

determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

#### B. Executive Order 13132

The State of Florida is requesting that EPA take action to designate State waters within the FKNMS as a NDZ. Therefore, this order does not apply.

#### C. Executive Order 13175

This order pertains to compliance costs of this rule to tribes. There are no tribal lands within the boundaries of the FKNMS. Therefore, this order does not apply.

#### D. Executive Order 13045

This order authorizes EPA the discretion to consider health or safety risks (especially for children) when making regulatory determinations. The net result of this action will be to improve environmental conditions within the FKNMS.

#### E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 6501 *et seq.* whenever an agency is developing regulations, it must prepare and make available for public comment the impact of the regulations on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required if the head of the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. EPA policy dictates that an Initial Regulatory Flexibility Analysis (IRFA) be prepared if the proposed action will have any significant effect on any small entities. An abbreviated IRFA can be prepared depending on the severity of the economic impact and relevant statute's allowance of alternatives. After considering the economic impacts of this proposed regulation/rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

#### F. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and recordkeeping burden on the regulated community, as we minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record keeping requirements affecting 10 or more non-Federal respondents be approved by OMB. Since today's rule would not establish or modify any

information and record keeping requirements, it is not subject to the requirements of the Paperwork Reduction Act.

#### G. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), 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 statute is required for EPA rules under section 205 of the Act, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must consider that alternative, unless the Administrator explains otherwise in the final rule. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them opportunity for meaningful and timely input during the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them of compliance with the regulatory requirements.

EPA, in consultation with local and State government officials, has determined that this rule does not include a Federal mandate that will result in estimated annualized costs of \$100 million or more to either State, local, and tribal governments in the aggregate, or to the private sector. All vessels that are equipped with MSDs and that navigate throughout the FKNMS are already subject to the EPA MSD Standard at 40 CFR part 140 and the U.S. Coast Guard MSD Standard at 33 CFR part 159. These standards prohibit the overboard discharge of untreated vessel sewage in State waters in the FKNMS and require that vessels with on-board toilets shall have U.S. Coast Guard certified MSDs which either retain sewage or treat sewage to the applicable standards. There are 3 types of MSDs certified by the U.S. Coast Guard. Only those vessels that have either one of the two types of certified flow-through devices will be affected by this proposed rule. Those vessels affected by this rule will either

retain and pump out treated sewage or discharge outside of the designated NDZ. Any costs associated with those activities is minimal and it is therefore estimated that the annualized costs to State or tribal governments in the aggregate, or to the private sector, will not exceed \$100 million.

Therefore, this rule is not subject to the requirements of sections 202 and 205 of the Act. Because the rule contains no regulatory requirements that might significantly or uniquely affect small governments, it is also not subject to the requirements of section 203 of the Act. Small governments are subject to the same requirements as other entities whose duties result from this rule and they have the same ability as other entities to retain and pump out treated sewage or discharge outside of the designated zones.

#### Lists of Subjects in 40 CFR Part 140

Environmental protection, Sewage disposal, Vessels.

Dated: July 16, 2001.

#### A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Title 40, Chapter 1, Part 140 of the Code of Federal Regulations is amended as follows:

#### PART 140—[AMENDED]

1. The authority citation for part 140 continues to read as follows:

**Authority:** 33 U.S.C. 1322

2. Section 140.4 is amended by adding paragraph (b)(1)(ii) to read as follows:

#### § 140.4 Complete prohibition.

\* \* \* \* \*

(b) \* \* \*

(ii) Waters of the State of Florida within the boundaries of the Florida Keys National Marine Sanctuary as delineated on a map of the Sanctuary at "<http://www.fknms.nos.noaa.gov/>".

\* \* \* \* \*

[FR Doc. 01-18650 Filed 7-25-01; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 261

[SW-FRL-7003-4]

#### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Amendment

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed amendment and request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA, also "the Agency" or "we" in this preamble) is proposing to modify an exclusion (or "delisting") from the lists of hazardous waste, previously granted to Geological Reclamation Operations and Waste Systems, Inc. (GROWS) in Morrisville, Pennsylvania. This action responds to a petition for amendment submitted by GROWS to increase the maximum annual volume covered by its current exclusion.

The Agency is basing its tentative decision to grant the petition for amendment on an evaluation of specific information provided by the petitioner. This tentative decision, if finalized, would increase the annual volume of waste conditionally excluded from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

**DATES:** EPA is requesting public comments on this proposed amendment. We will accept comments on this proposal until September 10, 2001. Comments postmarked after the close of the comment period will be stamped "late." These late comments may not be considered in formulating a final decision.

Any person may request a hearing on this tentative decision to grant the petition for amendment by filing a request by August 10, 2001. The request must contain the information prescribed in 40 CFR 260.20(d).

**ADDRESSES:** Please send two copies of your comments to David M. Friedman, Technical Support Branch (3WC11), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029.

Your request for a hearing should be addressed to James J. Burke, Director, Waste and Chemicals Management Division (3WC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029.

The RCRA regulatory docket for this proposed rule is located at the offices of U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029, and is available for your viewing from 8:30 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. Please call David M. Friedman at (215) 814-3395 for appointments. The public may copy material from the regulatory docket at \$0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For technical information concerning this document, please contact David M. Friedman at the address above or at (215) 814-3395.

**SUPPLEMENTARY INFORMATION:** The information in this section is organized as follows:

- I. Background
  - A. What Laws and Regulations Give EPA the Authority To Delist Waste?
  - B. What Is Currently Delisted At GROWS?
  - C. What Does GROWS Request in Its Petition For Amendment?
- II. Disposition of Petition Amendment
  - A. What Information Did GROWS Submit To Support Its Petition For Amendment?
  - B. What Method Did EPA Use To Evaluate Risk?
    - 1. How did EPA evaluate risk when it reviewed the 1986 GROWS' petition?
    - 2. How did EPA evaluate risk for this proposed amendment?
  - C. What Conclusion Did EPA Reach?
- III. Conditions for Exclusion
  - A. What Are the Maximum Allowable Concentrations of Hazardous Constituents?
  - B. How Frequently Must GROWS Test the Waste and How Must It Be Managed Until It Is Disposed?
  - C. What Must GROWS Do If the Process Changes?
  - D. What Data Must GROWS Submit?
  - E. What Happens If GROWS Fails To Meet the Conditions of the Exclusion?
- IV. Effect on State Authorization
- V. Effective Date
- VI. Administrative Requirements

#### I. Background

##### *A. What Laws and Regulations Give EPA the Authority To Delist Waste?*

EPA published amended lists of hazardous wastes from non-specific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA. These lists have been amended several times, and are found at 40 CFR 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 40 CFR Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity), or (2) they meet the criteria for listing contained in 40 CFR 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, 40 CFR 260.20 and 260.22 provide an exclusion procedure which allows a person to demonstrate that a specific listed waste from a particular generating facility should not be regulated as a hazardous waste, and should, therefore, be delisted.

According to 40 CFR 260.22(a)(1), in order to have these wastes excluded a petitioner must first show that wastes generated at its facility do not meet any of the criteria for which the wastes were listed. The criteria which we use to list wastes are found in 40 CFR 261.11. An explanation of how these criteria apply to a particular waste is contained in the background document for that listed waste.

In addition to the criteria that we considered when we originally listed the waste, we are also required by the provisions of 40 CFR 260.22(a)(2) to consider any other factors (including additional constituents), if there is a reasonable basis to believe that these factors could cause the waste to be hazardous.

