

entered at a post office within the service area of the authorizing BMC, and bear delivery addresses located within the service area of the authorizing BMC.

The Postal Service maintains that system-wide consistency would be achieved if exception requests are processed at one central location rather than at each BMC. This change is in line with the Postal Service's obligation to ensure prompt, efficient, reliable responses to customer needs.

**Proposed Changes**

This proposal would revise the DMM standards for testing parcels that do not conform to the general machinability criteria for machinable parcels. Under this proposal, mailers would send requests for testing to the manager, BMC Operations, USPS Headquarters for a determination of machinability. The procedure for testing parcels would ensure that customer expectations of consistency across postal operations are met. The procedure also would remove the processing of requests for testing from BMCs and enable BMC Operations at USPS Headquarters to ensure that test results are consistent.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. of 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the DMM, incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

**Part 111—[AMENDED]**

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual (DMM) as set forth below.

**C Characteristics and Content**

**C000 General Information**

*C010 General Mailability Standards*

\* \* \* \* \*

[Delete 7.0, Mailing Test Packages.]

\* \* \* \* \*

*C050 Mail Processing Categories*

\* \* \* \* \*

**4.0 MACHINABLE PARCEL**

\* \* \* \* \*

**4.3 Exception**

[Revise 4.3 to read as follows:]

Some parcels may be successfully processed on BMC parcel sorters even though they do not conform to the general machinability criteria in 4.1. The manager, BMC Operations, USPS Headquarters (see G043 for address) may authorize a mailer to enter such parcels as machinable parcels rather than irregular parcels if the parcels are tested on BMC parcel sorters and prove to be machinable. Mailers who wish to have parcels tested for machinability on USPS parcel sorting machines must:

a. Submit a written request to BMC Operations. The request must list mailpiece characteristics for every shape, weight, and size to be considered. If the letter requesting testing describes a mailpiece that falls within the specifications of pieces that were tested previously, they will not be tested.

b. Describe mailpiece construction, parcel weight(s), estimated number of parcels to be mailed in the coming year, and preparation level (e.g., destination BMC pallets).

c. Send 100 samples to the test facility designated by the manager, BMC Operations at least 6 weeks prior to the first mailing date. The manager, BMC Operations will recommend changes, to ensure machinability, for parcels that do not qualify.

\* \* \* \* \*

**6.0 OUTSIDE PARCEL (NONMACHINABLE)**

[Revise the first sentence to read as follows:]

An outside parcel is a parcel that exceeds any of the maximum dimensions for a machinable parcel.

\* \* \* \* \*

**G General Information**

**G000 The USPS and Mailing Standards**

\* \* \* \* \*

*G040 Information Resources*

\* \* \* \* \*

*G043 Address List for Correspondence*

[Add the following address:]

BMC OPERATIONS, US POSTAL SERVICE, E 475 L'ENFANT PLZ SW RM 7631, WASHINGTON DC 20260-2806.

\* \* \* \* \*

We will publish an appropriate amendment to 39 CFR part 111 to reflect the changes if the proposal is adopted.

**Neva R. Watson,**

*Attorney, Legislative.*

[FR Doc. 04-3657 Filed 2-19-04; 8:45 am]

**BILLING CODE 7710-12-M**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 261**

[FRL-7625-2]

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

**AGENCY:** Environmental Protection Agency (EPA).

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

**SUMMARY:** The EPA is proposing to grant a petition submitted by Bekaert Corporation (Bekaert) to exclude (or delist) a certain solid waste generated by its Dyersburg, Tennessee, facility from the lists of hazardous wastes.

The EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment.

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

If finalized, the EPA would conclude that Bekaert's petitioned waste is nonhazardous with respect to the original listing criteria and that the generation of an F006 hazardous waste sludge from the treatment of waste waters from electroplating processes performed by the facility will not be hazardous at the point of generation because of the adequately reduced likelihood of migration of constituents from this waste. The EPA would also conclude that Bekaert's process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

**DATES:** The EPA will accept comments until April 5, 2004. The EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach the EPA by March 8, 2004. The request

must contain the information prescribed in 40 CFR 260.20(d).

