For the reasons set out in the preamble, 22 CFR part 95 is added to subchapter J as follows:

## PART 95—IMPLEMENTATION OF TORTURE CONVENTION IN EXTRADITION CASES

Sec.
95.1 Definitions.
95.2 Application.
95.3 Procedures.
95.4 Review and construction.

**Authority:** 18 U.S.C. 3181 *et seq.*; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### § 95.1. Definitions.

(a) *Convention* means the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on December 10, 1984, entered into force for the United States on November 10, 1994. Definitions provided below in paragraphs (b) and (c) of this section reflect the language of the Convention and understandings set forth in the United States instrument of ratification to the Convention.

(b) *Torture* means:

(1) Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

(2) In order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulting from:

(i) The intentional infliction or threatened infliction of severe physical pain or suffering;

(ii) The administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(iii) The threat of imminent death; or

(iv) The threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

(3) Noncompliance with applicable legal procedural standards does not per se constitute torture.

(4) This definition of torture applies only to acts directed against persons in the offender's custody or physical control.

(5) The term ''acquiescence'' as used in this definition requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity.

(6) The term ''lawful sanctions'' as used in this definition includes judicially imposed sanctions and other enforcement actions authorized by law, provided that such sanctions or actions were not adopted in order to defeat the object and purpose of the Convention to prohibit torture.

(7) Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment.

(c) *Where there are substantial grounds for believing that [a fugitive] would be in danger of being subjected to torture* means if it is more likely than not that the fugitive would be tortured.

(d) *Secretary* means Secretary of State and includes, for purposes of this rule, the Deputy Secretary of State, by delegation.

### § 95.2 Application.

(a) Article 3 of the Convention imposes on the parties certain obligations with respect to extradition. That Article provides as follows:

(1) No State party shall expel, return (''refouler'') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

(2) For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

(b) Pursuant to sections 3184 and 3186 of Title 18 of the United States Criminal Code, the Secretary is the U.S. official responsible for determining whether to surrender a fugitive to a foreign country by means of extradition. In order to implement the obligation assumed by the United States pursuant to Article 3 of the Convention, the Department considers the question of whether a person facing extradition from the U.S. ''is more likely than not'' to be tortured in the State requesting extradition when appropriate in making this determination.

### § 95.3. Procedures.

(a) Decisions on extradition are presented to the Secretary only after a fugitive has been found extraditable by a United States judicial officer. In each case where allegations relating to torture are made or the issue is otherwise brought to the Department's attention, appropriate policy and legal offices review and analyze information relevant to the case in preparing a recommendation to the Secretary as to whether or not to sign the surrender warrant.

(b) Based on the resulting analysis of relevant information, the Secretary may decide to surrender the fugitive to the requesting State, to deny surrender of the fugitive, or to surrender the fugitive subject to conditions.

### § 95.4 Review and construction.

Decisions of the Secretary concerning surrender of fugitives for extradition are matters of executive discretion not subject to judicial review. Furthermore, pursuant to section 2242(d) of the Foreign Affairs Reform and Restructuring Act of 1998, P.L. 105–277, notwithstanding any other provision of law, no court shall have jurisdiction to review these regulations, and nothing in section 2242 shall be construed as providing any court jurisdiction to consider or review claims raised under the Convention or section 2242, or any other determination made with respect to the application of the policy set forth in section 2242(a), except as part of the review of a final order of removal pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252), which is not applicable to extradition proceedings.

Dated: February 18, 1999.

**Strobe Talbott,**

*Deputy Secretary of State.*

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 261

**[SW–FRL–6305–2]**

## Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

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

**ACTION:** Final rule.

**SUMMARY:** The EPA today is granting a petition submitted by McDonnell Douglas Corporation (McDonnell Douglas) of Tulsa, Oklahoma, to exclude from hazardous waste control (or delist) certain solid wastes generated at its U.S. Air Force Plant No. 3 facility. This action responds to McDonnell Douglas' petition to delist these wastes under those regulations that allow any person to petition the Administrator to modify or revoke any provision of certain hazardous waste regulations of the Code of Federal Regulations, and specifically provide generators the opportunity to petition the Administrator to exclude a waste on a ''generator-specific'' basis from the hazardous waste lists. After careful analysis, EPA has concluded that the petitioned waste is not hazardous waste when disposed of in Subtitle D landfills. This exclusion applies only to stabilized wastewater treatment sludge. The sludges were previously generated from the chemical conversion coating of aluminum operations at McDonnell Douglas' Tulsa, Oklahoma facility. The sludges were disposed of in surface impoundments which were then closed as a single Resource Conservation and Recovery Act (RCRA) landfill. The facility plans to excavate the waste from the city airport site and dispose of it offsite in a Subtitle D landfill. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under RCRA when disposed of in Subtitle D landfills.

