factors could cause the waste to be hazardous. These factors included: (1) whether the waste is considered acutely toxic, (2) the toxicity of the constituents, (3) the concentration of the constituents in the waste, (4) the waste constituent's tendency to migrate and to bioaccumulate, (5) its persistence in the environment once released from the waste, (6) plausible and specific types of management of the petitioned waste, (7) the quantity of waste produced, and (8) waste variability.

The EPA believes that the petitioned waste does not meet the criteria for which it listed the waste and does meet the criteria for delisting. The EPA's proposed decision to delist waste from Chaparral's facility is based on the description of the proposed treatment system and analytical data from the Midlothian facility submitted to support today's rule.

C. How Will Chaparral Manage the Waste if it is Delisted?

The facility would like to manage the waste in their onsite cooling system of which cooling ponds are a part. The wastewater would be substituted for some of the well water presently used for cooling purposes which would help conserve that natural resource. In this case, the requested change in waste management is subject to delisting by EPA and subsequent waste management practices in accordance with TNRCC rules and regulations.

D. When Would the Proposed Delisting Exclusion be Finalized?

The Hazardous and Solid Waste Act specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on today's proposal.

This rule, if finalized, will become effective immediately upon final publication. Section 3010(b) at 42 United States Code Annotated 6930(b) of RCRA allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

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

E. How would this action affect states?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received authorization from EPA to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent

requirements may include a provision that prohibits a federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If Chaparral transports the petitioned waste to or manages the waste in any State with delisting authorization, Chaparral must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What is the history of the delisting program?

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

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

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

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

B. What is a delisting petition, and what does it require of a petitioner?

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

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

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

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

C. What factors must EPA consider in deciding whether to grant a delisting petition?

Besides considering the criteria in section 260.22(a), in 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous. See 3010(b) of the Solid Waste Disposal Act.

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

The "mixture" and "derived-from" rules are now final, after having been vacated, remanded, and reinstated. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to EPA on procedural grounds. See *Shell Oil Co. v. EPA*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues. See (57 FR 7628) These rules became final on October 30, 1992. See (57 FR 49278) Consult these references for more information about mixtures derived from wastes.

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

A. What wastes did Chaparral petition EPA to delist?

On February 23, 1999, Chaparral Steel petitioned EPA for a conditional exclusion for 500,000 gallons (about 2,500 cubic yards) per year of leachate from its Landfill No. 3 single RCRA landfill unit containing electric arc furnace dust. The furnace dust is captured in the baghouse during the steelmaking process and is a listed hazardous waste classified as K061. The petitioned wastes are largely leachate generated in the landfill's leachate collection system and minor amounts of K061 wastewater from various plant operations including storm water from the baghouse floor areas and the pelletizer sump. These liquid wastes are presently pumped to an onsite storage tank. The resulting waste is also listed under § 261.3(c)(2)(i) (the "derived from" rule), as EPA Hazardous Waste No. K061. The listed constituents of concern for this waste code are hexavalent chromium, lead, and cadmium.

B. What information and analysis did Chaparral submit to support this petition?

To support its petition, Chaparral submitted:

- (1) historical analytical data for the Electric Arc Furnace Dust (K061), and leachate analytical data from their Landfill No. 3 containing the Electric Arc Furnace Dust, and analytical data for the liquid from the K061 waste water storage tank;
- (2) analytical results of the total constituent list for 40 CFR part 264, appendix IX volatiles, semivolatiles, metals (including hexavalent chromium), pesticides, herbicides, polychlorinated biphenyls, furans, and dioxins;
- (3) analytical results of the constituent list derived from appendix IX for identified constituents;
- (4) analytical results for reactive sulfide;
- (5) analytical results for reactive cyanide;
- (6) test results for corrosivity by pH;
- (7) analytical results of samples from bench tests of treated leachate/K061 wastewater; and
- (8) test results for oil and grease.

C. Who is Chaparral and what process do they use to generate the petitioned waste?

Chaparral Steel operates a steel plant which manufactures primary steel from scrap steel utilizing an electric arc furnace process with continuous casting

of billets, and then rolling to finished goods. Electric arc furnace dust, which is captured in the baghouse during the steelmaking process, is a listed hazardous waste (K061). In the past, K061 was landfilled on-site. The on-site landfills have been closed. The baghouse K061 wastes are currently shipped off-site for metals recovery or are reused on site by reintroduction to the electric arc furnace.

Leachate from Landfill No. 3 which also bears the K061 waste classification, is collected from the landfill's leachate collection system and stored in an on-site tank. Small amounts of water from various locations within the facility including storm water from the palletizer sump and storm water from the baghouse floor (which is potentially mixed with electric arc furnace dust and therefore would also be designated as K061) is also placed in the tank occasionally. Also minor amounts of water that has potentially contacted K061 is occasionally added to the tank. However, the amounts of storm water and other potentially contaminated wastewaters are very minor as compared to the leachate. The contents of the leachate tank are presently transported to an offsite injection facility for disposal.