**ADDRESSES:** Please send three copies of your comments. You should send two copies to the Chief, North Section, RCRA Enforcement and Compliance Branch, Waste Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street SW., Atlanta, Georgia, 30303. You should send a third copy to Mike Apple, Director, Division of Solid Waste Management, Tennessee Department of Environment and Conservation, 5th Floor, L&C Tower, 401 Church Street, Nashville, Tennessee, 37243-1535. Identify your comments at the top with this regulatory docket number: R4DLP-0401-Bekaert. You may submit your comments electronically to Daryl Himes at [Himes.Daryl@epa.gov](mailto:Himes.Daryl@epa.gov).

You should address requests for a hearing to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, Waste Division, U.S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303.

**FOR FURTHER INFORMATION CONTACT:** For general and technical information about this final rule, contact Daryl Himes, South Enforcement and Compliance Section (Mail Code 4WD-RCRA), RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303 or call (404) 562-8614.

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

- I. Overview Information
  - A. What action is the EPA proposing?
  - B. Why is the EPA proposing to approve this delisting?
  - C. How will Bekaert manage the waste if it is delisted?
  - D. When would the proposed delisting exclusion be finalized?
  - E. How would this action affect States?
- II. Background
  - A. What is the history of the delisting program?
  - B. What is a delisting petition, and what does it require of a petitioner?
  - C. What factors must the EPA consider in deciding whether to grant a delisting petition?
- III. The EPA's Evaluation of the Waste Information and Data
  - A. What wastes did Bekaert petition the EPA to delist?
  - B. Who is Bekaert and what process do they use to generate the petition waste?
  - C. How did Bekaert sample and analyze the data in this petition?
  - D. What were the results of Bekaert's analysis?
  - E. How did the EPA evaluate the risk of delisting this waste?
- F. What did the EPA conclude about Bekaert's analysis?
- G. What other factors did the EPA consider in its evaluation?
- H. What is the EPA's evaluation of this delisting petition?
- IV. Next Steps
  - A. With what conditions must the petitioner comply?
  - B. What happens if Bekaert violates the terms and conditions?
- V. Public Comments
  - A. How may I as an interested party submit comments?
  - B. How may I review the docket or obtain copies of the proposed exclusions?
- VI. Regulatory Impact
- VII. Regulatory Flexibility Act
- VIII. Paperwork Reduction Act
- IX. Unfunded Mandates Reform Act
- X. Executive Order 13045
- XI. Executive Order 13084
- XII. National Technology Transfer and Advancement Act
- XIII. Executive Order 13132 Federalism

### I. Overview Information

#### A. What Action Is the EPA Proposing?

The EPA is proposing to grant the delisting petition submitted by Bekaert to have its dewatered waste water treatment plant (WWTP) sludge (F006 listed hazardous waste) excluded, or delisted, from the definition of a hazardous waste.

#### B. Why Is the EPA Proposing To Approve This Delisting?

Bekaert's petition requests a delisting for the dewatered wastewater treatment plant (wwtp) sludge which result from the treatment of waste waters generated as a result of its electroplating operations. Bekaert does not believe that the petitioned waste meets the criteria for which the EPA listed it. Bekaert also believes no additional constituents or factors could cause the waste to be hazardous. The EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)-(4). In making the initial delisting determination, the EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, the EPA would have proposed to deny the petition.) The EPA

evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. The EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. The EPA's proposed decision to delist waste from the Bekaert facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Dyersburg, Tennessee facility.

#### C. How Will Bekaert Manage the Waste if It Is Delisted?

Bekaert currently sends the petitioned waste to a hazardous waste landfill. If the delisting exclusion is finalized, Bekaert intends to dispose of the petitioned waste (*i.e.*, dewatered WWTP sludge) in a subtitle D solid waste landfill in the State of Tennessee.

