personal $80x recourse liability of A's, on January 1, 2007. Immediately after AB's assumption of A's personal $80x recourse liability, A is completely released from liability, and only B and C are ultimately liable on the $80x recourse debt.

(ii) As in *Example 8*, the $360x liability is ignored for purposes of determining whether the transfers constitute a sale of A's or B's interest in AB because no partner assumes the $360x liability. However, AB's assumption of A's $80x recourse liability is treated as a transfer of consideration to A to the extent that the amount of the liability exceeds A's share of that liability immediately after AB assumes the liability, determined as provided in paragraph (j)(4)(i) of this section. Under paragraph (j)(4)(i) of this section, A's share of the recourse liability immediately following the assumption is zero. Thus, the assumption is treated as a transfer of $80x to A by AB on January 1, 2007. Because C's transfer of $100x to AB, and AB's transfer of $80x to A, occurred within two years, the transfers are presumed to be a sale of a portion of A's partnership interest in AB to C, under paragraph (c) of this section, unless the facts and circumstances clearly establish otherwise. There are no facts that rebut the presumption of sale treatment or that support the application of either of the presumptions against sale treatment provided in paragraphs (e) or (f) or the exception provided in paragraph (g) of this section. Thus, the transfers are treated as a sale of a portion of A's partnership interest in AB to C. Under paragraph (a)(3)(i) of this section, the value of the partnership interest that A is treated as selling to C equals the lesser of the consideration transferred by AB to A, or the consideration transferred by C to AB. C transferred $100x to AB, and A received $80x from AB. Thus, A is treated as having sold a partnership interest in AB with a value of $80x to C. Under paragraph (a)(4) of this section, the amount realized by A on the sale of its partnership interest includes any reduction in A's share of the $360x partnership liability that is treated as occurring as a result of the sale. Before the sale, A's share of the nonrecourse liability under § 1.752–3(a)(3) was $180x (50% of the $360x liability). As a result of A's sale of its $80x partnership interest in AB to C, A's share of the nonrecourse liability under § 1.752–3(a)(3) was reduced to $133x (because A's partnership interest was 37% after the sale). Thus, A's amount realized on the sale of its partnership interest equals $80x plus the reduction in A's share of the $360x partnership liability of $47x ($180x − $133x), or $127x. C also is treated as making, in its capacity as a partner, and without regard to any deemed contributions under section 752(a), a contribution to AB to which section 721 applies of $20x ($100x contribution − $80x amount of sale).

Par. 7. Section 1.707–8 is amended as follows:

1. Revising paragraph (a).

2. Revising paragraph (c).

The revisions read as follows:

§ 1.707–8 Disclosure of certain information.

(a) *In general.* The disclosure referred to in § 1.707–3(c)(2) (regarding certain transfers made within seven years of each other), § 1.707–5(a)(7)(ii) (regarding a liability incurred within two years prior to a transfer of property), § 1.707–5(a)(8) (relating to liabilities assumed within seven years of the transfer), § 1.707–6(c) (relating to transfers of property from a partnership to a partner in situations analogous to those listed above), and § 1.707–7(k) (relating to certain transfers made within seven years of each other) is to be made in accordance with paragraphs (b) and (c) of this section.

* * * * *

(c) *Parties required to disclose.* The disclosure required by this section must be made by any person who makes a transfer that is required to be disclosed. The persons who are required to disclose may designate by written agreement a single person to make the disclosure. The designation of one person to make the disclosure does not relieve the other persons required to disclose from their obligation to make the disclosure if the designated person fails to make the disclosure in accordance with paragraph (b) of this section.

Par. 8. Section 1.707–9 is amended as follows:

1. Revising the heading for paragraph (a).

2. Revising paragraph (a)(1).

3. Revising the heading for paragraph (a)(2), and adding a sentence at the end of the paragraph.

4. Amending paragraph (a)(3) by removing the language ''1.707–6'' and adding ''1.707–7'' in its place.

5. Revising paragraph (b).

The revisions and addition read as follows:

§ 1.707–9 Effective dates and transitional rules.

