before promulgating a rule that includes a Federal mandate that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Section 203 requires EPA to establish a plan for obtaining input from, informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule, unless EPA explains why a particular alternative is not selected or the selection of a particular alternative is inconsistent with law.

Because this proposed rule does not impose any new mandates on State, local, or tribal governments, and the rule is estimated to result in the expenditures by State, local, and tribal governments or the private sector of less that $100 million in any 1 year, EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, EPA is not required to develop a plan with regard to small governments. However, EPA will work with eligible State and local air pollution control agencies to assist them in requesting delegation of authority to implement and enforce the OCS regulations.

C. Paperwork Reduction Act

These rule revisions do not contain any information collection requirements subject to review by the OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501, *et seq.*

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to identify potentially adverse impacts of Federal rules upon small entities. Small entities include small businesses, organizations, and governmental jurisdictions. In instances where significant economic impacts are possible on a substantial number of these entities, agencies are required to perform a regulatory flexibility analysis. Furthermore, *EPA Guidelines for Implementing the Regulatory Flexibility Act,* issued on April 9, 1992, require the Agency to determine whether regulations will have any economic impacts on small entities. These revisions to the OCS regulations do not, in themselves, impose any requirements on small entities, nor require or exclude small entities from meeting the requirements of the OCS regulations. As a result, EPA has determined that these revisions will not have a significant impact on a substantial number of small entities.

Therefore, as required under § 605 of the RFA, 5 U.S.C. 605, I certify that these revisions do not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Continental shelf, Intergovernmental relations, Nitrogen oxides, Ozone, permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 13, 1996.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, 40 CFR part 55 is proposed to be amended as set forth below.

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

§ 55.2 [Amended]

2. In § 55.2 the introductory text of the definition of ''Nearest Onshore Area'' is proposed to be amended by adding a comma after ''OCS source'' and removing the words ''located within 25 miles of the States' seaward boundary,'' which follows.

3. Section 55.3 is proposed to be amended by revising paragraph (c) to read as follows:

§ 55.3 Applicability.

* * * * *

(c) The OCS sources located beyond 25 miles of States' seaward boundaries shall be subject to all the requirements of this part, except the requirements of §§ 55.4, 55.5, 55.12 and 55.14 of this part.

* * * * *

4. Section 55.6 is proposed to be amended by revising paragraph (d)(2) to read as follows:

§ 55.6 Permit requirements.

* * * * *

(d) * * *

(1) * * *

(2) The Administrator or delegated agency shall not issue a permit to operate to any existing OCS source that has not demonstrated compliance with all the applicable requirements of this part.

* * * * *

5. Section 55.11 is proposed to be amended by revising paragraph (a) and by adding paragraph (j) to read as follows:

§ 55.11 Delegation.

(a) The governor or the governor's designee of any State adjacent to an OCS source subject to the requirements of this part may submit a request, pursuant to section 328(a)(3) of the Act, to the Administrator for the authority to implement and enforce the requirements of this OCS program (i) within 25 miles of the State's seaward boundary and/or beyond 25 miles of the State's seaward boundary. Authority to implement and enforce §§ 55.5, 55.11, and 55.12 of this part will not be delegated.

* * * * *

(j) *Delegated Authority.*

The delegated agency in the COA for sources located within 25 miles of the State's seaward boundary or the delegated agency in the NOA for sources located beyond 25 miles of the State's seaward boundary will exercise all delegated authority. If there is no delegated agency in the COA for sources located within 25 miles of the State's seaward boundary, or in the NOA for sources located beyond 25 miles of the State's seaward boundary, the EPA will issue the permit and implement and enforce the requirements of this part. For sources located within 25 miles of the State's seaward boundary, the Administrator may retain the authority for implementing and enforcing the requirements of this part if the NOA and COA are in different States.