#### D. When Would the Proposed Delisting Exclusion Be Finalized?

RCRA section 3001(f) specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, the EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1) at 42 U.S.C. 6930(b)(1), allows rules to become effective in less than six months after the EPA addresses public comments when the regulated facility does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

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

### *E. How Would This Action Affect the States?*

Because the EPA is issuing this exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude States who have received authorization from the EPA to make their own delisting decisions.

The EPA allows the States to impose their own non-RCRA regulatory requirements that are more stringent than the EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. 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, the EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under the State law. Delisting petitions approved by the EPA Administrator under 40 CFR 260.22 are effective in the State of Tennessee only after the final rule has been published in the **Federal Register**.

## **II. Background**

### *A. What Is the History of the Delisting Program?*

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in §§ 261.31 and 261.32. The EPA lists these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

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

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

### *B. What Is a Delisting Petition, and What Does It Require of a Petitioner?*

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

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

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

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

### *C. What Factors Must the EPA Consider in Deciding Whether To Grant a Delisting Petition?*

Besides considering the criteria in § 260.22(a) and section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, the EPA must consider any factors (including additional constituents) other than those for which the EPA listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

The EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See § 261.3(a)(2)(iii) and (iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

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

### *A. What Waste Did Bekaert Petition the EPA To Delist?*

On October 28, 2002, Bekaert petitioned the EPA to exclude from the lists of hazardous waste contained in

§§ 261.31 and 261.32, a dewatered WWTP sludge generated from the facility located in Dyersburg, Tennessee. The waste (EPA Hazardous Waste No. F006) is generated by treating wastewater from the copper and zinc electroplating of steel cords for the automobile tire industry. Specifically, in its petition, Bekaert requested that the EPA grant an exclusion for 1250 cubic yards per calendar year of dewatered WWTP sludge resulting from the treatment of waste waters from an electroplating operation at its facility.

### *B. Who Is Bekaert and What Process Do They Use To Generate the Petition Waste?*

Bekaert is a facility located in an industrial setting in the northeast portion of the City of Dyersburg, Tennessee.

Bekaert produces cabled wire which is a major component in the production of steel belted radial tires. The incoming "raw material" from which the wire is drawn is two (2) ton spools of high carbon steel wire rod. As part of the production process, the drawn wire is plated with copper and zinc. Treatment of the waste waters which result from the electroplating process result in the generation of sludges which are classified as F006 listed hazardous wastes pursuant to 40 CFR 261.31. The 40 CFR part 261, appendix VII hazardous constituents for which F006 hazardous wastes are listed include cadmium, hexavalent chromium, nickel, and cyanide (complexed).

### *C. How Did Bekaert Sample and Analyze the Data in This Petition?*

To support its petition, Bekaert submitted:

- (1) Results of the total constituent analysis for metals;
- (2) Results of the Toxicity Characteristic Leaching Procedure (TCLP) extract for the following: volatile and semivolatile organics, pesticides, herbicides, and metals.

### *D. What Were the Results of Bekaert's Analyses?*

The EPA believes that the descriptions of Bekaert's dewatered WWTP sludge, in addition to the data submitted in support of the petition show that the dewatered WWTP sludge is nonhazardous. Analytical data from Bekaert's dewatered WWTP sludge samples were used for evaluation in the Delisting Risk Assessment Software. The data summaries for detected constituents are presented in Table I. The EPA has reviewed the sampling procedures used by Bekaert and has determined they satisfy the EPA's

criteria for collecting representative samples of the variations in constituent concentrations in the hazardous waste water treatment sludge. The data

submitted in support of the petition show that constituents in Bekaert's waste are presently below health-based levels used in the delisting decision-

making. The EPA believes that Bekaert has successfully demonstrated that the dewatered WWTP sludge is nonhazardous.