(a) *Sections 1.707–3 through 1.707–7*—(1) *In general.* Except as provided in paragraph (a)(3) of this section, §§ 1.707–3 through 1.707–7 apply to any transaction with respect to which all transfers that are part of a sale of an item of property or of a partnership interest occur on or after the date these regulations are published as final regulations in the **Federal Register**. For any transaction with respect to which all transfers that are part of a sale of an item of property occur after April 24, 1991, but before the date these regulations are published as final regulations in the **Federal Register**, §§ 1.707–3 through 1.707–6 as contained in 26 CFR edition revised April 1, 2004, (TD 8439) apply, except as provided in paragraph (a)(3) of this section.

(2) *Transfers occurring before effective dates.* * * * In addition, except as provided in paragraph (a)(3) of this section, in the case of any transaction with respect to which one or more of the transfers occurs after April 24, 1991, but before the date these regulations are published as final regulations in the **Federal Register**, the determination of whether the transaction is a disguised sale of a partnership interest under section 707(a)(2)(B) is to be made on the same basis.

* * * * *

(b) * * * The disclosure provisions described in § 1.707–8 apply to transactions with respect to which all transfers that are part of a sale of property occur on and after the date these regulations are published as final regulations in the **Federal Register**. For transactions with respect to which all transfers that are part of a sale of property occur after September 30, 1992, but before the date these regulations are published as final regulations in the **Federal Register**, the disclosure provisions as described in § 1.707–8 as contained in the 26 CFR edition revised April 1, 2004, (TD 8439) apply.

* * * * *

§ 1.752–3 [Amended]

Par. 9. Section 1.752–3 is amended in the sixth sentence of paragraph (a)(3) by revising the sentence ''This additional method does not apply for purposes of § 1.707–5(a)(2)(ii)'' to read ''This additional method does not apply for purposes of §§ 1.707–5(a)(2)(ii) and 1.707–7(j)(4)(ii).''

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–26112 Filed 11–24–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7842–9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA, also ''the Agency'' or ''we'' in this preamble) is proposing to modify a conditional exclusion (or ''delisting'') from the lists of hazardous waste, previously granted to BMW Manufacturing Co., LLC (BMW), in Greer, South Carolina. This action responds to a petition for amendment requested by BMW to eliminate the total concentration limits its wastewater treatment sludge covered by its current conditional exclusion.

The Agency is basing its tentative decision to grant the petition for amendment on a re-evaluation of the specific information initially provided by the petitioner in its original request and on an evaluation of delistings granted to other automobile manufactures for its F019 waste. This tentative decision, if finalized, would eliminate the total concentration limits of barium, cadmium, chromium, lead, nickel, and cyanide from its conditionally excluded wastewater treatment sludge from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA). The waste will still be subject to local, State, and Federal regulations for nonhazardous solid wastes.

DATES: EPA is requesting public comments on this proposed amendment. We will accept comments on this proposal until January 10, 2005. Comments postmarked after the close of the comment period will be stamped ''late.'' These late comments may not be considered in formulating a final decision.

Any person may request a hearing on this proposed decision by filing a request by December 13, 2004.

ADDRESSES: Send two copies of your comments to Narindar Kumar, Chief, RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303. Send one copy to Cindy Carter, Appalachia III District, South Carolina Department of Health and Environmental Control, 975C North Church Street, Spartanburg, South Carolina 29303.

Requests for a hearing should be addressed to Winston A. Smith, Director, Waste Management Division, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. The request must contain the information prescribed in 40 CFR 260.20(d).

The RCRA regulatory docket for this proposed rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The docket contains the petition, all information submitted by the petitioner, and all information used by EPA to evaluate the petition.