**EFFECTIVE DATE:** February 26, 1999.

**ADDRESSES:** The public docket for this final rule is located at the Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Freedom of Information Act Reading Room of the 7th floor from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is ''F–98–OKDEL–AIRFORCEPLANT3.'' 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 concerning this notice, contact David Vogler (6PD–O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, 75202–2733, (214) 665–7428.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Authority*

Under 40 CFR 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of 40 CFR; and § 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator-specific'' basis from the hazardous waste lists. Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, 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.

### *B. History of This Rulemaking*

McDonnell Douglas petitioned EPA to exclude from hazardous waste control its stabilized waste resulting from the treatment of waste waters originating from its chemical conversion coating of aluminum operations at the Tulsa, Oklahoma facility and disposed of in surface impoundments which have been closed as a single RCRA landfill. After evaluating the petition, EPA proposed, on July 14, 1998, to exclude McDonnell Douglas' waste from the lists of hazardous wastes under §§ 261.31 and 261.32. *See* 63 FR 37797. This rulemaking addresses public comments received on the proposal and finalizes the decision to grant McDonnell Douglas' petition.

## II. Disposition of Petition

McDonnell Douglas Corporation, Tulsa, Oklahoma

### *A. Proposed Exclusion*

McDonnell Douglas petitioned the EPA to exclude from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32, its wastewater treatment sludges from its chemical conversion coating of aluminum operations. These sludges were disposed of in surface impoundments and then later stabilized as part of the process of closing the impoundments as a single RCRA landfill. McDonnell Douglas Corporation, located in Tulsa, Oklahoma, petitioned for the exclusion for a maximum volume of 85,000 cubic yards of stabilized waste, described in its petition as EPA Hazardous Waste No. F019 with minor amounts of F002, F003, and F005. Approximately 5000 cubic yards of the total waste volume will consist of about 2500 cubic yards of unstabilized waste (presently located in the bottom portion of the northwest section of the closed surface impoundments) mixed with about 2500 cubic yards of materials to stabilize the waste. This exclusion only applies to the wastes as described in the petition.

Specifically, in its petition, McDonnell Douglas petitioned the Agency to exclude its waste presently listed as EPA Hazardous Waste No. F019—''Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.'' The petitioned wastes are believed to also have very small amounts of wastes presently classified as F002, F003, and F005. The listed constituents of concern for these waste codes are listed in Table 1. *See* 40 CFR part 261, Appendix VII.

TABLE 1.—HAZARDOUS WASTE CODES ASSOCIATED WITH WASTEWATER STREAMS

| Waste code | Basis for characteristics/listing |
|---|---|
| F019 | Hexavalent Chromium. Cyanide (complexed). |
| F002 | Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane. |
| F003 | Xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, methanol. |
| F005 | Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, 2-nitropropane. |

McDonnell Douglas petitioned the EPA to exclude this waste because it does not believe that the stabilized waste disposed of in a single RCRA landfill meets the criteria for which it was listed. McDonnell Douglas also believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by RCRA § 3001(f)(1).

In support of its petition, McDonnell Douglas submitted: (1) descriptions of its wastewater treatment processes and the activities associated with petitioned wastes; (2) results of the total constituent list for 40 CFR 264 Appendix IX volatiles, semivolatiles, metals, pesticides, herbicides, polychlorinated biphenyls, furans, and dioxins; (3) results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for identified constituents; (4) results for total sulfide; (5) results for total cyanide; (6) results for pH; (7) results of the Multiple Extraction Procedure (MEP) for acidic, neutral, and basic extractions; (8) results of ground water monitoring; and (9) results of surface impoundment waste analysis for constituents of concern.

*B. Summary of Responses to Public Comments*

The EPA received public comments on the proposed notice published on July 14, 1998, from the Environmental Defense Fund (EDF), Earth Concerns of Oklahoma (EOC), and the Oklahoma Chapter of the Sierra Club (OCSC) as joint commenters.

