or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34) (f) and (g), of Commandant Instruction M16475.1D, from further environmental documentation.

A final ''Environmental Analysis Checklist'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

General Regulated Navigation Areas, Safety Zones, Security Zones, Restricted Waterfront Areas, Specific Regulated Navigation Areas and Limited Access Areas.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.T05–091.

§ 165.T05–091 Security Zone; Oyster Creek Generation Station, Forked River, Ocean County, New Jersey.

(a) *Location.* The following area is a security zone: starting at the south branch of the Forked River in the vicinity of the Oyster Creek Generation Station, west from a point located at 39° 49′11.8″ N, 074°12′ 10.5″ W. Oyster Creek West from a point located at 39° 48′39.7″ N, 074°12′ 0″ W. All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(c) *Definitions.* For the purposes of this temporary section, Captain of the Port means the Commanding Officer of the Coast Guard Marine Safety Office/ Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

(d) *Effective dates.* This section is effective from 5 p.m. Eastern Daylight Time on May 13, 2003 to 5 p.m. Eastern Standard Time on January 24, 2004.

Dated: May 13, 2003.

Jonathan D. Sarubbi,

Captain, U.S. Coast Guard, Captain of the Port Philadelphia.

[FR Doc. 03–13697 Filed 5–30–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7505–6]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a petition submitted by Bekaert Steel, Dyersburg, Tennessee (''Bekaert''), to exclude (or ''delist'' a certain hazardous waste from the lists of hazardous wastes. Bekaert will generate the petitioned waste by treating wastewater from Bekaert's steel plant, copper electroplating area where steel wire is used to manufacture copper and zinc coated steel wire for the tire industry. The waste so generated is a wastewater treatment sludge that meets the definition of F006. Bekaert petitioned EPA to grant a generator-specific delisting, because Bekaert believes that its F006 waste does not meet the criteria for which this type of waste was listed. EPA reviewed all of the waste-specific information provided by Bekaert, performed calculations, and determined that the waste could be disposed in a landfill without harming human health and the environment. This action responds to Bekaert's petition to delist this waste on a ''generator-specific'' basis from the hazardous waste lists, and the approved delisting petition for the Bekaert, Rogers, Arkansas facility which utilizes an identical process. EPA took into account the final delisting levels which are based on the EPACML model as performed by Region 6. Unless adverse comments are received with sixty days of this Direct Final Rule and in accordance with the conditions specified in this final rule, Bekaert's petitioned waste is excluded from the requirements of hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA).

DATES: This rule is effective on August 1, 2003 without further notice, unless EPA receives adverse comment by July 17, 2003. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the EPA Library, U.S. Environmental

Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

The reference number for this docket is R4–03–01–BekaertF. 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 copying at the Tennessee Department of Environment and Conservation , please see below.

FOR FURTHER INFORMATION CONTACT: For general and technical information concerning this final rule, please contact David Langston, RCRA Enforcement and Compliance Branch, (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8588, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for David Langston to return your call. Questions may also be e-mailed to David Langston at *langston.david@epa.gov.* You may also contact Nina Vo,Tennessee Department of Environment and Conservation, Division of Solid Waste Management, 5th Floor L&C Tower 401 Church Street, Nashville, Tennessee 37243–1535. If you wish to copy documents at TDEC, please contact Ms. Vo for copying procedures and costs.