The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general and technical information about this proposed amendment, contact Kris Lippert, North Enforcement and Compliance Section, (Mail Code 4WD–RCRA), RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8605.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background

A. What Laws and Regulations Give EPA the Authority To Delist Wastes?

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 in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they 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 [1] facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, 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. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. 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 EPA 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 wastes continue to be nonhazardous based on the hazardous waste characteristics (*i.e.*, characteristics which may be

[1] Although no one produces hazardous waste intentionally, many industrial processes result in the production of hazardous waste, as well as useful products and services. A ''generating facility'' is a facility in which hazardous waste is produced, and a ''generator'' is a person who produces hazardous waste or causes hazardous waste to be produced at a particular place. Please see 40 CFR 260.10 for regulatory definitions of ''generator,'' ''facility,'' ''person,'' and other terms related to hazardous waste, and 40 CFR part 262 for regulatory requirements for generators.

promulgated subsequent to a delisting decision.)

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 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). These rules became final on October 30, 1992, 57 FR 49278, and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. The mixture and derived-from rules are codified in 40 CFR 261.3 (b)(2) and (c)(2)(i). EPA plans to address waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with §§ 260.20 and 260.22, by generators within their Regions (National Delegation of Authority 8–19), in States not yet authorized to administer a delisting program in lieu of the Federal program. On March 11, 1996, the Regional Administrator of EPA, Region 4, redelegated delisting authority to the Director of the Waste Management Division (Regional Delegation of Authority 8–19).

B. What Is Currently Delisted at BMW?

BMW manufactures BMW automobiles at its facility in Greer, South Carolina. On June 2, 2000, BMW petitioned EPA under the provisions in 40 CFR 260.20 and 260.22 to exclude from hazardous waste regulations its F019 wastewater treatment sludge.

In support of its petition, BMW submitted sufficient information to EPA to allow us to determine that the waste was not hazardous based upon the criteria for which it was listed and that no other hazardous constituents were present in the waste at levels of regulatory concern.

A full description of this waste and the Agency's evaluation of the 2000 BMW's petition are contained in the proposed rule and request for comments published in the **Federal Register** on February 12, 2001, (66 FR 9781–9798).

After evaluating public comment on the proposed rule, we published a final decision in the **Federal Register** on May 2, 2001, (66 FR 21877–21886), to exclude BMW's wastewater treatment sludge derived from the treatment of EPA Hazardous Waste No. F019 from the list of hazardous wastes found in 40 CFR 261.31.

EPA's final decision in 2001 was conditional on the TCLP and total concentration limits of barium, cadmium, chromium, cyanide, lead, and nickel. If the sludge exceeds the TCLP or total concentration limits, then that sludge would have to be managed as hazardous waste.

C. What Does BMW Request in Its Petition for Amendment?

As a result of delistings granted to other automobile manufactures by EPA, BMW petitioned EPA on December 11, 2003, for an amendment to its May 2, 2001, final exclusion.

In its petition, BMW requested to eliminate the total concentration limits.

II. Disposition of Delisting Petition

A. What Information Did BMW Submit To Support Its Petition for Amendment?

BMW petitioned EPA, Region 4, on June 2, 2000, to exclude its F019 waste, on a generator-specific basis, from the lists of hazardous wastes in 40 CFR part 261, subpart D. BMW requested EPA to review its original submittals to support its 2000 petition for this petition amendment to eliminate all total concentration limits. BMW also requested EPA to review other delisting petitions granted by EPA to automobile manufactures for the F019 waste to support this petition for amendment.