In a delisting petition, the petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics defined in Subpart C of 40 CFR Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity), and must present sufficient information for EPA to determine whether the waste contains any other constituents at hazardous levels.

A generator remains obligated under RCRA to confirm that its waste remains non-hazardous based on the hazardous waste characteristics defined in Subpart C of 40 CFR Part 261 even if EPA has delisted its waste.

We also define residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes as hazardous wastes. (*See* 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively.) These wastes are also eligible for exclusion but remain hazardous wastes until delisted.

##### *B. What Is Currently Delisted at GROWS?*

GROWS operates a commercial landfill and wastewater treatment plant in Morrisville, Pennsylvania. On November 13, 1986, GROWS petitioned EPA under the provisions in 40 CFR 260.20 and 260.22 to exclude from hazardous waste regulation a wastewater treatment sludge filter cake derived from the treatment of landfill leachate. This leachate originates, in part, from its closed landfill containing a mixture of solid wastes and hazardous wastes. The wastewater treatment plant also treats non-hazardous leachate from non-hazardous waste landfills.

In support of its petition, GROWS submitted sufficient information to EPA to allow us to determine that the waste was not hazardous based upon the criteria for which it was listed and that

no other hazardous constituents were present in the waste at levels of regulatory concern.

A full description of these wastes and the Agency's evaluation of the 1986 GROWS' petition are contained in the Proposed Rule and Request for Comments published in the **Federal Register** on September 17, 1990 (55 FR 38090).

After evaluating public comment on the Proposed Rule, we published a final decision in the **Federal Register** on August 20, 1991, (56 FR 41286) to exclude GROWS' wastewater treatment sludge filter cake derived from the treatment of EPA Hazardous Waste No. F039 (multi-source leachate) from the list of hazardous wastes found in 40 CFR 261.31.

EPA's final decision in 1991 was conditioned on the volume of waste identified in the 1986 GROWS' petition. Specifically, the exclusion granted by EPA is limited to a maximum annual volume of 1000 cubic yards. Any additional waste volume in excess of this limit generated by GROWS in a calendar year was to have been managed as hazardous waste.

*C. What Does GROWS Request in Its Petition for Amendment?*

As a result of an increase in wastewater treatment sludge filter cake production associated with an increase in the efficiency of the wastewater treatment operation, GROWS petitioned EPA on June 12, 2000 for an amendment to its August 20, 1991 final exclusion.

In its petition, GROWS requested an increase in the maximum annual waste volume that is covered by its exclusion from 1000 cubic yards to 2000 cubic yards.

**II. Disposition of Petition Amendment**

*A. What Information Did GROWS Submit To Support its Petition for Amendment?*

The exclusion which we granted to GROWS on August 20, 1991, is a conditional exclusion. In order for its exclusion to remain effective, GROWS must verify that its waste meets prescribed delisting levels. Prior to disposal, GROWS is required to sample each batch of waste generated over a four week period. Samples must be analyzed for a list of verification constituents. If the concentration of any verification constituent exceeds its respective maximum allowable concentration, the batch must either be retreated until it meets these levels, or managed and disposed of as a hazardous waste in accordance with Subtitle C of RCRA.

In order to support its Petition For Amendment, GROWS submitted its verification testing results from the past two years to EPA. This submission consisted of the results of twenty-seven (27) analyses conducted on samples collected for the time period from December 15, 1997, until December 10, 1999.

The verification testing program prescribed by EPA in the August 20,

1991 exclusion requires GROWS to analyze metal constituents using the Toxicity Characteristic Leaching Procedure (TCLP), cyanide using a distilled water leaching procedure, and organics using total constituent analysis.

The tools used by EPA in its evaluation of petitioned wastes have changed since the 1986 GROWS' delisting petition was granted. The changes in the methods used by EPA in evaluation of requests for exclusions are described below and in section II. B. of this preamble.

In addition to the two most recent years of verification testing results mentioned above, we also requested that GROWS submit the results of total constituent analyses for a minimum of four samples for the inorganic constituents. This was necessary because both total constituent analysis data and leachate data are now used in assessing the potential risk from disposal of a petitioned waste, and there is no reliable way to estimate actual total constituent concentrations of the inorganic constituents from leachate data. GROWS submitted this additional information on June 12, 2000, September 21, 2000, and February 5, 2001.

The maximum total and leachate concentrations for the inorganic constituents which were found in the verification testing results and in the additional information provided by GROWS are presented in Table 1.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS <sup>1</sup> WWTP FILTER CAKE

Inorganic constituents	Total constituent concentration (mg/kg)	TCLP leachate concentration (mg/l)
Arsenic .....	11.6	0.017
Barium .....	47.0	0.77
Cadmium .....	0.5	0.02
Chromium .....	9.3	0.02
Lead .....	8.0	0.65
Mercury .....	0.3	0.0002
Nickel .....	4.0	0.098
Selenium .....	0.3	0.008
Silver .....	<0.5	0.02
Cyanide (total) .....	<1.0	0.009

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

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

The verification testing program specified by the current exclusion for GROWS requires only total constituent analysis for the organic constituents but not leachate testing. Leachate testing for organic constituents was not required at the time that the 1986 GROWS' petition was being evaluated. Organic

constituent mobility was estimated by modeling rather than testing.

Because the Agency had not yet developed a reliable leachate test to estimate the migration potential of organic constituents, leachable concentrations of organic constituents in the waste were estimated using a

model known as the Organic Leachate Model (OLM). The OLM was based on an empirical relationship involving a waste constituent's aqueous solubility that was derived from a supporting data base of waste constituent concentrations and experimentally measured leachate concentrations. (See 50 FR 48953 for a

complete description of the model, and 51 FR 41084 for a description of changes that were made to the model in response to public comment).

The Agency made it clear that the OLM was an interim tool to be used for this purpose and that it would be replaced when an analytical organic leaching test was developed.

On March 29, 1990, we promulgated the Toxicity Characteristic Rule which included the TCLP (61 FR 11798). In the preamble to this Rule, we stated that it was our intention to use the TCLP in the delisting program. However, we continued to use the OLM instead of the TCLP in the evaluation of those petitions (including the GROWS' petition) that were then currently being processed.

Because the verification testing program specified by the current exclusion for GROWS does not require TCLP testing for organic constituents, we have evaluated its request for an amendment by calculating theoretical maximum leachate concentrations for the organic constituents by applying the most conservative assumption.

Analyzing a waste for TCLP constituent concentrations involves application of the TCLP (a leaching procedure) followed by analysis of the TCLP leachate for the constituents of concern. For a waste that is a physical solid (*i.e.*, a waste that does not contain a liquid phase), the maximum theoretical leachate concentration can be calculated by dividing the total concentration of the constituent by twenty. This twenty-fold dilution is part

of the TCLP protocol and represents the liquid to solid ratio employed in the test procedure.

If the TCLP were performed on the actual wastewater treatment sludge filter cake, the concentration of the constituents in the TCLP leachate could not exceed the calculated value derived from the procedure described above. The actual TCLP concentration, if determined, may be substantially less than the calculated value because the calculated value assumes that 100 percent of the constituent leaches from the waste.

