U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201 and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Janice Lewis at (215) 814–2185 or Betty Harris at (215) 814–2168, the EPA Region III address above or by e-mail at *lewis.janice@epa.gov* or *harris.betty@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: August 10, 2001.

**Judith Katz,**

*Acting Regional Administrator, Region III.*

[FR Doc. 01–21029 Filed 8–20–01; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[PA–4138b; FRL–7038–9]**

### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and $NO_X$ RACT Determinations for Eleven Individual Sources in the Pittsburgh-Beaver Valley Area

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania for the purpose of establishing and requiring reasonably available control technology (RACT) for eleven major sources of volatile organic compounds (VOC) and nitrogen oxides ($NO_X$). These sources are located in the Pittsburgh-Beaver Valley ozone nonattainment area. In the Final Rules section of this **Federal Register,** EPA is approving the Commonwealth's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if adverse comment is received for a specific source or subset of sources covered by an amendment, section or paragraph of this rule, only that amendment, section, or paragraph for that source or subset of sources will be withdrawn. If that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**DATES:** Comments must be received in writing by September 20, 2001.

**ADDRESSES:** Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; and the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

**FOR FURTHER INFORMATION CONTACT:** Catherine Magliocchetti at (215) 814–2174, or Ellen Wentworth (215) 814–2034 at the EPA Region III address above or by e-mail at *magliocchetti.catherine@epa.gov.* or *wentworth.ellen@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: August 10, 2001.

**Judith Katz,**

*Acting Regional Administrator, Region III.*

[FR Doc. 01–21027 Filed 8–20–01; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

**[SW–FRL–7034–2]**

### Hazardous Waste Management System; Proposed Exclusion for Identifying and Listing Hazardous Waste

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

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

**SUMMARY:** The EPA (also, ''the Agency'' or ''we'' in this preamble) is proposing to grant a petition submitted by Ormet Primary Aluminum Corporation (Ormet) to exclude (or ''delist'') vitrified spent potliner (generated from primary aluminum production) at Ormet's Hannibal, Ohio plant from the lists of hazardous wastes contained in subpart D of part 261.

The Agency has evaluated the waste-specific information provided by Ormet and has tentatively decided to grant the exclusion based on our conclusion that Ormet's vitrified spent potliner (VSP) is nonhazardous. This proposed decision, if finalized, conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

**DATES:** *Comments.* We will accept public comments on this proposed decision until October 5, 2001. We will stamp comments postmarked after the close of the comment period as ''late.'' These ''late'' comments may not be considered in formulating a final decision.

*Request for Public Hearing.* Your request for a hearing must reach EPA by September 5, 2001. The request must contain the information prescribed in § 260.20(d).

**ADDRESSES:** *Comments.* Please send two copies of your comments to Todd Ramaly, Waste Management Branch (DW–8J), Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, IL 60604.

*Request for Public Hearing.* Any person may request a hearing on this proposed decision by filing a request with Robert Springer, Director, Waste, Pesticides and Toxics Division (D–8J), Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, IL 60604.

**FOR FURTHER INFORMATION CONTACT:** For technical information concerning this notice, contact Todd Ramaly at the address above or at (312) 353–9317. The RCRA regulatory docket for this proposed rule is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. Call Todd Ramaly at (312) 353–9317 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

**SUPPLEMENTARY INFORMATION:**



## I. Overview Information

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

The EPA is proposing to grant Ormet's petition to have vitrified spent potliner from the primary reduction of aluminum at Ormet's Hannibal, Ohio plant, excluded, or delisted, from the definition of a hazardous waste. We evaluated the petition using a fate and transport model to predict the concentration of hazardous constituents which could be released from the petitioned waste after it is disposed.

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

Ormet petitioned EPA to exclude, or delist, the VSP because Ormet believes that the petitioned waste does not meet the RCRA criteria for which EPA originally listed the waste and believes there are no additional constituents or factors which could cause the waste to be hazardous.

We evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (3). We also considered the original listing criteria and any additional factors which could cause the waste to be hazardous, as required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(2)–(4).

These factors included: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the hazardous constituents to migrate and to bioaccumulate; (5) persistence of hazardous constituents in the environment once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

Based on our review of the analytical data and other submitted information we agree with the petitioner that the waste is nonhazardous with respect to the original listing criteria and that there are no additional factors which could cause the waste to be hazardous. If our review had found that the waste remained hazardous, we would have proposed to deny the petition. We have therefore concluded that the waste should be delisted.

### *C. How Will Ormet Manage the Waste If It Is Delisted?*

If the petitioned waste is delisted, Ormet must dispose of it in a Subtitle D landfill licensed or permitted by a State to manage industrial waste. Ormet may also dispose of the delisted waste in a permitted Subtitle C landfill.

### *D. When Would EPA Finalize the Proposed Delisting Exclusion?*

HSWA specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not make a final decision or grant an exclusion until it has considered and addressed all timely public comments (including any at public hearings) on today's proposal.

Since this rule would reduce the existing requirements for a person generating hazardous wastes, the regulated community does not need a six-month period to come into compliance in accordance with section 3010 of RCRA as amended by HSWA. Therefore, the exclusion would become effective upon finalization.

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

Because EPA is issuing today's exclusion under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. This exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements, or in states which have received our authorization to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, we urge the petitioner to contact the state regulatory authority to establish the status of its waste under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program. That is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If Ormet transports the petitioned waste to or manages the waste in any state with delisting authorization, Ormet must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

## II. Background

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

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in §§ 261.11(a)(2) or (3).

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

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows a person to demonstrate that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

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

A delisting petition is a request from a facility to EPA or an authorized state to exclude wastes from the list of hazardous wastes. In a delisting petition, the petitioner must show that the waste generated at a particular facility does not meet any of the criteria for listed wastes. The criteria for which EPA lists a waste are in 40 CFR 261.11 and in the background documents for the listed wastes.

In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See § 260.22, 42 U.S.C. 6921(f) and the background documents for a listed waste.)

A generator remains obligated under RCRA to confirm that its waste remains nonhazardous.

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

EPA must consider any factors (including additional constituents) other than those for which we listed the waste if these additional factors could cause the waste to be hazardous. (See HSWA of 1984.) EPA must also consider as a hazardous waste, mixtures containing listed hazardous wastes and wastes derived from treatment of listed hazardous waste. See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. These wastes are also eligible for exclusion but remain hazardous wastes until excluded.

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

### A. What Wastes Did Ormet Petition EPA to Delist?

Ormet submitted an ''upfront'' petition in April 1994 to exclude vitrified spent potliner, K088, generated at its Hannibal Ohio plant, from the list of hazardous wastes contained in 40 CFR 261.32. K088 is defined as ''spent potliner from the primary reduction of aluminum.'' In December 1999 Ormet submitted a revised petition for an annual volume of 8,500 cubic yards of K088 generated under full scale operation. The EPA reviews a petitioner's estimated volume and, on occasion, has requested a petitioner to re-evaluate the estimated waste generation rate. EPA accepts Ormet's estimate of annual volume of waste.

### B. What Information and Analyses Did Ormet Submit To Support This Petition?

To support its petition, Ormet submitted (1) descriptions and schematic diagrams of the aluminum reduction process generating the K088 and the vitrification system used to treat the K088; (2) analyses for total and TCLP metals, total and TCLP volatile and semivolatile organics, total cyanide, total and TCLP fluoride, total sulfides, total dioxins and furans, oil and grease; pH, and reactivity; (3) analyses for leachable metals, cyanide, and fluoride, using the TCLP procedure with neutral and basic extraction fluids.