In support of its 2000 petition, BMW submitted: (1) Descriptions of its manufacturing and wastewater treatment processes, the generation point of the petitioned waste, and the manufacturing steps that will contribute to its generation; (2) Material Safety Data Sheets (MSDSs) for materials used to manufacture automobiles and to treat wastewater; (3) the minimum and maximum annual amounts of wastewater treatment sludge generated from 1996 through 1999, and an estimate of the maximum annual amount expected to be generated in the future; (4) results of analysis for metals, cyanide, sulfide, fluoride, and volatile organic compounds in the currently generated waste at the BMW plants in Greer, South Carolina, and Dingolfing, Germany; (5) results of the analysis of leachate from these wastes, obtained by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311 [2]); (6) results of the determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity in these wastes; (7) results of determinations of dry weight percent, bulk density, and free liquids in these wastes; and (8) results of the analysis of the waste currently generated at the plant in Greer, South Carolina, by means of the Multiple Extraction Procedure (MEP), SW–846 Method 1320, in order to evaluate the long-term resistance of the waste to leaching in a landfill.

B. How Did EPA Evaluate This Petition?

1. How Did EPA Evaluate the 2000 BMW's Petition?

In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11 (a)(2) and (a)(3). Based on this review, EPA agreed with the petitioner that the waste was nonhazardous 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 such additional factors could cause the waste to be hazardous. See § 260.22 (a) and (d). EPA considered whether the waste was 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.

BMW submitted to EPA analytical data from its Greer, South Carolina plant and from the BMW plant in Dingolfing, Germany. Four composite samples of wastewater treatment sludge, from approximately 60 batches of wastewater, were collected from each plant over a three-week period. After reviewing this analytical data and information on

[2] ''SW–846'' means EPA Publication SW–846, ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.'' Methods in this publication are referred to in today's proposed rule as ''SW–846,'' followed by the appropriate method number.

processes and raw materials, EPA identified the following constituents of concern: barium, cadmium, chromium, cyanide, lead, and nickel. The maximum reported concentrations of the toxicity characteristic (TC) metals barium, cadmium, chromium, and lead in the TCLP extracts of the samples were below the TC regulatory levels. The maximum reported concentration of total cyanide in unextracted waste was 3.35 milligrams per kilogram (mg/kg), which is greater than the generic exclusion level of 1.8 mg/kg for high temperature metal recovery (HTMR) residues in 40 CFR 261.3(c)(2)(ii)(C)(*1*), and less than 590 mg/kg, the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) level, in 40 CFR 268.48. Chromium was undetected in the TCLP extract of any sample. The maximum reported concentration of barium in unextracted samples was 144 mg/kg for the German plant and 402 mg/kg for the Greer, South Carolina plant. The maximum reported concentration of chromium in unextracted samples was 100 mg/kg for the German plant and 222 mg/kg for the Greer, South Carolina plant. The maximum concentration of nickel in the TCLP extract of any sample was 0.73 milligrams per liter (mg/l) for the German plant and 6.25 mg/l for the Greer, South Carolina plant. The maximum reported concentration of nickel in unextracted samples was 6,500 mg/kg for the German plant and 1,700 mg/kg for the Greer, South Carolina plant. See the proposed rule, 66 FR 9781–9798, February 12, 2001, for details on BMW's analytical data, production process, and generation process for the petitioned waste.

After developing the list of constituents of concern, EPA calculated delisting levels for each of them using Maximum Contaminant Levels (MCLs) and EPA Composite Model for Landfills (EPACML) Dilution Attenuation Factors (DAFs) and calculated delisting levels and risks using Delisting Risk Assessment Software (DRAS) and EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) DAFs.

EPA also used three additional methods of evaluating BMW's delisting petition and determining delisting levels: (1) Use of the Multiple Extraction Procedure (MEP), SW–846 Method 1320,[3] to evaluate the long-term resistance of the waste to leaching in a landfill; (2) setting limits on total concentrations of constituents in the waste that are more conservative than results of calculations of constituent release from waste in a landfill to surface water and air, and release during waste transport; and (3) setting delisting levels at the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) levels in 40 CFR 268.48. The UTS levels for BMW's constituents of concern are the following: Barium: 21 mg/l TCLP; Cadmium: 0.11 mg/l TCLP; Chromium: 0.60 mg/l TCLP; Cyanide Total: 590 mg/kg; Cyanide Amenable 30 mg/kg; Lead: 0.75 mg/l TCLP; Nickel: 11 mg/l TCLP.