D. How did Chaparral sample and analyze the data in this petition?

Chaparral developed a list of constituents of concern from prior analytical data and by analyzing the first sample for the entire appendix IX list of hazardous constituents found in 40 CFR part 264. More specifically, Chaparral analyzed one treated and one raw leachate composite sample for the total concentrations (i.e., mass of a particular constituent per mass of waste) of the volatiles and semivolatiles, metals, herbicides, pesticides, PCBs, and furans from appendix IX. These two samples were analyzed for the comprehensive list in order to confirm that there were no other constituents of concern in the petitioned waste.

Chaparral collected four composite samples from the storage tank over a twenty-five week period. They collected these samples in this manner to ensure that the samples represented the potential time and space variability of the petitioned waste. All samples were analyzed for constituents of concern and were also analyzed to determine whether the waste exhibited ignitable, corrosive, or reactive properties as defined under 40 CFR 261.21, 261.22, and 261.23, including analysis for reactive constituent concentrations of cyanide and sulfide. These samples were not analyzed for TCLP

concentrations (i.e., mass of a particular constituent per unit volume of extract) since the leachate is a liquid and the total analysis concentration is considered to be the TCLP concentration.

Chaparral used these methods	To quantify
SW-846 Method 8260, and 8270.	The total constituent concentrations of 40 CFR, part § 264 Appendix IX Volatiles and Appendix IX Semivolatiles including PCBs, Pesticides, and Herbicides.
SW-846 Methods 6010, 7041, and 7740, and 7196.	Appendix IX Metals.
SW-846 Methods 7470.	Mercury.
9071	Total oil and grease.
9045	pH
9030	Reactive Sulfide.
9010	Reactive Cyanide.

Chaparral used these methods	To quantify
1010	Ignitability.

E. What were the results of Chaparral's analysis?

Tables 1 and 2 present the maximum total constituent leachate concentrations for the raw waste and for the treated waste samples from bench test studies. The bench test study simulated a typical wastewater treatment process. If the raw (untreated) waste does not meet delisting criteria, then Chaparral intends to treat the waste in a wastewater treatment plant to meet the delisting criteria. The wastewater treatment process would add a coagulant such as ferric chloride to precipitate the metal constituents and then add a cationic polymer to flocculate the metal constituents. A filter unit would remove the precipitated metal constituents which would yield a wastewater with concentrations of constituents of

concern well below the delisting criteria concentrations.

Chaparral calculated, based on historical information and the worst case scenario, the maximum petitioned waste to be excluded on a yearly basis will be 500,000 gallons (or about 2500 cubic yards) of petitioned waste. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The EPA reviews a petitioner's estimates and, on occasion, has requested a petitioner to reevaluate the estimated waste volume. The EPA accepted Chaparral's certified estimates. The EPA does not generally verify submitted test data before proposing delisting decisions. The EPA, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting an exclusion.

TABLE 1.—MAXIMUM ORGANIC TOTAL CONSTITUENT CONCENTRATIONS¹ For Raw Leachate/K061 Wastewater and Treated Leachate/K061 Wastewater from the Storage Tank

Constituents	Total Constituent Analyses for Raw Leachate ¹ (mg/l)	Total Constituent Analyses for Treated Leachate ¹ (mg/l)
1,2-Dichloroethane	0.004	<0.005
2-Butanone	0.003	0.005
4-Methyl-2-pentanone	0.008	0.005
Acetone	0.08	0.1
Carbon Disulfide	0.003	0.005
Chloromethane	<0.01	0.001
Ethylbenzene	0.004	<0.005
Methyl Iodide	<0.01	0.002
Methylene Chloride	0.001	<0.005
Toluene	0.001	0.004
Xylene	0.03	0.006

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

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

F. How did EPA evaluate the risk of delisting this waste?

Chaparral Steel's petition requests a conditional delisting for listed hazardous wastes. In making the initial delisting determination, EPA evaluated the petitioned wastes against the listing criteria and factors cited in §§ 261.11(a)(1), 261.11(a)(2) and 261.11(a)(3). Based on this review, EPA has determined that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the wastes remained hazardous based on the factors for which the wastes were originally listed, EPA would have

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

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (i.e., ground water, surface water and air) for hazardous constituents present in the petitioned wastes. The EPA determined that disposal in a surface impoundment is the most reasonable, worst-case disposal scenario for Chaparral's petitioned wastes, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, EPA used a particular fate and transport model, EPA Composite Model for Landfills (EPACML), to predict the maximum allowable concentrations of hazardous

constituents that may be released from the petitioned wastes after disposal and to determine the potential impact of the disposal of Chaparral's petitioned wastes on human health and the environment. You can find a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting in 56 *FR* 32993 (July 18, 1991), 56 *FR* 67197 (December 30, 1991) and the RCRA public docket. This model includes both unsaturated and saturated zone transport modules. It uses the reasonable worst-case contaminant levels in ground water at a compliance point (that is, a receptor well serving as a drinking-water supply.)

