(Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131–8137; Sections 2, 3, 4, and 4a of the Architectural Barriers Act of 1968, as amended, Public Law 90–480, 42 U.S.C. 4151–4157)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–7002–3]

Land Disposal Restrictions: Granting of a Site-Specific Treatment Variance to Dupont Environmental Treatment—Chambers Works Wastewater Treatment Plant, Deepwater, NJ

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is promulgating a site-specific treatment variance from the Land Disposal Restrictions (LDR) standards for wastewater treatment sludge generated at the Dupont Environmental Treatment (DET)—Chambers Works Wastewater Treatment Plant located in Deepwater, New Jersey. This sludge is derived from the treatment of multiple listed wastes, including K088, and characteristic hazardous waste, and differs significantly from the waste used to establish the LDR treatment standard for arsenic in K088 nonwastewaters. Accordingly, we are finalizing an alternate treatment standard of 5.0 mg/L Toxicity Characteristic Leaching Procedure (TCLP) for the arsenic in the wastewater treatment sludge generated at this facility.

This treatment variance requires DET to dispose of their wastewater treatment sludge in their on-site RCRA Subtitle C landfill provided the sludge complies with the specified alternate treatment standard for arsenic in K088 nonwastewaters and meets all other applicable LDR treatment standards.

DATES: This rule is effective June 26, 2001.

ADDRESSES: The official record for this rulemaking is identified as Docket Number F–2001–DPVF–FFFFF and is located in the RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. The RIC is open from 9 am to 4 pm Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling 703–603–9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost $0.15 per page. (The index is available electronically. See the ''Supplementary Information'' section for information on accessing them).

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). The RCRA Call Center operates Monday-Friday, 9 am to 6 pm, Eastern Standard Time. For more detailed information on specific aspects of this rule, contact Elaine Eby at 703–308–8449, eby.elaine@epa.gov, or write her at the Office of Solid Waste, 5302W, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002.

SUPPLEMENTARY INFORMATION:

Availability of Rule on Internet

Please follow these instructions to access the rule: From the World Wide Web (WWW), type http://www.epa.gov/epaoswer/hazwaste/ldr.

The official record for this action will be kept in paper form. Accordingly, EPA has transferred any comments received electronically into paper form and placed them in the official record which also includes comments submitted directly in writing. The official record is the paper record maintained at the RIC listed in the **ADDRESSES** section at the beginning of this document.

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I. Why and How Are Treatment Variances Granted?

Under Section 3004(m) of the Resource Conservation and Recovery Act (RCRA) as amended by the Hazardous and Solid Waste Amendments of 1984, EPA is required to set ''levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.'' We have interpreted this language to authorize treatment standards based on the performance of best demonstrated available technology (BDAT). This interpretation was sustained by the court in *Hazardous Waste Treatment Council* vs. *EPA,* 886 F. 2d 355 (D.C.Cir.1989).

We recognize that there may be wastes that cannot be treated to levels specified in the regulation (see 40 CFR 268.40) (51 FR 40576, November 7, 1986). For such wastes, a treatment variance exists (40 CFR 268.44) that, if granted, becomes the treatment standard for the waste at issue.

Treatment variances may be generic or site-specific. A generic variance can result in the establishment of a new treatability group and a corresponding treatment standard that applies to all wastes that meet the criteria of the new waste treatability group (55 FR 22526, June 1, 1990). A site-specific variance applies only to a specific waste from a specific facility. Under 40 CFR 268.44(h), a generator or treatment facility may apply to the Administrator, or EPA's delegated representative, for a site-specific variance in cases where a waste that is generated under conditions specific to only one site and cannot or should not be treated to the specified level(s). The applicant for a site-specific variance must demonstrate that because the physical or chemical properties of the waste differ significantly from the waste analyzed in development of the treatment standard, the waste cannot be treated by BDAT to the specified levels or by the specified method(s). Although there are other grounds for obtaining treatment variances, we will not discuss those in this notice because this is the only provision relevant to the present petition.

Dupont Environmental Treatment—Chambers Works submitted their request for a treatment variance in February 2000. All information and data used in the development of this final rule can be found in the RCRA docket supporting this rule.

II. Summary of the Proposed Rule

On December 4, 2000 (65 FR 75651), we published a proposed rule detailing our intent to grant a site-specific variance from the K088 treatment standard for arsenic in nonwastewaters to Dupont Environmental Treatment—

Chambers Works (herein referred to as ''DET'') for their dewatered wastewater treatment sludge.[1] In the proposal, we conclude that an alternative treatment standard of 5.0 mg/L TCLP for arsenic is warranted for the following reasons. First, the sludge generated at DET's WWTP is not the same type of waste that was used to develop the 26.1 mg/kg treatment standard for arsenic in K088 nonwastewaters, nor does it present the same situation regarding the use of a total arsenic standard to lock-in treatment process parameters. Second, the sludge will be disposed of in a Subtitle C hazardous waste landfill with pH conditions in the range of 6.5 to 8.5 and not the alkaline conditions, i.e., pH conditions of 12 and above, that resulted in mobilization of arsenic at Reynold's K088 landfill. Thus, the conditions that prompted the change in the K088 treatment standard are absent for this site. Third, the TCLP remains an adequate measure of treatment efficiency for DET's WWTP sludge due to the non-alkaline sludge matrix and the expected disposal conditions. Therefore, we believe that a TCLP standard of 5.0 mg/L is a reasonable measure of demonstrating that threats posed by the waste's disposal have been minimized. Fourth, the alternative standard of 5.0 mg/L TCLP is currently the standard applicable to arsenic in all other hazardous wastes, except K088 nonwastewaters. Fifth, data submitted to the Agency shows that DET's dewatered WWTP sludge consistently maintains both a neutral pH and TCLP levels of arsenic far less than 5.0 mg/L. Finally, arsenic concentrations in the WWTP sludge cannot be treated to a lower treatment standard based on a totals analysis, i.e., arsenic is an element and as such must be immobilized, it cannot be destroyed.

