recordings under the license, *or within 45 days of the effective date of this regulation.''* (Emphasis added).

Subsequently, the President signed into law the Digital Millennium Copyright Act of 1998 (''DMCA''). Among other things, the DMCA expanded the section 114 compulsory license to allow a nonexempt, eligible nonsubscription transmission service and a pre-existing satellite digital audio radio service to perform publicly a sound recording by means of certain digital audio transmissions, subject to notice and recordkeeping requirements. 17 U.S.C. 114(f).

The notice and recordkeeping requirements found in §§ 201.35 and 201.36 would appear to apply to any service eligible for the section 114 license, including those newly eligible to use the license under the amended provisions of the license. However, these regulations provide no opportunity for a newly eligible nonsubscription transmission service which was in service prior to the passage of the DMCA to make a timely filing of its initial notice of transmission.

Therefore, the Copyright Office is proposing an amendment to § 201.35(f) which would extend the period for filing the initial notice to October 15, 1999, in order to allow the eligible nonsubscription services which were in operation prior to the passage of the DMCA an opportunity to file their initial notice timely. Comments on the extension of the filing period must be filed with the Copyright Office within September 3, 1999.

The Office also recognizes that § 201.36, which prescribes rules detailing how services shall notify copyright owners of the use of their sound recordings, what to include in that notice, and how to maintain and make available such records, does not apply to those services newly eligible for the section 114 license under the DMCA. Currently, § 201.36(c) requires ''Reports of Use [to] be served upon Collectives that are identified in the records of the Licensing Division of the Copyright Office as having been designated under the statutory license, either by settlement agreement . . ., or by decision of a Copyright Arbitration Royalty Panel . . ., or by an order of the Librarian . . . .'' At this time, no collective has been designated in accordance with any of the methods enumerated in § 201.36(c) for the purpose of collecting royalty fees from the newly eligible services, nor have any rates or terms been set for the use of the license by these services. *See* 63 FR 65555 (November 27, 1998). The newly eligible services and the interested copyright owners, however, continue negotiations to reach industry-wide agreement on rates and terms for the expanded section 114 license. In deference to these negotiations, the Office will refrain from initiating at this time a rulemaking proceeding to consider amendments to the recordkeeping regulations.

### Regulatory Flexibility Act

Although the Copyright Office, located in the Library of Congress which is part of the legislative branch, is not an ''agency'' subject to the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Register of Copyrights has considered the effect of the proposed amendment on small businesses. The Register has determined that the amendment would not have a significant economic impact on a substantial number of small entities that would require provision of special relief for small entities. The proposed amendment is designed to minimize any significant economic impact on small entities.

### List of Subjects in 37 CFR Part 201

Copyright.

### Proposed Regulations

For the reasons set forth in the preamble, part 201 of title 37 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

**Authority:** 17 U.S.C. 702.

2. Section 201.35(f) is amended by removing the phrase ''or within 45 days of the effective date of this regulation.'' and adding in its place ''or by October 15, 1999.''

Dated: July 30, 1999.

**Marybeth Peters,**

*Register of Copyrights.*

[FR Doc. 99–19988 Filed 8–3–99; 8:45 am]

BILLING CODE 1410–31–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 261

**[SW–FRL–6413–1]**

## 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 submitted by BWX Technologies, Inc. (formerly Babcock & Wilcox), to exclude (or ''delist'') certain solid wastes generated at its Lynchburg, Virginia, facility from the lists of hazardous wastes contained in Subpart D of Title 40 of the Code of Federal Regulations Part 261. This action responds to a ''delisting'' petition submitted pursuant to 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 pursuant to 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 excluded from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

**DATES:** EPA is requesting public comments on this proposed decision. Comments will be accepted until September 20, 1999. 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 by August 19, 1999. The request must contain the information prescribed in 40 CFR 260.20(d).

**ADDRESSES:** Two copies of any comments should be sent to David M. Friedman, Technical Support Branch (3WC11), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029.

Requests for a hearing should be addressed to John A. Armstead, Director, Waste and Chemicals Management Division (3WC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029.

The RCRA regulatory docket for this proposed rule is located at the offices of U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029, and is available for viewing from 8:30 a.m. to 5:00 p.m., Monday through Friday, excluding Federal holidays. Call David M. Friedman at (215) 814–3395 for appointments. The public may copy material from the regulatory docket at $0.15 per page. The docket for this proposed rule is also located at the offices of the Campbell County Administrator's Office, P.O. Box 100,

Main Street—Haberer Building 2nd floor, Rustburg, VA, 24588, and is available for viewing from 8:30 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. Call Kathy Elliot at (804) 332–9619 for appointments.

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

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Authority*

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published at 40 CFR 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 40 CFR Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have its wastes excluded, a petitioner must show that wastes generated at its facility do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a)(1) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require EPA 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. See 40 CFR 260.22(a)(2). Accordingly, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics defined in Subpart C of 40 CFR Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity), and must present sufficient information for EPA to determine whether the waste contains any other constituents at hazardous levels. 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 defined in Subpart C of 40 CFR Part 261.

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 40 CFR 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 EPA on procedural grounds. *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 FR 7628). EPA plans to address issues related to waste mixtures and residues in a future rulemaking.

### *B. Approach Used To Evaluate This Petition*

BWX Technologies, Inc.'s (hereinafter, BWX Technologies') petition requests a delisting for a listed hazardous waste. In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). Based on this review, EPA tentatively agreed with the petitioner, pending public comment, that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.

EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that other factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, and considered the concentration of the constituents in the waste, the toxicity of the constituents, their tendency to migrate and to bioaccumulate, their persistence in the environment if 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, EPA used such information gathered to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. Since BWX Technologies' waste is presently landfilled, EPA determined that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, EPA used a fate and transport model to predict the maximum concentrations of hazardous constituents that may be released from the petitioned waste and to determine the potential impact of BWX Technologies' petitioned waste on human health and the environment. Specifically, EPA used the 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 were then compared directly to the health-based levels at an assumed excess cancer risk of $10^{-6}$, which is the target risk level used in delisting decision-making for the hazardous constituents of concern.