After considering all public comments on the February 12, 2001, Proposed Rule, and the MEP analysis of the petitioned waste which indicated long-term resistance to leaching (*see* 66 FR 9793–9794, February 12, 2001), EPA granted BMW, in the May 2, 2001, Final Rule, an exclusion from the lists of hazardous wastes in subpart D of 40 CFR part 261 for its petitioned waste when disposed in a Subtitle D[4] landfill. In the 2001 Final Rule, BMW was required to meet delisting conditions based on the DRAS EPACMTP model in order for this exclusion to be valid. For details, *see* the following **Federal Registers**: 65 FR 75637–75651, December 4, 2000; 65 FR 58015–58031, September 27, 2000; the proposed rule for BMW's petitioned waste, 66 FR 9792–9793, February 12, 2001, and Final Rule for BMW's petitioned waste, 66 FR 21877–21886, May 2, 2001.

Delisting levels and risk levels calculated by DRAS, using the EPACMTP model, are presented in Table 1 below. DRAS found that the major pathway for human exposure to this waste is groundwater ingestion, and calculated delisting and risk levels based on that pathway. The input values required by DRAS were the chemical constituents in BMW's petitioned waste; their maximum reported concentrations in the TCLP extract of the waste and in the unextracted waste; the maximum annual volume to be disposed (2,850 cubic yards) in a landfill; the desired risk level, which was chosen to be no worse than 10^{-6} for carcinogens; and a hazard quotient of no greater than 1 for non-carcinogens. The only carcinogenic constituent in the waste is cadmium, and cadmium also has non-carcinogenic toxic effects. Allowable total concentrations in the waste, as calculated by DRAS for the waste, itself, not the TCLP leachate, were all at least 1,000 times greater than the actual maximum total concentrations found in the waste, and are not included in Table 1, since many amount to metal or cyanide concentrations of several percent. However, in addition to limits on the concentrations of constituents in the TCLP leachate of the petitioned waste, EPA did set the following limits on total concentrations, in units of milligrams of constituent per kilogram of unextracted waste (mg/kg): Barium: 2,000; Cadmium: 500; Chromium: 1,000; Cyanide (Total, not Amenable): 200; Lead: 2,000; and Nickel: 20,000. The maximum reported total concentrations for BMW's petitioned waste were all below these limits. The limit for cyanide was chosen so that the waste could not exhibit the reactivity characteristic for cyanide by exceeding the interim guidance for reactive cyanide of 250 mg/kg of releasable hydrogen cyanide (SW–846, Chapter Seven, Section 7.3.3.)

TABLE 1.—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR BMW PETITIONED WASTE

Constituent	Delisting level (mg/l TCLP)	DAF	DRAS-calculated risk for maximum concentration of carcinogen in waste	DRAS-calculated hazard quotient for maximum concentration of non-carcinogen in waste
Barium	182[a]	69.2		4.87×10^{-2}
Cadmium	1.4[a]	74.6	1.62×10^{-13}	3.57×10^{-2}

[3] ''SW–846'' means EPA Publication SW–846, ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.'' Methods in this publication are referred to in today's proposed rule as ''SW–846,'' followed by the appropriate method number.

[4] The term, ''Subtitle D landfill,'' refers to a landfill that is licensed to land dispose nonhazardous wastes, that is, wastes that are not RCRA hazardous wastes. A Subtitle D landfill is subject to federal standards in 40 CFR parts 257 and 258 and to state and local regulations for nonhazardous wastes and nonhazardous waste landfills.