TABLE 1.—MAXIMUM TCLP CONSTITUENT CONCENTRATIONS OF THE STABILIZED HAZARDOUS DEWATERED WWTP SLUDGE AND CORRESPONDING DELISTING LIMITS <sup>1</sup>

Constituent	Total constituent analyses (mg/kg)	TCLP leachate conc. (mg/l)	Maximum allowable TCLP conc. (mg/l)
Antimony	<7.4	ND	0.922
Arsenic	<7.9	ND	0.0419
Barium	300	ND	100
Cadmium	<8.4	ND	0.672
Chromium	85.3	ND	5.0
Copper	1200	ND	4710
Lead	19.6	ND	5.0
Mercury	<0.04938	ND	0.2
Nickel	109	ND	127
Selenium	<4.94	ND	1.0
Silver	<7.9	ND	5.0
Zinc	27,700	74	1260
2,4-D		ND	5.96
2,4,5-TP (Silvex)		ND	1.0
Benzene		ND	0.806
		ND	0.560
Chlorobenzene		ND	8.51
Chloroform		ND	1.09
1,4-Dichlorobenzene		ND	2.46
1,2-Dichloroethane		ND	0.5
1,1-Dichloroethene		ND	0.0982
Methyl ethyl ketone		8.71	200
Tetrachloroethene		ND	0.425
Trichloroethene		ND	0.5
Vinyl Chloride		ND	0.0415
Cresols		ND	200
m-Cresol		ND	200
m-,p-Cresols		ND	200
Pentachlorophenol		ND	100
2,4,5-Trichlorophenol		ND	400
2,4,6-Trichlorophenol		ND	2.0
2,4-Dinitrotoluene		ND	0.0915
Hexachlorobenzene		ND	0.00295
Hexachlorobutadiene		ND	0.5
Hexachloroethane		ND	1.38
Nitrobenzene		ND	2.0
Pyridine		ND	3.19
g-BHC (Lindane)		ND	0.003
Chlordane		ND	0.0156
Endrin		ND	0.02
Heptachlor		ND	0.08
Heptachlor epoxide		ND	0.08
Methoxychlor		ND	10
Toxaphene		ND	0.05

<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.

ND—Denotes that the constituent was not detected.

*E. How Did the EPA Evaluate the Risk of Delisting This Waste?*

For this delisting determination, we assumed that the waste would be disposed in a Subtitle D landfill and we considered transport of waste constituents through ground water, surface water and air. We evaluated Bekaert's petitioned waste using the Agency's Delisting Risk Assessment Software (DRAS) to predict the

concentration of hazardous constituents that might be released from the petitioned waste and to determine if the waste would pose a threat. The DRAS uses EPA's Composite Model for leachate migration with Transformation Products (EPACMTP) to predict the potential for release to groundwater from landfilled wastes and subsequent routes of exposure to a receptor. From a release to ground water, we

considered routes of exposure to a human receptor of ingestion of contaminated ground water, inhalation from groundwater via showering and dermal contact while bathing. The DRAS program considers the surface water pathway by erosion of waste from run-off from an open landfill. It evaluates the subsequent routes of exposure to a human receptor from such releases through exposure pathways of

fish ingestion and ingestion of drinking water. DRAS also considers releases of waste particles and volatile emissions to air from the surface of an open landfill. From a release to air, we considered routes of exposures of inhalation of particulates and absorption into the lungs, ingestion of particulates eliminated from respiratory passages and subsequently swallowed, air deposition of particulates and subsequent ingestion of the soil/waste mixture, and inhalation of volatile constituents.

We used the maximum estimated waste volume and the maximum reported total and leachate concentration as inputs to estimate the constituent concentrations in the ground water, soil, surface water or air.

Assuming a cancer risk of  $1 \times 10^{-5}$  and a hazard quotient of one, the DRAS program back calculated a maximum allowable concentration level which would not exceed protective levels in both the waste and the leachate for each constituent at the given annual waste volume of 1,250 cubic yards.

#### *F. What Did the EPA Conclude About Bekaert's Analysis?*

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

#### *G. What Other Factors Did the EPA Consider in Its Evaluation?*

During the evaluation of this petition, the EPA also considered the potential impact of the petitioned waste via non-ground water routes (*i.e.*, air emission and surface runoff). With regard to airborne dispersion in particular, the EPA believes that exposure to airborne contaminants from the petitioned waste is unlikely. Therefore, no appreciable air releases are likely from the dewatered WWTP sludge under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from the waste water treatment sludge in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment

from airborne exposure to constituents from the hazardous waste water treatment sludge.