Specifically, EPA used the maximum estimated waste volumes and the maximum reported concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from a theoretical disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the current Maximum Contaminant Levels (MCLs) promulgated under the Safe Drinking Water Act or health-based levels derived from verified Reference Doses. The values used for lead and copper are action levels for treatment of a water supply in lieu of an MCL (40 CFR 141.80).

The EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned wastes in a surface impoundment, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and gives a high degree of confidence that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. In most cases, because a delisted waste is no longer subject to hazardous waste control (unless conditionally delisted), EPA is generally unable to predict, and does not presently control, how a waste will be managed after delisting. Therefore, EPA normally believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. If however, conditions contained in a delisting indicate that it is necessary to consider site specific factors or otherwise indicate that the model is inappropriate,

EPA may consider these factors in applying the model.

The EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. The evaluation of the information submitted indicated that the waste is managed in a tank with secondary containment. Therefore ground water data is not applicable to this petition.

From the evaluation of Chaparral's delisting petition, one of the constituents evaluated, lead, is being proposed as a verification testing condition. Proposed maximum allowable leachable concentrations for this constituent was derived by back-calculating from the delisting health-based levels through the proposed fate and transport model for a surface impoundment management scenario and by comparing results with the Land Disposal Restrictions (LDRs) maximum allowable concentration. The lowest of these two concentrations (i.e., delisting levels) are part of the verification testing conditions of the proposed exclusion. Therefore, delisting levels are less than LDR concentrations and thus the LDRs are met. Details of the evaluation of lead and other constituents of concern is explained in more detail later in this section.

Chaparral's exclusion (if granted) would be contingent upon the facility conducting sampling and analysis of the waste to insure that the delisting conditions are met (i.e., wastes meet EPA's verification testing conditions).

The EPA's proposed decision is based on the information submitted in support of today's rule, i.e., historical data from the Landfill No. 3 leachate, analytical data from recent samples from the leachate storage tank containing leachate and K061 wastewaters, and analytical data from bench tests of the leachate/K061 wastewaters after treatment in a simulated wastewater treatment system.

Finally, RCRA (7004(b)(1)) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

The EPA's evaluation of the raw leachate using a Dilution Attenuation Factor of 68, a maximum waste volume annually of 2500 cubic yards (or 500,000 gallons per calendar year), and the maximum reported constituent concentrations (see Tables 1 and 2), yielded compliance point concentrations (see Tables 3 and 4) that

are below the current health-based levels except for the constituent lead which is discussed below.

In Table 3, the calculated compliance point concentrations derived from the maximum reported leachate concentrations (see Table 1) of the organic constituents detected in the waste are compared with the levels of concern. The organic constituents are believed to be artifacts from sampling or analysis errors because: (1) the arc furnace process should have destroyed the organic chemicals, (2) the organic constituents are not detected consistently, (3) most detections are near the detection limits, and (4) several of the compounds are common laboratory contaminants. However, in spite of this reasoning, EPA completed the evaluation conservatively using the highest concentration found for each organic constituent in the petitioned waste. As shown in Table 3, the maximum reported leachate concentrations of 1,2-dichloroethane, 2-butanone, 4-methyl-2-pentanone, acetone, carbon disulfide, ethylbenzene, methylene chloride, toluene, and xylene yielded compliance point concentrations below the health-based levels used in delisting decision-making. It should also be noted that the concentrations of the organic constituents found in the raw leachate are below LDR concentration values and therefore the LDRs are met. See Table 1.

The EPA also evaluated the mobility of the two remaining organic constituents chloromethane and methyl iodide which were not detected in the leachate but were found in the treated leachate at concentrations of 0.001 and 0.002 mg/l yielding compliance concentrations of 0.00001 and 0.00003 mg/l, in respective order. These concentrations are well below the levels of concern of 0.007 and 0.03 mg/l, respectively. The 0.001 and 0.002 mg/l values are below the LDR concentration values and therefore the LDRs are met.

In Table 4, the calculated compliance point concentrations derived from the maximum reported leachate/K061 wastewater concentrations of the inorganic constituents (see Table 2) detected in the petitioned raw waste are compared with the levels of regulatory concern. The maximum reported or calculated concentrations of arsenic, barium, cadmium, total chromium, copper, mercury, nickel, vanadium, and zinc yielded compliance point concentrations below Levels of Concern.