EPA believes that this fate and transport model represents a reasonable worst-case scenario for the petitioned waste, 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 (40 CFR Parts 260 through 266 and 268). 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, should not pose a threat to human health or the environment.

EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, EPA determined that it would be inappropriate to request ground water monitoring data because BWX Technologies currently disposes of the petitioned waste off-site. For petitioners using off-site management, EPA believes that, in most cases, the ground water monitoring data would not be meaningful. Most commercial land disposal facilities accept waste from numerous generators. Any ground water contamination or leachate would be characteristic of the total volume of waste disposed of at the facility. In most cases, EPA believes that it would be impossible to isolate ground water

impacts associated with any one waste disposed of in a commercial landfill. Therefore, EPA did not request ground water monitoring data from BWX Technologies.

Based on its evaluation of BWX Technologies' delisting petition, EPA developed a list of constituents for the verification testing program. Proposed maximum allowable leachate concentrations for these constituents were derived by back-calculating from the delisting health-based levels through the proposed fate and transport model for a landfill management scenario. These concentrations (*i.e.*, ''delisting levels'') are part of the proposed verification testing conditions of the exclusion.

Like other facilities seeking exclusions, BWX Technologies' exclusion (if granted) would be contingent upon the facility conducting analytical testing of representative samples of the petitioned waste at the Lynchburg, VA facility. This testing would be necessary to verify that the treatment system is operating as demonstrated in the petition submitted on September 30, 1994, and in subsequent submissions. Specifically, the verification testing requirements would be implemented to demonstrate that the facility will continue to generate nonhazardous waste (*i.e.*, waste that meets the EPA's verification testing conditions).

EPA's proposed decision to delist waste from BWX Technologies' facility is based on the information submitted in support of today's proposed rule. This information includes descriptions of the waste generation processes and the wastewater treatment system at the Lynchburg, VA facility, and data from the analysis of representative samples of the petitioned waste. HSWA specifically requires 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

BWX Technologies, Inc., Naval Nuclear Fuel Division, Mount Athos Road, Lynchburg, Virginia 24505–0785.

### *A. Petition for Exclusion*

Babcock & Wilcox acquired the Mt. Athos site and began operations there in 1955. BWX Technologies, Inc. (an affiliate of the Babcock & Wilcox Company) was created as the result of an internal corporate reorganization on July 1, 1997. BWX Technologies, Naval Nuclear Fuel Division, located in Lynchburg, Virginia, is engaged in the production of nuclear fuel assemblies for the United States Department of Energy. They manufacture nuclear fuels and reactor components for commercial and military use. The BWX Technologies facility generates wastewaters which are treated in an on-site wastewater treatment plant that consists of four (4) discrete wastewater treatment systems. These are the pickle acid, low-level radioactive, sanitary, and Lamella systems. Filter cake solids were originally generated from the combined flows of the pickle acid and the Lamella systems. However, these systems were separated with the introduction of a microfiltration system to the pickle acid system in 1992. The metal finishing operations, which consist of cleaning, hydrofluoric and nitric acid pickling, and anodizing, generate wastewaters that are treated in the pickle acid treatment system. The treatment of these wastewaters in the pickle acid treatment system ultimately generates a wastewater treatment sludge in the form of a filter cake which is listed as EPA Hazardous Waste No. F006—''Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.'' The hazardous waste F006 is listed for cadmium, hexavalent chromium, nickel and complexed cyanide (40 CFR Part 261, Appendix VII). The filter cake from the pickle acid system is the only waste stream that is the subject of the BWX Technologies' petition.

Review of this petition included consideration of the original listing criteria, as well as the additional factors required by HSWA. See Section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22.

### *B. Background*

On September 30, 1994, BWX Technologies (then Babcock & Wilcox) petitioned EPA to exclude from the lists of hazardous waste listed at 40 CFR 261.31 both past and currently generated filter cake solids produced by its wastewater treatment facility from the treatment of wastewaters in the pickle acid treatment system because it believed that the petitioned waste did not meet any of the criteria under which the waste was listed and that there were no additional constituents or factors that would cause the waste to be hazardous. Subsequently, BWX Technologies provided additional information to complete its petition. Specifically, in its petition, BWX Technologies requested that EPA grant an exclusion for its past generated filter cake consisting of 551 cubic yards per calendar year (1991 generation rate) and the currently generated filter cake consisting of 247 cubic yards per calendar year (1993 generation rate). BWX Technologies divided its request into these two categories based on the installation of a microfiltration system in 1992 which minimized the volume of filter cake production from the treatment of the pickle acid wastewaters. More recently, BWX Technologies updated the filter cake generation rate. Based on additional information submitted by BWX Technologies on December 17, 1998, the facility is currently generating filter cake solids at a maximum rate of 267 cubic yards per calendar year. By letter dated March 11, 1999, BWX Technologies requested that the delisting be based on a waste volume of 300 cubic yards per calendar year to allow for an increase in the waste generation rate. In support of its petition, BWX Technologies submitted detailed descriptions of its manufacturing and wastewater treatment process, a schematic diagram of the wastewater treatment process, and analytical testing results for representative samples of the petitioned wastes, including: (1) the hazardous characteristics of ignitability and corrosivity; (2) total oil and grease; (3) Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311) analysis for volatile and semi-volatile organic compounds and Toxicity Characteristic (TC) metals plus antimony, beryllium, cobalt, copper, nickel, thallium, tin, vanadium and zinc; (4) total constituent analysis for volatile and semi-volatile organic compounds and TC metals plus antimony, beryllium, cobalt, copper, nickel, thallium, tin, vanadium and zinc; (5) total cyanide, total sulfide, total fluoride and total formaldehyde; and (6) TCLP analysis for fluoride. BWX Technologies developed a list of constituents of concern by comparing a list of all raw materials used in the plant that could possibly appear in the petitioned waste with those found in 40 CFR Part 261, Appendix VIII and 40 CFR part 264, Appendix IX. Based on a knowledge of their metal working processes and other processes at the facility and of the treatment operation, BWX Technologies determined that certain classes of chemical constituents would not be anticipated to be present

in the filter cake. These chemicals include semi-volatile organic constituents (except those constituents listed in 40 CFR 261.24), pesticides, herbicides, dioxins and furans.

