

Christos Panos at (312) 353-8328 before visiting the Region 5 Office.)

Dated: January 17, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-7150-2]

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

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA, also the Agency or we in this preamble) is proposing to grant a petition submitted by Weirton Steel Corporation (Weirton), to exclude (or delist) on a one-time basis certain solid wastes generated at its Weirton, West Virginia, facility from the lists of hazardous waste.

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

DATES: EPA is requesting public comments on this proposed decision. We will accept comments on this proposal until April 12, 2002. 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 by filing a request by March 13, 2002. 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 you to view from 8:30 a.m. to 5 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:

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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 Does Weirton Request in Its Petition?

On March 3, 1999, Weirton petitioned EPA to exclude on a one-time basis the wastewater treatment sludge contained in an inactive surface impoundment (the East Lagoon) and two tanks (the Figure 8 tanks) from the list of hazardous wastes contained in 40 CFR 261.31. The lagoon and tanks were removed from service in September,

1998. The total estimated volume of sludge in the impoundment and tanks is 18,000 cubic yards.

The wastewater treatment sludge is described in Weirton's petition as a mixture of small quantities of EPA Hazardous Waste Numbers F007 (spent cyanide plating bath solutions from electroplating operations) and F008 (plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process) with nonhazardous solids that settled during treatment of process wastewater, cooling water, quench water, and stormwater entering Weirton's C&E outfall area.

Hazardous wastes F007 and F008 were originally listed because they were found to contain cyanide salts, although Land Disposal Restriction treatment standards for these wastes found at 40 CFR 268.40 have been established for cadmium, chromium (total), cyanide (total), cyanide (amenable), lead, nickel, and silver.

The sludge is currently being managed as listed hazardous waste as a result of a judicial Consent Decree (Civil Action No. 5:96-CV-171) entered into on December 26, 1996, by Weirton, EPA, the West Virginia Department of Environmental Protection (WVDEP) and the United States Department of Justice. The Consent Decree requires that Weirton decommission the East Lagoon (and another impoundment known as the West Lagoon) and manage and dispose of the sludge as listed hazardous waste. The sludge contained in the West Lagoon is not included in this petition. It was removed and disposed of as hazardous waste in the fall of 1997 and spring of 1998.

Weirton is requesting this exclusion so that the sludge in the East Lagoon and the Figure 8 tanks can be removed and disposed of in a permitted Subtitle D landfill.

II. Waste-Specific Information

A. How Was the Waste Generated by Weirton?

Weirton owns and operates an integrated steel mill, including the C&E wastewater treatment plant, occupying approximately 1300 acres on the banks of the Ohio River in Weirton, WV. Weirton produces iron and steel, and manufactures flat rolled carbon steel that is further processed into tin mill products and hot rolled, cold rolled and galvanized sheet steel products. Manufacturing processes that contributed wastewater to the generation of the wastewater treatment sludge that is the subject of this petition (known as the C&E sludge) included

steel-making in basic oxygen furnaces, steel slab production in a four strand continuous caster, sheet steel production via hot and cold rolling using roughing and finishing strands, tandem mills, pickling, temper mills, annealing and hot dip galvanizing of sheet steel.

Several waste treatment processes contributed wastewater discharges to the C&E outfall area. Internal wastewater treatment plants at the hot mill, continuous caster, the basic oxygen plant scrubber and the oil recovery plant remove solids and oil from the process wastewater via settling, filtration and skimming. The primary contributor of wastewater flow is the hot mill wastewater treatment plant which contributes mill scale containing iron and trace levels of metals and oil and grease to the C&E outfall area. The basic oxygen plant scrubber treats quench water from the basic oxygen furnace exhaust, and its wastewater treatment plant contributes trace levels of iron and other metals to the C&E outfall area. Weak acid rinsewater and oils are treated in the on-site oil recovery plant, and this wastewater treatment plant contributes metals and oil and grease to the C&E outfall area. Spent pickle liquor is processed at an on-site acid regeneration plant for reuse in the pickling lines.