Applicability of the Land Disposal Restriction (LDR) Requirements

*Comment:* The EDF, EOC, and OCSC (commenters) assert that ''McDonnell Douglas seeks authorization to excavate the 85,000 cubic yards of landfilled waste, stabilizing with fly ash or cement kiln dust the previously untreated waste, and disposing of the treated waste in a nonhazardous waste lanfill. However, it is well established this act of excavation constitutes waste generation, and thereby triggers all applicable hazardous waste requirements including treatment prior to land disposal.''

*Response:* The EPA disagrees with the commenters suggestion that the petitioned waste once excavated would be subject to land disposal restrictions and associated treatment standards. According to EPA records and documents submitted by the facility, the petitioned waste was last land disposed on or before July of 1988, prior to the effective date of an applicable land disposal prohibition. Because the waste will be delisted before being excavated from the landfill (i.e., re-generated) there will be no hazardous waste to which a land disposal prohibition could attach once the waste is excavated, and therefore, the petitioned waste will not be subject to LDRs and does not have to meet the Land Disposal Restrictions (LDRs) treatment standards before being land disposed. *See* 63 FR 28617–8, May 26, 1998.

The EPA evaluated the waste and the low health-based risk indicated that the waste did not need to be handled as a hazardous waste. The waste will still be considered a solid waste and managed as such under applicable state regulations.

*Comment:* Regarding the untreated waste, the commenters contend that ''EPA never addressed the application of treatment standards to organic constituents nor did EPA evaluate whether the organic contaminants in the sludge are legitimately treated using fly ash, much less utilize the LDR variance process as contemplated under existing Agency policy.''

*Response:* The EPA did not address the application of LDR treatment standards to the untreated waste because it will be stabilized with fly ash or cement kiln dust prior to excavation. Consolidation and in situ treatment (or stabilization) of hazardous waste within an area of contamination do not create a new point of hazardous waste generation triggering land disposal restrictions. *See* October 14, 1998 memorandum, ''Management of Remediation Waste Under RCRA,'' Publication No. EP530–F–98–026, and sources cited therein. *See* 63 FR 28617 and 28620, May 26, 1998. Assuming the newly treated waste meets the delisting levels and all other delisting conditions prior to the point of waste regeneration, the newly treated waste will be delisted. Therefore, there will be no hazardous waste to which a land disposal prohibition can attach and land disposal treatment standards would not apply and a treatment variance is not necessary. The EPA determined that analytical results from twenty samples representing the stabilized waste indicated that the stabilization process had worked to reduce the concentrations of hazardous constituents to below levels of health-based concern. *See* 63 FR 37802, July 14, 1998.

Trichloroethylene, a constituent of concern to the commenters was not detected in the leachate analysis of the previously stabilized sludge. Three other organic constituents of concern to the commenters were detected sporadically in the twenty-one samples analyzed for leachate concentrations. The leachate concentration values that were detected are as follows: ethylbenzene (0.004, 0.004, 0.003, 0.002 mg/l), toluene (0.014, 0.033, 0.006, 0.019, 0.035, 0.015, 0.009 mg/l), and xylenes (0.017, 0.019, 0.012,0.007, 0.011 mg/l). However, these values are below drinking water Maximum Concentration Levels (MCLs) even before the 95 percent Upper Confidence Limit (UCL) was calculated or a Dilution Attenuation Factor (DAF) was applied indicating that the values are well below health-based concerns. It should be noted that these values are also very minimal concentrations.

Since analysis of the portion of the waste that had been stabilized using flyash indicated that the process had significantly reduced the concentrations and mobility of the hazardous constituents, it was considered demonstrated that the unstabilized sludges in the surface impoundments which had been closed in place as a landfill could also achieve similar levels. If delisting levels cannot be attained and the waste is placed in another land disposal unit, then the delisting states that the waste would be considered a hazardous waste and must be managed as such.

*Comment:* The commenters contend that the use of evaporation and/or dilution techniques to achieve compliance with land disposal treatment standards are not authorized under RCRA or EPA regulations.

