TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(D) If after 30 days Heritage or Nucor presents no further information, the Regional Administrator 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's determination shall become effective immediately, unless the Regional Administrator provides otherwise.
*	*	* * * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7124–9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA (also, ''the Agency'' or ''we'' in this preamble) is granting a petition submitted by USG Corporation (USG), Chicago, Illinois, to exclude (or ''delist''), on a one-time basis, certain solid wastes that are interred at an on-site landfill at its American Metals Corporation (AMC) facility in Westlake, Ohio from the lists of hazardous wastes. This landfill was used exclusively by Donn Corporation, the original site owner, for disposal of its wastewater treatment plant (WWTP) sludge from 1968 to 1978.

After careful analysis, the EPA has concluded that the petitioned waste is not a hazardous waste when disposed of in a Subtitle D landfill. Today's action conditionally excludes the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) only if the waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste.

EFFECTIVE DATE: This rule is effective on January 15, 2002.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call Todd Ramaly at (312) 353–9317 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, contact Todd Ramaly at the address above or at (312) 353–9317.

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

I. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a petitioner to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in 40 CFR 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must 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.

Petitioners remain obligated under RCRA to confirm that their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the wastes.

B. What Regulations Allow a Waste To Be Delisted?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding it from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273 of Title 40 of the Code of Federal Regulations. Section 260.22 provides any person with the opportunity to petition the Administrator to exclude a waste at a particular generating facility from the hazardous waste lists.

II. USG's Delisting Petition

A. What Waste Did USG Petition EPA To Delist?

On May 22,1997, USG petitioned EPA to exclude 12,400 cubic yards of previously disposed WWTP sludge from the list of hazardous wastes contained in 40 CFR 261.31. The WWTP sludge is a mixture of EPA Hazardous Waste Number F019 wastewater treatment sludge from the conversion coating of aluminum and other nonhazardous wastes.

B. What Information Must the Petitioner Supply?

A petitioner must provide sufficient information to allow the EPA to determine that the waste does not meet any of the criteria for which it was listed as a hazardous waste. In addition, where there is a reasonable basis to believe that factors other than those for which the waste was listed (including additional constituents) could cause the waste to be hazardous, the Administrator must determine that such factors do not warrant retaining the waste as hazardous.

C. What Information Did USG Submit To Support This Petition?

To support its petition, USG submitted (1) descriptions and schematic diagrams of its manufacturing and wastewater treatment processes, including historical information on past

waste generation and management practices; (2) detailed chemical and physical analysis of the landfilled sludge; and (3) environmental monitoring data from recent studies of the facility, including groundwater data from wells located in and around the on-site landfill.

III. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

Today the EPA is finalizing an exclusion to USG for 12,400 cubic yards of WWTP sludge interred at the AMC facility in Westlake, Ohio.

USG petitioned EPA to exclude, or delist, the WWTP sludge because USG believes that the petitioned waste does not meet the RCRA criteria for which it was listed it and that there are no additional constituents or factors which could cause the waste to be hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 222 of HSWA, 42 United States Code (U.S.C.) 6921(f), and 40 CFR 260.22 (d)(2)–(4).

On September 27, 2000, EPA proposed to exclude or delist USG's WWTP sludge from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (65 FR 58015). EPA considered all comments received, and for reasons stated in both the proposal and this document, we believe that USG's waste should be excluded from hazardous waste control.

B. What Are the Terms of This Exclusion?

USG must dispose of the estimated total landfill volume of the WWTP sludge, 12,400 cubic yards, in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste. Any amount exceeding this volume is not considered delisted under this exclusion. This exclusion is effective only if all conditions contained in today's rule are satisfied. This rule does not change the regulatory status of the landfill in Westlake, Ohio where the waste currently resides.

C. When Is the Delisting Effective?

This rule is effective January 15, 2002. 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. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the 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 exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements, or in states which have received EPA authorization to make their own delisting decisions.

EPA allows 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, EPA urges the petitioner to contact the state regulatory authority to establish the status of its wastes under the state law.