### C. How Is the Petitioned Waste Generated?

Aluminum is produced by the reduction of alumina (aluminum oxide) in large iron pots. The pot is lined with anthracite coal which serves as the cathode. Anodes in the center of the bath are constructed of petroleum coke and a pitch binder. The pot is filled with a mixture of aluminum oxide, cryolite and aluminum fluoride and a direct current is passed from the anode to the cathode. The heat generated by the resistance of the solid mixture causes it to melt and at the surface of the cathode the molten aluminum oxide is reduced to aluminum. The molten aluminum is periodically withdrawn from the bottom of the cell and cast into ingots, billets, or pigs.

In the reducing environment, atmospheric nitrogen reacts with the carbon of the potliner to form cyanide within the potliner. Over the life of the cathode, the carbon lining of the pot becomes impregnated with cryolite, as well as with sodium and fluoride. In addition, the potliner may also be contaminated with heavy metals. As the cryolite is absorbed into the cathode, the lining of the pot will crack and heave. When the lining fails, the molten aluminum can come in contact with the iron pot. If this happens, the aluminum will pick up impurities from the iron. Upon failure, the potliner must be replaced. The pot is removed from service, emptied and cooled, and the spent potliner is stripped from the steel shell by mechanical means.

Spent potliner from primary aluminum reduction is hazardous waste K088. This waste was originally listed for complexes of cyanide, although Land Disposal Restriction treatment standards 40 CFR 268.40 for K088 have been established for cyanide, fluoride, heavy metals, and PAHs.

Ormet treats the spent potliner generated at the Hannibal plant in an on-site treatment unit. The treatment unit is a natural gas fired combustion melting system which vitrifies the spent potliner. The glass-like VSP fractures into a cullet or frit upon quenching. The State of Ohio currently allows Ormet to recycle the VSP. The system also generates a baghouse dust which is mostly sodium fluoride. The proposed exclusion is for the glass-like VSP only.

### D. How Did Ormet Sample and Analyze the Data in This Petition?

In April of 1994, Ormet sought an upfront exclusion for the VSP based on the results of pilot-scale treatment of the spent potliner. Ormet collected and analyzed five composite samples each of untreated spent potliner and VSP during the pilot study. All samples were analyzed for: total and TCLP metals plus antimony, beryllium, nickel, thallium, tin, vanadium, and zinc; total volatile and semivolatile organic compounds; total fluoride; total cyanide; reactivity; pH; and oil & grease. All untreated spent potliner samples and one sample of the vitrified spent potliner were also analyzed by TCLP for 10 VOCs and 67

SVOCs. Two samples of vitrified spent potliner were analyzed for dioxins and furans.

Four samples of vitrified spent potliner were collected in August 1998 after the full-scale operation was established and were analyzed for: total antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, nickel, potassium, selenium, silver, sodium, and thallium; TCLP arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver; total and TCLP VOCs and SVOCs; total fluoride; total and leachable cyanide; reactivity; pH; and oil & grease. One sample of vitrified spent potliner collected in August 1998 was analyzed for dioxins and furans.

To demonstrate stability over a range of pH possible in landfill leachate, Ormet collected an additional ten samples of VSP in June 1999 to demonstrate that the treated VSP is stable over a range of pH values.

Ormet demonstrated that the treated VSP is stable over a range of pH by using the TCLP procedure but substituting: (1) Deionized water and (2) 0.1 normal sodium hydroxide solution for the extraction fluid prescribed in the TCLP.

Eight composite samples of VSP were collected in June 1999 and analyzed for total antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver, and thallium; total SVOCs, total fluoride; total cyanide. These samples were also analyzed for the above metals plus vanadium, zinc, and fluoride by the TCLP, SW 846 Method 1311, and by the TCLP procedure in which both neutral and an alkaline extraction fluids were substituted for the extraction fluid specified in Method 1311. Samples were analyzed for TCLP cyanide using both neutral and alkaline extraction fluids, and for pH. Five of the composite samples were also analyzed for TCLP SVOCs.