The EPA did not evaluate the mobility of the constituents beryllium, hexavalent chromium, cobalt, selenium, silver, thallium and cyanide from Chaparral's petitioned waste because

these constituents were not detected in the leachate using the appropriate analytical test methods. See Table 2. The EPA believes that it is inappropriate to evaluate nondetectable concentrations of a constituent of concern in its delisting modeling efforts if the nondetectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), EPA, for delisting purposes, assumes that the constituent is not present and therefore does not present a threat to human health or the environment. In the delisting program EPA believes it is inappropriate to evaluate constituents undetected in the waste samples.

The maximum reported raw leachate concentration for a single sample of lead (2.0 mg/l) yielded a calculated

compliance point concentration (0.029 mg/l) slightly above the health-based level (0.015 mg/l) used in the delisting decision-making process.

The lead value (0.029 mg/l) represents the calculated leachate concentrations of lead at a theoretical downgradient ground water monitoring well using the EPACML model and a concentration value of 2.0 mg/l from one raw waste sample. This value was the highest concentration identified for the four analysis completed for lead. The four concentration values for lead as identified in the raw waste were 2.0, 1.3, 0.5 and 0.55 mg/l and the values for the treated waste were 0.081, 0.06, 0.026, and <0.0011 mg/l. Two of the raw waste lead values (0.5 and 0.55 mg/l) and all of the treated samples yield calculated compliance point concentrations below the concentration of concern. For this reason, verification

testing for one waste constituent, lead, will be a condition of the delisting.

Lead was the only constituent that did not consistently have calculated compliance point concentrations below the concentrations of concern. As shown in Tables 3 and 4, all other constituents were always below the concentrations of concern at the calculated compliance point. It should also be noted that the concentration values as measured in the raw waste for all other constituents of concern were below the LDR concentration values. Therefore, with the exception of the constituent lead, the petitioned waste meets LDR concentration values even before the compliance point concentrations are calculated. Seven years of historical leachate data also supported the decision that lead was the only Constituent of Concern which should require verification testing.

TABLE 2.—MAXIMUM INORGANIC TOTAL CONSTITUENT CONCENTRATIONS FOR RAW LEACHATE/K061 WASTEWATER AND TREATED LEACHATE/K061 WASTEWATER FROM THE K061 STORAGE TANK

Constituents	Total Constituent Analyses for Raw Leachate ¹ (mg/l)	Total Constituent Analyses for Treated Leachate ¹ (mg/l)
Antimony	<0.0066	0.008
Arsenic	0.081	0.068
Barium	0.26	0.007
Beryllium	<0.0017	<0.0017
Cadmium	0.019	0.0020
Chromium (Total)	0.17	0.013
Chromium (Hexavalent)	<0.1	<0.02
Cobalt	<0.0016	<0.0016
Copper	0.096	0.029
Lead	2	0.081
Mercury	0.00031	0.00016
Nickel	0.019	0.014
Selenium	<0.01	0.044
Silver	<0.0012	<0.0012
Thallium	<0.0096	<0.0096
Tin	0.025	0.017
Vanadium	0.042	0.038
Zinc	5.6	0.08
Sulfide (Total)	1.3	<1.0
Cyanide (Total)	<0.0018	<0.0018

< Denotes that the constituent was not detected at the noted detection limit.

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

TABLE 3.—EPACML: CALCULATED COMPLIANCE POINT ORGANIC CONCENTRATIONS FOR RAW LEACHATE AND K061 WASTEWATER FROM THE K061 STORAGE TANK.

Organic Constituents	Compliance Point Concentrations ¹ (mg/l)	Levels of Concern ² (mg/l)
1,2-Dichloroethane	0.00006	0.005
2-Butanone	0.00004	20.
4-Methyl-2-pentanone	0.0001	2.
Acetone	0.001	4.
Carbon Disulfide	0.00004	4.
Ethylbenzene	0.00006	70.
Methylene Chloride	0.00001	0.005
Toluene	0.00001	1.

TABLE 3.—EPACML: CALCULATED COMPLIANCE POINT ORGANIC CONCENTRATIONS FOR RAW LEACHATE AND K061 WASTEWATER FROM THE K061 STORAGE TANK.—Continued

Organic Constituents	Compliance Point Concentrations ¹ (mg/l)	Levels of Concern ² (mg/l)
Xylene	0.0004	10.

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

¹ Using the maximum leachate level from Table 1 and based on a DAF of 68 calculated using the EPACML for a yearly volume of 2500 cu. yards (or 500,000 gal.).

² See Docket Report on Health-Based Levels and Solubilities Used in the evaluation of Delisting Petitions, December 1994 located in the RCRA public docket for today's document.

TABLE 4.—EPACML: CALCULATED COMPLIANCE POINT INORGANIC CONCENTRATIONS FOR RAW LEACHATE/K061 WASTEWATER FROM THE K061 STORAGE TANK.