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

I. Background
A. What Laws and Regulations Give EPA the Authority to Delist Wastes?
B. How did EPA Evaluate this Petition?
1. What is the EPACML model that EPA used in the past for determining delisting levels?
2. What is the DRAS that uses the new EPACMTP model to calculate not only delisting levels, but also to evaluate the effects of the waste on human health and the environment?
3. Why is the EPACMTP an improvement over the EPACML?
4. Where can technical details on the EPACMTP be found?
5. What method is EPA proposing to use to determine delisting levels for this petitioned waste?
II. Disposition of Delisting Petition
A. Summary of Delisting Petition Submitted by Bekaert Steel Corporation, Dyersburg, Tennessee (Bekaert)
B. What Delisting Levels Did EPA Obtain with DRAS and EPACMTP?
C. Conclusion
III. Limited Effect of Federal Exclusion Will this Rule Apply in All States?
IV. Effective Date
V. Paperwork Reduction Act
VI. National Technology Transfer and Advancement Act
VII. Unfunded Mandates Reform Act
VIII. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement and Fairness Act
IX. Executive Order 12866
X. Executive Order 13045
XI. Executive Order 13084 Affecting Indian Tribal Governments
XII. Submission to Congress and General Accounting Office
XIII. Executive Order 13132

I. Background

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

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility [1] should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. *See* § 260.22(a) and the background documents for the listed wastes. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. *See* § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are ''delisted'' (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on the hazardous waste characteristics (*i.e.*, characteristics which may be promulgated subsequent to a delisting decision.)

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. *See* § 261.3(a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the ''mixture/derived-from'' rules and remanded them to the EPA on procedural grounds. Shell Oil Co. v. EPA, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278), and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. On May 16, 2001, EPA amended the mixture and derived-from rules for certain types of wastes (66 FR 27218 and 66 FR 27266). The mixture and derived-from rules are codified in 40 CFR 261.3, paragraphs (a)(2)(iv) and (c)(2)(i). EPA plans to address all waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with §§ 260.20 and 260.22, by generators within their Regions (National Delegation of Authority 8–19), in States not yet authorized to administer a delisting

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

program in lieu of the Federal program. On March 11, 1996, the Regional Administrator of EPA, Region 4, redelegated delisting authority to the Director of the Waste Management Division (Regional Delegation of Authority 8–19).

B. How Did EPA Evaluate This Petition?

This petition requests a delisting for a hazardous waste listed as F006. In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11 (a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. *See* § 260.22 (a) and (d). The EPA considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

1. What Is the EPACML Model That EPA Used in the Past for Determining Delisting Levels?

In the past, EPA used the EPA Composite Model for Landfills (EPACML) fate and transport model, modified for delisting, as one approach for determining the delisting levels for petitioned waste. *See* 56 FR 32993–33012, July 18, 1991, for details on the use of the EPACML model to determine the concentrations of constituents in a waste that will not result in groundwater contamination. With the EPACML approach, as used in the past, EPA calculated a delisting level for each hazardous constituent by using the maximum estimated waste volume to determine a Dilution Attenuation Factor (DAF) from a table of waste volumes and DAFs previously calculated by the EPACML model, as modified for delisting. *See* 56 FR 32993–33012, July 18, 1991. The maximum estimated waste volume is the maximum number of cubic yards of petitioned waste to be disposed of each year. The delisting level for each constituent was equal to the DAF multiplied by the maximum contaminant level (MCL) which the Safe Drinking Water Act allows for that constituent in drinking water. The delisting level is a concentration in the waste leachate that will not cause the MCL to be exceeded in groundwater underneath a landfill where the waste is disposed. This method of calculating delisting levels resulted in conservative levels that were protective of groundwater, because the model did not assume that the landfill had the controls required of Subtitle D landfills. A Subtitle D landfill is a landfill subject to RCRA Subtitle D nonhazardous waste regulations, and to State and local nonhazardous waste regulations.

2. What Is the DRAS That Uses the New EPACMTP Model To Calculate Not Only Delisting Levels, But Also To Evaluate the Effects of the Waste on Human Health and the Environment?

The EPA is proposing to use the Delisting Risk Assessment Software (DRAS),[2] developed by EPA, Region 6, to evaluate this delisting petition. The DRAS uses a new model, called the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP). The EPACMTP improves on the EPACML model in several ways. EPA is proposing to use the DRAS to calculate delisting levels and to evaluate the impact of Bekaert's petitioned waste on human health and the environment. Delisting levels are the maximum allowable concentrations for hazardous constituents in the waste, so that disposal in a landfill will not harm human health and the environment by contaminating groundwater, surface water, or air.