To quantify the total constituent and extraction fluid concentrations, Ormet used the following SW–846 Methods: arsenic 6010, 7060; antimony 6010, 7041; barium 6010; beryllium 6010; cadmium 6010; chromium 6010; lead 6010, 7421; mercury 7471 and 7471A; nickel 6010; selenium 7740, 7741; silver 6010; thallium 7841; tin 6010; vanadium 6010; zinc 6010; VOCs 8260, 8260B; SVOCs 8270, 8270B; TCLP SVOCs 8270C; cyanide 9010; sulfides 9030; dioxins and furans 8290; pH 9045; and reactive cyanide and reactive sulfides Sections 7.3.3.2 and 7.3.4.2 of SW–846. From ''Methods for Chemical Analysis of Water and Wastes'' Ormet used methods 340.1 and 340.2 for fluoride, method 418.1 for oil and grease, and method 335.2 for leachable cyanide using TCLP procedure with deionized water.

*E. What Were the Results of Ormet's Analysis?*

Table 1 presents the maximum total and leachate concentrations for detected constituents in VSP. The values reported in the table are the maximum values detected in any one sample, with the exception of chromium. Chromium was detected at levels higher than expected during the pilot study. This was attributed to refractory materials within the pilot-scale furnace which contained relatively high concentrations of chromium. A low-chromium refractory was used in the full-scale furnace and the chromium analytical data from the pilot study were not used. For inorganic constituents, the maximum reported leachate concentrations for metals in the treated VSP were well below the health-based levels of concern used in decision-making for delisting. No organic constituents were detected except an insignificant concentration of 2,3,4,6,7,8 hexachloro-dibenzo furan found in just one sample.

EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with the petition binds the petitioner to present truthful and accurate results. Ormet submitted a signed Certification of Accuracy and Responsibility statement presented in 40 CFR 260.22(i)(12).

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

For this delisting determination, we identified plausible exposure routes (i.e., ground water, surface water, air) for hazardous constituents present in the petitioned waste. We used a fate and transport model to predict the release of hazardous constituents and to evaluate the potential impact of the petitioned waste on human health and the environment once it is disposed. We used a Windows based software tool, the Delisting Risk Assessment Software Program (DRAS), to estimate the potential releases of waste constituents and to predict the risk associated with those releases using several EPA models including EPA's Composite Model for leachate migration with Transformation Products (EPACMTP) fate and transport model for groundwater releases. For a detailed description of the DRAS program and the EPACMTP model, see 65 FR 58015, September 27, 2000 and 65 FR 75897, December 5, 2000. The DRAS program is available on the World Wide Web at *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm.* A technical support document for the DRAS program is available in the public docket.

For constituents which are not detected in the extract but are detected as a total concentration, the DRAS model requires that the detection level be entered along with the other data. For these constituents, the DRAS uses one half of the detection level to calculate risk. We believe that it is inappropriate to evaluate constituents which are not detected if an appropriate analytical method was used.

*G. What Other Factors Did EPA Consider in Evaluating This Waste?*

We also considered the applicability of groundwater monitoring data during the evaluation of delisting petitions. In this case, we determined that it would be inappropriate to request groundwater monitoring data because the waste is not currently being land disposed. Therefore, we did not request ground water monitoring data from Ormet. Potential impacts of the petitioned waste via air emission and storm water run-off are addressed in the DRAS.

*H. What Did EPA Conclude About Ormet's Analysis?*

After reviewing Ormet's petition, the EPA concludes that (1) no hazardous constituents are likely to be present above health based levels of concern in the VSP generated at Ormet's Hannibal, Ohio Plant; and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. See 40 CFR 261.21, 261.22, 261.23, and 261.24, respectively.

The total cumulative risk posed by the waste is well below the U.S. EPA Region 5 Delisting Program's target level of $1 \times 10^{-6}$. The aggregate hazard index for this waste is estimated to be 0.0139, which is also well below the target of 1.0.