[FR Doc. 96–12627 Filed 5–17–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 261

[SW–FRL–5507–8]

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) is proposing to grant a

petition to Giant Refining Company (Giant) to exclude (or ''delist''), on a one-time basis, certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 (hereinafter all sectional references are to 40 CFR unless otherwise indicated). This action responds to a delisting petition originally submitted by the Bloomfield Refining Company, Inc. (Bloomfield), in Bloomfield, New Mexico. Bloomfield was purchased by Giant on October 4, 1995. Giant has advised the Agency that it wishes to proceed with the petition for delisting submitted by Bloomfield. This petition was submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 266, 268 and 273, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator specific'' basis from the hazardous waste lists. This proposed decision is based on an evaluation of waste-specific information provided by the petitioner. If this proposed decision is finalized, the petitioned waste will be conditionally excluded from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

The EPA is also proposing the use of a fate and transport model (the EPA Composite Model for Landfills (EPACML)) to evaluate the potential impact of the petitioned waste on human health and the environment, based on the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents that may be released from the petitioned waste, once it is disposed.

DATES: The EPA is requesting public comments on this proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until July 5, 1996. Comments postmarked after the close of the comment period will be stamped ''late.''

Any person may request a hearing on this proposed decision by filing a request with Jane N. Saginaw, Regional Administrator, whose address appears below, by June 4, 1996. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments. Two copies should be sent to William Gallagher, Delisting Program, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202. A third copy should be sent to the New Mexico Environment Department, Hazardous and Radioactive Materials Bureau, 1190 St. Francis Drive, Sante Fe, New Mexico 87502. Identify your comments at the top with this regulatory docket number: ''F–96–NMDEL–GIANT.''

Requests for a hearing should be addressed to the Regional Administrator, Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

The RCRA regulatory docket for this proposed rule is located at the Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202 and is available for viewing in the EPA library on the 12th floor from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The docket may also be viewed at the New Mexico Environment Department, 1190 St. Francis Drive, Sante Fe, New Mexico 87502. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION, CONTACT: For technical information concerning this notice, contact Michelle Peace, Delisting Program (6PD–O), Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–7430.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, the EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in § 261.31 and § 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or 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 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, § 260.20 and § 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. § 6921(f), and the background documents for the listed wastes. Although wastes which are ''delisted'' (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See §§ 261.3 (a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the ''mixture/derived from'' rules and remanded them to the Agency on procedural grounds. *See* Shell Oil Co. v. EPA, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 Federal Register (FR) 7628). On December 21, 1995, the EPA proposed rules related to waste mixtures and residues at 60 FR 66344 and invited public comment.

B. Approach Used To Evaluate This Petition

Giant's petition requests a delisting for a listed hazardous waste. 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 agreed with the petitioner that the waste is non-hazardous 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 then 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, and considered the toxicity of the constituents, 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.

For this delisting determination, the EPA used such information to identify plausible exposure routes (i.e., ground water, surface water, air) for hazardous constituents present in the petitioned waste. The EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for Giant's petitioned waste, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, the EPA is proposing to use a particular fate and transport model to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the disposal of Giant's petitioned waste on human health and the environment. Specifically, the EPA used the maximum estimated waste volume and the maximum reported extract concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the current health-based levels at an assumed risk value of 10^{-6} used in delisting decision-making for the hazardous constituents of concern.

The EPA believes that this fate and transport model represents a reasonable worst-case scenario for 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 RCRA Subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. Because a delisted waste is no longer subject to hazardous waste control, the EPA is generally unable to predict and does not presently control how a waste will be managed after delisting. Therefore, the EPA does not currently consider extensive site-specific factors when applying the fate and transport model.

The EPA also considers the applicability of groundwater monitoring data during the evaluation of delisting petitions. The EPA normally requests groundwater monitoring data for wastes managed on-site to determine whether hazardous constituents have migrated to the underlying groundwater. Groundwater monitoring data provides significant additional information important to fully characterize the potential impact (if any) of the disposal of a petitioned waste on human health and the environment. In this case, the EPA determined that the groundwater monitoring data was not applicable to the evaluation of the petitioned waste. Although Giant's petitioned waste is managed in an on-site waste pile, the EPA Region 6 has not required Giant to install groundwater monitoring wells specifically to monitor the waste pile. Giant does have a monitoring system in place at its facility, including wells in the vicinity of the waste pile. However, the location of these wells were not selected with the specific intent of monitoring the waste pile. For these reasons, the EPA does not believe that data collected from Giant's groundwater monitoring system will provide a clear measure of whether the waste pile has adversely impacted groundwater quality at the Giant site. However, the potential impact of these wastes on the groundwater will be predicted through the application of the EPACML, fate and transport model.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