Today's proposal provides background information on the mechanics of the DRAS, and the use of the DRAS in delisting decision-making. Please see the EPA, Region 6, *RCRA Delisting Technical Support Document* (RDTSD) for a complete discussion of the DRAS calculation methods. The RDTSD, and **Federal Registers**, 65 FR 75637–75651, December 4, 2000, and 65 FR 58015–58031, September 27, 2000, are the sources of the DRAS information presented in today's preamble, and are included in the RCRA regulatory docket for this proposed rule.

The DRAS performs a risk assessment for petitioned wastes that are disposed of in the two waste management units of concern: surface impoundments for liquid wastes and landfills for non-liquid wastes. Bekaert's petitioned waste is solid, not liquid, and will be disposed in a landfill; therefore, only the application of DRAS to landfills will be discussed in this preamble.

DRAS calculates releases from solid-phase wastes in a landfill, with the following assumptions: (1) The wastes are disposed in a Subtitle D landfill and covered with a 2-foot-thick native soil layer; (2) the landfill is unlined or effectively unlined due to a liner that will eventually completely fail. The two parameters used to characterize landfills are (1) area and (2) depth (the thickness of the waste layer). Data to characterize landfills were obtained from a nationwide survey of industrial Subtitle D landfills.[3] Parameters and assumptions used to estimate infiltration of leachate from a landfill are provided in the *EPACMTP Background Document and User's Guide*, Office of Solid Waste, U.S. EPA, Washington, DC, September 1996.

DRAS uses the EPACMTP model to simulate the fate and transport of dissolved contaminants from a point of release at the base of a landfill, through the unsaturated zone and underlying groundwater, to a receptor well at an arbitrary downstream location in the aquifer (the rock formation in which the groundwater is located). DRAS evaluates, with the EPACMTP model, the groundwater exposure concentrations at the receptor well that result from the chemical release and transport from the landfill (*Application of EPACMTP to Region 6 Delisting Program: Development of Waste Volume-Specific Dilution Attenuation Factors,* U.S. EPA, August 1996). For the purpose of delisting determinations, receptor well concentrations for both carcinogens and non-carcinogens from finite-source degraders and non-degraders are determined with this model. Delisted waste is a finite source, because in a finite period of time, the

[2] For more information on DRAS and EPACMTP, please see 65 FR 75637–75651, December 4, 2000 and 65 FR 58015–58031, September 27, 2000. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). URL addresses for Region 6 delisting guidance and software are the following:

1. Delisting Guidance Manual *http://www.epa.gov/earthlr6/6pd/rcra_c/pd-o/dlistpdf.htm*

2. Delisting Risk Assessment Software (DRAS) *http://www.epa.gov/Arkansas/6pd/rcra_c/pd-o/dras/dras.htm*

3. DRAS Technical Support Document (DTSD) *http://www.epa.gov/earthlr6/6pd/rcra_c/pd-o/dtsd.htm*

4. DRAS Users Guide *http://www.epa.gov/earthlr6/6pd/rcra_c/pd-o/uguide.pdf* Region 6 has made them available to the public, free of charge.

[3] *Nationwide Survey of Industrial Subtitle D Landfills,* Westat, 1987

waste's constituents will leach and move out of the landfill. Since EPA has made a final decision to delist Bekaert's F006 waste, Bekaert must meet the delisting levels and dispose of the waste in a Subtitle D landfill, because EPA determined the delisting levels based on a landfill model.

3. Why Is the EPACMTP an Improvement Over the EPACML?

The EPACMTP includes three major categories of improvements over the EPACML. The improvements include:

1—Incorporation of additional fate and transport processes (*e.g.*, degradation of chemical constituents; fate and transport of metals);

2—Use of enhanced flow and transport equations (*e.g.*, for calculating transport in three dimensions); and

3—Revision of the Monte Carlo methodology (*e.g.*, to allow use of site-specific, waste-specific data) (*EPACMTP Background Document and User's Guide,* Office of Solid Waste, U.S. EPA, Washington, DC, September 1996).