In June, 1990, the filter cake was found to contain trace levels of special nuclear materials (*i.e.*, uranium at typically less than 30 picocuries per gram). As of October 1991, this special nuclear material contamination was eliminated from the filter cake. Because the past generated filter cake was contaminated with special nuclear materials, it was placed in drums and roll-off boxes and disposed of at a Nuclear Regulatory Commission (NRC) approved hazardous waste landfill after the NRC granted an exemption for filter cake as a low-level radioactive material. Beginning in 1992, a Memtek Advanced Membrane Filtration System has been utilized as part of the BWX Technologies' wastewater treatment process for the pickling acid system. Currently generated filter cake from the Memtek system is not contaminated by special nuclear materials and is being disposed off-site at a RCRA Subtitle C permitted facility.

In BWX Technologies' petition, the past generated filter cake contains a radioactive component; therefore, it is classified as a ''mixed waste'' under RCRA. A ''mixed waste'' is defined as a waste that contains both a radioactive component subject to the Atomic Energy Act (AEA), and a hazardous component subject to RCRA. There are two parts of the RCRA program that states implement. These are the RCRA-base program (pre-HSWA) and HSWA. The hazardous components of mixed wastes come under RCRA base program. Under Section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA hazardous waste program within the state. When new, more stringent federal requirements were promulgated or enacted, the state was obligated to enact equivalent authority within specified time frames. New federal requirements did not take effect in authorized states until the state adopted the requirements as state law. Up until 1986, the applicability of RCRA to mixed waste was unclear. To clarify the applicability of RCRA to mixed waste, EPA issued a clarification notice on July 3, 1986 (51 FR 24504). In that notice, EPA announced that the hazardous component of mixed waste is subject to RCRA jurisdiction and that the radioactive portion of the waste (source, special nuclear, and by-product material) is subject to the Atomic Energy Act (AEA). EPA also required states which had obtained RCRA base program authorization prior to the July 3, 1986 notice to revise their programs to clarify the regulatory status of mixed waste (*i.e.*, to include the hazardous component of mixed waste in their program definition of solid waste), and to apply for EPA authorization to their revised program. The Commonwealth of Virginia had been granted authorization to administer the RCRA base program prior to July 3, 1986. However, as of this date, Virginia has not been specifically authorized for mixed waste. In a State which is authorized for the RCRA base program, but not specifically authorized for mixed waste, this waste is not subject to the Federal hazardous waste requirements until the State revises its program and receives authorization specifically for mixed waste. Therefore, EPA cannot consider for exclusion the past generated filter cake solids at BWX Technologies.

BWX Technologies' Naval Nuclear Fuel Division includes several operations which generate wastewaters which are influent to the pickle acid treatment system. A brief description of these operations follows.

(1) Metal Processing—Metal components undergo a metal forming operation and subsequent heat treatment. Solvents, including acetone, xylene, and trichloroethylene (TCE), were used for pre- and post-cleaning to remove various substances. Grit blasting is conducted to remove the oxide film or scale which develops during heat treatment. Prior to 1994, metal components were degreased using ultrasonic detergent cleaning or TCE. In 1994, BWX Technologies eliminated the use of xylene, and the use of acetone and TCE have been strictly limited. None the these solvents (acetone, xylene and TCE) is currently used for pre- or post-cleaning of metal components. Metal components are currently cleaned with aqueous-based cleaning solutions and soaps. Other metal processing operations include corrosion testing, welding, and component inspection.

(2) Metal Pickling—Once cleaned and inspected, metal components are pickled in an aqueous acid solution containing hydrofluoric acid and nitric acid. The metal is then passed through cold and hot water rinse baths.

(3) Metal Anodizing—The final metal components are anodized with a caustic solution followed by water rinses.

(4) Copper Recovery—BWX Technologies conducts a copper dissolution operation using a concentrated nitric acid solution. The process combines the copper-laden spent nitric acid solution with dilute nitric acid rinses. In the past, the resultant solution was treated in an on-site copper recovery process. The copper was removed and sold as a copper oxide product. Non-acidic waste solutions from the copper recovery process were treated in the wastewater treatment plant (WWTP). The copper recovery system ceased operation in 1993. Since December 1993 spent copper nitrate solutions have been collected and shipped off-site as a hazardous waste for recovery.

(5) Hafnium and Inconel Pickling—Hafnium is pickled in the bath used for metal components (after the metal components have been pickled) or in a bath containing fresh nitric and hydrofluoric acid solutions. Inconel (a corrosion-resistant alloy of nickel and chromium) components are cleaned in an aqueous solution of hydrofluoric and nitric acids, and subsequently rinsed in cold and hot water.

(6) Aluminum Pickling and Anodizing—Aluminum components are pickled using a caustic solution, cleaned with an aqueous acid solution consisting of nitric and hydrofluoric acids, and rinsed in cold and hot water. Aluminum is anodized with a caustic solution followed by water rinses.

(7) Other Wastewater Streams Entering the WWTP—Four (4) intermittent wastewater streams have also been treated as part of the pickle acid wastewater system. These included: (a) rinsewater from the aluminum oxide grit blasting operation; (b) backwash of the softener, demineralizer, and sand filter components of the deionized water supply system; (c) effluent from the x-ray photography laboratory silver recovery process; and (d) a low flow sub-surface creek (*i.e.*, ground water seep) intercepted and treated for pH adjustment. Of these four (4) intermittent waste streams, the grit blasting operation is the only one that now discharges to the pickle acid wastewater system. The sub-surface creek, filter plant backwash and silver recovery flows are all treated in the Lamella System. According to BWX Technologies, the three (3) intermittent waste streams that are now treated in the Lamella System did not have an impact on the pickle acid system, and the removal of these streams has had no significant effect on the characteristics of the filter cake.