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

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

#### *H. What Is the EPA's Evaluation of This Delisting Petition?*

The descriptions by Bekaert of the hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this proposal), provide a reasonable basis for the EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (see table 1). The EPA believes that the dewatered WWTP sludge generated by Bekaert

contains hazardous constituents at levels which will present minimal short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, the EPA believes that it should grant to Bekaert an exclusion for the dewatered WWTP sludge. The EPA believes the data submitted in support of the petition shows the Bekaert dewatered WWTP sludge to be nonhazardous.

The EPA has reviewed the sampling procedures used by Bekaert and has determined they satisfy the EPA's criteria for collecting representative samples of variable constituent concentrations in the dewatered WWTP sludge. The data submitted in support of the petition show that constituents in Bekaert's waste are presently below the compliance point concentrations used in the delisting decision-making process and would not pose a substantial hazard to the environment. The EPA believes that Bekaert has successfully demonstrated that the dewatered WWTP sludge is nonhazardous.

The EPA therefore proposes to grant an exclusion to Bekaert, in Dyersburg, Tennessee, for the dewatered WWTP sludge described in its petition. The EPA's decision to exclude this waste is based on analysis performed on samples taken of the dewatered WWTP sludge.

If the EPA finalizes the proposed rule, the EPA will no longer regulate the dewatered WWTP sludge under parts 262 through 268 and the permitting standards of part 270.

## **IV. Next Steps**

### *A. With What Conditions Must the Petitioner Comply?*

The petitioner, Bekaert, must comply with the requirements in 40 CFR part 261, appendix IX, table 1 as amended by this proposal. The text below gives the rationale and details of those requirements.

#### (1) Delisting Levels

This paragraph provides the levels of constituents for which Bekaert must test the leachate from the dewatered WWTP sludge; the leachate must conform to the standards described below to be considered nonhazardous.

The EPA selected the set of inorganic and organic constituents specified in paragraph (1) and listed in 40 CFR part 261, appendix IX, table 1, based on information in the petition. The EPA compiled the inorganic and organic constituents list from descriptions of the manufacturing process used by Bekaert, previous test data provided for the waste, and the respective health-based

levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the TCLP extract and total concentrations of the waste.

#### (2) Waste Holding and Handling

The purpose of this paragraph is to ensure that Bekaert manages and disposes of any dewatered WWTP sludge that might contain hazardous levels of inorganic and organic constituents according to Subtitle C of RCRA. Holding the dewatered WWTP sludge until characterization is complete will protect against improper handling of hazardous material.

#### (3) Verification Testing Requirements

Bekaert must complete a verification testing program on the dewatered WWTP sludge to assure that the dewatered WWTP sludge does not exceed the maximum levels specified in paragraph (1). If the EPA determines that the data collected under this paragraph does not support the data provided for in the petition, the exclusion will not cover the tested waste. This verification program operates on a quarterly basis followed by an annual basis. The first part of the verification testing program consists of testing the dewatered WWTP sludge for specified indicator parameters as per paragraph (1) on a quarterly basis. The quarter testing will be performed for four (4) quarters by taking a composite sample consisting of four (4) grab samples from an individual roll-off container once this rule is final. The first sample can be taken at any time following this rule being final. The remaining quarterly samples shall be taken at ninety (90) day intervals from the taking of the first quarterly sample. If any roll-off fails to meet the specified limits, then Bekaert must dispose of the waste as hazardous.

The second part of the verification testing program is the annual testing of one composite samples of dewatered WWTP sludge for all constituents specified in paragraph (1). The first and subsequent annual tests should coincide with the month during which the final quarterly test was performed. If the annual testing of the waste does not meet the delisting requirements in paragraph (1), Bekaert must notify the EPA according to the requirements in paragraph (6). The EPA will then take the appropriate actions necessary to protect human health and the environment per paragraph (6).