A summary of the key enhancements which have been implemented in the EPACMTP is presented here and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR **Federal Register** proposal docket (60 FR 66344, December 21, 1995). For more information, please contact David Langston, North Enforcement and Compliance Section, (Mail Code 4WD–RCRA), RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8588, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for David Langston to return your call. You may also contact him by e-mail: *langston.david@epa.gov*.

The EPACML accounts for: one-dimensional steady and uniform advective flow; contaminant dispersion in the longitudinal, lateral, and vertical directions; and sorption. However, advances in groundwater fate and transport have been made in recent years and EPA proposes and requests public comment on the use of the EPACMTP, which is a more advanced groundwater fate and transport model, for this RCRA delisting.

The EPACML was limited to conditions of uniform groundwater flow. It could not handle accurately the conditions of significant groundwater mounding and non-uniform groundwater flow due to a high rate of infiltration from the waste disposal units. These conditions increase the transverse horizontal, as well as the vertical, spreading of a contaminant plume.

The EPACMTP model overcomes the deficiencies of the EPACML in the following way: The subsurface as modeled with the EPACMTP consists of an unsaturated zone beneath a landfill and a saturated zone, the underlying water table aquifer. Contaminants move vertically downward through the unsaturated zone to the water table. The EPACMTP simulates one-dimensional, vertically downward flow and transport of contaminants in the unsaturated zone, as well as two-dimensional or three-dimensional groundwater flow and contaminant transport in the underlying saturated zone. The EPACML used a saturated zone module that was based on a Gaussian distribution of the concentration of a chemical constituent in the saturated zone. The module also used an approximation to account for the initial mixing of the contaminant entering at the water table (saturated zone) underneath the waste unit. The module accounting for initial mixing in the EPACML could lead to unrealistic groundwater concentrations. The enhanced EPACMTP model incorporates a direct linkage between the unsaturated zone and saturated zone modules which overcomes these limitations of the EPACML. The following mechanisms affecting contaminant migration are accounted for in the EPACMTP model: transport by advection and dispersion, retardation resulting from reversible linear or nonlinear equilibrium sorption on the soil and aquifer solid phase, and biochemical degradation processes. The EPACML did not account for biochemical degradation, and did not account for sorption as accurately as the EPACMTP.

The EPACMTP consists of four major components:

1—A module that performs one-dimensional analytical and numerical solutions for water flow and contaminant transport in the unsaturated zone beneath a waste management unit;

2—A numerical module for steady-state groundwater flow subject to recharge from the unsaturated zone;

3—A module of analytical and numerical solutions for contaminant transport in the saturated zone; and

4—A Monte Carlo module for assessing the effect of the uncertainty resulting from variations in model parameters on predicted receptor well concentrations.

4. Where Can Technical Details on the EPACMTP Be Found?

For more information on DRAS and EPACMTP, please see 65 FR 75637–75651, December 4, 2000; 65 FR 58015–58031, September 27, 2000; and 66 FR 9781–9798, February 12, 2001. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995) A summary of DRAS is presented in 66 FR 9781–9798, February 12, 2001. Footnote 2 in Preamble section I.B.2. above lists the URL addresses for Region 6 guidance on DRAS.

5. What Method Is EPA Proposing To Use To Determine Delisting Levels for This Petitioned Waste?

Bekaert submitted to the EPA analytical data from its Dyersburg, Tennessee plant and the Rogers, Arkansas plant. Samples of wastewater treatment sludge were collected from roll-off containers over a one-month period. A summary of analytical data is presented in Table 1 of section II below, with analytical details in the Table footnotes.

After reviewing the analytical data and information on processes and raw materials that Bekaert submitted in the delisting petition, EPA developed a list of constituents of concern and calculated delisting levels and risks using DRAS and EPACMTP DAFs as described above. EPA requests public comment on this proposed method of calculating delisting levels and risks for Bekaert's petitioned waste.