Giant Refining Company, Bloomfield, New Mexico

A. Petition for Exclusion

Giant, located in Bloomfield, New Mexico, is involved in the processing and refining of petroleum. Giant petitioned the EPA for an exclusion of a discrete volume of contaminated soil presently stored in an on-site waste pile, generated from the cleaning of two wastewater treatment impoundments (referred to as the South and North Oily Water Ponds) in 1982. The soil is classified as EPA Hazardous Waste No. K051—''API separator sludge from the petroleum refining industry.'' The listed constituents of concern for EPA Hazardous Waste No. K051 are hexavalent chromium and lead (see Part 261, Appendix VII).

Giant petitioned the EPA to exclude this discrete volume of excavated soil because it does not believe that the waste meets the criteria for which it was listed. Giant also believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See Section 222 of HSWA, 42 U.S.C. § 6921(f), and 40 CFR § 260.22(d) (2)–(4). Today's proposal to grant this petition for delisting is the result of the EPA's evaluation of Giant's petition.

B. Background

On April 15, 1991, Bloomfield, now Giant, petitioned the EPA to exclude, from the lists of hazardous wastes contained in 40 CFR § 261.31 and § 261.32, a discrete volume of contaminated soil excavated from its wastewater treatment impoundments. Giant subsequently provided additional information to complete its petition. Specifically, in its petition, Giant requested that the EPA grant an one-time exclusion for 2,000 cubic yards of excavated soil presently stored in an on-site waste pile.

In support of its petition, Giant submitted: (1) descriptions of its wastewater treatment processes and the excavation activities associated with the petitioned waste; (2) results from total constituent analyses for the eight Toxicity Characteristic (TC) metals listed in § 261.24 (i.e., the TC metals) antimony, beryllium, cyanide, nickel, vanadium, and zinc from representative samples of the stockpiled waste; (3) results from the Toxicity Characteristic Leaching Procedure (TCLP, SW–846

Method 1311) for the eight TC metals, antimony, beryllium, cyanide, nickel, vanadium, and zinc from representative samples of the stockpiled waste; (4) results from the Oily Waste Extraction Procedure (OWEP, SW–846 Method 1330) for the eight TC metals, antimony, beryllium, nickel, vanadium, and zinc from representative samples of the stockpiled waste; (5) results from the Extraction Procedure Toxicity Test (EP, SW–846 Method 1310) for the eight metals listed in § 261.24 from representative samples of the stockpiled waste; (6) results from total oil and grease analyses from representative samples of the stockpiled waste; (7) test results and information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity; and (8) results from total constituent and TCLP analyses for certain volatile and semi-volatile organic compounds from representative samples of the stockpiled waste.

Giant is an active petroleum refinery. In October 1984, Bloomfield purchased the refinery located in Bloomfield, New Mexico, from Plateau, Inc., a subsidiary of Suburban Propane Gas Corporation. On October 4, 1995, Giant purchased the refinery from Bloomfield. Giant has assumed ownership and operation of the Bloomfield site and wishes to proceed with the petition for delisting originally submitted by Bloomfield. Current refinery operations, including wastewater treatment, are different than the operations on-line during the time period the waste considered in this petition was generated. During the period of interest, Plateau operated the refinery primarily as a producer of gasoline and diesel fuel. The facility processed roughly 10,000 barrels per day of low sulfur crude oil. The refinery was altered substantially during the period of time in which the waste was generated. In 1976, the refinery consisted of a crude unit with a capacity of 8,000 barrels per day, a reformer with a capacity of roughly 2,800 barrels per day, and required tankage and utilities. By November 1982, the refinery had installed a 6,000 barrel per day fluidized catalytic cracking unit, expanded the crude unit to 16,500 barrels per day, installed a wastewater treatment system, and had added to tankage and utilities. The refinery experienced no periods of inactivity during this time.