The process that caused the C&E sludge to be classified as EPA hazardous wastes F007 and F008 was the recovery of tin from tin plating line sludges in the detinning plant and the subsequent discharge of wastewater from the detinning plant to the C&E wastewater treatment plant. Tin sludge from the tin mill was generated in Weirton's halogen electroplating lines which used cyanide in the process. The sludge was periodically removed from the electroplating cells and transported to the detinning plant for tin recovery. The detinning plant was also used for the recovery of tin and steel from tin-plated scrap steel. Both elemental tin and steel were recycled in this process.

The volume of tin-recovery process water historically discharged from the detinning plant to the C&E outfall area (approximately 22,500 gallons per day) was negligible compared to the quantity of non-hazardous process water discharged to this outfall (approximately 60,000,000 gallons per day). Recovery of tin from tin scrap ceased in 1996, and tin sludge processing related discharges from the detinning plant to the C&E outfall ceased on February 7, 1997. The detinning plant was subsequently closed, and tin scrap and tin sludge are

currently transported offsite for tin recovery and/or disposal.

Other non-process wastewater treated at the C&E outfall area wastewater treatment plant consists of onsite and Weirton City stormwater runoff collected from multiple upstream facilities and locations.

At the C&E outfall area, the lagoon was used for oil skimming and for settling of solids not removed in the upstream wastewater treatment plants described above.

The sludge itself consists primarily of inorganic solids generated as a result of steelmaking. The Ohio River is used as the source of process water for the steelmaking process, and much of the solids content in the wastewater is associated with the suspended and dissolved solids in the raw river water. Another substantial portion of the sludge can be attributed to the mill scale present in the wastewater. Oil and grease are also present in the sludge as a result of the use of various lubricants in the rolling and other steelmaking equipment.

The East Lagoon and the Figure 8 tanks are no longer used for wastewater treatment purposes. They were placed in service in 1974. From 1974 through 1990, the East Lagoon and an adjacent surface impoundment (the West Lagoon) were used for primary solids settling and oil skimming. In 1990, a 3.5 million gallon wastewater treatment plant was constructed upstream of the lagoons. After 1990, the lagoons were used for final polishing of wastewater prior to discharge through a permitted outfall.

Historically, the C&E sludge from the East Lagoon was dredged on a routine basis and placed in the Figure 8 tanks using either a clamshell bucket or a hydraulic dredge. Placement of the sludge in the Figure 8 tanks served to gravity thicken and dewater it prior to offsite disposal.

The East Lagoon and the Figure 8 tanks were removed from service on September 2, 1998.

B. What Information Did Weirton Submit To Support Its Petition?

In order to support its petition, Weirton submitted detailed descriptions of its manufacturing and wastewater treatment process, analytical results from representative samples of its wastewater treatment sludge collected by the United States Army Corps of Engineers (ACOE) for EPA during an investigation done in September 1996, analytical results from samples of the wastewater treatment sludge obtained by Weirton on September 8, 1996, and split samples analyzed by Weirton from the ACOE sampling investigation. We

requested and Weirton provided Material Safety Data Sheets (MSDS) for commercial products used in its process.

The ACOE analytical program obtained systematic and grab samples from the East Lagoon. Sludge samples were obtained from twenty-nine discrete locations in the East Lagoon. Nineteen samples were obtained from grid nodes. Five random samples were obtained from the shallow sludge layer. An additional five samples from the deep sludge layer were obtained from the center of the lagoon and the center of each lagoon quadrant.

All nineteen grid samples were analyzed for the twenty-three metals on the Target Analyte List (TAL) plus tin, total and amenable cyanide, total petroleum hydrocarbons (TPH) and pH. The Toxicity Characteristic Leaching Procedure (TCLP) was performed on the five grid samples that had the highest total metal content to determine leachable metals concentrations of the eight Toxicity Characteristic (TC) metals plus nickel and tin.

The five random samples were analyzed for the twenty-three metals on the TAL plus tin, total and amenable cyanide, TPH and pH. The TCLP was performed on three of the random samples to determine leachable metals concentrations of the TC metals plus nickel and tin.

The five deep samples were analyzed for the twenty-three metals on the TAL plus tin, total and amenable cyanide, TPH, volatile organic compounds, semivolatile organic compounds, pH and ignitability. The TCLP was performed on all five deep samples to determine leachable concentrations of the TC metals plus nickel and tin, and TC organics except for pesticides and herbicides.