EPA considered two additional methods of evaluating Bekaert's delisting petition and determining delisting levels: (1) Setting limits on total concentrations of constituents in the waste that are more conservative than results obtained by DRAS for total concentrations; and (2) setting delisting levels at the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) levels in 40 CFR 268.48. The UTS levels for Bekaert's constituents of concern are the following:

Arsenic: 5.0 mg/l TCLP; Barium: 21 mg/l TCLP; Cadmium: 0.11 mg/l TCLP; Chromium: 0.60 mg/l TCLP; Cyanide Total: 590 mg/kg; Cyanide Amenable 30 mg/kg; Lead: 0.75 mg/l

TCLP; Nickel: 11 mg/l TCLP; Silver: 0.14 mg/l TCLP; Vanadium: 1.6 mg/l; Zinc: 4.3 mg/l TCLP.

II. Disposition of Delisting Petition

A. Summary of Delisting Petition Submitted by Bekaert Steel Corporation, Dyersburg, Tennessee (Bekaert)

Bekaert initially petitioned EPA, Region 6, in September 11, 1995, to exclude from the Rogers, Arkansas facility, a maximum annual weight of 1,250 cubic yards of its F006 waste, on a generator-specific basis, from the lists of hazardous wastes in 40 CFR part 261, subpart D. Because of the identical construction and operation of Rogers, Arkansas and the Dyersburg, Tennessee facilities, Bekaert petitioned EPA, Region 4, in October 28, 2002, to consider a delisting based on equivalent data and operations. Bekaert 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 electroplating operations. Specifically, in its petition, Bekaert petitioned the Agency to exclude its wastewater treatment filter cake presently listed as EPA Hazardous Waste No. F006—''Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.'' The listed constituents of concern for EPA Hazardous Waste No. F006 are: cadmium, hexavalent chromium, nickel and cyanide (complexed). See 40 CFR part 261, Appendix VII. Bekaert petitioned the EPA to exclude this waste because it does not believe that the waste meets the criteria for which it was listed. Bekaert 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 the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2) through (4).

B. What Delisting Levels Did EPA Obtain With DRAS and EPACMTP?

In support of its petition, Bekaert submitted the previous petition for the Rogers, Arkansas facility and documentation which supported equivalency of the Dyersburg, Tennessee facility. Included within the petition are: (1) Descriptions of its manufacturing and wastewater treatment processes, including schematic diagrams; (2) a list of all raw materials and Material Safety Data Sheets (MSDSs) for all trade name products used in the manufacturing and waste treatment processes; (3) results from total constituent analyses for fourteen metals including the eight Toxicity Characteristic (TC) metals listed in § 261.24 (*i.e.*, the TC metals) and antimony, beryllium, copper, nickel, thallium, and zinc from representative samples of the petitioned waste; (4) results from the Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311) for fourteen metals which include the eight TC metals, and antimony, beryllium, copper, nickel, thallium, and zinc from representative samples of the petitioned waste; (5) results from total constituent analysis for total and reactive sulfide and cyanide for representative samples of the petitioned waste; (6) results from total oil and grease analyses from representative samples of the petitioned waste; (7) test results and information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity; and (8) results from total constituent analyses for certain volatile and semi-volatile organic compounds from representative samples of the petitioned waste.

The hazardous constituents of concern for which F006 was listed are hexavalent chromium and cyanide (complexed). Bekaert petitioned the EPA to exclude its F006 waste because Bekaert does not believe that the waste meets the criteria of the listing.