*I. What Is EPA's Final Evaluation of This Delisting Petition?*

We have reviewed the sampling procedures used by Ormet and have determined that they satisfy EPA criteria for collecting representative samples of the VSP. The descriptions of the hazardous waste treatment process and the analytical data, together with the proposed verification testing requirements, provide a reasonable basis for EPA to grant the exclusion. We believe the data submitted in support of the petition show that the waste will not pose a threat when disposed of in a Subtitle D landfill. We therefore,

propose to grant Ormet an exclusion for the VSP generated at Ormet's Hannibal, Ohio Plant.

If we finalize this proposed exclusion, the Agency will no longer regulate the petitioned waste under 40 CFR parts 262 through 268 and the permitting standards of part 270.

## IV. Conditions for Exclusion

### *A. What Are the Maximum Allowable Concentrations of Hazardous Constituents in the Waste?*

Table 1 summarizes maximum allowable concentrations in an extract using the DRAS program and the point of exposure (POE) concentrations of concern in groundwater. Allowable levels are determined only for constituents which were detected in one or more samples. The allowable leachate concentrations were derived from either the health-based calculation within the DRAS program, from SWDA Maximum Contaminant Level Goals (MCLs), treatment technique, or toxicity characteristic values, whichever resulted in a lower delisting level. The only exception was arsenic.

The delisting level for arsenic at the target risk level of $1 \times 10^{-6}$ is 0.00107 mg/L in a TCLP extract which is well below the best detection limit achieved by Ormet. EPA's July 1996 *Soil Screening Guidance: User's Guide,* EPA/540/R–96/018, states that acceptable levels of contaminants in soils for the groundwater pathway can be derived from MCLs. If the POE target concentration is set at the Safe Drinking Water Act (SWDA) Maximum Contaminant Level (MCL), the maximum allowable waste leachate concentration would be 1.1 mg/L TCLP arsenic. According to EPA's January 2001 *Technical Fact Sheet: Final Rule for Arsenic in Drinking Water,* EPA 815–F–00–015, naturally occurring levels of arsenic in public drinking water systems can range from .002 to .01 mg/L. Therefore, some allowance has been exercised in setting the allowable level for arsenic at a concentration which corresponds to a cancer risk of $1 \times 10^{-4}$. This corresponds to a POE concentration of approximately one tenth of the existing MCL. Delisting levels for constituents other than arsenic will still be set at concentrations corresponding to the original target level of $1 \times 10^{-6}$.

Since the spent potliner is undergoing treatment after generation and prior to disposal, the applicable LDR treatment standards for K088 must also be met before the VSP can be land disposed. Based on the data submitted, the vitrified spent potliner does not exceed current LDR treatment standards as identified in Table 1. Ormet must comply with all future LDR treatment standards promulgated under 40 CFR 268.40 for K088.