Inorganic Constituents	Compliance Point Concentrations ¹ (mg/l)	Levels of Concern ² (mg/l) ¹
Arsenic	0.0012	0.05
Barium	0.0038	2.
Cadmium	0.00028	0.005
Chromium (Total)	0.0025	0.1
Copper	0.0014	1.3
Lead	0.03	0.015
Mercury	0.000005	0.002
Nickel	0.00028	0.1
Tin	0.00037	21.
Vanadium	0.00062	0.3
Zinc	0.082	5.

¹ Using the maximum concentration level from Table 2 and based on a DAF of 68 calculated using the EPACML for yearly volume of 2500 cu. yards (or 500,000 gal.).

² See Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions, December 1994 located in the RCRA public docket for today's document.

G. What did EPA conclude about Chaparral's analysis?

The EPA concluded, after reviewing Chaparral Steel's processes and analytical data that:

(1) no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by-products in Chaparral's wastes, and

(2) the petitioned wastes do not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

H. What other factors did EPA consider in its evaluation?

During the evaluation of Chaparral's petition, EPA also considered the potential impact of the petitioned wastes via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from the petitioned wastes is unlikely as the constituents of concern are not volatile organics which would readily transfer to the ambient air; no appreciable air releases are likely from the petitioned wastes under any likely disposal

conditions. Nor does EPA believe that the petitioned waste presents a threat to surface water. Calculations indicate that the concentrations of the constituents of concern would be below drinking water criteria and surface water criteria before reaching the nearest surface water. See docket.

I. What is EPA's final evaluation of this delisting petition?

The descriptions of the Chaparral Steel's process and analytical characterization, in conjunction with the proposed verification testing requirement (as discussed later in this document), provide a reasonable basis to grant Chaparral Steel's petition for a conditional exclusion of the petitioned waste. The EPA believes the data submitted in support of the petition show Chaparral Steel's proposed wastewater treatment process can render the raw leachate wastes non-hazardous if the raw leachate does not meet delisting conditions. Treatment is an option if the untreated waste does not meet the delisting criteria. The EPA has reviewed the sampling procedures used by Chaparral Steel and has determined they satisfy EPA criteria for collecting representative samples of the

variations in constituent concentrations in the petitioned waste. The data submitted in support of the petition show that constituents, with the exception of lead in two samples, in Chaparral Steel's raw leachate waste are presently below health-based levels used in the delisting decision-making. The EPA believes that the facility's information has successfully shown that the petitioned waste is non-hazardous or can be rendered non-hazardous through treatment. The EPA, therefore, proposes to grant a conditional exclusion to Chaparral Steel Midlothian, L.P., located in Midlothian, Texas, for the leachate from their Landfill No. 3, the storm water from their baghouse, and other wastewater that may have come in contact with K061. The EPA's decision to conditionally exclude this waste is based on the historical analytical data associated with the petitioned waste and characterization of the raw and treated waste. If the proposed rule is finalized, the petitioned wastes will no longer be subject to regulation under parts 262 through 268 and the permitting standards of part 270.

IV. Next Steps

A. With what conditions must the petitioner comply?

The petitioner, Chaparral, must comply with the requirements in 40 CFR part 261, appendix IX, Table 2. The text below gives the rationale and details of those requirements.

(1) *Delisting Levels:* All concentrations for the constituent total lead in the approximately 2,500 cubic yards (500,000 gallons) per calendar year of raw leachate from Landfill No.3, storm water from the baghouse area, and other K061 wastewaters that is transferred from the storage tank to nonhazardous management must not exceed 0.69 mg/l (parts per million). Constituents must be measured in the waste by the method specified in SW-846.

This paragraph provides the level of lead for which Chaparral Steel must test the raw leachate, baghouse storm water, and other K061 wastewaters combined in the storage tank. This is the level below which this waste would be considered non-hazardous and for which the Agency is proposing to grant an annual conditional exclusion. The EPA selected the lead constituent specified after reviewing information about the composition of the waste, descriptions of Chaparral's treatment process, previous test data provided for the waste, the respective health-based levels used in delisting decision-making, and LDR levels. The EPA established the proposed delisting levels for this paragraph by back-calculating the Maximum Allowable Leachate concentrations from the health-based levels for the constituents of concern using the EPACML chemical-specific DAF of 68. See, previous discussions in Section III.F, i.e., $MAL = HBL \times DAF$ or $1.02 \text{ mg/l} = 0.015 \text{ mg/l} \times 68$. The EPA selected the more conservative concentration level in considering the calculated health-based value of 1.02 mg/l and the technology based LDR value of 0.69 mg/l. This delisting level corresponds to the allowable levels measured in the waste.