*Response:* As stated earlier, land disposal restrictions do not apply in this situation and therefore, land disposal treatment standards do not apply also. However, EPA agrees with commenters that the organic contaminants do evaporate and some dilution does occur during the stabilization process for which the RCRA unit was authorized under a RCRA closure plan. In cases where wastes are left in-place, it is commonly authorized to stabilize sludges in this manner. Under a RCRA closure plan, which is subject to approval by the Oklahoma Department of Environmental Quality, protection of human health and the environment would be a major consideration. Also, under the rules of the Occupational Safety and Health Authority (OSHA) and under a RCRA closure plan, McDonnell Douglas is subject to meet the worker safety requirements.

In considering this particular delisting case, only three samples of five located in one small area show concentrations of total Trichloroethylene (<0.005,

<0.005, 110, 166, and 1090 mg/kg), a constituent of concern to the commenters. The corresponding TCLP leachate values are <0.1, ,0.1, 0.8, 0.9, and 17.3 mg/l. Outside of this area, Trichloroethylene was not detected. Considering the small amount of waste in the small area and the short duration of time for stabilization within the unit of the waste along with other site conditions, the qualitative risk to the public appears to be minimal.

After consideration of the concerns of the commenters, EPA is adding two new conditions to the conditional delisting of the unstabilized sludges found in the bottom of the northwest section of the surface impoundments which have been closed as a landfill. McDonnell Douglas Corporation will be required to control volatile emissions from the stabilization process by collection of the volatile chemicals as they are emitted from the waste but before release to the ambient air. The facility will also be required to use adequate dust control measures.

McDonnell Douglas Corporation shall control volatile emissions from the stabilization process by collection of the volatile chemicals as they are emitted from the waste but before release to the ambient air and the facility shall use dust control measures. These two controls must be adequate to protect human health and the environment.

These two additional conditions will prevent cross-media transfer and provide more definitive protection to the public and onsite workers. These two conditions would normally be considered under a new RCRA closure (by removal) plan and under OSHA regulations but are also being addressed herein.

The delisting of the approximately 2500 cubic yards of unstabilized sludge in this area is limited to 5000 total cubic yards of stabilized waste after the materials used in the stabilization process (about 2500 cubic yards) are added. Therefore, the maximum allowable 1-to-1 dilution is not considered a major factor. The materials used to stabilize the waste raises the pH of the combined materials to a basic level which lowers the leachate concentrations of metals as confirmed by the MEP tests. The mixing of the materials in the stabilization process volatilizes the organic constituents which are then collected before entering the ambient air. A 1-to-1 dilution would not reduce the present detected TCLP concentrations (0.8, 0.9, and 17.3 mg/l TCLP) to below the delisting limit for the Trichloroethylene which is calculated at a value of .280 mg/l TCLP. This reduction must be accomplished by this alternate treatment method.

The commenters state in a footnote ''EPA's proposed delisting limits for the organic contaminants will not ensure legitimate and adequate treatment because the delisting limits substantially exceed Universal Treatment Standard (UTS) and/or the limits are expressed as leachate values instead of total concentrations.'' In order to better demonstrate that legitimate treatment has occurred in the case of organic contaminants, EPA is adding a requirement that the organic constituents of concern in the unstabilized sludge must be treated to below the total concentration of the UTS value as well as the calculated health-based leachate concentration value. Leachate values that are higher than the total concentration are logically eliminated.

(1) *Delisting Levels:* All leachable concentrations for the constituents in (1)(A) and (1)(B) in the approximately 5,000 cubic yards of combined stabilization materials and excavated sludges from the bottom portion of the northwest lagoon of the surface impoundments which are closed as a landfill must not exceed the following levels (ppm) after the stabilization process is completed in accordance with Condition (3). Constituents must be measured in the waste leachate by the method specified in 40 CFR 261.24. Cyanide extractions must be conducted using distilled water in the place of the leaching media per 40 CFR 261.24. Constituents in (1)(C) must be measured as the total concentrations in the waste(ppm).

(A) Inorganic Constituents (leachate) Antimony—0.336; Cadmium—0.280; Chromium (total)—5.0; Lead—0.84; Cyanide—11.2;

(B) Organic Constituents (leachate) Benzene—0.28; trans-1,2-Dichloroethene—5.6; Tetrachloroethylene—0.280; Trichloroethylene—0.280

(C) Organic Constituents (total analysis) Benzene—10.; Ethylbenzene—10.; Toluene—30; Xylenes—30.; trans-1,2-Dichloroethene—30.; Tetrachloroethylene—6.0; Trichloroethylene—6.0

If delisting limits are not met, then the waste cannot be delisted and cannot be transported to a Subtitle D landfill.