The maximum (measured) total and maximum (calculated) leachate concentrations for all detected organic constituents in GROWS' waste samples are presented in Table 2.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT <sup>1</sup> AND LEACHATE CONCENTRATIONS WWTP FILTER CAKE

Organic constituents	Measured total constituent concentration (mg/kg)	Calculated TCLP leachate concentration (mg/l)
Acetone .....	1.3	0.065
Bis(2-ethylhexyl)phthlate .....	1.09	0.0545
Carbon Disulfide .....	0.011	0.00055
Chloroform .....	0.12	0.006
Cresol, Total .....	1.23	0.0615
Ethyl Benzene .....	0.028	0.0014
Methyl Ethyl Ketone (2-Butanone) .....	1.8	0.09
Methylene Chloride .....	0.096	0.0048
Napthalene .....	0.75	0.0375
Phenol .....	2.6	0.13
Xylene .....	0.16	0.008

<sup>1</sup> 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.

EPA requires that petitioners submit signed certifications affirming the truthfulness, accuracy and completeness of the information in their delisting petitions (*See* 40 CFR 260.22(i)(12)). GROWS submitted signed certifications dated June 12, 2000, October 2, 2000, and February 5, 2001, stating that all submitted information is true, accurate and complete.

*B. What Method Did EPA Use To Evaluate Risk?*

1. How Did EPA Evaluate Risk When It Reviewed the 1986 GROWS' Petition?

For the current GROWS' delisting determinations, we used the following fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal so that we could determine the potential impact on human health and the environment. This transport model was used to estimate the potential impact of

leachable hazardous constituents on an underlying aquifer.

On February 26, 1985, the Agency first proposed the use of an analytical approach to evaluate the potential impact of wastes that are landfilled. The approach proposed at that time involved the use of a groundwater transport model known as the vertical and horizontal spread (VHS) model, adapted from Domenico and Palciauskas.<sup>1</sup> Under a landfill or surface impoundment scenario, the plausible route of exposure that was of most concern to the Agency was the ingestion of contaminated groundwater. The VHS model approximated the transport processes likely to occur in an aquifer below a waste disposal site. The model predicted the dilution of the contaminants in a drinking water aquifer as a result of dispersion in the vertical and horizontal directions. (*See* 50 FR 7896–7900 for a complete

description of the model, and 50 FR 48886–48910 for a description of changes that were made to the model in response to public comment).

In applying the VHS model, the Agency made a variety of assumptions to account for a reasonable worst-case disposal scenario. The VHS model was based on the premise that a waste being evaluated was placed in a 40 foot wide, 8 foot deep trench at a disposal site (*i.e.*, a landfill). The length of the trench is a function of the volume of the petitioned waste. The model assumed an infinite source of waste and no aquifer recharge. The model mathematically simulates the migration of toxicant-bearing leachate from the waste into the uppermost underlying aquifer, and the subsequent dilution of the toxicants due to dispersion within the aquifer. The Agency used this model to predict the maximum concentration of the diluted toxicant at a compliance point located 500 feet from the disposal site. The model did not consider biodegradation,

<sup>1</sup> Domenico, P.A. and Palciauskas, V.V., *Ground Water*, v.20, no.3, pp. 303–311 (1982).

sorption, hydrolysis, or unsaturated soil conditions.

The waste-specific parameters used in the VHS model were the leachate concentrations of constituents of concern and the annual volume of the petitioned waste.

Because of acknowledged limitations of the VHS such as concerns with its ability to consider large waste volumes, wastes stored in surface impoundments, unsaturated soil conditions, groundwater recharge, and longitudinal contaminant dispersion in the aquifer, the Agency worked to develop a more sophisticated model that would account for these waste disposal assumptions and transport processes.

EPA stated in the final rule promulgating the Toxicity Characteristic that it would begin using a more sophisticated model for the delisting program (See 55 FR 11833; March 29, 1990). Starting with a proposed rule on July 18, 1991, (56 FR 32993) the fate and transport of constituents in leachate from the bottom of the waste unit through the unsaturated zone and to a drinking water well in the saturated zone was estimated using the EPA Composite Model for Landfill (EPACML). The EPACML accounts for:

- One-dimensional steady and uniform advective flow;
- Contaminant dispersion in the longitudinal, lateral, and vertical directions;
- Sorption.

However, continued advances in groundwater fate and transport modeling have been made in recent years and we now propose the use of a more advanced groundwater fate and transport model for delisting evaluations.

## 2. How Did EPA Evaluate Risk for This Proposed Amendment?

a. *Introduction.* For this delisting determination, we used information gathered to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. We used a fate and transport model to predict the release of hazardous constituents from the petitioned waste once it is disposed of to evaluate the potential impact on human health and the environment. To accomplish this, we used a Windows-based software tool, the Delisting Risk Assessment Software Program (DRAS), to estimate the potential releases of waste constituents and to predict the risk associated with those releases. DRAS accomplishes this using several EPA models including the EPA Composite Model for Leachate Migration with Transformation Products

(EPACMTP) fate and transport model for estimating groundwater releases.

Additional information about the EPACMTP model is provided below. For a detailed description of the DRAS program, See 65 FR 58015, September 27, 2000. The technical support document for the DRAS program is available in the public docket for this proposed amendment.

Several revisions have been made to the DRAS program in order to improve the modeling. Specifically, (a) the groundwater inhalation pathway was revised to reflect recent advances in modeling household inhalation from home water use (*e.g.*, showering); (b) the equations used to predict surface volatilization from a landfill have been modified to more accurately reflect true waste concentration releases; (c) the method used to estimate the amount of a constituent that is released to surface water and which eventually becomes freely dissolved in the water column has been improved; and (d) the DRAS was modified to account for bioaccumulation of methyl mercury as a result of the release of mercury into the surface water column.

For a more detailed description of the revisions to the DRAS program listed above, See 65 FR 75637, December 4, 2000.

b. *What fate and transport model does the Agency use in the DRAS for evaluating the risks to groundwater from the proposed exempted waste?* We have used the EPACMTP in this tentative delisting determination. The EPACMTP considers the subsurface fate and transport of chemical constituents. The EPACMTP is capable of simulating the fate and transport of dissolved contaminants from a point of release at the base of a waste management unit through the unsaturated zone and underlying groundwater to a receptor well at an arbitrary downstream location in the aquifer. The model accounts for the following mechanisms affecting contaminant migration: Transport by advection and dispersion, retardation resulting from reversible linear or nonlinear equilibrium adsorption onto the soil and aquifer solid phase, and biochemical degradation processes.

c. *Why is the EPACMTP fate and transport model an improvement over the EPACML?* The modeling approach used for this proposed rulemaking includes three major enhancements over the EPACML. The enhancements include:

- 1—Incorporation of additional fate and transport processes (*e.g.*, degradation of chemical constituents);
- 2—Use of enhanced flow and transport solution algorithms and

techniques (*e.g.*, three-dimensional transport) and;

3—Revision of the Monte Carlo methodology (*e.g.*, site-based implementation of available input data).

A discussion of the key enhancements which have been implemented in the EPACMTP is presented in the Agency's Proposed Rule found at 65 FR 58015, September 27, 2000, and the details are provided in the proposed 1995 Hazardous Waste Identification Rule (HWIR) background documents (60 FR 66344, December 21, 1995).

### C. What Conclusion Did EPA Reach?

EPA believes that the information provided by GROWS provides a reasonable basis to grant GROWS' petition for an amendment to its current delisting. We, therefore, propose to grant GROWS an amendment for an increase in waste volume. The data submitted to support the petition and the Agency's evaluation show that the constituents in the GROWS' wastewater treatment sludge filter cake are below health-based levels used by the Agency for delisting decision-making even at the increased maximum annual waste volume of 2000 cubic years.