The exclusion is effective upon publication in the **Federal Register** but the disposal cannot begin until the first quarterly verification sampling is

completed and is approved by EPA. Disposal is also not authorized if Bekaert fails to perform the quarterly and yearly testing as specified herein. Should Bekaert fail to conduct the quarterly/yearly testing as specified herein, then disposal of dewatered WWTP sludge as delisted waste may not occur in the following quarter(s)/year(s) until Bekaert obtains the written approval of the EPA.

#### (4) Changes in Operating Conditions

Paragraph (4) would allow Bekaert the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment processes. However, Bekaert must prove the effectiveness of the modified process and request approval from the EPA. Bekaert must manage wastes generated during the new process demonstration as hazardous waste until it has obtained written approval and paragraph (3), is satisfied.

#### (5) Data Submittals

To provide appropriate documentation that Bekaert's facility is managing the dewatered WWTP sludge, Bekaert must compile, summarize, and keep delisting records on-site for a minimum of five years. It should keep all analytical data obtained through paragraph (3) including quality control information for five years. Paragraph (5) requires that Bekaert furnish these data upon request for inspection by any employee or representative of the EPA or the State of Tennessee.

If the proposed exclusion is made final, then it will apply only to 1250 cubic yards per calendar year of dewatered WWTP sludge generated at the Bekaert facility after successful verification testing.

The EPA would require Bekaert to file a new delisting petition under any of the following circumstances:

(a) If Bekaert significantly alters the manufacturing process treatment system except as described in paragraph (4).

(b) If Bekaert uses any new manufacturing or production process(es), or significantly change from the current process(es) described in its petition; or

(c) If Bekaert makes any changes that could affect the composition or type of waste generated.

Bekaert must manage waste volumes greater than 1250 cubic yards per calendar year of dewatered WWTP sludge as hazardous waste until the EPA grants a new exclusion. When this exclusion becomes final, the management by Bekaert of the dewatered WWTP sludge covered by

this petition would be relieved from Subtitle C jurisdiction. Bekaert must either (a) treat, store, or dispose of the waste in a State permitted on-site facility, or (b) Bekaert must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a State permit, license, or register to manage municipal or industrial solid waste consistent with the requirements of RCRA.

#### (6) Reopener

The purpose of paragraph (6) is to require Bekaert to disclose new or different information related to a condition at the facility or disposal of the waste if it is pertinent to the delisting. Bekaert must also use this procedure if the waste sample in the annual testing fails to meet the levels found in paragraph (1). This provision will allow the EPA to reevaluate the exclusion if a source provides new or additional information to the EPA. The EPA will evaluate the information on which it based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause the EPA to deny the petition if presented.

This provision expressly requires Bekaert to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within ten (10) days of discovery. If the EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

The EPA believes that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978) *et seq.*, to reopen a delisting decision. The EPA may reopen a delisting decision when it receives new information that calls into question the assumptions underlying the delisting.

The EPA believes a clear statement of its authority in delistings is merited in light of the EPA experience. See Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading the EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, the EPA will continue to address these situations case by case. Where necessary, the EPA will make a good cause finding to justify

emergency rulemaking. *See* APA section 553(b).

#### (7) Notification Requirements

In order to adequately track wastes that have been delisted, the EPA is requiring that Bekaert provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. Bekaert must provide this notification within sixty (60) days of commencing this activity.

#### *B. What Happens if Bekaert Violates the Terms and Conditions?*

If Bekaert violates the terms and conditions established in the exclusion, the EPA will initiate procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the EPA will evaluate the need for enforcement activities on a case-by-case basis. The EPA expects Bekaert to conduct the appropriate waste analysis and comply with the criteria explained above in paragraph (1) of the exclusion.

#### V. Public Comments

##### *A. How May I as an Interested Party Submit Comments?*

The EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to the Chief, North Section, RCRA Enforcement and Compliance Branch, U. S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303. Send a third copy to Mr. Mike Apple, Director, Division of Solid Waste Management, Tennessee Department of Environment and Conservation, 5th Floor, L&C Tower, 401 Church Street, Nashville, Tennessee 37243-1535. You should identify your comments at the top with this regulatory docket number: RSDLP-0301-Bekaert.