After an initial review of the Weirton petition, we rejected the analytical results obtained by Weirton from the samples it collected on September 8, 1996, and from the samples it analyzed which were obtained as split samples during the ACOE investigation. We did this because the data had not been validated and, therefore, was of unknown quality.

We requested that Weirton supplement the data obtained during the ACOE investigation because high TPH values indicated the oil and grease content of the waste was greater than 1%. When oil and grease content is greater than 1%, we do not know if the leachate data for metal constituents obtained by performing SW-846 Method 1311, the Toxicity Characteristic Leaching Procedure (TCLP), will be representative of the

mobility of these constituents in the environment. In this case, we requested that Weirton perform leachate analysis for metals using Method 1330A, the Extraction Procedure for Oily Wastes (OWEP).

Because of the number and variety of wastewater generating operations at Weirton, we felt there was the possibility that hazardous constituents other than those addressed in the ACOE data might be present in the waste. Therefore, we requested that Weirton provide analysis for the entire list of hazardous constituents found in Appendix IX to 40 CFR Part 264.

In addition, the quantitation levels for semivolatile organic compounds in the ACOE data were unacceptably high for risk-based decision making. Therefore, we requested that when doing the Appendix IX analysis, Weirton provide us with semivolatile organic compound data that had lower (more sensitive) quantitation levels.

On June 12 and 13, 2001, Weirton collected eight additional samples to supplement the ACOE data. Three shallow samples and three deep samples were collected in the East Lagoon. An additional sample was collected from each of the Figure 8 tanks.

These samples were analyzed for total Appendix IX volatiles, semi-volatiles, metals, cyanide and sulfide. Leachable concentrations of all constituents except cyanide and sulfide were determined by performing the TCLP for Appendix IX volatile and semivolatile organics, and the OWEP for metals. Analysis for Appendix IX polychlorinated dibenzodioxins (PCDDs) and polychlorinated dibenzofurans (PCDFs), polychlorinated biphenyls (PCBs), pesticides and herbicides was performed on four of these samples. These additional analyses were performed on two of the shallow samples and one deep sample from the East Lagoon, and one of the samples from the Figure 8 tanks.

Leachate analysis was not performed on any of the samples for cyanide. Therefore, in our evaluation of cyanide we have calculated the theoretical maximum leachate concentration 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 waste, the concentration of this constituent 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.

During the supplemental sampling event on June 12 and 13, 2001, the WVDEP collected split samples and analyzed them using the TCLP for all TC constituents.

We also requested that Weirton supplement the data obtained during the ACOE investigation because of discrepancies in the results of the testing done for the characteristic of ignitability.

As mentioned above, the five deep samples from the ACOE sampling event were analyzed for ignitability. The results reported for these determinations showed that two of the five samples had a flash point greater than 150° F. The reported results for the other three samples showed a flash point of 62° F. As defined in 40 CFR 261.21, a liquid that has a flash point of less than 140° F, determined using one of the methods prescribed in that regulation, is an ignitable hazardous waste. The method used for these determinations was EPA Method 1010 (Pensky-Martens Closed-Cup Method for Determining Ignitability).

Weirton argues in its petition that the results of samples showing a flash point of 62° F were reported in error, and presents results of its own determinations to support this conclusion.

Furthermore, we note that a flash point determination is only applicable to liquids as a definitive test for determining the characteristic of ignitability. The C&E sludge is not a liquid. Weirton reports that the sludge is approximately 45% solids by weight. There is no promulgated definitive test for determining the ignitability of solids (i.e., physically a solid with no free liquid). There is, however, a test method in EPA's compendium of test methods, "Test Methods for Evaluating Solid Wastes," (SW-846) for Ignitability of Solids (Method 1030). Although not required by regulation, this method (a burning rate test procedure) may be used to evaluate that portion of the ignitability definition in 40 CFR

261.22(a)(2) that reads, “ * * * and, when ignited, burns so vigorously and persistently that it creates a hazard,” for certain solids.