(2) *Waste Holding and Handling:* Chaparral Steel must store as hazardous all leachate waste from Landfill No. 3, storm water from the bag house area, and other K061 wastewaters until verification testing as specified in Condition (3), is completed and valid analyses demonstrate that condition (1) is satisfied. If the levels of constituents measured in the samples of the waste do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed the delisting levels set in Condition (1), the waste volume corresponding to this sample must be treated until delisting levels are met or

returned to the original storage tank. Treatment is designated as precipitation, flocculation, and filtering in a wastewater treatment system to remove metals from the wastewater. If the delisting level cannot be met, then the waste must be managed and disposed of in accordance with subtitle C of RCRA.

The purpose of this paragraph is to ensure that any waste located in the storage tank which might contain hazardous levels of lead are managed and disposed of in accordance with subtitle C of RCRA. Holding the leachate waste from Landfill No. 3, the storm water from the baghouse area, and other K061 wastewaters until characterization is complete will protect against improper handling of hazardous material. If EPA determines that the data collected under this condition do not support the data provided for the petition or Chaparral Steel is not meeting the terms of its exclusion, the exclusion will not cover the petitioned wastes.

(3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW-846 methodologies. Chaparral Steel must analyze one composite sample from each batch of untreated wastewater transferred from the hazardous waste storage tank to non-hazardous waste management. Each composited batch sample must be analyzed, prior to non-hazardous management of the waste in the batch represented by that sample, for the constituent lead as listed in Condition (1). Chaparral may treat the waste as specified in Condition (2).

If EPA judges the treatment process to be effective during the operating conditions used during the initial verification testing, Chaparral Steel may replace the testing requirement in Condition (3)(A) with the testing requirement in Condition (3)(B). Chaparral must continue to test as specified in (3)(A) until and unless notified by EPA or designated authority that testing in Condition (3)(A) may be replaced with by Condition (3)(B).

(A) *Initial Verification Testing:* Representative composite samples from the first eight (8) full-scale treated batches of wastewater from the K061 leachate/wastewater storage tank must be analyzed for the constituent lead as listed in Condition (1). Chaparral must report to EPA the operational and analytical test data, including quality control information, obtained from these initial full scale treatment batches within 90 days of the eighth treatment batch.

(B) *Subsequent Verification Testing:* Following notification by EPA, Chaparral Steel may substitute the testing conditions in (3)(B) for (3)(A). Chaparral Steel must analyze representative composite samples from the treated full scale batches on an annual basis. If delisting levels for any constituent listed in Condition (1) are exceeded in the annual sample, Chaparral must reinstitute complete testing as required in Condition (3)(A). As

stated in Condition (3) Chaparral must continue to test all untreated batches to determine if delisting criteria are met before managing the wastewater from the K061 tank as nonhazardous.

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

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

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

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

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

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

If made final, the proposed conditional exclusion will apply to 2500 cubic yards (500,000 gallons) per calendar year of petitioned waste. Although management of the wastes covered by this petition would not be subject to subtitle C jurisdiction upon final promulgation of an exclusion, Chaparral must ensure that the onsite management of the delisted waste is in accordance with TNRC rules and regulations or the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

(6) *Reopener Language*

(A) If, anytime after disposal of the delisted waste, Chaparral Steel possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data.

(B) If Chaparral fails to submit or maintain the data requested in paragraphs (5), or (6)(A) or if any information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

(C) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or delegate's notice to present such information.

(D) Following the receipt of information from the facility described in paragraph (6)(C) or (if no information is presented under paragraph (6)(C)) the initial receipt of information described in paragraph (5) or (6)(A), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or

the environment. Any required action described in the Regional Administrator or delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise.

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

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

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

delisting petition and a possible revocation of the decision.

B. What happens if Chaparral violates the terms and conditions?

If Chaparral violates the terms and conditions established in the exclusion, the Agency will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the Agency will continue to evaluate these events on a case-by-case basis. The Agency expects Chaparral to conduct the appropriate waste analysis and comply with the criteria explained above in terms and conditions of the exclusion.

V. Public Comments

A. How may I as an interested party submit comments?

The EPA is requesting public comments on this proposed decision and on the applicability of the fate and transport model used to evaluate the petition.

Please send three copies of your comments: Send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD-O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Send the third copy to the Texas Natural Resource Conservation Commission (TNRC), 12100 Park 35 Circle, Austin, Texas 78753. Identify your comments at the top with this regulatory docket number: F-99-TXDEL-CHAPARRAL.

You should address requests for a hearing to the Acting Director, Robert E. Hanneschlager, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How may I review the docket or obtain copies of the proposed exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in EPA Freedom of Information Act Review Room from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665-6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

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

VII. Children's Health Protection

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

VIII. Regulatory Flexibility Act

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

This rule, if promulgated, will not have any adverse economic impact on

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

IX. Paperwork Reduction Act

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

X. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory

requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local or tribal governments or the private sector. The EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon state, local or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

XI. Intergovernmental Partnership

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

List of Subjects in 40 CFR Part 261

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

Dated: August 6, 1999.