III. Comment Summary and Final Rule

We received two comments on the proposed rule. Both commenters, the petitioner, DET, and Alcoa Incorporated/Reynolds Metals Company (herein referred to as ''Alcoa''), support all the conclusions articulated in the proposal and recommend granting the petition. No adverse comments were made. Alcoa did note, however, that the stipulation, ''* * * the waste must be land disposed in their (DET's) on-site subtitle C landfill * * *'' (65 FR at 75654) was not specifically reflected in the regulatory language. As such, we are today granting DET's petition for a site-specific treatment variance for their WWTP sludge and will amend 40 CFR part 268 to state that wastewater treatment sludge generated by Dupont Environmental Treatment—Chambers Works Wastewater Treatment Plant in Deepwater, New Jersey is subject to an arsenic treatment standard of 5.0 mg/L TCLP for all RCRA wastes. Furthermore, taking note of Alcoa's concern, we stipulate, and make clear in the regulatory language, that the waste must be land disposed in DET's on-site Subtitle C landfill assuming the waste meets all applicable federal, state and local requirements.

IV. Administrative Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because this final rule does not create any new regulatory requirements, it is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. This treatment variance does not create any new regulatory requirements. Rather, it establishes an alternative treatment standard for a regulated constituent. This action, therefore, does not require a regulatory flexibility analysis.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. If a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why that alternative was not adopted. The provisions of section 205 do not apply when they are inconsistent with applicable law.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more in the aggregate to

[1] DET WWTP operates as both a commercial treatment facility for industrial and RCRA hazardous waste and as an internal treatment operation for E. I. Dupont de Nemours' numerous manufacturing operations. As the largest wastewater treatment facility in the United States, DET WWTP processes approximately 16 million gallons of wastewater per day or 5.84 billion gallons per year. It should be noted, however, that the WWTP sludge at issue here is generated by the biological treatment of a relatively small quantity of wastewater carrying the K088 waste designation. This K088 wastewater accounts for less than 0.002% of the total annual throughput at DET WWTP.

either State, local, or tribal governments or the private sector in one year. The rule would not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. States, tribes, and local governments would have no compliance costs under this final rule. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act. Thus, today's rule is not subject to the requirements of sections 202, 204 and 205 of UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule will not significantly or uniquely affect small governments. This final rule will not impose any requirements on small entities. This treatment variance does not create any new regulatory requirements. Rather, it establish an alternative treatment standard for a regulated constituent at the specific facility. Today's rule is not, therefore, subject to the requirements of section 203 of UMRA.

D. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today's rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The subject wastes will comply with all other treatment standards and be disposed of in a RCRA Subtitle C landfill. Therefore, we have identified no risks that may disproportionately affect children.

E. Environmental Justice Executive Order 12898

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today's final rule applies to wastes that will be treated and disposed of in a RCRA Subtitle C hazardous waste landfill, ensuring a high degree of protection to human health and the environment. Therefore, the Agency does not believe that today's action will result in any disproportionately negative impacts on minority or low-income communities relative to affluent or non-minority communities.

F. Paperwork Reduction Act

This rule only changes the treatment standards applicable to a subcategory of K088 waste. It does not change in any way the paperwork requirements already applicable to these waste. Therefore, this rule is not affected by the requirements of the Paperwork Reduction Act.

G. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards based on new methodologies. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Consultation With Tribal Governments

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 final 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. This treatment variance does not create any new regulatory requirements. Rather, it establishes an alternative treatment standard for a regulated constituent at the specific facility. Thus, Executive Order 13175 does not apply to this rule.

I. 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 implication.'' ''Policies that have federalism implication'' 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 governments.''

This final rule does not have federalism implications. It will not 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, as specified in Executive Order 13132. This treatment variance does not create any new regulatory requirements. Rather, it establishes an alternative treatment standard for a regulated constituent at the specific facility. Thus, Executive Order 13132 does not apply to this rule.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 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 the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: June, 14, 2001.

Michael Shapiro,

Acting Assistant Administrator for Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. In § 268.44, the table in paragraph (o) is amended by adding in alphabetical order a new entry for ''Dupont Environmental Treatment—Chambers Works Wastewater, Deepwater, NJ'' and adding a new footnote 8 to read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *

(o) * * *

TABLE—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40

Facility name [1] and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/L)	Notes	Concentration (mg/kg)	Notes
*	*	*	*	*	*	*	
Dupont Environmental Treatment—Chambers Works Wastewater Treatment Plant, Deepwater, NJ [8].	K088	Standards under § 268.40.	Arsenic	1.4	NA	5.0 mg/L TCLP	NA
*	*	*	*	*	*	*	

[1] A facility may certify compliance with these treatment standards according to provisions in 40 CFR 268.7.

* * * * * * *

[8] Dupont Environmental Treatment—Chambers Works must dispose of this waste in their on-site Subtitle C hazardous waste landfill.

Note: NA means Not Applicable.

[FR Doc. 01–15880 Filed 6–25–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–B–7415]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Administrator, Federal Insurance Administration and Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.