Prior to November 1982, Plateau operated two wastewater treatment surface impoundments; the bottoms of the two impoundments had been treated with bentonite to retard migration of contaminants. These two impoundments were used to contain water outflow from an API separator. The API separator was used to remove oil and oily sludges from refinery wastewater and consisted of two reinforced concrete bays. The API separator system received wastewaters from many sources during the time period of waste generation, including boiler blowdown; cooling tower blowdown; desalination water; process area runoff; small amounts of solvent cleaners and sealants; and lubricants used in site vehicles, pump reservoirs, metal machining tools, instrument air supplies, and during the overhaul and rebuilding of various pieces of process equipment. Oily wastewater entered the API separator and was contained for a period of approximately 27 hours (flow to the API separator averaged roughly 35 gallons per minute during the period of interest). Oil within the wastewater was allowed to rise and form a separate floating phase. This phase was recovered through a weir at the downstream end of each bay. Wastewater from each bay flowed under the weir, discharging into the first of two impoundments. Wastewater from the first impoundment was subsequently directed through an outflow pipe to the second impoundment. In addition, any oily sludge with a density heavier than the wastewater sank to the bottom of the concrete bays. These sludges were removed and disposed of at a hazardous waste facility approximately every two years.

During the period around October and November 1982, Plateau cleaned the impoundments to install a 100 milliliter synthetic high density polyethylene (HDPE) liner. Approximately 90,000 gallons of sludge were removed by vacuum truck and disposed of in an offsite hazardous waste disposal facility. This sludge was mainly the result of the accumulation of windblown dirt and debris. Visibly contaminated soil from the impoundments was removed and disposed of in an unlined on-site landfill in October 1984. This landfill was a dedicated area of the Giant site, and did not hold any other waste material. Plateau assumed this material was not hazardous based on characteristic testing. As part of subsequent closure activities, the contaminated soil was reexcavated in November 1989 and stockpiled at its present location, where it awaits final disposal. This volume of stockpiled soil is the subject of Giant's delisting petition.

The impoundments were originally installed about 1974 for fresh water use. Following the installation of the API separator in late 1976, wastewater from the API separator was routed to the impoundments for further wastewater treatment. Prior to the installation of the API separator, a tank was used to recover oil from wastewater. The API separator was installed because of substantial expansion planned and underway for the refinery. Therefore, the period of generation of waste sludges into the impoundments (and, therefore, the generation of the contaminated soil) was from late 1976 until the impoundments were cleaned in November 1982.

The stockpiled waste has a moisture content of roughly 25 percent. The waste does not contain any free liquids or liquid petroleum. The stockpiled waste consists only of the waste that was originally deposited in the landfill from the impoundments and a small amount of soils adjacent to the landfill that was removed during the November 1989 excavation activities.

To collect representative samples from a waste pile like Giant's, petitioners are normally requested to divide the unit into four quadrants (not exceeding 10,000 square feet per quadrant) and randomly collect five full-depth core samples from each quadrant. The five full-depth core samples are then composited (mixed) by quadrant to produce a total of four composite samples. See *Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods,* EPA, Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and *Petitions to Delist Hazardous Wastes—A Guidance Manual,* (second edition), EPA, Office of Solid Waste, (EPA/530–R–93–007), March 1993.

The first sampling and analysis of the stockpiled waste took place in May 1990. Two samples of waste were gathered over the full depth of the waste pile, from the surface to the bottom of the waste pile. This was accomplished by cutting trenches into the waste pile using a backhoe and gathering composite samples, with a trowel, from ten locations within each trench spanning the entire depth of the trench. To form a composite from the west side of the waste pile, ten samples each from six trenches were mixed in a bucket (for a total of 60 samples). The same procedure was followed in forming a composite from the east side of the waste pile. These two composite samples were analyzed for the total concentrations (i.e., mass of a particular constituent per mass of waste) of the eight TCLP metals, nickel, antimony, beryllium, vanadium, selected volatile and semi-volatile organic constituents, and oil and grease content. These two samples were also analyzed to

determine whether the waste exhibited ignitable, corrosive, or reactive properties as defined, respectively, under § 261.21, § 261.22, and § 261.23, including analysis for total constituent concentrations of cyanide, sulfide, reactive cyanide, and reactive sulfide. These two samples were also analyzed for TCLP concentrations (i.e., mass of a particular constituent per unit volume of extract) of the eight TC metals, nickel, and selected volatile and semi-volatile organic constituents. Finally, these two samples were analyzed for EP toxicity concentrations of the eight metals listed in § 261.24.