(8) Acid clean line—This line was added in 1994 as part of a new manufacturing process. It consists of a series of adjacent tanks including hot detergent cleaning, acid cleaning and a variety of rinse tanks. The acid tanks which utilize a mixture of nitric, hydrofluoric, hydrochloric and phosphoric acids, as well as ferric chloride, are used to clean Inconel metal

components. The spent acid mixtures are sent off-site for disposal. The detergent and rinse tanks discharge to the pickle acid system.

(9) An industrial water jet cutting operation was added to the manufacturing facility in 1995. The water jet cutter uses a high-pressure jet of water/garnet sand to cut Inconel metal. Wastewater from the cutter flows through a cyclone separator to remove sand and metal fines, and then flows to the pickle acid system.

The current wastewater treatment system is a Memtek Advanced Filtration System which was put into operation in 1992 to minimize the volume of filter cake produced from the neutralization of the pickling wastewaters. Bench-scale and pilot plant testing of the Memtek System indicated that this system reduced the volume of waste generated by 75 percent. The actual reduction attributable to the Memtek System is between 50 and 75 percent.

The pickling wastewaters are first held in a recirculated equalization tank to reduce fluctuations in the fluoride concentration. From the equalization tank, the pickling wastewaters flow to a 2,000-gallon tank where lime is added for initial pH adjustment. The lime causes the fluoride in the wastewater to precipitate. The bulk of the neutralization or final adjustment to obtain a pH of 10.5 is made with sodium hydroxide in a series of two 500-gallon reaction tanks. The sodium hydroxide does not produce any additional neutralization sludge since most sodium salts are soluble. The treated wastewater is transferred to a 650-gallon concentration tank. The wastewater is pumped out of the concentration tank and through a bank of microfilters. Effluent from the filters discharges to a day tank and then to an equalization tank. The equalization tanks are monitored for pH and fluoride prior to reprocessing or discharge to an outfall. Concentrated solids from the filter banks are returned to the concentration tank. The concentration of solids in the concentration tank gradually increases as more solids are added. A timed pump transfers solids from the bottom of the concentration tank to the plate and frame filter press. At the filter press, the slurry is dewatered to produce a 50 to 60 percent solids filter cake.

*C. Waste Analysis*

BWX Technologies developed a list of analytical constituents based on a review of facility processes, Material Safety Data Sheets for raw materials and chemical additives used in the manufacturing process, and recommendations contained in EPA delisting guidance (Petitions to Delist Hazardous Waste: A Guidance Manual, 2nd Edition, EPA/530–R–93–007, NTIS Publication Number PB 93–169 365, March 1993). For the delisting petition, BWX Technologies collected four (4) weekly composite samples of the filter cake solids. In order to ensure the representativeness of samples collected in 1992 and to detect any variability over time in the concentration of constituents of concern within the filter cake, time-composite sampling was conducted. BWX Technologies provided data which shows that the samples collected take into account all wastes that are discharged to the pickle acid treatment system.

Composite samples were collected beginning September 3, 1992, and continuing through September 29, 1992. Each composite sample consisted of bore hole grab samples taken directly from the filled filter press troughs. The daily grab samples were collected from different filter press troughs each day they were collected so that any variations through the filter press were characterized in the weekly composite sample. At the end of each week, the containers holding the daily grab samples were emptied into a clean stainless steel bucket and mixed thoroughly. Each sample was packed in an appropriately labeled container. Composite samples for most analyses were prepared in the field. However, samples for volatile organic compound (VOC) analysis were sent to the analytical laboratory to be composited under controlled conditions in order to prevent the loss of VOCs.

To supplement the data in its petition, BWX Technologies also collected additional samples as part of an annual sampling program. Composite samples of the filter cake were collected and analyzed for the years 1993, 1994, 1995, 1996, 1997 and 1998.

To quantify the total constituent and leachate concentrations in the four (4) composite samples that were analyzed in 1992, BWX Technologies used SW–846 methods 7040 for antimony, 7061 for arsenic, 6010 for barium, 7091 for beryllium, 7130 for cadmium, 7190 for chromium, 7201 for cobalt, 7210 for copper, 7421 for lead, 7470 and 7471 for mercury, 7520 for nickel, 6010 for selenium, 6010 for silver, 7841 for thallium, 7870 for tin, 7911 for vanadium, 7950 for zinc, 9010 for cyanide, 9030 for sulfide, 8010 for halogenated volatile organics, 8020 for aromatic volatile organics, and 8270 for semivolatile organic compounds. BWX Technologies used EPA method 340.2 to determine fluoride concentrations and NIOSH method 3500 to determine formaldehyde concentrations. Using SW–846 method 9071, BWX Technologies determined that the samples of the petitioned waste had a maximum oil and grease content of less than one (1) percent. (If the total oil and grease concentrations had been greater than or equal to one (1) percent, the Oily Waste Extraction Procedure, Method 1330, would have been required.) BWX Technologies also used these methods on the leachate obtained using the Toxicity Characteristic Leaching Procedure or TCLP (SW–846 method 1311), as described below, to determine leachable levels of metals and selected volatile organic compounds.

Composite samples analyzed during the BWX Technologies' annual sampling program were done using the same analytical methods as the 1992 composites with the following changes: concentrations for all metal analytes were determined using method 6010 with the exception of mercury (which continued to be determined using methods 7470 and 7471), and volatile organic compounds which were determined using method 8260.

EPA has reviewed the sampling procedures used by BWX Technologies and has determined that they satisfy EPA criteria for collecting representative samples.

Table 1 presents the maximum total and leachate concentrations for 17 metals and fluoride, total cyanide and total sulfide. The detection limits presented in Table 1 represent the lowest concentrations quantifiable by BWX Technologies when using appropriate SW–846 methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed.)