TABLE 1.—CONSTITUENT CONCENTRATIONS AND DRAS MAXIMUM ALLOWABLE LEACHATE AND POINT OF EXPOSURE LEVELS

| Constituent | Maximum [1] observed total concentration (mg/kg) | Maximum [1] observed leachate concentration (mg/L TCLP) | | | Maximum allowable leachate concentration (mg/L TCLP) | Maximum allowable concentration based on LDRs (mg/kg or m/L TCLP) | Maximum allowable point of exposure concentration (mg/L in groundwater) |
|---|---|---|---|---|---|---|---|
| | | acidic | neutral | alkaline | | | |
| Antimony | <20 | <2 | <0.04 | <0.04 | 0.235[2] | 1.15 mg/L TCLP | 0.006[2] |
| Arsenic | 5.1 | <1 | <0.008 | <0.008 | 0.107 | 5 mg/L TCLP 26.1 mg/kg | 0.005 |
| Barium | 320 0.3 | | 0.08 | <0.02 | 63.5[2] | 21 mg/L TCLP | 2.0[2] |
| Beryllium | 15 | <0.1 | <0.005 | <0.005 | 0.474[2] | 1.2[2] mg/L TCLP | 0.004[2] |
| Cadmium | <0.5 | <0.1 | <0.005 | <0.005 | 0.171[2] | 0.11 mg/L TCLP | 0.005[2] |
| Chromium | 140 | <0.2 | <0.04 | <0.04 | 1.76[2] | 0.6 mg/L TCLP | 0.1[2] |
| Lead | 30 | <1 | <0.2 | <0.2 | 5[3] | 0.75 mg/L TCLP | 0.015[2] |
| Mercury | <0.25 | <0.005 | <0.005 | <0.005 | 0.17[2] | 0.025 mg/L TCLP | 0.002[2] |
| Nickel | 210 | 0.27 | <0.08 | <0.08 | 32.2 | 11 mg/L TCLP | 0.753 |
| Selenium | 1.8 | <1 | <0.2 | <0.2 | 0.661[2] | 5.7 mg/L TCLP | 0.05[2] |
| Silver | 12 | <0.4 | <0.02 | <0.02 | 4.38 | 0.14 mg/L TCLP | 0.187 |
| Thallium | <0.5 | <0.05 | <0.01 | <0.01 | 0.1[2] | 0.2 mg/L TCLP | 0.002[2] |
| Tin | <1 | <0.2 | NR | NR | 257 | NA | 22.5 |
| Vanadium | 74 | 0.022 | <0.02 | <0.02 | 24.1 | 1.6 mg/L TCLP | 2.63 |
| Zinc | 390 | 0.31 | <0.04 | <0.04 | 320 | 4.3 mg/L TCLP | 11.27 |
| Cyanide | 14 | NR | <0.01 | <0.01 | 4.11 | NA mg/L TCLP 590 mg/kg 30 mg/kg amen. | 0.2[2] |
| Fluoride | 26,100 | 6 | 2.6 | 2.4 | NA | NA | NA |
| Sulfide | 450 | NR | NR | NR | NA | NA | NA |
| Acenaphthene | <0.170 | NR | NR | NR | NR | 3.4 mg/kg | NA |
| Anthracene | <0.170 | NR | NR | NR | NR | 3.4 mg/kg | NA |
| Benz(a)anthracene | <0.170 | NR | NR | NR | NR | 3.4 mg/kg | NA |
| Benzo(a)pyrene | <0.170 | NR | NR | NR | NR | 3.4 mg/kg | NA |
| Benzo(b)fluoranthene | <0.170 | NR | NR | NR | NR | 6.8 mg/kg | NA |

TABLE 1.—CONSTITUENT CONCENTRATIONS AND DRAS MAXIMUM ALLOWABLE LEACHATE AND POINT OF EXPOSURE LEVELS—Continued

| Constituent | Maximum [1] observed total concentration (mg/kg) | Maximum [1] observed leachate concentration (mg/L TCLP) | | | Maximum allowable leachate concentration (mg/L TCLP) | Maximum allowable concentration based on LDRs (mg/kg or m/L TCLP) | Maximum allowable point of exposure concentration (mg/L in groundwater) |
|---|---|---|---|---|---|---|---|
| | | acidic | neutral | alkaline | | | |
| Benzo(k)fluoranthene ... | <0.170 | NR | NR | NR | NR | 6.8 mg/kg | NA |
| Benzo(g,h,i)perylene .... | <0.170 | NR | NR | NR | NR | 1.8 mg/kg | NA |
| Chrysene ..... | <0.170 | NR | NR | NR | NR | 3.4 mg/kg | NA |
| Dibenz(a,h)anthracene | <0.170 | NR | NR | NR | NR | 8.2 mg/kg | NA |
| Fluoranthene ..... | <0.170 | NR | NR | NR | NR | 3.4 mg/kg | NA |
| Indeno(1,2,3,-c,d)pyrene ..... | <0.170 | NR | NR | NR | NR | 3.4 mg/kg | NA |
| Phenanthrene ..... | <0.170 | NR | NR | NR | NR | 5.6 mg/kg | NA |
| Pyrene ..... | <0.170 | NR | NR | NR | NR | 8.2 mg/kg | NA |

[1] These levels represent the highest constituent concentration found in any sample and are not necessarily the specific levels found in any one sample.
[2] The concentration is based on the MCL or TT action level.
[3] The concentration is based on the toxicity characteristic level in 40 CFR 261.24.
NA Not applicable.
NR Analysis not run.