*Comment:* Commenters assert that the delisting levels for the untreated sludge are less stringent than the corresponding UTS for cadmium, chromium, and lead.

*Response:* As stated previously, the land disposal restrictions do not apply to the waste that is subject to the delisting and therefore, the UTS are not required to be met. The delisting levels were calculated using the EPACML model and health-based concentrations for drinking water. The resulting calculated health-based concentrations are above the UTS standards.

However, in evaluating the data, it should be noted that the actual concentrations of these three constituents in the petitioned waste are below the UTS concentrations when the 95 percent UCL is calculated (see next response for an explanation of the 95 percent UCL). Furthermore, since the stabilization reduced the actual concentrations of the three constituents in the 80,000 cubic yards of stabilized waste to below the 95 percent UCL of the UTS, it would be reasonably expected that similar results would be obtained after the 2500 cubic yards of unstabilized sludges undergoes the stabilization process and that each sample would yield concentrations below the UTS values. In any case, the calculated health-based concentrations must be met before the petitioned waste is excluded from Subtitle C management.

*Comment:* The commenters indicate a concern that several samples of the stabilized sludge leach levels ''sometimes fails to achieve the UTS for cadmium.'' They indicate that ''these exceedances are relevant because the treatment standards are established and enforced through grab sampling, thus every sample must conform to the requisite treatment standards.''

*Response:* In delisting, samples are often composited in order to establish the mean concentration of the entire waste stream or waste volume to be disposed of in the landfill. This value is more representative of the waste. The highest concentration value identified in a group of samples is generally used as a screening level. If the waste does not pass the initial screening evaluation and the sample size is large enough, then the 95 percent UCL of the mean concentration is calculated for all samples within the sample population. This concentration is used as a representative value for evaluation purposes beyond the initial screening. One grab sample usually does not represent a waste stream or waste volume (depending on sample size and homogeneity). *See* USEPA Petitions to Delist Hazardous Wastes A Guidance Manual, Second Edition, March 1993; USEPA RCRA Sampling Procedures Handbook, August 1989; and USEPA SW–846, Test Methods for Evaluating Solid Waste, Volume II.

As shown in the proposed exclusion (63 FR 37803, July 14, 1998), the cadmium leachate concentration value for the stabilized waste for the 95 percent UCL of the mean concentration value is calculated at 0.0236 mg/l which yielded a compliance point concentration of 0.00042 mg/l which is well below the health-based level of 0.005 mg/l for cadmium used in the delisting decision making. It should also be noted that the 95% UCL

concentration value of 0.0236 mg/l TCLP is also below the UTS concentration level for cadmium of 0.11 mg/l TCLP.

The EPA is also concerned about the presence of wastes which are not stabilized as indicated by either individual or composited samples. Instead of allowing the approximately 2500 cubic yards of unstabilized waste identified by sampling to be simply mixed in with the 80,000 cubic yards of stabilized sludges, EPA calculated health-based delisting levels for the constituents of concern. This was done to insure that the unstabilized waste with elevated concentrations would be stabilized to the calculated delisting limits. These delisting limits are established based on health considerations and are relatively low concentration levels.

If delisting levels cannot be attained and the waste is to placed in another land disposal unit, McDonnell Douglas is required to manage the unstabilized waste as hazardous waste in accordance with to Subtitle C requirements and the required technology standards.

The Delisting Limits for the Untreated Sludge

*Comment:* The commenters requested that EPA increase the active life of the landfill as used in the modified EPA Composite Landfill Model (EPACML) from the 20 years for use in delisting (*See* 56 FR 32998, July 18, 1991) to a 30 year period as used in the promulgation of the petroleum refinery listing determination *See* 63 FR 42139, August 6, 1998.

The commenters were concerned that the increased active life would increase the waste volume and thus the DAF which would then change the calculated delisting levels to more conservative values which might cause some of the delisting values for the unstabilized sludge to be unprotective. Similarly, the evaluation of the stabilized sludge could also prove to be incorrect.