TABLE 1.—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR BMW PETITIONED WASTE—Continued

Constituent	Delisting level (mg/l TCLP)	DAF	DRAS-calculated risk for maximum concentration of carcinogen in waste	DRAS-calculated hazard quotient for maximum concentration of non-carcinogen in waste
Chromium	5.39×10^{5} [a]	9,580		5.8×10^{-7}
Cyanide	33.6	44.8		1.49×10^{-3}
Lead	187[a]	1.24×10^{4}		Not Calculable; No Reference Dose for Lead.
Nickel	70.3	93.5		8.9×10^{-2}
Total Hazard Quotient for All Waste Constituents				0.187
Total Carcinogenic Risk for the Waste (due to Cadmium)			1.62×10^{-13}	

[a] These levels are all greater than the Toxicity Characteristic (TC) regulatory level in 40 CFR 261.24. A waste cannot be delisted if it exhibits a hazardous characteristic; therefore, the delisting level for each of these constituents could not be greater than the TC level of 100 for Barium; 1.0 for Cadmium; 5.0 for Chromium; and 5.0 for Lead.

2. How Did EPA Evaluate This Proposed Amendment?

EPA reviewed the allowable total concentrations in the waste, as calculated by DRAS for the waste, to determine if increasing the barium total concentration limit would be still protective to human health and the environment. The allowable total concentrations, according to the DRAS, were all at least 1,000 times greater than the actual maximum total concentrations found in the waste. Based on the DRAS results, EPA proposes to grant BMW's petition for amendment to eliminate all total concentration limits. EPA asks for public comment on this new totals limit set for barium which has been calculated to be both protective of human health and the environment and realistic, attainable values for BMW's wastewater treatment sludge.

C. What Conclusions Did EPA Reach?

EPA believes that the information provided by BMW provides a reasonable basis to eliminate all total concentration limits. We, therefore, propose to grant BMW an amendment to its current delisting for an elimination of all total concentration limits on its delisted wastewater treatment sludge and are requesting comments solely on eliminating all total concentration limits.

EPA believes that this proposal to eliminate all concentration limits will not harm human health and the environment when disposed in a nonhazardous waste landfill, if the proposed delisting levels are met.

EPA proposes to eliminate all total concentration limits, based on descriptions of waste management and waste history, evaluation of the results of waste sample analysis, and on the requirement that BMW's petitioned waste must meet this proposed amendment delisting level of all the constituents of concern concentration limits as state in the May 2, 2001, Final Rule before disposal. If this proposed amendment becomes final, the petitioned waste would not be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270. Although management of the waste covered by this petition would, upon final promulgation, be relieved from Subtitle C jurisdiction, the waste would remain a solid waste under RCRA. As such, the waste must be handled in accordance with all applicable Federal, State, and local solid waste management regulations. Pursuant to RCRA section 3007, EPA may also sample and analyze the waste to determine if delisting conditions are met.

EPA believes that BMW's petitioned waste will not harm human health and the environment when disposed in a nonhazardous waste landfill if the delisting levels are met as granted in the May 2, 2001, Final Rule and amended in this petition.

What Are the Terms of This Exclusion?

The following summarizes the maximum allowable constituent concentrations (delisting levels) for BMW's waste. We calculated these delisting levels for each constituent that is part of BMW's current delisting based on the DRAS EPACMTP model, which grants BMW an exclusion from the lists of hazardous wastes in subpart D of 40 CFR part 261 for its petitioned waste when disposed in a Subtitle D[5] landfill. BMW must meet all of the following delisting conditions in order for this exclusion to be valid: delisting levels in mg/l in the TCLP extract of the waste of 100.0[6] for Barium, 1.0 for Cadmium, 5.0 for Chromium, 33.6 for Cyanide, 5.0 for Lead, and 70.3 for Nickel.

III. Limited Effect of Federal Exclusion

Will This Rule Apply in All States?