*B. How Frequently Must Ormet Test the Waste?*

Ormet must demonstrate on a quarterly basis that the constituents of concern in the petitioned waste do not exceed the levels of concern in Table 1 above. Ormet must collect two representative samples of the treated VSP per month and analyze the samples using: (a) the TCLP method, (b) the TCLP procedure with an extraction fluid of 0.1 Normal sodium hydroxide solution. Appropriate detection levels and quality control procedures are required.

*C. What Must Ormet Do If the Process Changes?*

If Ormet significantly changes either the manufacturing process, the treatment process, or the chemicals used in the treatment process, Ormet must manage wastes generated after the process change as hazardous waste until Ormet has received written approval from EPA. Ormet may not handle the VSP generated from the new process under this exclusion until it has demonstrated to EPA that the waste meets the levels set in section IV.A and that no new hazardous constituents listed in appendix VIII of 40 CFR part 261 have been introduced.

*D. What Data Must Ormet Submit?*

Ormet must submit an annual summary of the data obtained through monthly verification testing to U.S. EPA Region 5, Waste Management Branch (DW–8J), 77 W. Jackson Blvd., Chicago, IL 60604, by February 1 of each year for the prior calendar year. Ormet must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. Ormet must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

*E. What Happens If Ormet Fails To Meet the Conditions of the Exclusion?*

If Ormet violates the terms and conditions established in the exclusion, the Agency may start procedures to withdraw the exclusion.

If the monthly testing of the waste does not meet the delisting levels described in section IV.A above, Ormet must notify the Agency within ten days. The exclusion will be suspended and the waste managed as hazardous until Ormet has received written approval for the exclusion from the Agency. Ormet may provide sampling results that support the continuation of the delisting exclusion.

The EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978) *et seq.* (APA), to reopen a delisting decision if we receive new information indicating that the conditions of this exclusion have been violated, or otherwise not met.

**V. Regulatory Impact**

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

The proposal to grant an exclusion, if promulgated, would reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

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

**VI. Regulatory Flexibility Act**

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

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

**VII. Paperwork Reduction Act**

Information collection and record-keeping requirements associated with this proposed rule have been approved by the 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.

**VIII. Unfunded Mandates Reform Act**

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, 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, EPA 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.

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

**IX. Executive Order 13045**

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 proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

**X. Executive Order 13175**

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The effect of this rule would be limited to one facility. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where EPA does not use available and potentially applicable voluntary consensus standards, the Act requires the Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

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

**XII. Executive Order 13132—Federalism**

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 implications. 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.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA

specifically solicits comment on this proposed rule from State and local officials.

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

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

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

Dated: August 1, 2001.

**Robert Springer,**

*Director, Waste, Pesticides and Toxics 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, and 6938.