*Response:* The published EPACML values for DAFs as compared to waste volumes are based on a facility generating the charted waste volume on a per year basis for 20 years. For example, a 1000 cubic yard volume in the table represents 20,000 cubic yards of total waste disposed. Since this is a one-time delisting, the waste volume is not generated on a yearly basis for 20 years and is thus finite. Therefore, in McDonnell Douglas' case, the waste volume must be divided by 20 to yield a DAF that corresponds to the actual total volume. That is to say, to use the table, 85,000 cubic yards is the same volume as 4,250 cubic yards per year for 20 years. *See* 56 FR 33000, July 18, 1991.

If the 30 year landfill life was applied, the modified EPACML model would be rerun increasing waste volumes and thus DAFs. The DAFs would not be changed in a straight line relationship as suggested by the commenters. *See* 56 FR 32999, July 18, 1991.

However, in this specific case, if the change to 30 years was made, the increased waste volumes would be divided by 30 instead of 20 for a one-time delisting thus yield similar DAF values and similar delisting limits to those presently used.

The conclusion is that a change to a 30 year active life would not make a significant difference in the DAF used in the calculations for the waste delisted in this instance and the petitioned waste would still qualify for delisting.

Delisting of the Stabilized Sludge

*Comment:* The commenters contend that EPA should impose cadmium delisting limits and verification testing requirements for the previously stabilized sludge in order to ensure the cadmium is treated sufficiently to achieve the desired leach values consistent with the reduced DAFs based upon a minimum 30 year landfill life.

*Response:* As previously explained, the application of the 30 year landfill active life would not make a significant difference for a one-time delisting since the waste volume is finite. Therefore, the second sample of cadmium would remain below heath-based delisting levels for a calculated theoretical down-gradient receptor well using the modified EPACML. The appropriate evaluation of cadmium as a constituent of concern has been previously addressed in this notice.

No verification testing is being required for the previously stabilized waste. It was determined that the facility presented sufficient amounts of information to demonstrate that the previously stabilized waste met the delisting criteria. Verification testing is being required to demonstrate that delisting limits are met for the approximately 5000 cubic yards of newly stabilized waste which is processed by mixing the 2500 cubic yards of presently unstabilized waste with stabilization materials,

*Comment:* Furthermore, the commenters were concerned about ''EPA's reliance on onsite groundwater monitoring data to refute the modeling prediction.''

*Response:* The EPA did not use ground water monitoring data to refute the modeling predications. As previously shown, the modeling predictions stand on their own merit and fully support the granting of the petition.

Ground water monitoring data was evaluated as an additional source of information. The ground water data indicated that constituents of concern had not been detected at nearby detection monitoring wells at concentrations of regulatory concern, therefore this information was considered to support the petition. Conversely, if ground water monitoring data had shown concentrations above levels of concern had been detected, this information would have supported denial of the petition.

Typographical Error Correction

The EPA is correcting the compliance point concentration value for nickel found in Table 4B. of the proposed exclusion (63 FR 37803, July 14, 1998) which should be 0.005 mg/l and not 10.005 mg/l as printed.

In the Delisting Levels section, EPA is correcting the Hexavalent Chromium constituent to read ''Chromium (total)'' to be consistent with the MCL and the regulatory TCLP usage of total chromium instead of hexavalent chromium. Total chromium leachate values were used to calculate the delisting levels and should be reflected as total chromium leachate in the delisting levels sections instead of hexavalent chromium leachate (63 FR 37804 and 37807, July 14, 1998).

(A) Inorganic Constituents (leachate) Antimony-0.336; Cadmium-0.280; Chromium (total)-5.0; Lead-0.84; Cyanide-11.2;

*C. Final Agency Decision*

For reasons stated in both the proposal and this notice, EPA believes that McDonnell Douglas' petitioned waste should be excluded from hazardous waste control. The EPA, therefore, is granting a final one-time exclusion to McDonnell Douglas Corporation, located in Tulsa, Oklahoma, for a maximum of 85,000 cubic yards of stabilized waste, described in its petition as EPA Hazardous Waste No. F019 with minor amounts of F002, F003, and F005. A conditional one-time exclusion is granted for approximately 5000 cubic yards of the total waste volume. This 5000 cubic yards of waste consists of 2500 cubic yards of unstabilized waste located in the bottom portion of the northwest section of the surface impoundments which were closed as a single RCRA landfill plus the stabilization materials to be added. This waste is required to undergo stabilization and verification testing before being considered as excluded

from Subtitle C regulation. Requirements for control of emissions from volatilization or airborne dust during the stabilization process have been included in this one-time exclusion. This exclusion only applies to the wastes as described in the petition.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of the delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation. *See* 40 CFR part 260, Appendix I. McDonnell Douglas plans to dispose of the excluded waste in one or more Subtitle D landfills.