To highlight any possible variance of the outer material due to weathering, a third composite sample was formed from samples taken from eight locations across the surface of the waste pile. The maximum depth sampled was twelve inches. This composite sample was subject to the same analyses as the other two composite samples. In August 1990, Giant collected three samples, one sample each from the west side, east side, and surface of the waste pile. These samples were analyzed for TCLP concentrations of selected semi-volatile constituents.

Giant claims that because the waste pile was subjected to several operations that would have mixed the waste to a significant extent, including dredging of the wastewater treatment impoundments; loading and transporting the waste; unloading and spreading the waste in the landfill; reexcavating, loading and transporting the waste; and spreading and contouring the waste, the analytical data obtained from the two composite samples are representative of any variation in the waste pile concentrations. Based on its review of information describing this sampling event, the EPA concluded that these samples were not sufficient to support a delisting determination in part, because only two of the samples represented the full depth of the waste pile. At the request of the EPA, Giant submitted an addendum to its delisting petition. This addendum, submitted on June 25, 1993, included results from the analysis of four additional samples of the petitioned waste. Four waste samples were collected from the waste pile at the Giant facility in April 1993. The waste pile was divided into four quadrants and four full-depth core samples were collected from each quadrant.

All four samples were analyzed for total constituent concentrations of the TC metals, antimony, beryllium, cyanide, nickel, sulfide, vanadium, zinc, reactive cyanide, and reactive sulfide. The four composite samples were also analyzed for oil and grease content and leachate concentrations (using the TCLP and OWEP) of the TC metals, antimony, beryllium, cyanide, nickel, vanadium, and zinc (using distilled water in the cyanide extraction). An aliquot of the full-depth core sample was removed and analyzed for total constituent and TCLP leachate concentrations of selected volatile organic constituents. In addition, the remainder of the sample was composited and analyzed for total constituent and TCLP leachate concentrations of selected semi-volatile organic constituents.

C. Agency Analysis

Giant used SW–846 Methods 7041 through 7740 to quantify the total constituent concentrations of antimony, arsenic, lead, mercury, and selenium; and SW–846 Method 6010 to quantify total constituent concentrations of barium, beryllium, cadmium, chromium, nickel, silver, vanadium, and zinc in the 1990 and 1993 samples. Giant used SW–846 Methods 9010 (modified) to quantify the total constituent concentrations of cyanide in the 1990 and 1993 samples. Giant used Methods 7.3.4.2 and 9030 modified to quantify the total constituent concentrations of sulfide, respectively, in the 1990 and 1993 samples.

Using modified SW 846 Method 9071, Giant determined that the petitioned waste had a maximum oil and grease content of 2.35 percent. Two composite samples of the waste had more than one percent oil and grease. The leachate analyses for one sample extract (as discussed below) was modified in accordance with the OWEP methodology. The leachate analysis for the other sample extract was not modified, as the laboratory had already conducted the TCLP without filtration difficulties. Wastes having more than one percent total oil and grease may either have significant concentrations of constituents of concern in the oil phase, which may not be assessed using the standard leachate procedures, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample.

Giant used SW–846 Method 1311 (TCLP)/Method 6010 to quantify the leachable concentrations of the eight TC metals, antimony, beryllium, nickel, vanadium, and zinc in the 1990 and 1993 samples. SW–846 Method 7470 was used for mercury analyses of the extracts from the 1993 samples. Giant used SW–846 Method 1311 (TCLP; modified using distilled water)/Method 9010 to quantify leachable cyanide concentrations in the 1993 samples. Extractable metals for one of the 1993 composite samples (i.e., Sample D) was evaluated by the OWEP (SW–846 Method 1330).[1]

Giant used SW–846 Method 1310 (EP)/Method 6010 to quantify the leachable concentrations of arsenic, barium, cadmium, chromium, lead, selenium, and silver in the 1990 samples. SW–846 Method 7470 was used for mercury analyses of the extracts from the 1990 samples. The EP analyses were only conducted on the three 1990 composite samples.

Characteristic testing was conducted on the 1990 and 1993 samples of the stockpiled waste, including analysis for reactive cyanide and reactive sulfide (SW–846 Methods 7.3.3.2 and 7.3.4.2, respectively), ignitability (SW–846 Method 1010 (modified)), and corrosivity (SW–846 Method 9045).