This proposed rule, if promulgated, would be issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, 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 States. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal and State programs), petitioners are urged to contact State

[5] The term, ''Subtitle D landfill,'' refers to a landfill that is licensed to land dispose nonhazardous wastes, that is, wastes that are not RCRA hazardous wastes. A Subtitle D landfill is subject to federal standards in 40 CFR parts 257 and 258 and to state and local regulations for nonhazardous wastes and nonhazardous waste landfills.

[6] Delisting levels cannot exceed the Toxicity Characteristic (TC) regulatory levels. Therefore, although the DRAS EPACMTP calculates higher concentrations (*see* the proposed rule, 66 FR 9793, February 12, 2001, and Table 1, below), the delisting levels in the final rule are set at the TC levels for barium, cadmium, chromium, and lead. In order for the waste to be delisted, concentrations in the TCLP extract of the waste must be less than the TC levels. *See* the regulatory definition of a TC waste in 40 CFR 261.24.

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, would not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, BMW 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 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 the petitioner. 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 Procedure Act, pursuant to 5 U.S.C. 553(d).

V. 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 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VI. National Technology Transfer and Advancement Act

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 note) 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 proposed rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based measurement System (''PBMS''), EPA proposes not to require the use of specific, prescribed analytical methods, except when required by regulation in 40 CFR parts 260 through 270. Rather the Agency plans to allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

VII. 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, 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 EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. 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 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 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. EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

VIII. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement and Fairness 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 a significant economic impact on a substantial number of small entities.

This rule, if promulgated, will not have an adverse economic impact on any small entities since its effect would be to reduce the overall costs of 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.

IX. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as 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 of policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order.

OMB has exempted this proposed rule from the requirement for OMB review under section (6) of Executive Order 12866.

X. Executive Order 12875

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

XI. Executive Order 13045

The Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the 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 rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XII. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of 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 and other representatives of Indian tribal governments ''to meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. Today's proposed rulemaking does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this proposed rule.

XIII. Submission to Congress and General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States.

The EPA is not required to submit a rule report regarding today's action under Section 801 because this is a rule of particular applicability, etc. Section 804 exempts from Section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedures, or practice that do not substantially affect the rights or obligations of non-agency parties. *See* 5 U.S.C. 804(3). This rule will become effective on the date of publication as a final rule in the **Federal Register**.

XIV. Executive Order 13132

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

''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

List of Subjects in 40 CFR Part 261

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

Dated: November 10, 2004.

Winston A. Smith,

Director, Waste Management Division.

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, 6924(y) and 6938.

2. In Table 1 of Appendix IX, Part 261 revise the entry for BMW Manufacturing Co., LLC 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
*	*	* * * * *
BMW Manufacturing Co., LLC.	Greer, South Carolina	Wastewater treatment sludge (EPA Hazardous Waste No. F019) that BMW Manufacturing Corporation (BMW) generates by treating wastewater from automobile assembly plant located on Highway 101 South in Greer, SouthCarolina. This is a conditional exclusion for up to 2,850 cubic yards of waste(hereinafter referred to as ''BMW Sludge'') that will be generated each year and disposed in a Subtitle D landfill after [date of final rule]. With prior approval by the EPA, following a public comment period,BMW may also beneficially reuse the sludge. BMW must demonstrate that the following conditions are met for the exclusion to be valid. (1) *Delisting Levels:* All leachable concentrations for these metals and cyanide must not exceed the following levels (ppm): Barium–100; Cadmium–1; Chromium–5; Cyanide–33.6, Lead–5; and Nickel–70.3. These metal and cyanide concentrations must be measured in the waste leachate obtained by the method specified in 40 CFR 261.24, except that for cyanide, deionized water must be the leaching medium. Cyanide concentrations in waste or leachate must be measured by the method specified in 40 CFR 268.40, Note 7. (2) *Annual Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies, where specified by regulations in 40 CFR parts 260—270. Otherwise, methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the BMW Sludge meet the delisting levels in Condition (1). (A) *Annual Verification Testing:* BMW must implement an annual testing program to demonstrate that constituent concentrations measured in the TCLP extract do not exceed the delisting levels established in Condition (1). (3) *Waste Holding and Handling:* BMW must hold sludge containers utilized for verification sampling until composite sample results are obtained. If the levels of constituents measured in the composite samples of BMW Sludge do not exceed the levels set forth in Condition (1), then the BMW Sludge is non-hazardous and must be managed in accordance with all applicable solid waste regulations. If constituent levels in a composite sample exceed any of the delisting levels set forth in Condition (1), the batch of BMW Sludge generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA. (4) *Changes in Operating Conditions:* BMW must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are implemented. EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify BMW in writing that the BMW Sludge must be managed as hazardous waste F019 until BMW has demonstrated that the wastes meet the delisting levels set forth in Condition (1) and any levels established by EPA for the additional constituents of concern, and BMW has received written approval from EPA. IfEPA determines that the changes do not result in additional constituents of concern, EPA will notify BMW, in writing, that BMW must verify that the BMW Sludge continues to meet Condition (1) delisting levels. (5) *Data Retention:* Records of analytical data from Condition (2) must be compiled, summarized, and maintained by BMW for a minimum of three years, and must be furnished upon request by EPA or the State of South Carolina, and made available for inspection. Failure to maintain the required records for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