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1] WWTP FILTER CAKE

| Inorganic constituents | Total constituent analyses (mg/kg) | TCLP leachate analyses (mg/nl) |
|---|---|---|
| Antimony ..... | 28.0 | *0.7 |
| Arsenic ..... | 0.13 | 0.017 |
| Barium ..... | 120.0 | 0.46 |
| Beryllium ..... | <0.01 | 0.004 |
| Cadmium ..... | 1.14 | 0.018 |
| Chromium ..... | 1100.0 | 1.8 |
| Cobalt ..... | 34.0 | 2.2 |
| Copper ..... | 1850.0 | 79.3 |
| Lead ..... | 12.3 | 0.22 |
| Mercury ..... | 0.5 | 0.0036 |
| Nickel ..... | 260.0 | 12.5 |
| Selenium ..... | <0.05 | <0.016 |
| Silver ..... | 419 | 0.11 |
| Thallium ..... | <0.1 | **0.159 |
| Tin ..... | 1170 | 0.107 |
| Vanadium ..... | 18.5 | <0.004 |

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1] WWTP FILTER CAKE—Continued

| Inorganic constituents | Total constituent analyses (mg/kg) | TCLP leachate analyses (mg/nl) |
|---|---|---|
| Zinc ..... | 130 | 1.8 |
| Fluoride ..... | 11875.0 | 22.6 |
| Cyanide (total) ..... | <0.02 | NA |
| Sulfide (total) | 14.1 | NA |

[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.

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

*Value represents 1 sample analysis out of 4 done in 1992. Since then, process improvements have resulted in all values for antimony being <0.069.

** Maximum TCLP concentration for this constituent occurred in a sample that was not analyzed for total constituent concentration.

BWX Technologies also analyzed samples of the petitioned waste for volatile and semivolatile organic compounds. Table 2 presents the maximum total and leachate concentrations for all detected organic constituents in BWX Technologies' waste samples.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1] WWTP FILTER CAKE

| Organic constituents | Total constituent analyses (mg/kg) | TCLP leachate analyses (mg/l) |
|---|---|---|
| Acetone ..... | 0.181 | 0.062 |
| Benzene ..... | 0.007 | <0.005 |
| Methyl Ethyl Ketone (2-Butanone) .. | 0.017 | <0.05 |
| Methylene Chloride ..... | <0.01 | *0.12 |
| Toluene ..... | 0.008 | <0.005 |
| 1,1,1-Trichloroethane ..... | 0.004 | <0.005 |

[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.

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

* Maximum TCLP concentration for this constituent occurred in a sample that was not analyzed for total constituent concentration.

BWX Technologies submitted a signed Certification of Accuracy and Responsibility statement found at 40 CFR 260.22(i)(12) as required for the information contained in the petition submitted on September 30, 1994, as well as for the information contained in all subsequent submissions.

EPA does not generally verify submitted test data before proposing delisting actions. The sworn affidavit submitted with the petition requires that the petitioner present truthful and accurate results. Failure to do so can subject the petitioner to significant penalties, including the possibility of fine and imprisonment.

*D. EPA Evaluation*

Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. EPA, therefore, evaluated BWX Technologies' petitioned waste using the modified EPA Composite Model for Landfills (EPACML) which predicts the potential for ground water 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 ground water 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 ground-water recharge for a specific volume of waste. The DAFs generated using the EPACML vary from a maximum of 100 for smaller annual volumes of waste (*i.e.*, less than 1,000 cubic yards per year) to DAFs approaching ten for larger annual volume wastes (*i.e.*, 400,000 cubic yards per year). EPA requests comments on the use of the EPACML as applied to the evaluation of BWX Technologies' waste.

Typically, EPA uses the maximum annual waste volume to derive a petition-specific DAF. The DAFs are currently calculated assuming an ongoing process that generates wastes for 20 years. BWX Technologies' maximum waste volume of 300 cubic yards per year corresponds to a DAF of 100. EPA's evaluation of the BWX Technologies' filter cake using a DAF of 100, a maximum waste volume of 300 cubic yards, and the maximum reported TCLP concentrations (see Tables 1 and 2) yielded the following compliance point concentrations (see Table 3).

TABLE 3.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS WWTP FILTER CAKE

| Inorganic and organic constituents | Compliance point concentrations (mg/l) [1] | Levels of concern (mg/l) [2] |
|---|---|---|
| Antimony ..... | 0.007 | 0.006 |
| Arsenic ..... | 0.00017 | 0.05 |
| Barium ..... | 0.0046 | 2.0 |
| Beryllium ..... | 0.00004 | 0.004 |
| Cadmium ..... | 0.00018 | 0.005 |
| Chromium ..... | 0.018 | 0.1 |
| Cobalt ..... | 0.022 | 2.1 |
| Copper ..... | 0.793 | 1.3 |
| Lead ..... | 0.0022 | 0.015 |
| Mercury ..... | 0.000036 | 0.002 |
| Nickel ..... | 0.125 | 0.7 |
| Silver ..... | 0.0011 | 0.2 |
| Thallium ..... | 0.00159 | 0.002 |
| Tin ..... | 0.00107 | 21.0 |
| Zinc ..... | 0.018 | 10.0 |
| Fluoride ..... | 0.226 | 4.0 |
| Acetone ..... | 0.00062 | 4.0 |
| Methylene Chloride ..... | 0.0012 | 0.005 |

[1] Using the maximum TCLP leachate concentration, based on a DAF of 100 for a maximum annual volume of 300 cubic yards.

[2] See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," May 1996 located in the RCRA Public Docket for today's notice.

The compliance point concentrations presented in Table 3 are below the current health-based levels (HBLs) for all inorganic and organic constituents except for the metal antimony. EPA does not consider the maximum reported TCLP concentration of 0.7 mg/l for antimony to be representative of the BWX Technologies' currently generated filter cake. EPA came to this conclusion because the one TCLP result that exceeded the HBL occurred in only one (1) sample (out of four (4)) collected and analyzed by BWX Technologies in 1992. Because antimony was detected in the method blank for this sample, there is not a high degree of confidence in the reported concentration. In addition, since 1992, TCLP concentrations for antimony in the filter cake have been below detection levels in all subsequent analyses for 1993, 1994, 1995, 1996, 1997 and 1998.

BWX Technologies performed total constituent analyses for cyanide (total), but did not submit TCLP results. EPA has determined that TCLP results are not required for this demonstration since cyanide is not used in any of the processes at BWX Technologies, and since total constituent analysis for cyanide (total) concentrations in the filter cake have all been below the reported detection limit of 0.02 mg/kg.