Table 1 presents the maximum total constituent and leachate concentrations for the eight TC metals, antimony, beryllium, cyanide, nickel, vanadium, and zinc for the composite samples of the petitioned waste. Table 1 also presents maximum reactive cyanide and reactive sulfide concentrations.

The detection limits presented in Table 1 represent the lowest concentrations quantifiable by Giant when using the appropriate SW–846 or Agency-approved analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, i.e., the ''cleanliness'' waste matrices varies and ''dirty'' waste matrices may cause interferences, thus raising the detection limits).

Giant used SW–846 Methods 8240 and 8270 to quantify the total constituent concentrations of 41 volatile and 65 semi-volatile organic compounds, respectively, in the stockpiled waste samples. This suite of constituents included all of the nonpesticide organic constituents listed in § 261.24. Giant used SW–846 Methods 8240 and 8270 to quantify the leachable concentrations of 21 volatile and 76 semi-volatile organic compounds, respectively, in the stockpiled waste samples, following extraction by SW–846 Method 1311

[1] The Oily Waste Extraction Procedure (OWEP) is a leach test used to determine the mobile metal concentration in oily wastes. The OWEP simulates biodegradation that has occurred in the landfill. The oil in the wastes, which tends to bind complex metals such that they are not available for leaching, degrades in the landfill disposal environment, eventually resulting in the release of the metals into the underlying strata and ground water. Per the EPA instructions, Bloomfield modified the OWEP by substituting the Toxicity Characteristic Leaching Procedure (TCLP) for the Extraction Procedure (EP) in step 7.10 of the OWEP method.

(TCLP). This suite of constituents included all of the organic constituents listed in § 261.24. Table 2 presents the maximum total and leachate concentrations of all detected organic constituents in Giant's waste and waste extract samples. Lastly, on the basis of explanations and analytical data provided by Giant, none of the analyzed samples exhibited the characteristics of ignitability, corrosivity, or reactivity. See § 261.21, § 261.22 and § 261.23.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS (ppm) [1] STOCKPILED SOIL

Inorganic constituents	Total constituent analyses	Leachate analyses	
		EP/TCLP	OWEP
Antimony	< 0.3	0.07	< 0.616
Arsenic	3.9	< 0.2	< 2.05
Barium	194	0.632	0.629
Beryllium	0.3	0.002	< 1.03
Cadmium	3.9	0.003	< 0.030
Chromium (total)	507	0.149	< 0.0999
Cyanide (total)	< 1	< 0.02	
Lead	26.2	< 0.08	0.916
Mercury	0.29	< 0.1	< 0.006
Nickel	14.7	0.007	0.954
Selenium	< 0.4	< 0.09	1.68
Silver	< 0.7	< 0.007	< 0.074
Vanadium	55	< 0.04	< 0.41
Zinc	302	1.67	0.978
Cyanide (reactive)	< 2		
Sulfide (reactive)	< 10		

< Denotes that the constituent was not detected at the detection limit specified in the table.
[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS (ppm) [1] STOCKPILED SOIL

Organic constituents	Total constituent analyses	TCLP leachate analyses
Acetone	0.032	< 0.1
Benzo(a)anthracene	1.2	< 0.005
Benzo(a)pyrene	2.1	< 0.005
Chrysene	3.9	< 0.005
Fluorene	1.5	< 0.005
2-Methylnaphthalene	5.9	0.006
Naphthalene	0.83	< 0.005
Phenanthrene	4.4	< 0.005
Pyrene	2.1	< 0.005

< Denotes that the constituent was not detected at the detection limit specified in the table.
[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

Giant submitted a signed certification stating that the waste pile contains 2,000 cubic yards of waste. The EPA reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. The EPA accepted Giant's certified estimate of 2,000 cubic yards of stockpiled waste.

The EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The EPA, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting a final exclusion.

D. Agency Evaluation

The EPA considered the appropriateness of alternative waste management scenarios for Giant's stockpiled waste and decided, based on the information provided in the petition, that disposal in a municipal solid waste landfill is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The EPA, therefore, evaluated Giant's petitioned waste using the modified EPACML which predicts the potential for groundwater contamination from wastes that are landfilled. See 56 *FR* 32993 (July 18, 1991), 56 *FR* 67197 (December 30, 1991), and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worst-case contaminant levels in groundwater at a compliance point (i.e., a receptor well serving as a drinking-water supply). Specifically, the model estimated the dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from groundwater recharge for a specific volume of waste. The EPA requests comments on the use of the

EPACML as applied to the evaluation of Giant's petitioned waste.