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

Facility	Address	Waste Description
		(6) *Reopener Language:* (A) If, at any time after disposal of the delisted waste, BMW possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, BMW must report the data, in writing, to EPA and South Carolina within 10 days of first possessing or being made aware of that data. (B) If the testing of the waste, as required by Condition (2)(A), does not meet the delisting requirements of Condition (1), BMW must report the data, in writing, to EPA and South Carolina within 10 days of first possessing or being made aware of that data. (C) Based on the information described in paragraphs (6)(A) or (6)(B) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If EPA determines that the reported information does require Agency action, EPA will notify the facility in writing of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing BMW with an opportunity to present information as to why the proposed action is not necessary. BMW shall have 10 days from the date of EPA's notice to present such information. (E) Following the receipt of information from BMW, as described in paragraph (6)(D), or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment, given the information received in accordance with paragraphs (6)(A) or (6)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise. (7) *Notification Requirements:* BMW must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, 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 conditions and a possible revocation of the decision to delist.
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[FR Doc. 04–26166 Filed 11–24–04; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 531

[Docket No. 04–12]

RIN 3072–AC30

Non-Vessel Operating Common Carrier Service Arrangements

AGENCY: Federal Maritime Commission.

ACTION: Proposed rulemaking; extension of time.

SUMMARY: The Commission by Notice of Proposed Rulemaking published November 3, 2004 (69 FR 63981) proposed an exemption from the tariff publication requirements of the Shipping Act of 1984 for service arrangements made by non-vessel-operating common carriers, subject to the conditional filing requirements set forth in this new Part. The Commission has received and determined to grant a request from the Department of Justice, for an extension of time to November 30, 2004 to file comments in this proceeding.

DATES: Comments are now due November 30, 2004. Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 10, Microsoft Word 2003, or earlier versions of these applications.

ADDRESSES: Address all comments concerning this proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001; (202) 523–5725, e-mail: *Secretary@fmc.gov*.

FOR FURTHER INFORMATION CONTACT: Amy W. Larson, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1018, Washington, DC 20573–0001; (202) 523–5740, e-mail: *GeneralCounsel@fmc.gov;* and Austin L. Schmitt, Director, Office of Operations, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1078, Washington, DC 20573–0001, (202) 523–0988.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–26125 Filed 11–24–04; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[ET Docket No. 04–35; FCC 04–188]

Disruptions to Communications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document expands the record in this proceeding to focus specifically on the unique communications needs of airports, including wireless and satellite communications. In this regard, we request comment on the additional types of airport communications (*e.g.*,