For this delisting determination, we used information gathered to identify plausible exposure routes (*i.e.*, groundwater, surface water, air) for hazardous constituents present in the petitioned waste. We determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for GROWS' petitioned waste. We applied the Delisting Risk Assessment Software (DRAS) described above to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal, and we determined the potential impact of the disposal of GROWS' petitioned waste on human health and the environment. In assessing potential risks to groundwater, we used the increased maximum waste volume and the maximum measured or calculated leachate concentrations as inputs to the DRAS program to estimate the constituent concentrations in the groundwater at a hypothetical receptor well downgradient from the disposal site. Using an established risk level, the DRAS program can back-calculate receptor well concentrations (referred to as a compliance-point concentration) using standard risk assessment algorithms and Agency health-based numbers.

EPA Region III generally defines acceptable risk levels for the delisting program as wastes with an excess cancer risk of no more than  $1 \times 10^{-6}$  and a

hazard quotient of no more than 0.1 for individual constituents. These are the criteria that we applied to this petition with one exception. A detectable concentration for arsenic of 0.017 mg/l was found in one out of thirty-one samples analyzed. The calculated chemical cumulative risk for ingestion of carcinogenic arsenic at this level is  $5.67 \times 10^{-6}$ . However, we believe that this risk is acceptable because arsenic was detected in only one sample and because the risk is within a generally acceptable range of  $1 \times 10^{-6}$  and  $1 \times 10^{-6}$ . This is the type of evaluation that the Region III delisting program makes on a case-specific basis.

Furthermore, EPA recently lowered the Safe Drinking Water Act (SDWA) Maximum Contaminant Level (MCL) for arsenic from 50  $\mu\text{g/l}$  to 10  $\mu\text{g/l}$  (See 66 FR 6976, January 22, 2001). Although this recently promulgated level is being reexamined, if the maximum allowable leachate concentration was calculated using the new MCL, the maximum allowable leachate concentration for this waste would be 0.616 mg/l, over 30 times higher than the one detected arsenic leachate concentration. EPA's July 1996 Soil Screening Guidance: User's Guide, EPA/540/R-96/018, states that acceptable levels of contaminants in soils for the groundwater pathway could be derived from SWDA Maximum Contaminant Level Goals (MCLGs) or MCLs. Because the maximum allowable leachate concentration calculated using the new MCL is significantly higher than the concentration calculated using the health-based limit, and because EPA's May 2000 Technical Fact Sheet: Proposed Rule for Arsenic in Drinking Water and Clarifications to Compliance and New Source Contaminants Monitoring, EPA 815-F-00-011, states that naturally occurring levels of arsenic are often higher than these levels, we believe that there can be some flexibility used in setting the allowable concentration of arsenic in leachate.

Therefore, for this amendment, we propose to set the maximum allowable leachate concentration for arsenic at 0.3 mg/l which is the concentration that corresponds to the  $1 \times 10^{-4}$  risk level. This concentration is lower than the 0.79 mg/l level, which is the maximum allowable leachate concentration for arsenic in the current GROWS' delisting. Delisting levels for carcinogenic constituents other than arsenic will still be set at concentrations which correspond to the target risk level of  $1 \times 10^{-6}$ .

Using the maximum compliance-point concentrations and the EPACMTP fate and transport modeling factors, the DRAS further back-calculates the

maximum waste constituent concentrations which would not exceed the compliance-point concentrations in groundwater.

The Agency believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible groundwater contamination resulting from disposal of the petitioned waste in a landfill and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of the RCRA Subtitle C program. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

Similarly, the DRAS used the increased waste volume requested in the petition and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (e.g., volatilization or wind-blown particulate from the landfill). As in the groundwater analyses, the DRAS uses the established acceptable risk level, the health-based data, and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations. In most cases, because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict, and does not presently control, how a petitioner will manage a waste after it is excluded. Therefore, we believe that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model.

As a condition of GROWS' current delisting, GROWS must continue to test for a list of constituents. Based on the increased waste volume requested in the petition and the improved risk assessment methodology, new proposed maximum allowable leachate concentrations and maximum allowable total constituent concentrations (as explained below) 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. The maximum allowable concentration of constituents in leachate for all inorganic constituents and the maximum allowable concentration of constituents

in leachate or waste for all organic constituents in GROWS' waste samples are presented in Table 3 below. These concentrations (*i.e.*, delisting levels) are part of the proposed verification testing conditions of this amendment.

### III. Conditions for Exclusion

#### A. What Are the Maximum Allowable Concentrations of Hazardous Constituents?

The following table summarizes the maximum allowable constituent concentrations (delisting levels) for GROWS' waste. We recalculated these delisting levels for each constituent that is part of GROWS' current delisting using the DRAS and the increased maximum annual waste volume of 2000 cubic yards. These proposed delisting levels were derived from the health-based calculations performed by the DRAS program using either strict health-based levels or MCLs, or from Toxicity Characteristic regulatory levels, whichever resulted in a lower (*i.e.*, more conservative) concentration.

The current maximum allowable constituent concentrations (delisting levels) for GROWS as found in 40 CFR 261 Appendix IX, Table 1, are specified as leachate concentrations for inorganic constituents and as total constituent concentrations for organic constituents for reasons set forth in Section II.B. of this preamble.

Based on the type of waste being evaluated and using the current evaluation techniques developed by the Agency, we believe that groundwater contamination would continue to be the most critical exposure pathway from mismanagement of the waste. Therefore, for this type of evaluation, delisting levels are now typically expressed as TCLP leachate concentrations for both inorganic and organic constituents.

However, because we are proposing to amend the current GROWS' delisting, we have tentatively decided to give GROWS the option of using either: (a) Delisting levels calculated as TCLP leachate concentrations for both inorganic and organic constituents; or (b) delisting levels calculated as TCLP leachate concentrations for the inorganic constituents and delisting levels for the organic constituents which are derived from the TCLP leachate concentrations and recalculated as total constituent concentrations as described below. This option is similar to the current GROWS' verification testing program. The recalculated total constituent concentrations are equally or even more protective than the actual TCLP concentration. In section II.A. of this preamble, we explained that the

TCLP uses a liquid to solid ratio of twenty to one. For a waste such as the wastewater treatment sludge filter cake generated by GROWS that is a physical solid (*i.e.*, a waste that does not contain a liquid phase), the smallest (or lowest) theoretical concentration of a constituent in a waste that can result in a particular TCLP concentration would

be the TCLP concentration multiplied by a factor of twenty. Again, because this calculation assumes that all of the constituent present in the waste will leach from the waste, it is the most conservative assumption. The actual total constituent concentration that would result in a particular TCLP

concentration would likely be much higher.

Both maximum allowable leachate concentrations and maximum allowable total concentrations for the organic constituents that are part of the GROWS' verification testing program are presented in Table 3.