TABLE 1.—WASTE WATER CONCENTRATIONS ZINC & COPPER

[Metals Constituent Comparison Between Rogers, Arkansas F006 and Dyersburg, Tennessee F006]

	Cell 1	Cell 2	Cell 3	Cell 4	Cell 5	Average
Zinc Concentration mg/l:						
Dyersburg	19875	20867	Inactive	9978	Not present	16907
Rogers	11480	14350	Inactive	16502	28700	17758
Copper Concentration mg/l:						
Dyersburg	0	22.6	Inactive	5.6	Not present	11.2
Rogers	70	50	Inactive	70	50	60

TABLE 2.—METALS ANALYSIS F006 FILTER CAKE

Total Metals mg/kg	Dyersburg, Tennessee	Rogers, Arkansas: Petition	Rogers, Arkansas: 1997	Rogers, Arkansas: 1998	Rogers, Arkansas: 1999
Arsenic	<900	<5.00			
Barium	46.4	2.5			
Cadmium	0.24	3.1			
Chromium	13.6	68			
Copper	7.81	580			
Lead	12.5	<5.0			
Selenium	3.5	6.4			
Silver	<0.9	1.2			
Zinc	113	16000			
TCLP Metals mg/l:					
Antimony	<0.20				
Arsenic	<0.20	<0.05	<0.10	1.92	<0.085
Barium	<0.050	1.3	0.18	0.078	<0.004
Cadmium	<0.040	<0.05	<0.01	<0.005	<0.005

TABLE 2.—METALS ANALYSIS F006 FILTER CAKE—Continued

Total Metals mg/kg	Dyersburg, Tennessee	Rogers, Arkansas: Petition	Rogers, Arkansas: 1997	Rogers, Arkansas: 1998	Rogers, Arkansas: 1999
Chromium	<0.050	<0.05	<0.01	<0.007	<0.007
Copper	<0.050	.....	.....	.....	.....
Lead	<0.10	<0.10	<0.10	<0.050	<0.05
Nickel	<0.10	.....	.....	.....	.....
Selenium	<0.20	0.091	<0.10	<0.10	<0.10
Silver	<0.070	0.2	<0.01	0.0182	0.007
Zinc	26	.....	.....	.....	.....
Mercury Total mg/kg	<0.8	<0.125	.....	.....	.....
Mercury TCLP mg/l	<0.002	<0.005	<0.005	<0.002	<0.002

EPA concluded after reviewing Bekaert's waste management and waste history information that no other hazardous constituents, other than those tested for, are likely to be present in Bekaert's petitioned waste. In addition, on the basis of test results and other information provided by Bekaert, pursuant to § 260.22, EPA concluded that the petitioned waste will not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

During its evaluation of Bekaert's petition, EPA also considered the potential impact of the petitioned waste on media other than groundwater. With regard to airborne dispersal of waste, EPA evaluated the potential hazards resulting from airborne exposure to waste contaminants from the petitioned waste using an air dispersion model for releases from a landfill. The results of this evaluation indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from Bekaert's petitioned waste. (A description of EPA's assessment of the potential impact of airborne dispersal of Bekaert's petitioned waste is presented in the RCRA public docket for today's proposed rule.)

EPA evaluated the potential impact of the petitioned waste on surface water resulting from storm water runoff from a landfill containing the petitioned waste, and found that the waste would not present a threat to human health or the environment. (*See* the docket for today's proposed rule for a description of this analysis). In addition, EPA believes that containment structures at municipal solid waste landfills can effectively control runoff, as Subtitle D regulations (*see* 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. While some contamination of surface water is possible through runoff from a waste disposal area, EPA believes that the dissolved concentrations of hazardous constituents in the runoff are likely to be lower than the extraction procedure test results reported in today's proposed rule, because of the aggressive acidic medium used for extraction in the TCLP. EPA also believes that, in general, leachate derived from the waste will not directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents may occur. Transported contaminants would be further diluted in the receiving water body. Subtitle D controls would minimize significant releases to surface water from erosion of undissolved particulates in runoff.