BWX Technologies performed total constituent analyses for fluoride, but

did not submit TCLP results until 1998. In evaluating the possibility that fluoride concentrations could be present in sufficient concentrations to be of concern, EPA initially evaluated BWX Technologies' filter cake assuming the extreme worst case situation; that is that all of the fluoride present in the filter cake would leach out of the filter cake during a TCLP test (*i.e.*, the fluoride present in the filter cake was 100 percent leachable). While some of the earlier total constituent analyses results for fluoride could, hypothetically, result in an exceedence of the 4 mg/l HBL concentration for fluoride when evaluating the ground water contamination pathway using the modified EPACML model described earlier, EPA considered this result to be highly unlikely because the fluoride in BWX Technologies' filter cake is present as calcium fluoride (a very insoluble form). Additionally, BWX Technologies has certified that waste minimization efforts at its facility have reduced influent fluoride concentrations to the wastewater treatment facility. Total fluoride concentrations for the filter cake generated in more recent years are more than 50 percent lower that past generation. Total fluoride concentrations in the current filter cake have been less than 5000 mg/kg since 1995. At this level, assuming the extreme worst case situation evaluated above (that the fluoride is 100 percent leachable), and using a DAF of 100 based on a maximum annual waste volume of 300 cubic yards, fluoride levels could not exceed the HBL of 4.0 mg/l. To support this conclusion, BWX Technologies submitted TCLP results for fluoride for the most recent samples collected and analyzed in 1998. The results confirm that leachable fluoride levels are below delisting levels of concern (see the maximum compliance point concentration in Table 3).

For the other inorganic constituents, the maximum reported or calculated leachate concentrations of arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, nickel, silver, thallium, tin and zinc in BWX Technologies' filter cake yielded compliance point concentrations well below the health-based levels used in delisting decision-making. EPA did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, selenium, and vanadium) from BWX Technologies' filter cake because they were not detected in the leachate using the appropriate analytical test methods (see Table 1). EPA believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable 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, EPA assumes that the constituent is not present and, therefore, does not present a threat to human health or the environment.

EPA also evaluated the potential hazards of the organic constituents detected in the TCLP leachate of BWX Technologies' filter cake. The maximum reported leachate concentrations of acetone and methylene chloride yielded compliance point concentrations well below the health-based levels used in delisting decision-making.

After reviewing BWX Technologies' process information, EPA concluded that no other hazardous constituents of concern, other than those tested for, are likely to be present in the filter cake, and that any migration of constituents from the waste would result in concentrations below delisting health-based levels of concern. In addition, on the basis of test results and information provided by BWX Technologies pursuant to 40 CFR 260.22, EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, reactivity or toxicity.

During the evaluation of BWX Technologies' petition, EPA also considered the potential impact of the petitioned wastes via non-ground water routes (*i.e.*, air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from BWX Technologies' petitioned waste is unlikely. Therefore, no appreciable air releases are likely from BWX Technologies' waste under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from BWX Technologies' 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 and the environment from airborne exposure to constituents from BWX Technologies' filter cake. A description of EPA's assessment of the potential impact of BWX Technologies' waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for today's proposed rule.

EPA also considered the potential impact of the petitioned waste via a surface water route. 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 run-off will tend to be lower than the levels in the TCLP leachate analyses reported in today's notice due to the aggressive acidic medium used for extraction in the TCLP. EPA believes that, in general, leachate derived from the wastes 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, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, EPA evaluated the potential impacts on surface water if BWX Technologies' waste were released from a municipal solid waste landfill through runoff and erosion. (See ''Docket Report on Evaluation of Contaminant Releases to Surface Water from BWX Technologies' Petitioned Waste,'' April 1999, in 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 EPA Recommended Chronic Water Quality Criteria for aquatic organisms (63 FR 68354 (December 10, 1998)). EPA, therefore, concluded that BWX Technologies' filter cake is not a substantial present or potential hazard to human health and the environment via the surface water exposure pathway.

*E. Conclusion*

EPA believes that the descriptions of BWX Technologies' hazardous waste process and analytical characterization, in conjunction with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis to grant BWX Technologies' petition for an exclusion of the filter cake. The EPA believes the data submitted in support of the petition show BWX Technologies' process can render the filter cake non-hazardous. EPA has reviewed the sampling procedures used by BWX Technologies and has determined they satisfy EPA

criteria for collecting representative samples for purposes of characterizing the filter cake. The data submitted in support of the petition show that constituents in BWX Technologies' waste are present below health-based levels used in the delisting decision-making. EPA believes that BWX Technologies has successfully demonstrated that the filter cake is non-hazardous.

EPA, therefore, proposes to grant an exclusion to BWX Technologies for the filter cake from its pickle acid treatment system described in its petition as EPA Hazardous Waste No. F006. If made final, the proposed exclusion will apply only to 300 cubic yards of petitioned waste generated annually, on a calendar year basis. The facility must treat waste generated in excess of 300 cubic yards per year as hazardous. If either the manufacturing or treatment processes are altered such that an adverse change in waste composition occurs (*e.g.*, higher levels of hazardous constituents are present in the waste), this exclusion is no longer valid.

Although management of the waste covered by this petition would be removed from Subtitle C jurisdiction upon final promulgation of an exclusion, this exclusion applies only if this waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste, a permitted Subtitle C landfill or a Subtitle C landfill which is operating under interim status.

*F. Verification Testing Conditions*

(1) Delisting Levels: All leachable concentrations for the following constituents measured using SW–846 method 1311 (the TCLP) must not exceed the following levels (mg/l).

(a) Inorganic constituents—Antimony-0.6; Arsenic-5.0; Barium-100; Beryllium-0.4; Cadmium-0.5; Chromium-5.0; Cobalt-210; Copper-130; Lead-1.5; Mercury-0.2; Nickel-70; Silver-5.0; Thallium-0.2; Tin-2100; Zinc-1000; Fluoride-400.

(b) Organic constituents—Acetone-400; Methylene Chloride-0.5.