TABLE 3.—MAXIMUM ALLOWABLE CONCENTRATION OF CONSTITUENTS IN LEACHATE OR IN WASTE <sup>1</sup>

Constituent	Maximum allowable leachate concentration (mg/l)	Maximum allowable total concentration (mg/kg)
Arsenic	3.00e-01	
Barium	2.34e+01	
Cadmium	1.80e-01	
Chromium	5.00e+00	
Lead	5.00e+00	
Mercury	7.70e-02	
Nickel	9.05e+00	
Selenium	6.97e-01	
Silver	1.23e+00	
Cyanide	4.33e+00	
Acetone	2.28e+01	4.56e+02
Acetonitrile	3.92e+00	7.84e+01
Acetophenone	2.28e+01	4.56e+02
Acrolein	1.53e+03	3.06e+04
Acrylonitrile	7.80e-03	1.56e-01
Aldrin	5.81e-06	1.16e-04
Aniline	7.39e-01	1.48e+01
Anthracene	8.00e+00	1.60e+02
Benz(a)anthracene	1.93e-04	3.86e-03
Benzene	1.45e-01	2.90e+00
Benzo(a)pyrene	1.18e-05	2.36e-04
Benzo(b)fluoranthene	1.07e-04	2.14e-03
Benzo(k)fluoranthene	1.49e-03	2.98e-02
Bis(2-chlorethyl)ether	3.19e-02	6.38e-01
Bis(2-ethylhexyl)phthalate	8.96e-02	1.79e+00
Bromodichloromethane	6.80e-02	1.36e+00
Bromoform(Tribromomethane)	5.33e-01	1.07e+01
Butyl-4,6-dinitrophenol, 2-sec-(Dinoseb)	2.28e-01	4.56e+00
Butylbenzylphthalate	9.29e+00	1.86e+02
Carbon disulfide	2.28e+01	4.56e+02
Carbon tetrachloride	4.50e-02	9.00e-01
Chlordane	5.11e-04	1.02e-02
Chloro-3-methylphenol 4-	2.97e+02	5.94e+03
Chloroaniline, p-	9.14e-01	1.83e+01
Chlorobenzene	6.08e+00	1.22e+02
Chlorobenzilate	4.85e-02	9.70e-01
Chlorodibromomethane	5.02e-02	1.00e+00
Chloroform	7.79e-02	1.56e+00
Chlorophenol, 2-	1.14e+00	2.28e+01
Chrysene	2.04e-02	4.08e-01
Cresol	1.14e+00	2.28e+01
DDD	5.83e-04	1.17e-02
DDE	1.37e-04	2.74e-03
DDT	2.57e-04	5.14e-03
Dibenz(a,h)anthracene	5.59e-06	1.12e-04
Dibromo-3-chloropropane, 1, 2-	3.51e-03	7.02e-02
Dichlorobenzene, 1,3-	9.35e+00	1.87e+02
Dichlorobenzene, 1,2-	1.25e+01	2.50e+02
Dichlorobenzene, 1,4-	1.39e-01	2.78e+00
Dichlorobenzidine, 3,3'-	9.36e-03	1.87e-01
Dichlorodifluoromethane	4.57e+01	9.14e+02
Dichloroethane, 1,1-	1.20e+00	2.40e+01
Dichloroethane, 1,2-	2.57e-03	5.14e-02
Dichloroethylene, 1,1-	7.02e-03	1.40e-01
Dichloroethylene, trans-1,2-	4.57e+00	9.14e+01
Dichlorophenol, 2,4-	6.85e-01	1.37e+01
Dichlorophenoxyacetic acid, 2,4-(2, 4-D)	2.28e+00	4.56e+01

TABLE 3.—MAXIMUM ALLOWABLE CONCENTRATION OF CONSTITUENTS IN LEACHATE OR IN WASTE <sup>1</sup>—Continued

Constituent	Maximum allowable leachate concentration (mg/l)	Maximum allowable total concentration (mg/kg)
Dichloropropane, 1,2- .....	1.14e-01	2.28e+00
Dichloropropene, 1,3- .....	2.34e-02	4.68e-01
Dieldrin .....	6.23e+01	1.25e+03
Diethyl phthalate .....	2.21e+02	4.42e+03
Dimethoate .....	6.01e+01	1.20e+03
Dimethyl phthalate .....	1.20e+02	2.40e+03
Dimethylbenz(a)anthracene, 7,12- .....	1.55e-06	3.10e-05
Dimethylphenol, 2,4- .....	4.57e+00	9.14e+01
Di-n-butyl phthalate .....	5.29e+00	1.06e+02
Dinitrobenzene, 1,3- .....	2.28e-02	4.56e-01
Dinitromethylphenol, 4,6-, 2- .....	2.16e-02	4.32e-01
Dinitrophenol, 2,4- .....	4.57e-01	9.14e+00
Dinitrotoluene, 2,6- .....	6.54e-03	1.31e-01
Di-n-octyl phthalate .....	1.12e-02	2.24e-01
Dioxane, 1,4- .....	3.83e-01	7.66e+00
Diphenylamine .....	3.76e+00	7.52e+01
Disulfoton .....	3.80e+02	7.60e+03
Endosulfan .....	1.37e+00	2.74e+01
Endrin .....	2.00e-02	4.00e-01
Ethylbenzene .....	1.66e+01	3.32e+02
Ethylene Dibromide .....	4.13e-03	8.26e-02
Fluoranthene .....	5.16e-01	1.03e+01
Fluorene .....	1.78e+00	3.56e+01
Heptachlor .....	8.00e-03	1.60e-01
Heptachlor epoxide .....	8.00e-03	1.60e-01
Hexachloro-1,3-butadiene .....	9.61e-03	1.92e-01
Hexachlorobenzene .....	9.67e-05	1.93e-03
Hexachlorocyclohexane, gamma-(Lindane) .....	4.00e-01	8.00e+00
Hexachlorocyclopentadiene .....	1.66e+04	3.32e+05
Hexachloroethane .....	1.76e-01	3.52e+00
Hexachlorophene .....	3.13e-04	6.26e-03
Indeno (1,2,3-cd) pyrene .....	6.04e-05	1.21e-03
Isobutyl alcohol .....	6.85e+01	1.37e+03
Isophorone .....	4.44e+00	8.88e+01
Methacrylonitrile .....	2.28e-02	4.56e-01
Methoxychlor .....	1.00e+01	2.00e+02
Methyl bromide (Bromomethane) .....	1.28e+02	2.56e+03
Methyl chloride (Chloromethane) .....	1.80e-01	3.60e+00
Methyl ethylketone .....	1.37e+02	2.74e+03
Methyl isobutylketone .....	1.83e+01	3.66e+02
Methyl methacrylate .....	1.03e+03	2.06e+04
Methyl parathion .....	1.27e+02	2.54e+03
Methylene chloride .....	2.88e-01	5.76e+00
Naphthalene .....	1.50e+00	3.00e+01
Nitrobenzene .....	1.14e-01	2.28e+00
Nitrosodiethylamine .....	2.81e-05	5.62e-04
Nitrosodimethylamine .....	8.26e-05	1.65e-03
Nitrosodi-n-butylamine .....	7.80e-04	1.56e-02
N-Nitrosodi-n-propylamine .....	6.02e-04	1.20e-02
N-Nitrosodiphenylamine .....	8.60e-01	1.72e+01
N-Nitrosopyrrolidine .....	2.01e-03	4.02e-02
Pentachlorobenzene .....	1.15e-02	2.30e-01
Pentachloronitrobenzene (PCNB) .....	5.00e-03	1.00e-01
Pentachlorophenol .....	4.10e-03	8.20e-02
Phenanthrene .....	2.09e-01	4.18e+00
Phenol .....	1.37e+02	2.74e+03
Polychlorinated biphenyls .....	3.00e-05	6.00e-04
Pronamide .....	1.71e+01	3.42e+02
Pyrene .....	3.96e-01	7.92e+00
Pyridine .....	2.28e-01	4.56e+00
Styrene .....	6.08e+00	1.22e+02
Tetrachlorobenzene, 1,2,4,5- .....	9.43e-03	1.89e-01
Tetrachloroethane, 1,1,2,2- .....	4.39e-01	8.78e+00
Tetrachloroethylene .....	8.55e-02	1.71e+00
Tetrachlorophenol, 2,3,4,6- .....	1.81e+00	3.62e+01
Tetraethyl dithiopyrophosphate (Sulfotep) .....	3.01e+05	6.02e+06
Toluene .....	4.57e+01	9.14e+02
Toxaphene .....	5.00e-01	1.00e+01