You should submit requests for a hearing to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, Waste Division, U. S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303.

##### *B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?*

You may review the RCRA regulatory docket for this proposed rule at the U.S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303.

It is available for viewing in the EPA Freedom of Information Act Review

Room from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (404) 562-8614 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

#### VI. Regulatory Impact

Under Executive Order 12866, the EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of the EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from the EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

#### VII. Regulatory Flexibility Act

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

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

#### VIII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been

approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050 0053.

#### IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, which was signed into law on March 22, 1995, the EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year.

When such a statement is required for the EPA rules, under section 205 of the UMRA the EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before the EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of the EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that this delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

#### X. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that the EPA determines (1) is economically

significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

**XI. Executive Order 13084**

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, the EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to have "meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal

governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

**XII. National Technology Transfer and Advancement Act**

Under section 12(d) of the National Technology Transfer and Advancement Act, the EPA is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by the EPA, the Act requires that the EPA provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the EPA has no need to consider the use of voluntary consensus standards in developing this final rule.

**XIII. Executive Order 13132 Federalism**

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires the EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that 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."

Under section 6 of Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that imposes substantial

direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on 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, because it affects only one facility.

**List of Subjects in 40 CFR Part 261**

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

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

Dated: February 10, 2004.

**Winston A. Smith,**

*Director, Waste Management Division, Region 4.*

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

**PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

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

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

2. In appendix IX to part 261, in table 1, revise the following waste stream, and in tables 2 and 3, add the following waste stream in alphabetical order by facility to read as follows:

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

Facility	Address	Waste description
* Bekaert Corp. ....	* Dyersburg, TN .....	* * * Dewatered wastewater treatment plant (WWTP) sludge (EPA Hazardous Waste Nos. F006) generated at a maximum rate of 1250 cubic yards per calendar year after [publication date of the final rule] and disposed in a Subtitle D landfill. For the exclusion to be valid, Bekaert must implement a verification testing program that meets the following paragraphs:



Facility	Address	Waste description
		<p>(1) <i>Delisting Levels:</i> All leachable concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. Bekaert must use the leaching method specified at 40 CFR 261.24 to measure constituents in the waste leachate. (A) <i>Inorganic Constituents (from Table 1) TCLP (mg/l):</i> Cadmium—0.672; Chromium—5.0; Nickel—127; Zinc—1260.0. (B) <i>Organic Constituents (from Table 1) TCLP (mg/l):</i> Methyl ethyl ketone—200.0.</p> <p>(2) <i>Waste Holding and Handling:</i> (A) Bekaert must accumulate the hazardous waste dewatered WWTP sludge in accordance with the applicable regulations of 40 CFR 262.34 and continue to dispose of the dewatered WWTP sludge as hazardous waste. (B) Once the first quarterly sampling and analyses event described in paragraph (3) is completed and valid analyses demonstrate that no constituent is present in the sample at a level which exceeds the delisting levels set in paragraph (1), Bekaert can manage and dispose of the dewatered WWTP sludge as nonhazardous according to all applicable solid waste regulations. (C) If constituent levels in any sample taken by Bekaert exceed any of the delisting levels set in paragraph (1), Bekaert must do the following: (i) notify EPA in accordance with paragraph (6) and (ii) manage and dispose the dewatered WWTP sludge as hazardous waste generated under Subtitle C of RCRA. (D) <i>Quarterly Verification Testing Requirements:</i> Upon this exclusion becoming final, Bekaert may begin the quarterly testing requirements of paragraph (3) on its dewatered WWTP sludge.</p> <p>(3) <i>Quarterly Testing Requirements:</i> Upon this exclusion becoming final, Bekaert may perform quarterly analytical testing by sampling and analyzing the dewatered WWTP sludge as follows: (A)(i) Collect four representative composite samples of the hazardous waste dewatered WWTP sludge at quarterly (ninety (90) day) intervals after EPA grants the final exclusion. The first composite sample may be taken at any time after EPA grants the final approval. (ii) Analyze the samples for all constituents listed in paragraph (1). Any roll-offs from which the composite sample is taken exceeding the delisting levels listed in paragraph (1) must be disposed as hazardous waste in a Subtitle C landfill. (iii) Within forty-five (45) days after taking its first quarterly sample, Bekaert will report its first quarterly analytical test data to EPA. If levels of constituents measured in the sample of the dewatered WWTP sludge do not exceed the levels set forth in paragraph (1) of this exclusion, Bekaert can manage and dispose the nonhazardous dewatered WWTP sludge according to all applicable solid waste regulations.</p> <p>(4) <i>Annual Testing:</i> (A) If Bekaert completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent with a level which exceeds the limits set forth in paragraph (1), Bekaert may begin annual testing as follows: Bekaert must test one representative composite sample of the dewatered WWTP sludge for all constituents listed in paragraph (1) at least once per calendar year. (B) The sample for the annual testing shall be a representative composite sample (according to SW-846 methodologies) for all constituents listed in paragraph (1). (C) The sample for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken.</p> <p>(5) <i>Changes in Operating Conditions:</i> If Bekaert significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated as established under paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify the EPA in writing; it may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from the EPA.</p> <p>(6) <i>Data Submittals:</i> Bekaert must submit the information described below. If Bekaert fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). Bekaert must: (A) Submit the data obtained through paragraph (3) to the Chief, North Section, RCRA Enforcement and Compliance Branch, Waste Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street SW., Atlanta, Georgia, 30303, within the time specified. (B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when either the EPA or the State of Tennessee request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by the EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."</p>