Also, we note that the Agency has issued guidance saying that if a solid flashes using some modification of the flash point test, this may indicate that there is a potential problem with the sample, such as contamination with ignitable volatiles, and further investigation may be in order. The flash point test may be used with other evidence to build a case for a waste being classified as an ignitable hazard.

On December 18, 2001, Weirton collected five additional samples to further demonstrate that the sludge is not ignitable. Weirton determined the

flash point of these samples using Method 1010, and also analyzed the samples using Method 1030.

The results of this additional analysis demonstrated that the samples were not ignitable because of their flash point (all five samples had a flash point greater than 200° F), nor were they ignitable through application of the burning rate test.

We agree with Weirton’s determination that the C&E sludge is not ignitable. The sludge consists primarily of mill scale, sediments from treating process water taken from the Ohio River, oil and grease from the use of lubricants in the rolling and processing of steel, and storm water. It would not

be expected to have a significant volatile organic content.

We have reviewed the sampling and analysis procedures used by Weirton for the collection and analysis of these samples, and have determined that they are adequate for the generation of data that are acceptable for risk-evaluation purposes.

The maximum total and maximum leachate concentrations for all detected inorganic constituents in Weirton’s waste samples are presented in Table 1.

The detection limits presented in Table 1 represent the lowest concentrations quantifiable by Weirton or the ACOE using appropriate methods to analyze the waste.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS¹ WASTEWATER TREATMENT SLUDGE

Inorganic constituents	Total constituent concentration (mg/kg)	OWEP or TCLP leachate concentration (mg/l)
Antimony	2.2	<1.0
Arsenic	22.4	0.38
Barium	172	2.24
Beryllium	0.75	<0.05
Cadmium	6.3	0.0156
Chromium	276	0.382
Cobalt	38.4	0.3
Copper	243	0.15
Lead	217	0.23
Mercury	0.3	<0.001
Nickel	485	2.46
Selenium	5.4	0.3
Silver	6.2	0.01
Thallium	5.5	<0.2
Tin	7160	0.124
Vanadium	34.9	<0.5
Zinc	6010	12.2
Cyanide (total)	3.1	0.155 ²

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

² This value is the calculated theoretical maximum leachate concentration based on the maximum total constituent concentration.

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

The maximum total and maximum leachate concentrations for all detected organic constituents in Weirton’s waste samples are presented in Table 2.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT¹ AND LEACHATE CONCENTRATIONS WASTEWATER TREATMENT SLUDGE

Organic constituents	Total constituent concentration (mg/kg)	TCLP leachate concentration (mg/l)
Acetone	0.62	0.056
Acetophenone	2	<0.05
Anthracene	1.4	<0.05
Benz(a)anthracene	1.9	<0.05
Benzene	<0.012	0.021
Benzo(a)pyrene	1.8	<0.05
Benzo(b)fluoranthene	1.2	<0.05
Bis(2-ethylhexyl)phthalate	1.8	0.18
Butylbenzylphthalate	1.7	<0.05
Carbon Disulfide	0.052	<0.05
Chrysene	4.3	<0.05
m-Cresol	<10	0.25
p-Cresol	<10	0.25
DDE	<0.05	0.000007

TABLE 2.—MAXIMUM TOTAL CONSTITUENT¹ AND LEACHATE CONCENTRATIONS WASTEWATER TREATMENT SLUDGE—
Continued

Organic constituents	Total constituent concentration (mg/kg)	TCLP leachate concentration (mg/l)
DDT	0.079	0.00001
Endosulfan	0.13	0.000017
Endrin	0.242	<0.00006
Ethylbenzene	0.022	0.062
Fluoranthene	2.9	<0.05
Heptachlor	0.023	<0.00006
Heptachlor epoxide	0.014	<0.00006
Methyl chloride (chloromethane)	0.092	<0.1
Methyl ethyl ketone (2-butanone)	0.12	0.002
Methyl isobutyl ketone	0.38	<0.05
2-Methylnaphthalene	2	<0.05
Phenanthrene	3.8	<0.05
Phenol	1	0.038
Pyrene	4.8	<0.05
2,3,7,8-TCDD ²	0.00000766	0.0000000011
Toluene	2.4	0.46
Trichloroethylene	<0.012	0.035
Xylene	0.22	0.29

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

² For risk assessment of PCDDs and PCDFs compounds, toxicity values are expressed as 2,3,7,8-TCDD equivalents (TEQs).