TABLE 3.—MAXIMUM ALLOWABLE CONCENTRATION OF CONSTITUENTS IN LEACHATE OR IN WASTE <sup>1</sup>—Continued

Constituent	Maximum allowable leachate concentration (mg/l)	Maximum allowable total concentration (mg/kg)
Trichlorobenzene, 1,2,4- .....	7.24e-01	1.45e+01
Trichloroethane, 1,1,1- .....	7.60e+00	1.52e+02
Trichloroethane, 1,1,2- .....	7.80e-02	1.56e+00
Trichloroethylene .....	3.04e-01	6.08e+00
Trichlorofluoromethane .....	6.85e+01	1.37e+03
Trichlorophenol, 2,4,5- .....	9.16e+00	1.83e+02
Trichlorophenol, 2,4,6- .....	2.76e-01	5.52e+00
Trichlorophenoxyacetic acid, 2,4,5- (245-T) .....	2.28e+00	4.56e+01
Trichlorophenoxypropionic acid, 2,4,5- (Silvex) .....	1.00e+00	2.00e+01
Trichloropropane, 1,2,3- .....	7.69e-04	1.54e-02
Trinitrobenzene, sym- .....	6.49e+00	1.30e+02
Vinyl chloride .....	2.34e-03	4.68e-02
Xylenes (total) .....	3.20e+02	6.40e+03

<sup>1</sup> The term "e" in the table is a variation of "scientific notation" in base 10 exponential form and is used in this table because it is a convenient way to represent very large or small numbers. For example, 3.00e-03 is equivalent to  $3.00 \times 10^{-3}$  and represents the number 0.003.

#### *B. How Frequently Must GROWS Test the Waste and How Must It Be Managed Until It Is Disposed?*

GROWS must continue to test and manage its waste according to the conditions set forth in their current delisting. We are not proposing in this amendment to change the method of sample collection, the frequency of sample analysis or the waste holding procedures currently specified.

#### *C. What Must GROWS Do if the Process Changes?*

We are proposing to add this condition as part of the amendment. If GROWS significantly changes the treatment process or the chemicals used in the treatment process, GROWS may not manage the wastewater treatment sludge filter cake generated from the new process under this exclusion until it has met the following conditions: (a) GROWS must demonstrate that the waste meets the delisting levels set forth in Section III. A. of this preamble; (b) it must demonstrate that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced into the manufacturing or treatment process; and (c) it must obtain prior written approval from EPA and the Pennsylvania Department of Environmental Protection to manage the waste under this exclusion. This condition allows GROWS the flexibility to modify its process (e.g., changes in equipment or operating conditions). However, if any significant change is made which may affect the composition of the waste, GROWS must demonstrate that the waste continues to meet the delisting criteria and must obtain prior written approval from EPA and the

Pennsylvania Department of Environmental Protection.

#### *D. What Data Must GROWS Submit?*

We are proposing to add this condition as part of the amendment. The data obtained under Paragraphs B and C of this Section must be submitted to The Waste and Chemicals Management Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, and The Pennsylvania Department of Environmental Protection, Bureau of Land Recycling and Waste Management, Rachel Carson State Office Building, 400 Market Street, 14th Floor, Harrisburg, PA 17105. Data from the annual verification testing must be compiled and submitted to EPA and the Pennsylvania Department of Environmental Protection within sixty (60) days from the end of the calendar year. Records of operating conditions and analytical data must be compiled, summarized, and maintained onsite for a minimum of three years commencing with the effective date of the finalization of this amendment and must be furnished upon request by EPA or the Pennsylvania Department of Environmental Protection, and made available for inspection. Failure to submit the required data within the specified time period or to maintain the required records onsite for the specified time period will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent determined necessary by EPA. All data must be accompanied by a signed copy of the certification statement set forth in 40 CFR 260.22(i)(12) to attest to the truth and accuracy of the data submitted. Although management of the wastes covered by this petition would not be subject to Subtitle C jurisdiction

upon final promulgation of an exclusion, the generator of a delisted waste must treat, store, or dispose of the waste in a facility that is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

#### *E. What Happens if GROWS Fails To Meet the Conditions of the Exclusion?*

We are proposing to add this condition as part of the amendment. If GROWS violates the terms and conditions established in this exclusion, the Agency may start procedures to withdraw the exclusion.

If GROWS discovers that a condition at the facility or an assumption related to the treatment or disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then GROWS must report any information relevant to that condition in writing to the Regional Administrator or his/her delegatee and The Pennsylvania Department of Environmental Protection within 10 days of discovering that condition.

Upon receiving such information, regardless of its source, the Regional Administrator or his/her delegatee and the Pennsylvania Department of Environmental Protection will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate action deemed necessary to protect human health or the environment.

The purpose of this condition is to require GROWS 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 will allow EPA to

reevaluate the exclusion if new or additional information is provided to the Agency by GROWS which indicates that information on which EPA's decision was based was incorrect or that circumstances have changed such that the information evaluated for the delisting is no longer correct or would cause EPA to deny the petition if then presented. Further, although this provision expressly requires GROWS 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, EPA will act upon such information as appropriate.

EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 *et seq.* (1978), (APA), to reopen the delisting under the conditions described above.

### III. Effect on State Authorizations

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

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (*i.e.*, to make their own delisting decisions). Therefore, this proposed amendment, if promulgated, may not apply in those authorized States, unless it is adopted by the State. If the petitioned waste is managed in any State with delisting authorization, GROWS must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

### IV. Effective Date

EPA is today making a tentative decision to grant GROWS' petition for amendment. This proposed rule, if made final, will become effective immediately upon such final publication. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for a facility 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 Procedures Act, 5 U.S.C. 553(d).

### V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a "regulatory action" subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will not have substantial direct effects on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 40 CFR Part 261

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

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

Dated: June 14, 2001.

**Thomas C. Voltaggio,**  
*Acting Regional Administrator, Region III.*

For the reasons set forth 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.