Robert Hanneschlager,

Acting Director, Multimedia Planning and Permitting Division.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

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

Appendix IX to part 261—Wastes Excluded Under sections 260.20 and 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* Chaparral Steel Midlothian, L.P.	* Midlothian, Texas	<p>* Leachate from Landfill No. 3, storm water from the baghouse area, and other K061 wastewaters which have been pumped to tank storage (at a maximum generation of 2500 cubic yards or 500,000 gallons per calendar year) (EPA Hazardous Waste No. K061) generated at Chaparral Steel Midlothian, L.P., Midlothian, Texas, and is managed as nonhazardous solid waste after [publication date of final rule].</p> <p>* Chaparral Steel must implement a testing program that meets the following conditions for the exclusion to be valid:</p> <p>(1) <i>Delisting Levels:</i> All concentrations for the constituent total lead in the approximately 2,500 cubic yards (500,000 gallons) per calendar year of raw leachate from Landfill No. 3, storm water from the baghouse area, and other K061 wastewaters that is transferred from the storage tank to nonhazardous management must not exceed 0.69 mg/1 (ppm). Constituents must be measured in the waste by the method specified in SW-846.</p> <p>(2) <i>Waste Holding and Handling:</i> Chaparral Steel must store as hazardous all leachate waste from Landfill No. 3, storm water from the bag house area, and other K061 wastewaters until verification testing as specified in Condition (3), is completed and valid analyses demonstrate that condition (1) is satisfied. If the levels of constituents measured in the samples of the waste do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed the delisting levels set in Condition (1), the waste volume corresponding to this sample must be treated until delisting levels are met or returned to the original storage tank. Treatment is designated as precipitation, flocculation, and filtering in a wastewater treatment system to remove metals from the wastewater. If the delisting level cannot be met, then the waste must be managed and disposed of in accordance with subtitle C of RCRA.</p> <p>(3) <i>Verification Testing Requirements:</i> Sample collection and analyses, including quality control procedures, must be performed according to SW-846 methodologies.</p> <p>Chaparral Steel must analyze one composite sample from each batch of untreated wastewater transferred from the hazardous waste storage tank to non-hazardous waste management. Each composited batch sample must be analyzed, prior to non-hazardous management of the waste in the batch represented by that sample, for the constituent lead as listed in Condition (1). Chaparral may treat the waste as specified in Condition (2).</p> <p>If EPA judges the treatment process to be effective during the operating conditions used during the initial verification testing, Chaparral Steel may replace the testing requirement in Condition (3)(A) with the testing requirement in Condition (3)(B). Chaparral must continue to test as specified in (3)(A) until and unless notified by EPA or designated authority that testing in Condition (3)(A) may be replaced with by Condition (3)(B).</p> <p>(A) <i>Initial Verification Testing:</i> Representative composite samples from the first eight (8) full-scale treated batches of wastewater from the K061 leachate/wastewater storage tank must be analyzed for the constituent lead as listed in Condition (1), Chaparral must report to EPA the operational and analytical test data, including quality control information, obtained from these initial full scale treatment batches within 90 days of the eighth treatment batch.</p> <p>(B) <i>Subsequent Verification Testing:</i> Following notification by EPA, Chaparral Steel may substitute the testing conditions in (3)(B) for (3)(A). Chaparral Steel must analyze representative composite samples from the treated full scale batches on an annual basis. If delisting levels for any constituent listed in Condition (1) are exceeded in the annual sample, Chaparral must reinstitute complete testing as required in Condition (3)(A). As stated in Condition (3) Chaparral must continue to test all batches of untreated waste to determine if delisting criteria are met before managing the wastewater from the K061 tank as nonhazardous.</p> <p>(4) <i>Changes in Operating Conditions:</i> If Chaparral Steel significantly changes the treatment process established under Condition (3) (e.g., use of new treatment agents), Chaparral Steel must notify the Agency in writing. After written approval by EPA, Chaparral Steel may handle the wastes generated as non-hazardous, if the wastes meet the delisting levels set in Condition (1).</p>

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		<p>(5) <i>Data Submittals</i>: Records of operating conditions and analytical data from Condition (3) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, or both, and be made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:</p> <p>Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.</p> <p>As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.</p> <p>In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.</p> <p>(6) <i>Reopener Language</i> (A) If, anytime after disposal of the delisted waste, Chaparral Steel possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data.</p> <p>(B) Based on the information described in paragraphs (5), or (6)(A) and any other information received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.</p> <p>(C) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or delegate's notice to present such information.</p> <p>(D) Following the receipt of information from the facility described in paragraph (6)(C) or (if no information is presented under paragraph (6)(C)) the initial receipt of information described in paragraph (5) or (6)(A), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise.</p> <p>(7) <i>Notification Requirements</i>: Chaparral Steel must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activity. The one-time written notification must be updated if the delisted waste is shipped to a different disposal facility. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.</p>
*	*	*

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL 6427-3]

North Carolina; Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative determination on application of State of North Carolina for final approval, public hearing and public comment period—correction.