**III. Limited Effect of Federal Exclusion**

The final exclusion being granted today is 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 State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact the State regulatory authority to determine the current status of their wastes under the State law.

Furthermore, some States (e.g., Louisiana, Georgia, and Illinois) are authorized to administer a delisting program in lieu of the Federal program, (i.e., to make their own delisting decisions). Therefore, this exclusion does not apply in those authorized States. If the petitioned waste will be transported to and managed in any State with delisting authorization. McDonnell Douglas must obtain delisting authorization from that State before the waste can be managed as non-hazardous in the State.

**IV. Effective Date**

This rule is effective February 26, 1999. 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 reduces, rather than increases, the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

**V. Regulatory Impact**

Under Executive Order (E.O.) 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions. The effect of this rule is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. The reduction is achieved by excluding waste from EPA's lists of hazardous wastes, thereby enabling a facility to treat its waste as non-hazardous. As discussed in EPA's response to public comments, this rule is unlikely to have an adverse annual effect on the economy of $100 million or more. Therefore, this rule does not represent a significant regulatory action under the Executive Order, and no assessment of costs and benefits is necessary. The Office of Management and Budget (OMB) has exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

**VI. Regulatory Flexibility Act**

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

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

**VII. Paperwork Reduction Act**

Information collection and recordkeeping requirements associated with this final rule have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

**VIII. Unfunded Mandates Reform Act**

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before 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. 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, today's 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. 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 in the **Federal Register**.

### X. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

The E.O. 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 final rule is not subject to E.O. 13045 because this is not a n economically significant regulatory action as defined by E.O. 12866.

### XI. Executive Order 12875

Under E.O. 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 OMB 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, E.O. 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 E.O. 12875 do not apply to this rule.

### XII. Executive Order 13084

Under E.O. 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 OMB, 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, representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

### XIII. National Technology Transfer and Advancement Act

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

### Lists of Subjects in 40 CFR Part 261

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

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

Dated: February 23, 1999.

**William L. Luthans,**

*Acting Director, Multimedia Planning and Permitting Division.*

For the reasons set out in the preamble, 40 CFR part 261 is 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 1 of Appendix IX to Part 261 add the following waste stream in alphabetical order by facility to read as follows:

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

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

| Facility | Address | Waste description |
|---|---|---|
| * | * | * * * * * |
| McDonnell Douglas Corporation ..... | Tulsa, Oklahoma ... | Stabilized wastewater treatment sludges from surface impoundments previously closed as a landfill (at a maximum generation of 85,000 cubic yards on a one-time basis). EPA Hazardous Waste No. F019, F002, F003, and F005 generated at U.S. Air Force Plant No. 3, Tulsa, Oklahoma and is disposed of in Subtitle D landfills after February 26, 1999. |