EPA has also authorized some states to administer a 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 USG transports the petitioned waste to or manages the waste in any state with delisting authorization, USG must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

IV. Response to Public Comments Received on the Proposed Exclusion

Comment: The commenter stated that although the Agency reviewed and commented on the DRAS model, the public has not had the opportunity to do so.

Response: The proposed rule of September 27, 2000 discussed the DRAS model. The comment period provided an opportunity to comment on the DRAS model itself as well as its use in this proposed delisting. Each proposed delisting must explicitly reference the risk model used. Therefore, comments on the DRAS may always be submitted during the comment period for any future delisting for which the DRAS was used. Also, for comments on future delistings which used the DRAS model, the technical support document for the DRAS model may be accessed on-line at *<http://www.epa.gov/earth1r6/6pd/rcra__c/pd-o/dtsd.htm>.*

Comment: It is not clear the Agency intends to use this model and that all Regions will be using this methodology to evaluate all delisting petitions in the future.

Response: At this time the Agency anticipates that the DRAS model will become the standard tool for evaluating future delisting petitions although there is no regulation requiring the use of this model. For each petition, each Region will select the risk model it considers to be the most appropriate.

Comment: It is inappropriate for the DRAS model to incorporate elements of the not yet finalized Hazardous Waste Identification Rule (HWIR) model.

Response: The risk assessment procedure performed by the DRAS model has been reviewed by the Science Advisory Board as well as by EPA's Office of Research and Development. Finalizing HWIR will not impact the use of this model in delisting decisions.

Comment: Why were several additional exposure pathways added to the delisting evaluation?

Response: Most of the exposure pathways used in this delisting evaluation have been used in previous delisting evaluations. The expanded list of exposure pathways is consistent with the exposure pathways used by the Agency in recent listing determinations as well as in the proposed HWIR.

Comment: The detection level for 2,3,4,7,8-PeCDF in Table 1 is higher than the target risk level for this compound although detection levels in the most recent analysis are much lower.

Response: The highest detection level in any sample is displayed in the table, however EPA relied on the actual quantitative results from the more recent and more sensitive analysis in evaluating the petitioned waste.

Comment: The petitioner requested that the calculation of the risk factor for 2,3,4,7,8-PeCDF be verified because it was comparable to 2,3,7,8-TCDD which is known to be more toxic.

Response: Although, 2,3,4,7,8-PeCDF is less toxic, it is more bioaccumulative in fish tissue so that its lower toxicity is offset by increased exposure.

Comment: The petitioner requested clarification on how non-detects are treated when determining delistable levels for dioxins and furans.

Response: Non-detects are not evaluated or included if the sample was analyzed by a method sufficiently sensitive to detect the constituent at the level of concern.

Comment: The commenter expressed concern that DAF scaling factors were

not linearly related to waste volumes at annual waste volumes less than 20,000 cubic yards, while the proposed exclusion implied the relationship was linear.

Response: The commenter is correct in that the DAF scaling factors are not linearly related to annual waste volume for volumes less than 20,000 cubic yards. The relationship is approximated by EPA as an exponential function. References to linearity and DAF scaling factors in the proposed rule were misleading. The DAF scaling factors of one constituent are assumed to be directly proportional to DAF scaling factors of other constituents, not linearly related to volume.

Additional corrections to the proposed exclusion:

The delisting factors for dioxin and furan congeners in the proposed rule have been corrected to reflect the increased rate of fish ingestion attributed to high-risk subpopulations in Region 5, as intended in the proposed exclusion. The correct congener-specific factors are as follows: 2,3,7,8-TCDD -7.46×10^{-2}; 1,2,3,7,8-PeCDD -7.18×10^{-2}; 1,2,3,4,7,8-HxCDD -2.41×10^{-3}; 1,2,3,6,7,8-HxCDD -9.82×10^{-4}; 1,2,3,7,8,9-HxCDD -1.09×10^{-3}; 1,2,3,4,6,7,8-HpCDD -4.20×10^{-5}; OCDD -1.01×10^{-7}; 2,3,7,8-TCDF -5.08×10^{-3}; 1,2,3,7,8-PeCDF -8.17×10^{-4}; 2,3,4,7,8-PeCDF -5.97×10^{-2}; 1,2,3,4,7,8-HxCDF -5.97×10^{-4}; 1,2,3,6,7,8-HxCDF -1.46×10^{-3}; 2,3,4,6,7,8-HxCDF -4.90×10^{-3}; 1,2,3,7,8,9-HxCDF -5.30×10^{-3}; 1,2,3,4,6,7,8-HpCDF -8.78×10^{-6}; 1,2,3,4,7,8,9-HpCDF -3.11×10^{-4}; and OCDF -1.35×10^{-7}.