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

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)). Weirton submitted signed certifications stating that all submitted information is true, accurate and complete.

III. EPA's Evaluation of the Petition

A. What Method Did EPA Use To Evaluate Risk?

For this delisting determination, we used information gathered to identify plausible exposure routes (i.e., groundwater, surface water, and air) for hazardous constituents present in the petitioned waste. Because the Consent Decree requires that the sludge be removed from the units in which it currently resides and because of its physical form, we determined that disposal in a Subtitle D landfill was the most reasonable, worst-case disposal scenario for Weirton's petitioned waste. We then used a fate and transport model to predict the release of hazardous constituents from the petitioned waste once it is disposed of, in order to evaluate the potential impact on human health and the environment. To perform this evaluation, 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. For a detailed description of the DRAS program and the EPACMTP model, See 65 FR 58015, September 27, 2000. Subsequent revisions to the DRAS program are described in 65 FR 75637 (December 4, 2000). The DRAS program is available on the World Wide Web at http://www.epa.gov/earth1r6/6pd/rcra_abc/pd-o/dras.htm. The technical support document for the DRAS program is also available on the World Wide Web at http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dtsd.htm as well as in the public docket for this proposed rule.

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 insures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

In assessing potential risks to groundwater, we use the estimated

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.

For constituents which are not detected in leachate analysis, the DRAS requires that the detection limit be entered along with the other data. In these circumstances, the DRAS uses one-half the detection limit to calculate risk. We believe it is inappropriate to evaluate constituents which are not detected in any sample analyzed, if an appropriate analytical method was used.

Similarly, the DRAS also predicts 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 perform this assessment.

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.

The back-calculation procedure contrasts with the method used to compute the cumulative risk for a one-time delisting petition. To determine cumulative risk, the calculations proceed in a forward direction. Beginning with the leachate and total waste concentrations for each constituent in the waste (source concentrations), the waste volume and exposure parameters are used to estimate the upper-bound excess lifetime cancer risks (risk) and noncarcinogenic hazards (hazard). The risk is said to be cumulative because risks and hazards are summed separately for receptors (resident adults and children) across all applicable waste constituents and exposure pathways to obtain an estimate of the total individual risk and hazard for each receptor. Risk is the probability that a receptor will develop cancer. Risk is estimated based on a unique set of exposure, model, and toxicity assumptions.

Hazard is defined as the potential for noncarcinogenic health effects as a result of exposure to constituents of concern, averaged over an exposure period of less than an entire lifetime. A hazard is not a probability but rather a measure (expressed as a ratio) of the magnitude of a receptor's potential exposure relative to a standard exposure level. The standard exposure level is calculated over an exposure period such that there is no likelihood of adverse health effects to potential receptors, including sensitive populations.

If a delisting evaluation is performed for a one-time exclusion, the DRAS computes the cumulative carcinogenic risk by summing the carcinogenic risks for all waste constituents for a given exposure pathway and then summing the carcinogenic risks for each pathway analyzed in the delisting risk assessment. The DRAS also computes the cumulative noncarcinogenic risk by summing the Hazard Quotients for all waste constituents for a given exposure pathway to obtain exposure pathway-specific Hazard Indexes (HIs), and then summing the HIs associated with each exposure pathway analyzed. For a one-time exclusion, the results of the cumulative risk assessment may be used in lieu of the calculated delisting levels. Since this is a one-time delisting, we do not need to establish monitoring concentrations for each batch of waste that is subsequently managed under the exclusion. Therefore, we set the

evaluation levels in the cumulative risk process at the established target risk range (1×10^{-4} to 1×10^{-6} for carcinogenic waste constituents and a HI of 1.0 to 0.1 for noncarcinogenic waste constituents). Use of the cumulative risk analysis allows the risk associated with an individual waste constituent to extend to a less conservative risk level as long as the cumulative risk for the entire petitioned waste lies below or within EPA's target risk range.