BWX Technologies must test its filter cake by determining the levels of constituents in the TCLP leachate. Below these levels (also known as the Maximum Allowable Leachate (MAL) Concentrations), the filter cake would be considered non-hazardous. This exclusion is effective when the final rule is signed by the Regional Administrator. If the annual testing of the filter cake does not meet the delisting levels or MALs described in Paragraph 1 of this Section, the facility must notify the Agency according to the provisions in Paragraph 4 of this Section. In such case, the exclusion will be suspended until a decision is reached by the Agency. The facility shall provide sampling results which support the rationale that the delisting exclusion should not be withdrawn. EPA selected the set of inorganic and organic constituents specified in Paragraph 1 of this Section after reviewing information about the composition of the waste, descriptions of BWX Technologies' treatment process, and previous test data provided for the filter cake. EPA established the proposed delisting levels for this Paragraph by back-calculating MAL concentrations from the health-based levels (HBLs) for the constituents of concern using the EPACML model previously described and a DAF of 100 (see, previous discussions in Section D—Agency Evaluation). These delisting levels correspond to the allowable levels measured in the TCLP extract of the waste.

(2) Verification testing schedule: BWX Technologies must analyze a representative composite sample of the filter cake from the pickle acid treatment system on an annual, calendar year basis using methods with appropriate detection levels and quality control procedures. If the level of any constituent measured in the sample of filter cake exceeds the levels set forth in Paragraph 1 of this Section, then the waste is hazardous and must be managed in accordance with Subtitle C of RCRA. Data from the annual verification testing must be submitted to EPA within 60 days of the sampling event.

(3) Changes in Operating Conditions: If BWX Technologies significantly changes the manufacturing or treatment process described in the petition, or the chemicals used in the manufacturing or treatment process, BWX Technologies may not manage the filter cake generated from the new process under this exclusion until it has met the following conditions: (a) BWX Technologies must demonstrate that the waste meets the delisting levels set forth in Paragraph 1 of this Section; (b) it must demonstrate that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced into the manufacturing or treatment process; and (c) it must obtain prior written approval from EPA to manage the waste under this exclusion. This condition allows BWX Technologies the flexibility to modify its process (*e.g.*, changes in equipment or operating conditions). However, if any significant change is made which may affect the composition of the waste, BWX Technologies must demonstrate that the waste continues to meet the delisting criteria and must obtain prior written approval from EPA.

(4) Data Submittals: The data obtained under Paragraphs 2 and 3 of this Section must be submitted to The Waste and Chemicals Management Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. Records of operating conditions and analytical data must be compiled, summarized, and maintained on site for a minimum of five years and must be furnished upon request by EPA or the Commonwealth of Virginia, and made available for inspection. Failure to submit the required data within the specified time period or to maintain the required records on site for the specified time period will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent determined necessary by EPA. All data must be accompanied by a signed copy of the certification statement set forth in 40 CFR 260.22(i)(12) to attest to the truth and accuracy of the data submitted. Although management of the wastes covered by this petition would not be subject to Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility or ensure that the waste is delivered to an off-site treatment, storage, or disposal facility. In either case, the facility must be permitted, licensed, or registered by a State to manage municipal or industrial solid waste. The generator may also elect to continue to manage the delisted waste in a facility with a permit or interim status under Subtitle C.

(5) Reopener:

(a) If BWX Technologies discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then BWX Technologies must report any information relevant to that condition, in writing, to the Regional Administrator or his delegate within 10 days of discovering that condition.

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

The purpose of Paragraph 5 of this Section is to require BWX Technologies

to disclose new or different information related to a condition at the facility or disposal of the waste if it had or has bearing on the delisting. This will allow EPA to reevaluate the exclusion if new or additional information is provided to the Agency by BWX Technologies which indicates that information on which EPA's decision was based was incorrect or circumstances have changed such that the information evaluated for the delisting is no longer correct or would cause EPA to deny the petition if then presented. Further, although this provision expressly requires BWX Technologies to report differing site conditions or assumptions used in the petition within 10 days of discovery, if EPA discovers such information itself or from a third party, EPA will act upon such information as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions located at 40 CFR 268.6. EPA has recognized that current delisting regulations contain no express procedure for reopening a decision if additional information is received and although it believes that it has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978), *et seq.* (APA), to take this action, EPA believes that a clear statement of its authority in the context of delistings is merited in light of Agency experience. Until such time as EPA codifies an express reopener provision in the exclusion regulations, EPA will include language similar to that presented above in delistings. EPA is considering the inclusion of a more specific regulatory process both defining when a delisting should be reopened and the result of reopening a granted exclusion and is soliciting comments on this process. Since each delisting is waste-specific and facility-specific or process-specific, EPA is currently reluctant to adopt a rule which might inadvertently cause an immediate repeal where specific circumstances would not merit so precipitous a result. In the meantime, in the event that an immediate threat to human health or the environment presents itself, EPA will continue to rely on its authority under the APA to make a good cause finding to justify an emergency rulemaking suspending notice and comment. APA Section 553(b).

(6) Notification Requirements: BWX Technologies 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 be deemed to be a violation of this exclusion and may result in a revocation of the decision.

## III. Effect on State Authorizations

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

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

## IV. Effective Date

This rule, if made final, will become effective immediately upon such final publication. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for a facility generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedures Act, 5 U.S.C. 553(d).

## V. Regulatory Planning and Review (Executive Order 12866)

Under Executive Order 12866, EPA must determine whether a regulatory action is ''significant'' and, therefore, subject to OMB review and the other provisions of the Executive Order. A ''significant regulatory action'' is one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to Executive Order 12866 it has been determined that this rule is not a ''significant regulatory action'' and is therefore not subject to OMB review.

## VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act(5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) 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 effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency or delegated representative certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal Agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of 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 EPA's hazardous waste rules. Accordingly, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

### VII. Paperwork Reduction Act

Information collection and record-keeping 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.

### VIII. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The proposed delisting decision is deregulatory, and imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA. In addition, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments and, therefore, no small government agency plan is required under Section 203 of the UMRA.