Facility	Address	Waste description
*	*	<p>(7) <i>Reopener</i>: (A) If, anytime after disposal of the delisted waste Bekaert possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within ten (10) days of first possessing or being made aware of that data. (B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph (1), Bekaert must report the data, in writing, to the Regional Administrator or his delegate within ten (10) days of first possessing or being made aware of that data. (C) If Bekaert fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires the EPA 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. (D) If the Regional Administrator or his delegate determines that the reported information requires action the EPA, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notification shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have ten (10) days from the date of the Regional Administrator or his delegate's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Regional Administrator or his delegate will issue a final written determination describing the EPA actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise.</p> <p>(8) <i>Notification Requirements</i>: Bekaert must do the following before transporting the delisted waste: (A) Provide a one-time written notification to any State Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, sixty (60) days before beginning such activities. (B) Update the one-time written notification if Bekaert ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.</p>
*	*	*

[FR Doc. 04-3600 Filed 2-19-04; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-7624-9]

### National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Wheeler Pit Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA), Region V is issuing a notice of intent to delete the Wheeler Pit Superfund Site (Site) located in Janesville, Wisconsin, from the National Priorities List (NPL) and requests public comments on this notice of intent to delete. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response,

Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Wisconsin, through the Wisconsin Department of Natural Resources, have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund. In the "Rules and Regulations" section of today's **Federal Register**, we are publishing a direct final notice of deletion of the Wheeler Pit Superfund Site without prior notice of intent to delete because we view this as a non-controversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final notice of deletion. If we receive no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive timely adverse comment(s), we will withdraw the

direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on adverse comments received on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

**DATES:** Comments concerning this Site must be received by March 22, 2004.

**ADDRESSES:** Written comments should be addressed to: Zenny Sadlon, Community Involvement Coordinator, U.S. EPA (P-19J), 77 W. Jackson, Chicago, IL 60604, 312-886-6682 or 1-800-621-8431.

**FOR FURTHER INFORMATION CONTACT:** Darryl Owens, Remedial Project Manager at (312) 886-7089, or Gladys Beard, State NPL Deletion Process Manager at (312) 886-7253 or 1-800-621-8431, Superfund Division, U.S. EPA (SR-6J), 77 W. Jackson, Chicago, IL 60604.