#### Appendix IX of Part 261—[Amended]

2. In Table 1 of Appendix IX of Part 261, the entry for "Geological Reclamation Operations and Waste Systems, Inc., Morrisville, PA" is revised to read as follows:

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

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* Geological Reclamation Operations Waste Systems, Inc.	* Morrisville, Pennsylvania.	<p>* Wastewater treatment sludge filter cake from the treatment of EPA Hazardous Waste No. F039, generated at a maximum annual rate of 2000 cubic yards, after July 26, 2001; and disposed of in a Subtitle D landfill. The exclusion covers the filter cake resulting from the treatment of hazardous waste leachate derived from only "old" GROWS and non-hazardous leachate derived from only non-hazardous waste sources. The exclusion does not address the waste disposed of in the "old" GROWS Landfill or the grit generated during the removal of heavy solids from the landfill leachate. To ensure that hazardous constituents are not present in the filter cake at levels of regulatory concern, GROWS must implement a testing program for the petitioned waste. This testing program must meet the conditions listed below in order for the exclusion to be valid:</p> <p>(1) <i>Testing:</i> Sample collection and analyses, including quality control (QC) procedures, must be performed according to SW-846 methodologies.</p> <p>(A) <i>Sample Collection:</i> Each batch of waste generated over a four-week period must be collected in containers with a maximum capacity of 20-cubic yards. At the end of the four-week period, each container must be divided into four quadrants and a single, full-depth core sample shall be collected from each quadrant. All of the full-depth core samples then must be composited under laboratory conditions to produce one representative composite sample for the four-week period.</p> <p>(B) <i>Sample Analysis:</i> Each four-week composite sample must be analyzed for all of the constituents listed in Condition (3). The analytical data, including quality control information, must be submitted to The Waste and Chemicals Management Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, and the Pennsylvania Department of Environmental Protection, Bureau of Land Recycling and Waste Management, Rachel Carson State Office Building, 400 Market Street, 14th Floor, Harrisburg, PA 17105. Data from the annual verification testing must be compiled and submitted to EPA and the Pennsylvania Department of Environmental Protection within sixty (60) days from the end of the calendar year. All data must be accompanied by a signed copy of the statement set forth in 40 CFR 260.22(i)(12) to certify to the truth and accuracy of the data submitted. Records of operating conditions and analytical data must be compiled, summarized, and maintained on-site for a minimum of three years and must be furnished upon request by any employee or representative of EPA or the Pennsylvania Department of Environmental Protection, and made available for inspection.</p> <p>(2) <i>Waste Holding:</i> The dewatered filter cake must be stored as hazardous until the verification analyses are completed. If the four-week composite sample does not exceed any of the delisting levels set forth in Condition (3), the filter cake waste corresponding to this sample may be managed and disposed of in accordance with all applicable solid waste regulations. If the four-week composite sample exceeds any of the delisting levels set forth in Condition (3), the filter cake waste generated during the time period corresponding to the four-week composite sample must be retreated until it meets these levels (analyses must be repeated) or managed and disposed of in accordance with Subtitle C of RCRA. Filter cake which is generated but for which analyses are not complete or valid must be managed and disposed of in accordance with Subtitle C of RCRA, until valid analyses demonstrate that the waste meets the delisting levels.</p> <p>(3) <i>Delisting Levels:</i> If the concentrations in the four-week composite sample of the filter cake waste for any of the hazardous constituents listed below exceed their respective maximum allowable concentrations (mg/l or mg/kg) also listed below, the four-week batch of failing filter cake waste must either be retreated until it meets these levels or managed and disposed of in accordance with Subtitle C of RCRA. GROWS has the option of determining whether the filter cake waste exceeds the maximum allowable concentrations for the organic constituents by either performing the analysis on a TCLP leachate of the waste or performing total constituent analysis on the waste, and then comparing the results to the corresponding maximum allowable concentration level.</p>

Constituent	Maximum allowable leachate conc. (mg/l)
(A) Inorganics:	
Arsenic .....	3.00e-01
Barium .....	2.34e+01
Cadmium .....	1.80e-01
Chromium .....	5.00e+00
Lead .....	5.00e+00
Mercury .....	7.70e-02
Nickel .....	9.05e+00
Selenium .....	6.97e-01
Silver .....	1.23e+00

Constituent	Maximum allowable leachate conc. (mg/l)	
Cyanide .....	4.33e+00	
Cyanide extractions must be conducted using distilled water in place of the leaching media specified in the TCLP procedure.		
Constituent	Maximum allowable leachate conc. (mg/l)	Maximum allowable total conc. (mg/kg)
<b>(B) Organics:</b>		
Acetone .....	2.28e+01	4.56e+02
Acetonitrile .....	3.92e+00	7.84e+01
Acetophenone .....	2.28e+01	4.56e+02
Acrolein .....	1.53e+03	3.06e+04
Acrylonitrile .....	7.80e-03	1.56e-01
Aldrin .....	5.81e-06	1.16e-04
Aniline .....	7.39e-01	1.48e+01
Anthracene .....	8.00e+00	1.60e+02
Benz(a)anthracene .....	1.93e-04	3.86e-03
Benzene .....	1.45e-01	2.90e+00
Benzo(a)pyrene .....	1.18e-05	2.36e-04
Benzo(b)fluoranthene .....	1.07e-04	2.14e-03
Benzo(k)fluoranthene .....	1.49e-03	2.98e-02
Bis(2-chlorethyl)ether .....	3.19e-02	6.38e-01
Bis(2-ethylhexyl)phthalate .....	8.96e-02	1.79e+00
Bromodichloromethane .....	6.80e-02	1.36e+00
Bromoform (Tribromomethane) .....	5.33e-01	1.07e+01
Butyl-4,6-dinitrophenol, 2-sec-(Dinoseb) .....	2.28e-01	4.56e+00
Butylbenzylphthalate .....	9.29e+00	1.86e+02
Carbon disulfide .....	2.28e+01	4.56e+02
Carbon tetrachloride .....	4.50e-02	9.00e-01
Chlordane .....	5.11e-04	1.02e-02
Chloro-3-methylphenol 4- .....	2.97e+02	5.94e+03
Chloroaniline, p- .....	9.14e-01	1.83e+01
Chlorobenzene .....	6.08e+00	1.22e+02
Chlorobenzilate .....	4.85e-02	9.70e-01
Chlorodibromomethane .....	5.02e-02	1.00e+00
Chloroform .....	7.79e-02	1.56e+00
Chlorophenol, 2- .....	1.14e+00	2.28e+01
Chrysene .....	2.04e-02	4.08e-01
Cresol .....	1.14e+00	2.28e+01
DDD .....	5.83e-04	1.17e-02
DDE .....	1.37e-04	2.74e-03
DDT .....	2.57e-04	5.14e-03
Dibenz(a,h)anthracene .....	5.59e-06	1.12e-04
Dibromo-3-chloropropane, 1,2- .....	3.51e-03	7.02e-02
Dichlorobenzene 1,3- .....	9.35e+00	1.87e+02
Dichlorobenzene, 1,2- .....	1.25e+01	2.50e+02
Dichlorobenzene, 1,4- .....	1.39e-01	2.78e+00
Dichlorobenzidine, 3,3'- .....	9.36e-03	1.87e-01
Dichlorodifluoromethane .....	4.57e+01	9.14e+02
Dichloroethane, 1,1- .....	1.20e+00	2.40e+01
Dichloroethane, 1,2- .....	2.57e-03	5.14e-02
Dichloroethylene, 1,1- .....	7.02e-03	1.40e-01
Dichloroethylene, trans-1,2- .....	4.57e+00	9.14e+01
Dichlorophenol, 2,4- .....	6.85e-01	1.37e+01
Dichlorophenoxyacetic acid, 2,4-(2,4-D) .....	2.28e+00	4.56e+01
Dichloropropane, 1,2- .....	1.14e-01	2.28e+00
Dichloropropene, 1,3- .....	2.34e-02	4.68e-01
Dieldrin .....	6.23e+01	1.25e+03
Diethyl phthalate .....	2.21e+02	4.42e+03
Dimethoate .....	6.01e+01	1.20e+03
Dimethyl phthalate .....	1.20e+02	2.40e+03
Dimethylbenz(a)anthracene, 7,12- .....	1.55e-06	3.10e-05
Dimethylphenol, 2,4- .....	4.57e+00	9.14e+01
Di-n-butyl phthalate .....	5.29e+00	1.06e+02
Dinitrobenzene, 1,3- .....	2.28e-02	4.56e-01
Dinitromethylphenol, 4,6-,2- .....	2.16e-02	4.32e-01
Dinitrophenol, 2,4- .....	4.57e-01	9.14e+00
Dinitrotoluene, 2,6- .....	6.54e-03	1.31e-01
Di-n-octyl phthalate .....	1.12e-02	2.24e-01
Dioxane, 1,4- .....	3.83e-01	7.66e+00
Diphenylamine .....	3.76e+00	7.52e+01