### IX. Children's Health Protection

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency 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 Agency.

This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

### X. Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting with these governments, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's proposed rule does not create a mandate on State, local or tribal governments. The proposed rule does not impose any enforceable duties on these entities. Accordingly, the requirements of Section 1(a) of Executive Order 12875 do not apply.

### XI. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs EPA 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

### XII. Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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, or EPA consults with those governments. If EPA complies by consulting with these governments, Executive Order 13084 requires EPA to 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 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 EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. There is no impact to tribal governments as the result of today's proposed delisting decision. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this proposed rule.

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

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

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

Dated: July 26, 1999.

**Stanely Laskowski,**

*Acting Regional Administrator, Region III.*

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

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

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

| Facility | Address | Waste description |
|---|---|---|
| * | * | * * * * * |
| BWX Technologies ..... | Lynchburg, VA ..... | Wastewater treatment sludge from electroplating operations (EPA Hazardous Waste No. F006) generated at a maximum annual rate of 300 cubic yards per year, after (insert publication date of the final rule), and disposed of in a Subtitle D landfill.<br>BWX Technologies must meet the following conditions for the exclusion to be valid:<br>(1) Delisting Levels: All leachable concentrations for the following constituents measure using the SW–846 method 1311 (the TCLP) must not exceed the following levels (mg/l).<br>(a) Inorganic constituents—Antimony-0.6; Arsenic-5.0; Barium-100; Beryllium-0.4; Cadmium-0.5; Chromium-5.0; Cobalt-210; Copper-130; Lead-1.5; Mercury-0.2; Nickel-70; Silver-5.0; Thallium-0.2; Tin-2100; Zinc-1000; Fluoride-400.<br>(b) Organic constituents—Acetone-400; Methylene Chloride-0.5.<br>(2) Verification testing schedule: BWX Technologies must analyze a representative sample of the filter cake from the pickle acid treatment system on an annual, calendar year basis using methods with appropriate detection levels and quality control procedures. If the level of any constituent measured in the sample of filter cake exceeds the levels set forth in Paragraph 1, then the waste is hazardous and must be managed in accordance with Subtitle C of RCRA. Data from the annual verification testing must be submitted to EPA within 60 days of the sampling event.<br>(3) Changes in Operating Conditions: If BWX Technologies significantly changes the manufacturing or treatment process described in the petition, or the chemicals used in the manufacturing or treatment process, BWX Technologies may not manage the filter cake generated from the new process under this exclusion until it has met the following conditions: (a) BWX Technologies must demonstrate that the waste meets the delisting levels set forth in Paragraph 1; (b) it must demonstrate that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced into the manufacturing or treatment process; and (c) it must obtain prior written approval from EPA to manage the waste under this exclusion.<br>(4) Data Submittals: The data obtained under Paragraphs 2 and 3 must be submitted to The Waste and Chemicals Management Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. Records of operating conditions and analytical data must be compiled, summarized, and maintained on site for a minimum of five years and must be furnished upon request by EPA or the Commonwealth of Virginia, and made available for inspection. Failure to submit the required data within the specified time period or to maintain the required records on site for the specified time period will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent determined necessary by EPA. All data must be accompanied by a signed copy of the certification statement set forth in 40 CFR § 260.22(i)(12) to attest to the truth and accuracy of the data submitted.<br>(5) Reopener:<br>(a) If BWX Technologies discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then BWX Technologies must report any information relevant to that condition, in writing, to the Regional Administrator or his delegate within 10 days of discovering that condition.<br>(b) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Regional Administrator or his delegate will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment. |

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

| Facility | Address | Waste description |
|---|---|---|
| | | (6) Notification Requirements: BWX Technologies 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 be deemed to be a violation of this exclusion and may result in a revocation of the decision. |

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BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

**[FRL–6411–7]**

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

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

**ACTION:** Notice of intent to delete the 62nd Street Superfund site from the National Priorities List: request for comments.

**SUMMARY:** The United States Environmental Protection Agency (EPA) Region 4 announces its intent to delete the 62nd Street Superfund Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the Florida Department of Environmental Protection (FDEP) have determined that the site poses no significant threat to public health or the environment and therefore, further response measures pursuant to CERCLA are not appropriate.

**DATES:** Comments concerning the proposed deletion of this site from the NPL may be submitted on or before September 3, 1999.

**ADDRESSES:** Comments may be mailed to: Richard D. Green, Director, Waste Management Division, United States Environmental Protection Agency, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303–8909, (404) 562–8651.

Comprehensive information on this site is available through the EPA Region 4 public docket, which is available for viewing at the information repositories at two locations. Locations, contacts, phone numbers and viewing hours are: Record Center, U.S. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303–8909, (404) 562–9530, hours: 8 a.m. to 4 p.m., Monday through Friday by appointment only; Tampa/Hillsborough County Public Library/Special Collections, 900 North Ashley, Tampa, Florida 33602, (813) 273–3652, hours: 9 a.m. to 9 p.m. Monday through Thursday, 9 a.m. to 5 p.m., Friday through Saturday.

**FOR FURTHER INFORMATION CONTACT:** Randa Chichakli, U.S. EPA Region 4, Waste Management Division, 61 Forsyth Street, Atlanta, Georgia 30303–8909, (404) 562–8928.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents:**



### I. Introduction

EPA Region 4 announces its intent to delete the 62nd Street Superfund Site, Hillsborough County, Tampa, Florida, from the NPL, which constitutes Appendix B of the NCP, 40 CFR part 300, and requests comments on this deletion. The EPA identifies sites on the NPL that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Trust Fund. Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this site from the NPL for thirty calendar days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how this site meets the deletion criteria.

### II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites maybe deleted from or re-categorized on the NPL where no further response is appropriate. In making this determination, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

1. Responsible parties or other persons have implemented all appropriate response actions required;

2. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

3. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

If a site is deleted from the NPL where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazardous Ranking System.

### III. Deletion Procedures

EPA will accept and evaluate public comments before making a final decision on deletion from the NPL. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of the Site:

1. EPA has recommended deletion and has prepared the relevant documents;