The congener specific factors multiplied by the congener concentration in the waste provide the individual risk posed by each congener. The sum of these risks must not exceed the target risk level of 1×10^{-6}.

V. Regulatory Impact

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 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, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 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 tribal governments, as specified in Executive Order 13084 (63 FR 27655, May 10, 1998). 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(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) 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. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. 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.*).

VI. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non agency parties (5 U.S.C. 804(3)). This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

VII. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

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: October 26, 2001.

Robert Springer,

Director, Waste, Pesticides and Toxics Division.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

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

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

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
American Metals Corporation.	Westlake, Ohio	Wastewater treatment plant (WWTP) sludges from the chemical conversion coating (phosphating) of aluminum (EPA Hazardous Waste No. F019) and other solid wastes previously disposed in an on-site landfill. This is a one-time exclusion for 12,400 cubic yards of landfilled WWTP sludge. This exclusion is effective on January 15, 2002. 1. *Delisting Levels:* (A) The constituent concentrations measured in the TCLP extract may not exceed the following levels (mg/L): antimony—1.52; arsenic—0.691; barium—100; beryllium—3.07; cadmium—1; chromium—5; cobalt—166; copper—67,300; lead—5; mercury—0.2; nickel—209; selenium—1; silver—5; thallium—0.65; tin—1,660; vanadium—156; and zinc—2,070. (B) The total constituent concentrations in any sample may not exceed the following levels (mg/kg): arsenic—9,280; mercury—94; and polychlorinated biphenyls—0.265. (C) Concentrations of dioxin and furan congeners cannot exceed values which would result in a cancer risk greater than or equal to 10^{-6} as predicted by the model. 2. *Verification Sampling*—USG shall collect six additional vertically composited samples of sludge from locations that compliment historical data and shall analyze the samples by TCLP for metals including antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver, thallium, tin, vanadium, and zinc. If the samples exceed the levels in Condition (1)(a), USG must notify EPA. The corresponding sludge and all sludge yet to be disposed remains hazardous until USG has demonstrated by additional sampling that all constituents of concern are below the levels set forth in condition 1. 3. *Reopener Language*—(a) If, anytime after disposal of the delisted waste, USG possesses or is otherwise made aware of any 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 in Condition (1) is at a level higher than the delisting level established in Condition (1), or is at a level in the groundwater exceeding maximum allowable point of exposure concentration referenced by the model, then USG must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator 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 determines that the reported information does require Agency action, the Regional Administrator will notify USG in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing USG with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. USG shall have 10 days from the date of the Regional Administrator's notice to present the information. (d) If after 10 days USG presents no further information, the Regional Administrator 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's determination shall become effective immediately, unless the Regional Administrator provides otherwise. 4. *Notifications*—USG must provide a one-time written notification to any State Regulatory Agency to which or through which the waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.
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BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 100]

RIN 3090–AH52

Federal Travel Regulation; Maximum Per Diem Rates

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: To improve the ability of the per diem rates to meet the lodging demands of Federal travelers to high cost travel locations, the General Services Administration (GSA) has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the per diem rate-setting process.

An analysis of FPLP contracting actions and the lodging rate survey data reveals that the maximum per diem rate for the State of New York, city (borough) of Manhattan, should be increased and the maximum per diem rate for the State of New York, city (boroughs) of The Bronx, Brooklyn, and Queens, should be decreased to provide for the