In order to account for possible variability in the generation rate, EPA calculated delisting levels using a waste volume of 1,250 cubic yards. Delisting levels and risk levels calculated by DRAS, using the EPACMTP model, are presented in Tables 3, 4, and 5 below. DRAS found that the major pathway for human exposure to this waste is groundwater ingestion, and the majority of the delisting and risk levels for the TCLP leachate of the waste were calculated based on that pathway. EPA used DRAS-calculated values based on MCLs, when these would result in more conservative delisting levels. The input values required by DRAS were the chemical constituents in Bekaert's petitioned waste; their maximum reported concentrations in the TCLP extract of the waste and in the unextracted waste (*See* Table 1, Preamble section II.A.); the maximum annual volume to be disposed (1,250 cubic yards) in a landfill; the desired risk level, which was chosen to be no worse than 10^{-5} for carcinogens; and a hazard quotient of no greater than 1 [1.48] for non-carcinogens. The only carcinogenic constituent detected in the waste is cadmium (arsenic not detected in the Dyersburg, TN, waste). Cadmium also has non-carcinogenic toxic effects.

TABLE 3.—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR BEKAERT'S—PETITIONED WASTE BASED ON LIMITING PATHWAY

Constituent	Delisting level in TCLP based on limiting pathway	DAF	DRAS-calculated risk for maximum concentration of carcinogen in waste	DRAS-calculated hazard quotient for maximum concentration of non-carcinogen in waste
Inorganic Constituents				
Antimony	2.31	34.3	.....	1.300
Arsenic	0.0419	19.2	1.01×10^{-5}	4.39×10^{-2}
Barium	[4] 328	27.8	.....	1.000
Cadmium	[4] 2.52	30.0	3.45×10^{-5}	0.999

TABLE 3.—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR BEKAERT'S—PETITIONED WASTE BASED ON LIMITING PATHWAY—Continued

Constituent	Delisting level in TCLP based on limiting pathway	DAF	DRAS-calculated risk for maximum concentration of carcinogen in waste	DRAS-calculated hazard quotient for maximum concentration of non-carcinogen in waste
Chromium	[4] 49.71×10	3850	.....	1.000
Copper	[4] 4.71×10	7010	.....	10.000
Cyanide	60.5	18	.....	1.000
Lead	[5] 5.0	5000	.....	.....
Nickel	127	37.6	.....	1.000
Selenium	[6] 9.74	11.6	.....	1.000
Silver	[6] 17.2	20.5	.....	1.000
Mercury	[6] 0.364	74.5	.....	2.000
Zinc	1260	24.9	.....	1.000
Total Hazard Quotient for All Waste Constituents	.....	.....	.....	21.400
Total Carcinogenic Risk for the Waste (due to Arsenic, Cadmium, Hexavalent Chromium)	.....	.....	1.01×10^{-5}	.....

[4] Level exceeds characteristic level for this constituent. Therefore, this concentration in TCLP cannot be used for means of delisting the waste.
[5] Lead had no limiting value, therefore, characteristic level was used in place of limiting pathway.
[6] Concentration calculated here exceeds characteristic level for this constituent. Although the carcinogenic risk is acceptable, the calculated hazard quotient exceeds the necessary standard. Additionally, 4 constituents exceed the TCLP characteristic level for hazardous waste.

TABLE 4.—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR BEKAERT'S PETITIONED WASTE BASED ON MCLS

Constituent	MCL or drinking water standard (mg/l)	Delisting level (mg/l TCLP)	DAF	DRAS-calculated risk for maximum concentration of carcinogen in waste	DRAS-calculated hazard quotient for maximum concentration of non-carcinogen in waste
Inorganic Constituents					
Antimony	0.006	0.922	34.3	.....	4.00×10^{-1}
Arsenic	0.010	0.516	19.2	6.16×10^{-5}	2.67×10^{-1}
Barium	2.0	[7] 249	27.8	.....	7.60×10^{-1}
Cadmium	0.005	0.672	30.0	3.45×10^{-12}	2.66×10^{-1}
Chromium	0.10	[7] 1720	3850	.....	1.77×10^{-3}
Copper	[8] 1.30	40800	7010	.....	8.66×10^{-1}
Cyanide	0.20	16.1	18	.....	1.33×10^{-1}
Lead	0.015	[7] 336	5000	.....	.....
Nickel	[9] 0.10	16.9	37.6	.....	1.34×10^{-1}
Selenium	0.05	[7] 2.60	11.6	.....	1.33×10^{-1}
Silver	[8] 0.10	[7] 9.16	20.5	.....	2.66×10^{-1}
Mercury	0.002	0.149	74.5	.....	1.83
Zinc	[8] 5.0	558	24.9	.....	4.44×10^{-1}
Total Hazard Quotient for All Waste Constituents	.....	.....	.....	.....	5.50
Total Carcinogenic Risk for the Waste (due to Arsenic, Cadmium, Hexavalent Chromium)	.....	.....	.....	6.16×10^{-5}	.....