Constituent	Maximum allowable leachate conc. (mg/l)	Maximum allowable total conc. (mg/kg)
Disulfoton	3.80e+02	7.60e+03
Endosulfan	1.37e+00	2.74e+01
Endrin	2.00e-02	4.00e-01
Ethylbenzene	1.66e+01	3.32e+02
Ethylene Dibromide	4.13e-03	8.26e-02
Fluoranthene	5.16e-01	1.03e+01
Fluorene	1.78e+00	3.56e+01
Heptachlor	8.00e-03	1.60e-01
Heptachlor epoxide	8.00e-03	1.60e-01
Hexachloro-1,3-butadiene	9.61e-03	1.92e-01
Hexachlorobenzene	9.67e-05	1.93e-03
Hexachlorocyclohexane, gamma-(Lindane)	4.00e-01	8.00e+00
Hexachlorocyclopentadiene	1.66e+04	3.32e+05
Hexachloroethane	1.76e-01	3.52e+00
Hexachlorophene	3.13e-04	6.26e-03
Indeno(1,2,3-cd) pyrene	6.04e-05	1.21e-03
Isobutyl alcohol	6.85e+01	1.37e+03
Isophorone	4.44e+00	8.88e+01
Methacrylonitrile	2.28e-02	4.56e-01
Methoxychlor	1.00e+01	2.00e+02
Methyl bromide (Bromomethane)	1.28e+02	2.56e+03
Methyl chloride (Chloromethane)	1.80e-01	3.60e+00
Methyl ethyl ketone	1.37e+02	2.74e+03
Methyl isobutyl ketone	1.83e+01	3.66e+02
Methyl methacrylate	1.03e+03	2.06e+04
Methyl parathion	1.27e+02	2.54e+03
Methylene chloride	2.88e-01	5.76e+00
Naphthalene	1.50e+00	3.00e+01
Nitrobenzene	1.14e-01	2.28e+00
Nitrosodiethylamine	2.81e-05	5.62e-04
Nitrosodimethylamine	8.26e-05	1.65e-03
Nitrosodi-n-butylamine	7.80e-04	1.56e-02
N-Nitrosodi-n-propylamine	6.02e-04	1.20e-02
N-Nitrosodiphenylamine	8.60e-01	1.72e+01
N-Nitrosopyrrolidine	2.01e-03	4.02e-02
Pentachlorobenzene	1.15e-02	2.30e-01
Pentachloronitrobenzene (PCNB)	5.00e-03	1.00e-01
Pentachlorophenol	4.10e-03	8.20e-02
Phenanthrene	2.09e-01	4.18e+00
Phenol	1.37e+02	2.74e+03
Polychlorinated biphenyls	3.00e-05	6.00e-04
Pronamide	1.71e+01	3.42e+02
Pyrene	3.96e-01	7.92e+00
Pyridine	2.28e-01	4.56e+00
Styrene	6.08e+00	1.22e+02
Tetrachlorobenzene, 1,2,4,5-	9.43e-03	1.89e-01
Tetrachloroethane, 1,1,2,2-	4.39e-01	8.78e+00
Tetrachloroethylene	8.55e-02	1.71e+00
Tetrachlorophenol, 2,3,4,6-	1.81e+00	3.62e+01
Tetraethyl dithiopyrophosphate (Sulfotep)	3.01e+05	6.02e+06
Toluene	4.57e+01	9.14e+02
Toxaphene	5.00e-01	1.00e+01
Trichlorobenzene, 1,2,4-	7.24e-01	1.45e+01
Trichloroethane, 1,1,1-	7.60e+00	1.52e+02
Trichloroethane, 1,1,2-	7.80e-02	1.56e+00
Trichloroethylene	3.04e-01	6.08e+00
Trichlorofluoromethane	6.85e+01	1.37e+03
Trichlorophenol, 2,4,5-	9.16e+00	1.83e+02
Trichlorophenol, 2,4,6-	2.76e-01	5.52e+00
Trichlorophenoxyacetic acid, 2,4,5-(245-T)	2.28e+00	4.56e+01
Trichlorophenoxypropionic acid, 2,4,5-(Silvex)	1.00e+00	2.00e+01
Trichloropropane, 1,2,3-	7.69e-04	1.54e-02
Trinitrobenzene, sym-	6.49e+00	1.30e+02
Vinyl chloride	2.34e-03	4.68e-02
Xylenes (total)	3.20e+02	6.40e+03

(4) *Changes in Operating Conditions:* If GROWS significantly changes the treatment process or the chemicals used in the treatment process, GROWS may not manage the treatment sludge filter cake generated from the new process under this exclusion until it has met the following conditions: (a) GROWS must demonstrate that the waste meets the delisting levels set forth in Paragraph 3; (b) it must demonstrate that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced into the manufacturing or treatment process; and (c) it must obtain prior written approval from EPA and the Pennsylvania Department of Environmental Protection to manage the waste under this exclusion.

(5) *Reopener:*

(a) If GROWS 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 GROWS must report any information relevant to that condition, in writing, to the Regional Administrator or his delegate and to the Pennsylvania Department of Environmental Protection within 10 days of discovering that condition.

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

[FR Doc. 01-18533 Filed 7-25-01; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA 2000-8572]

RIN 2127-A133

#### Federal Motor Vehicle Safety Standards: Tire Pressure Monitoring Systems; Controls and Displays

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Transportation Recall Enhancement, Accountability, and Documentation Act of 2000 mandates a rulemaking proceeding to require motor vehicles to be equipped with a tire pressure monitoring system that warns the driver a tire is significantly under-inflated. In response, this document proposes to establish a new Federal Motor Vehicle Safety Standard No. 138 that would require tire pressure monitoring systems to be installed in new passenger cars and in new light trucks and multipurpose passenger vehicles.

This document seeks comment on two alternative versions of the new standard. One alternative would require that the driver be warned when the tire pressure in one or more tires, up to a total of 4 tires, has fallen to 20 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the vehicle's tires, or a minimum level of pressure to be specified in the

new standard, whichever is higher. The other alternative would require that the driver be warned when tire pressure in one or more tires, up to a total of 3 tires, has fallen to 25 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the vehicle's tires, or a minimum level of pressure to be specified in the new standard, whichever is higher.

**DATES:** Comments must be received on or before September 6, 2001.

**ADDRESSES:** You may submit your comments in writing to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) website at <http://dms.dot.gov>. Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document. You can find the number at the beginning of this document.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Mr. George Soodoo or Mr. Joseph Scott, Office of Crash Avoidance Standards (Telephone: 202-366-2720) (Fax: 202-366-4329).

For legal issues, you may call Mr. Dion Casey, Office of Chief Counsel (Telephone: 202-366-2992) (Fax: 202-366-3820).

You may send mail to these officials at National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

You may call Docket Management at 202-366-9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

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