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

| Facility | Address | Waste description |
|---|---|---|
| | | McDonnell Douglas must implement a testing program that meets the following conditions for the exclusion to be valid:<br>(1) *Delisting Levels:* All leachable concentrations for the constituents in Conditions (1)(A) and (1)(B) in the approximately 5,000 cubic yards of combined stabilization materials and excavated sludges from the bottom portion of the northwest lagoon of the surface impoundments which are closed as a landfill must not exceed the following levels (ppm) after the stabilization process is completed in accordance with Condition (3). Constituents must be measured in the waste leachate by the method specified in 40 CFR 261.24. Cyanide extractions must be conducted using distilled water in the place of the leaching media per 40 CFR 261.24. Constituents in Condition (1)(C) must be measured as the total concentrations in the waste(ppm).<br>(A) Inorganic Constituents (leachate)<br>Antimony-0.336; Cadmium-0.280; Chromium (total)-5.0; Lead-0.84; Cyanide-11.2;<br>(B) Organic Constituents (leachate)<br>Benzene-0.28; trans-1,2-Dichloroethene-5.6; Tetrachloroethylene-0.280; Trichloroethylene-0.280<br>(C) Organic Constituents (total analysis).<br>Benzene-10.; Ethylbenzene-10.; Toluene-30.; Xylenes-30.; trans-1,2-Dichloroethene-30.; Tetrachloroethylene-6.0; Trichloroethylene-6.0.<br>McDonnell Douglas Corporation shall control volatile emissions from the stabilization process by collection of the volatile chemicals as they are emitted from the waste but before release to the ambient air. and the facility shall use dust control measures. These two controls must be adequate to protect human health and the environment.<br>The approximately 80,000 cubic yards of previously stabilized waste in the upper northwest lagoon, entire northeast lagoon, and entire south lagoon of the surface impoundments which were closed as a landfill requires no verification testing.<br>(2) *Waste Holding and Handling:* McDonnell Douglas must store as hazardous all stabilized waste from the bottom portion of the northwest lagoon area of the closed landfill as generated until verification testing as specified in Condition (3), is completed and valid analyses demonstrate that Condition (1) is satisfied. If the levels of constituents measured in the samples of the stabilized waste do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in a Subtitle D landfill in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed any of the delisting levels set in Condition (1), the waste generated during the time period corresponding to this sample must be restabilized until delisting levels are met or managed and disposed of in accordance with Subtitle C of RCRA.<br>(3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies. McDonnell Douglas must stabilize the previously unstabilized waste from the bottom portion of the northwest lagoon of the surface impoundment (which was closed as a landfill) using fly ash, kiln dust or similar accepted materials in batches of 500 cubic yards or less. McDonnell Douglas must analyze one composite sample from each batch of 500 cubic yards or less. A minimum of four grab samples must be taken from each waste pile (or other designated holding area) of stabilized waste generated from each batch run. Each composited batch sample must be analyzed, prior to disposal of the waste in the batch represented by that sample, for constituents listed in Condition (1). There are no verification testing requirements for the stabilized wastes in the upper portions of the northwest lagoon, the entire northeast lagoon, and the entire south lagoon of the surface impoundments which were closed as a landfill.<br>(4) *Changes in Operating Conditions:* If McDonnell Douglas significantly changes the stabilization process established under Condition (3) (e.g., use of new stabilization agents), McDonnell Douglas must notify the Agency in writing. After written approval by EPA, McDonnell Douglas may handle the wastes generated as non-hazardous, if the wastes meet the delisting levels set in Condition (1). |

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

| Facility | Address | Waste description |
|---|---|---|
| | | (5) *Data Submittals:* Records of operating conditions and analytical data from Condition (3) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Oklahoma, or both, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site 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 following certification statement to attest to the truth and accuracy of the data submitted:<br>Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. §1001 and 42 U.S.C. §6928), I certify that the information contained in or accompanying this document is true, accurate and complete.<br>As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.<br>In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.<br>(6) *Reopener Language*<br>(a) If McDonnell Douglas discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then McDonnell Douglas must report any information relevant to that condition, in writing, to the Regional Administrator or his delegate within 10 days of discovering that condition.<br>(b) Upon receiving information described in paragraph (a) from any source, the Regional Administrator or his delegate will determine whether the reported condition requires further action. Further action may include revoking the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment.<br>(7) *Notification Requirements:* McDonnell Douglas must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activity. The one-time written notification must be updated if the delisted waste is shipped to a different disposal facility. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision. |
| * | * | * * * * * * |

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 567

**[Docket No. NHTSA–99–5074]**

**RIN 2127–AG65**

### Vehicle Certification; Contents of Certification Labels for Multipurpose Passenger Vehicles and Light Duty Trucks; Correction

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Correction to final rule.

**SUMMARY:** In a final rule published on February 11, 1999, at 64 FR 6815, NHTSA amended its regulations on vehicle certification to require the certification label for multipurpose passenger vehicles (MPVs) and trucks with a gross vehicle weight rating (GVWR) of 6,000 pounds or less to specify that the vehicle complies with all applicable Federal motor vehicle safety and theft prevention standards. This final rule was incorrectly identified as ''Docket No. NHTSA–99–5047.'' The docket number should be corrected to read ''Docket No. NHTSA–99–5074.'' Any petitions for reconsideration of this final rule should reference the docket number as corrected by this notice.