SUMMARY: The State of North Carolina has applied for approval of its underground storage tank program for petroleum and hazardous substances under subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) reviewed the North Carolina application and has made the tentative decision that the North Carolina underground storage tank program for petroleum and hazardous substances satisfies all of the requirements necessary to qualify for approval. The **Federal Register** document announcing EPA's tentative decision and requesting public comment was published in August 10, 1999 (64 FR 43336-43338). In that **Federal Register** document the date for EPA to determine if there is sufficient interest to hold a public hearing, and for the public to contact EPA to find out if a public hearing would be held, was incorrectly listed. The correct information should read: EPA will determine by September 10, 1999, whether there is sufficient interest to hold the public hearing. Anyone who wishes to learn whether or not the public hearing on the State's application has been canceled should telephone the contact listed under the heading **FOR FURTHER FURTHER INFORMATION CONTACT.**

DATES: Written comments on the North Carolina program approval application, as well as requests to present oral testimony, must be received by the close of business September 9, 1999. A public hearing is scheduled for September 13, 1999, unless insufficient public interest is expressed in holding a hearing. EPA reserves the right to cancel the public hearing if sufficient public interest is not communicated to EPA in writing by September 9, 1999. EPA will determine by September 10, 1999, whether there is significant interest to hold the public hearing. The State of North Carolina

will participate in the public hearing held by EPA on this subject.

ADDRESSES: Written comments should be sent to Mr. John K. Mason, Chief of Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303, telephone (404) 562-9277. Copies of the North Carolina approval application are available for inspection and copying during the hours of 9:00 am to 5:00 pm at the following addresses: North Carolina Department of Environment and Natural Resources, Underground Storage Tank Section, 2728 Capital Boulevard, Parker-Lincoln Building, Raleigh, North Carolina 27604, Phone: (919) 733-8486; U.S. EPA Docket Clerk, Office of Underground Storage Tanks, 1235 Jefferson Davis Highway-1st Floor, Arlington, Virginia 22202, Phone: (703) 603-9231; and, U.S. EPA Region 4, Underground Storage Tank Section, Atlanta Federal Center, 15th Floor, 61 Forsyth Street, SW, Atlanta, Georgia 30303, Phone: (404) 562-9277.

Unless insufficient public interest is expressed, EPA will hold a public hearing on the State of North Carolina's application for program approval on September 13, 1999, at 7:00 pm at the North Carolina Department of Environment and Natural Resources Archedale Building, Ground Floor Hearing Room, 512 North Salisbury Street, Raleigh, North Carolina 27604-1148. Anyone who wishes to learn whether or not the public hearing on the State's application has been cancelled should telephone the following contacts on or after September 10, 1999: Mr. John K. Mason, Chief, Underground Storage Tank Section, US EPA Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303, Phone: (404) 562-9277; or Mr. Burrie Boshoff, Chief, Underground Storage Tank Section, North Carolina Department of Environment and Natural Resources, Post Office Box 29578, Raleigh, North Carolina 27626-0578, Phone: (919) 733-8486.

FOR FURTHER INFORMATION CONTACT: Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303, phone: (404) 562-9277.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This document is issued under the authority of section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 13, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.
[FR Doc. 99-21940 Filed 8-23-99; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

42 CFR Part 84

National Institute for Occupational Safety and Health; Approval of Respiratory Devices Used to Protect Workers in Hazardous Environments

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of priorities for rulemaking.

SUMMARY: NIOSH is announcing a change in priority order and projected dates for publication of proposed rule amendments (modules) for respiratory devices used to protect workers in hazardous environments. The priority order of the planned modules is provided to help the respirator community plan for potential changes. **FOR FURTHER INFORMATION CONTACT:** Roland Berry Ann, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505-2888, telephone (304) 285-5907.

Availability and access of copies: Additional copies of this notice can be obtained by calling the NIOSH toll-free information number (1-800-35-**NIOSH**, option 5, 9 a.m.-4 p.m. ET); the electronic bulletin board of the Government Printing Office, (202) 512-1387; and the NIOSH Home Page on the World-Wide Web (<http://www.cdc.gov/niosh/homepage.html>).

SUPPLEMENTARY INFORMATION: NIOSH is currently in the process of developing modules to be proposed in the priority order below:

1. Administrative/Quality Assurance Module

Areas for potential modification in this module are: Upgrade of Quality Assurance requirements; Ability to use private sector quality auditors and private sector testing laboratories in the approval program; Revised approval label requirements; Validated approval fit tests; Updated and restructured fee schedule; and Fee retention in the Respirator program.