For the evaluation of Giant's petitioned waste, the EPA used the EPACML to evaluate the mobility of the hazardous inorganic constituents detected in the extract of samples of Giant's stockpiled waste. The EPA intends to evaluate petitions for wastes no longer being generated on a case-by-case basis. The DAFs are currently calculated assuming an ongoing process generates wastes for 20 years. Therefore, the DAF needs to be adjusted as appropriate for an one-time exclusion. The DAF for the waste volume of 2,000 cubic yards/year has been adjusted for the evaluation of this petition. The DAF for 2,000 cubic yards/year assuming 20 years of generation is 79, for this petition a DAF of 100 is being used. The EPA's evaluation, using a DAF of 100, maximum waste volume estimate of 2,000 cubic yards and the maximum reported TCLP or OWEP leachate concentrations (see Table 1), yielded compliance-point concentrations (see Table 3) that are below the current health-based levels at an assumed risk level of 10^{-6} used in delisting decision-making.

TABLE 3.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (ppm) STOCKPILED SOIL

Inorganic constituents	Compliance point concentrations [1] (mg/l)	Levels of regulatory concern [2] (mg/l)
Antimony	0.0007	0.006
Barium	0.0063	2.0
Beryllium	0.00002	0.004
Cadmium	0.00003	0.005
Chromium	0.0015	0.1
Lead	0.009	0.015
Nickel	0.010	0.1
Selenium	0.017	0.05
Zinc	0.017	10.0

[1] Using the maximum EP/TCLP leachate level and based on a DAF of 100 calculated using the EPACML for an one-time volume of 2,000 cubic yards.

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

The maximum reported or calculated leachate concentrations of antimony, barium, beryllium, cadmium, chromium, lead, nickel selenium, and zinc in the stockpiled waste yielded compliance point concentrations well below the health-based levels used in delisting decision-making. The EPA did not evaluate the mobility of the remaining inorganic constituents (i.e., arsenic, mercury, silver, vanadium, and cyanide) from Giant's waste because they were not detected in the leachate using the appropriate analytical test methods (see Table 1). The EPA believes that it is inappropriate to evaluate nondetectable concentrations of a constituent of concern in its modeling efforts if the nondetectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), the EPA assumes that the constituent is not present and therefore does not present a threat to human health or the environment.

The EPA also evaluated the potential hazard of 2-methylnaphthalene, the only organic constituent detected in the TCLP extract of samples of Giant's stockpiled waste. Although, the EPA does not have a health-based level of concern for comparison, the EPA believes that the reported leachate concentration of 0.006 ppm does not present a potential concern. In particular, were this leachate concentration evaluated using the EPACML, the calculated compliance-point concentration would be 0.00006 ppm, a value lower than other chemicals from the naphthalene family. The EPA does not believe that this concentration, at the receptor well, would present an adverse impact on human health or the environment.

As reported in Table 1, the maximum concentrations of reactive cyanide and sulfide in Giant's stockpiled waste are less than 2 and 10 ppm, respectively. These concentrations are below the EPA's interim standards of 250 and 500 ppm, respectively. See *Interim Agency Thresholds for Toxic Gas Generation,* July 12, 1985, internal Agency Memorandum in the RCRA public docket. Therefore, reactive cyanide and sulfide levels are not of concern.

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

During the evaluation of Giant's 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 Giant's petitioned waste is unlikely. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Giant's waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from Giant's stockpiled waste. A description of the EPA's assessment of the potential impact of Giant's waste, with regard to airborne dispersion of waste contaminants, is presented in the RCRA public docket for today's proposed rule.

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 run-off, as the recently promulgated 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/EP or OWEP leachate analyses reported in today's notice, due to the aggressive acid medium used for extraction in the TCLP/EP and OWEP tests. The EPA believes that, in general, leachate derived from the waste is unlikely to enter a surface water body directly without first travelling through the saturated subsurface zone where further dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of the 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. The reported TCLP/EP and OWEP extraction data show that the metals in Giant's stockpiled waste are essentially immobile in aqueous solution. Therefore, constituents that might be released from Giant's waste to surface water would be likely to remain undissolved. Finally, any transported constituents would be further diluted in the receiving surface water body due to relatively large flows of the streams/ rivers of concern.