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

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

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

| Facility | Address and waste description |
|---|---|
| * * * | * * * * |
| Ormet Primary Aluminum Corporation.—Hannibal, Ohio .. | Vitrified spent potliner (VSP), K088, that is generated by Ormet Primary Aluminum Corporation in Hannibal, Ohio at a maximum annual rate of 8,500 cubic yards per year and disposed of in a Subtitle D landfill, after (insert publication date of the final rule).<br>1. *Delisting Levels:* (A) The constituent concentrations measured in any of the extracts specified in Paragraph (2) may not exceed the following levels (mg/L): Antimony—0.235; Arsenic—0.107; Barium—63.5; Beryllium—0.474; Cadmium—0.171; Chromium (total)—1.76; Lead—5; Mercury—0.17; Nickel—32.2; Selenium—0.661; Silver—4.38; Thallium—0.1; Tin—257; Vanadium—24.1; Zinc—320; Cyanide—4.11. (B) LDR treatment standards for K088 must also be met before the VSP can be land disposed. Ormet must comply with any future LDR treatment standards promulgated under 40 CFR 268.40 for K088.<br>2. *Verification Testing:* (A) On a quarterly basis, Ormet must analyze two samples of the waste using (a) the TCLP method, and (b) the TCLP procedure with an extraction fluid of 0.1 Normal sodium hydroxide solution. The constituent concentrations measured must be less than the delisting levels established in Paragraph (1). Ormet must also comply with LDR treatment standards in accordance with 40 CFR 268.40. (B) If the quarterly testing of the waste does not meet the delisting levels set forth in paragraph (1), Ormet must notify the Agency in writing in accordance with Paragraph (5). The exclusion will be suspended and the waste managed as hazardous until Ormet has received written approval for the exclusion from the Agency. Ormet may provide sampling results that support the continuation of the delisting exclusion.<br>3. *Changes in Operating Conditions:* If Ormet significantly changes the manufacturing process or chemicals used in the manufacturing process or significantly changes the treatment process or the chemicals used in the treatment process, Ormet must notify the EPA of the changes in writing. Ormet must handle wastes generated after the process change as hazardous until Ormet has demonstrated that the wastes continue to meet the delisting levels set forth in Paragraph (1) and that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced and Ormet has received written approval from EPA.<br>4. *Data Submittals:* Ormet must submit the data obtained through monthly verification testing or as required by other conditions of this rule to U.S. EPA Region 5, Waste Management Branch (DW–8J), 77 W. Jackson Blvd., Chicago, IL 60604 by February 1 of each calendar year for the prior calendar year. Ormet must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. Ormet must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).<br>5. *Reopener Language*—(a) If, anytime after disposal of the delisted waste, Ormet possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) indicating that any constituent identified in Paragraph (1) is at a level in the leachate higher than the delisting level established in Paragraph (1), or is at a level in the groundwater higher than the point of exposure groundwater levels referenced by the model, then Ormet must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data.<br>(b) Based on the information described in paragraph (5)(a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency 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. |

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

| Facility | Address and waste description |
|---|---|
| | (c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify Ormet in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Ormet with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. Ormet shall have 30 days from the date of the Regional Administrator's notice to present the information.<br>(d) If after 30 days Ormet presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. |
| * * * | * * * * |

[FR Doc. 01–21045 Filed 8–20–01; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

**[FRL–7037–1]**

### South Carolina: Final Authorization of State Hazardous Waste Management Program Revisions

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

**ACTION:** Proposed rule.

**SUMMARY:** South Carolina has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to South Carolina. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

**DATES:** Send your written comments by September 20, 2001.

**ADDRESSES:** Send written comments to Narindar Kumar, Chief RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW Atlanta, GA, 30303–3104; (404) 562–8440. You can examine copies of the materials submitted by South Carolina during normal business hours at the following locations: EPA Region IV Library, Atlanta Federal Center, Library, 61 Forsyth Street, SW, Atlanta, Georgia 30303; phone number:(404) 347–4216, or the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, phone number: (803)896–4174.

**FOR FURTHER INFORMATION CONTACT:** Narindar Kumar, Chief RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW Atlanta, GA, 30303–3104; (404) 562–8440.

**SUPPLEMENTARY INFORMATION:** For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: June 12, 2001.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region IV.*

[FR Doc. 01–20787 Filed 8–20–01; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[FRL–7034–8]**

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the V&M/Albaladejo Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region II is issuing a notice of intent to delete the V&M/Albaladejo Superfund Site (Site), located in the Almirante Norte Ward of the municipality of Vega Baja, Puerto Rico, from the National Priorities List (NPL) and requests public comment on this action. The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. The EPA and the Commonwealth of Puerto Rico, through the Puerto Rico Environmental Quality Board, have determined that all appropriate response actions under CERCLA have been completed and that the Site poses no significant threat to public health or the environment. In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final notice of deletion of the V&M/Albaladejo Superfund Site without prior notice of this action because we view this as a noncontroversial revision and anticipate no significant adverse comment. We have explained our reasons for this deletion in the preamble