For calculation of delisting levels for multi-year (batch) waste generation, EPA Region III generally defines acceptable risk levels as wastes with an excess cancer risk of no more than 1×10^{-6} and a hazard quotient of no more than 0.1 for individual constituents. For a one-time delisting, EPA Region III evaluates the cumulative cancer risk and cumulative hazard index of the petitioned waste. A cumulative cancer risk less than 1×10^{-4} and a cumulative hazard index less than or equal to 1 are considered to be protective of human health and will be considered acceptable for this type of delisting determination.

B. What Other Factors Did EPA Consider in Its Evaluation?

We also consider the applicability of groundwater monitoring data during the evaluation of delisting petitions where the petitioned waste is currently managed or was once managed in a land-based unit (e.g., a landfill or surface impoundment).

We use the results of groundwater monitoring data evaluations as a check on the reasonable worst case evaluations performed, in order to provide an additional level of confidence in our delisting decisions. Because groundwater monitoring data are descriptive of the impact of the petitioned waste under actual conditions, and not reasonable worst case assumptions, we believe that evidence of groundwater contamination originating from a land-based waste management unit may be sufficient basis for petition denial.

Pursuant to an administrative order issued by EPA, Weirton is currently conducting a RCRA Facility Investigation (RFI) at its site in conformance with a plan approved by EPA on July 20, 1999. This plan includes groundwater monitoring in the C&E outfall area (known as Corrective Action Area I for this purpose) for Target Analyte List metals, Target Compound List volatile and semivolatile organics, and total cyanide.

The groundwater monitoring network established for the investigation in this

area was designed to monitor groundwater quality for the entire Corrective Action Area I, not just the East Lagoon. Corrective Action Area I includes several other solid waste management units in addition to the East Lagoon.

Nevertheless, one of the groundwater monitoring wells in the network is adjacent to the East Lagoon and is likely downgradient of the unit. Based on the results collected in the investigation so far, this well does not show elevated levels of contaminants, especially when compared to the upgradient well in the monitoring network.

C. What Conclusion Did EPA Reach?

EPA believes that the information provided by Weirton provides a reasonable basis to grant Weirton's petition. We, therefore, propose to grant Weirton a one-time delisting for its C&E sludge currently residing in the East Lagoon and the Figure 8 tanks. The data submitted to support the petition and the Agency's evaluation show that the constituents in the Weirton C&E sludge are below health-based levels used by the Agency for delisting decision-making, and that the sludge does not exhibit any of the characteristics of a hazardous waste.

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 Weirton's petitioned waste. We applied the 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 Weirton's petitioned waste on human health and the environment.

The estimated total cumulative risk posed by the waste, as calculated using the DRAS, is 7.5×10^{-5} . We believe that this risk is acceptable both because the value is within the generally acceptable range of 1×10^{-4} to 1×10^{-6} and, as stated above, for a one-time delisting, EPA Region III considers a cumulative cancer risk less than 1×10^{-4} to be protective of human health.

The estimated cumulative hazard index for this waste is calculated by DRAS to be 9.8×10^{-2} . We likewise believe that this risk is acceptable both because the value is within the generally acceptable range of 1.0 to 0.1 and, for a one-time delisting, EPA Region III considers a cumulative

hazard index less than or equal to 1 to be protective of human health.

We believe the data submitted in support of the petition show that the waste will not pose a threat when disposed of in a Subtitle D landfill. We, therefore, propose to grant Weirton's request for a one-time delisting for the C&E sludge currently residing in the East Lagoon and the Figure 8 tanks.

IV. Conditions for Exclusion

A. What Conditions Are Associated With This Exclusion?

The proposed exclusion would apply only to the estimated 18,000 cubic yards of C&E sludge currently contained in the East Lagoon and the Figure 8 tanks as described in Weirton's petition. Any volume of sludge exceeding this amount could not be managed as nonhazardous waste under this exclusion.

Furthermore, in order to insure that the sludge is removed from the units as required by the Consent Decree, and because the risk assessment was based on disposal in a landfill, this exclusion would be effective only when the sludge is removed from the units in which it currently resides. That is, if this proposed exclusion becomes final, the C&E sludge would remain a hazardous waste until it is removed from the East Lagoon and the Figure 8 tanks for transportation and subsequent disposal in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage municipal or industrial solid waste.