Based on the reasons discussed above, the EPA believes that contamination of surface water through run-off from the waste disposal area is very unlikely. Nevertheless, the EPA evaluated potential impacts on surface water if Giant's waste were released from a municipal solid waste landfill through run-off and erosion. *See,* the RCRA public docket for today's proposed rule. 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 (USEPA, OWRS, 1987). The EPA, therefore, concluded that Giant's stockpiled waste is not a substantial present or potential hazard to human health and the environment via the surface water exposure pathway.

E. Conclusion

The EPA has reviewed the sampling procedures used by Giant and has determined that they satisfy the EPA criteria for collecting representative samples of the variations in constituent concentrations found throughout the waste pile. The data submitted in support of the petition show that constituents in Giant's waste are present below the health-based levels used in the delisting decision-making. In addition, the constituents are immobile and should not leach from the waste pile into potential receptors. The EPA believes that Giant has successfully demonstrated that the stockpiled waste is non-hazardous.

The EPA, therefore, proposes to grant a one-time exclusion to Giant Refining Company, Inc., located in Bloomfield, New Mexico, for the stockpiled waste described in its petition as EPA Hazardous Waste No. K051. The EPA's decision to exclude this waste is based on descriptions of the excavation activities associated with the petitioned waste, descriptions of Giant's wastewater treatment process, and characterization of the stockpiled waste. If the proposed rule is finalized, the petitioned waste will no longer be subject to regulation under Parts 262 through 268 and the permitting standards of Part 270.

If made final, the proposed exclusion will apply only to the 2,000 cubic yards of stockpiled waste generated during the excavation of Giant's two wastewater treatment impoundments (referred to as the South and North Oily Water Ponds). The facility would need to file a new petition for any new waste produced. The facility must treat any excavated soil in excess of the original 2,000 cubic yards as hazardous unless a new exclusion is granted.

Although management of the waste covered by this petition would be removed from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

IV. Effective Date

This rule, if made final, will become effective immediately upon 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 persons 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, the 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 Procedure Act, pursuant to 5 U.S.C.§ 553(d).

V. Regulatory Impact

Under Executive Order 12866, the EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions. This 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, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact due to today's rule. Therefore, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

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

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

VII. Paperwork Reduction Act

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

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

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: May 3, 1996.

Jane N. Saginaw,

Regional Administrator.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

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

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

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* * * *	* * *	
Giant Refining Company, Inc	Bloomfield, New Mexico	Waste generated during the excavation of soils from two wastewater treatment impoundments (referred to as the South and North Oily Water Ponds) used to contain water outflow from an API separator (EPA Hazardous Waste No. K051). This is a one-time exclusion for approximately 2,000 cubic yards of stockpiled waste. This exclusion was published on [insert publication date of the final rule]. Notification Requirements: Giant Refining Company must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.
* * * *	* * *	

[FR Doc. 96–12607 Filed 5–17–96; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[MM Docket No. 96–16, FCC 96–198]

Revision of Broadcast EEO Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period; dismissal of petition for reconsideration.

SUMMARY: In *Streamlining Broadcast EEO Rules and Policies*, FCC 96–198, released April 26, 1996 (*Streamlining*), the Commission dismisses a Petition for Reconsideration, grants a Petition for Clarification in part and denies it in part, and grants a motion for extension of time concerning the Commission's *Order and Notice of Proposed Rule Making*, 11 FCC Rcd 5154 (1996), MM Docket No. 96–16, 61 FR 9964 (March 12, 1996) (*NPRM*). The Commission finds that the public interest favors grant of the motion for extension of time.

DATES: Initial comments due July 1, 1996; reply comments due July 31, 1996.

ADDRESSES: Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Hope G. Cooper, Mass Media Bureau, Enforcement Division. (202) 418–1450.

SUPPLEMENTARY INFORMATION: This is a synopsis of *Streamlining*, FCC 96–198, adopted and released April 26, 1996.

The complete text of *Streamlining* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services,