If Weirton discovers that a condition or assumption related to the characterization of this waste that was used in the evaluation of this petition is not as reported in the petition, Weirton will be required to report any information relevant to that condition or assumption in writing to the Regional Administrator and the West Virginia Department of Environmental Protection within 10 calendar days of discovering that condition.

The purpose of this condition is to require Weirton to disclose new or different information that may be pertinent to the delisting. This provision will allow us to reevaluate the exclusion based on this new information in order to determine if our original decision was correct. If we discover such information from any source, we will act on it as appropriate. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate action deemed necessary to protect human health or the environment. 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.

In order to adequately track wastes that have been delisted, we will require that Weirton provide a one-time notification to any State regulatory agency to which or through which the delisted waste will be transported for disposal. Weirton will be required to provide this notification at least 60 calendar days prior to commencing these activities. Failure to provide such notification will be a violation of the delisting, and may be grounds for revocation of the exclusion.

B. What Happens if Weirton Fails To Meet the Conditions of This Exclusion?

If Weirton violates the terms and conditions established in the exclusion, the Agency may start procedures to withdraw the exclusion, and may initiate enforcement actions.

V. Effect on State Authorizations

This proposed exclusion, if promulgated, would be issued under the Federal RCRA delisting program. States, however, may impose more stringent regulatory requirements than EPA pursuant to Section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (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 exclusion, 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, Weirton must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

VI. Effective Date

EPA is today making a tentative decision to grant Weirton's petition. 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).

VII. 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: February 19, 2002.

Donald S. Welsh,
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.

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

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

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Weirton Steel Corporation	Weirton, West Virginia	Wastewater treatment sludge (known as C&E sludge) containing EPA Hazardous Waste Numbers F007 and F008, subsequent to its excavation from the East Lagoon and the Figure 8 tanks for the purpose of transportation and disposal in a Subtitle D landfill after (insert publication date of the final rule). This is a one-time exclusion for 18,000 cubic yards of C&E sludge. (1) <i>Reopener language</i> (a) If Weirton discovers that any condition or assumption related to the characterization of the excluded waste which was used in the evaluation of the petition or that was predicted through modeling is not as reported in the petition, then Weirton must report any information relevant to that condition or assumption, in writing, to the Regional Administrator and the West Virginia Department of Environmental Protection within 10 calendar days of discovering that information. (b) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Regional Administrator and the West Virginia 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 or the environment. (2) <i>Notification Requirements</i> Weirton must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 calendar days prior to the commencement of such activities. Failure to provide such notification will be deemed to be a violation of this exclusion and may result in revocation of the decision and other enforcement action.
*	*	*

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 175

[Docket No. RSPA-02-11654 (HM-228)]

RIN 2137-AD18

Hazardous Materials: Revision of Requirements for Carriage by Aircraft

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: RSPA is considering changes to the requirements in the Hazardous Materials Regulations (HMR) on the

transportation of hazardous materials by aircraft. These changes would modify or clarify requirements to promote safer transportation practices; promote compliance and enforcement; eliminate unnecessary regulatory requirements; convert certain exemptions into regulations of general applicability; finalize outstanding petitions for rulemaking; facilitate international commerce; and make these requirements easier to understand. In addition, RSPA is denying a petition for rulemaking in this document.

This ANPRM invites public comments on how to accomplish these goals, provides an opportunity for comment on amendments that RSPA is considering, and provides a forum for the public to present additional ideas for improving the safe transportation of hazardous materials by aircraft.

DATES: *Written comments:* Comments must be received by May 31, 2002.

ADDRESSES: *Comments:* You must address comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street SW., Washington, DC 20590-0001. You should identify the docket number (RSPA-02-11654 (HM-228)) and submit your comments in two copies. If you want to confirm our receipt of your comments, you should include a self-addressed, stamped postcard. You may submit comments to RSPA by e-mail to: rules@rspa.dot.gov or you may submit comments to the DMS Web at: <http://dms.dot.gov>. The Dockets Management System is located on the Plaza Level of the Department of Transportation headquarters building (Nassif Building) at the above address. You may review public dockets there between the hours of 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You may also review comments on-line at the DOT Dockets