[7] DRAS Calculated level exceeds TCLP Characteristic level for this constituent.
[8] The Safe Drinking Water Act standard is a recommended secondary standard, rather than an enforceable MCL.
[9] MCL for Nickel was remanded on February 9, 1995, such that no legal limit exists. However, it is still recommended that nickel be monitored and exposure minimized until such time EPA reconsiders the MCL standard.

TABLE 5.—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR BEKAERT'S PETITIONED WASTE BASED ON MCL/LIMITING PATHWAY, DETECTION LEVEL, AND PERFORMANCE DEMONSTRATED CONCENTRATIONS FROM F006 TESTING

Constituent	Delisting Level (mg/l TCLP)	DAF	DRAS-Calculated Risk for Maximum Concentration of Carcinogen in Waste	DRAS-Calculated Hazard Quotient for Maximum Concentration of Non-Carcinogen in Waste
Inorganic Constituents				
Antimony	0.60	34.3	.....	2.60×10^{-1}
Arsenic	<0.20	19.2	2.39×10^{-5}	1.04×10^{-1}
Barium	50	27.8	.....	1.53×10^{-1}
Cadmium	0.50	30.0	3.45×10^{-12}	1.98×10^{-1}
Chromium	1.0	3850	.....	1.03×10^{-6}
Copper	100	7010	.....	2.12×10^{-3}
Cyanide	<0.005	18	.....	4.13×10^{-5}
Lead	<0.10	5000	.....	.....
Nickel	10	37.6	.....	7.90×10^{-2}
Selenium	<0.20	11.6	.....	1.03×10^{-2}
Silver	1	20.5	.....	5.82×10^{-2}
Mercury	<0.005	74.5	.....	3.95×10^{-2}
Zinc	125	24.9	.....	9.95×10^{-2}
Total Hazard Quotient for All Waste Constituents	.....	.....	.....	1.00
Total Carcinogenic Risk for the Waste (due to Arsenic, and Cadmium, which were non-detect in the waste.)	.....	.....	2.39×10^{-5}	.....

The Safe Drinking Water Act standard for copper is a recommended secondary standard, rather than an enforceable MCL.

EPA proposes to use the delisting levels in the TCLP leachate calculated by the DRAS, using the EPACMTP (Table 5) as well as the performance levels demonstrated during the F006 testing. These delisting levels are summarized in Table 6, below.

TABLE 6.—SUMMARY OF DELISTING LEVELS FOR BEKAERT'S PETITIONED WASTE

Constituent	Delisting level (mg/l TCLP)
Antimony	0.60
Arsenic	<0.20
Barium	50.0
Cadmium	0.50
Chromium	1.0
Copper	100
Cyanide	<0.005
Lead	<0.10
Nickel	10.0
Selenium	<0.20
Silver	1.0
Mercury	<0.005
Zinc	125

C. Conclusion

After reviewing Bekaert's processes, the EPA concludes that (1) no hazardous constituents of concern are likely to be present in Bekaert's waste at levels that would harm human health and the environment; and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

EPA believes that Bekaert's petitioned waste will not harm human health and the environment when disposed in a nonhazardous waste landfill if the delisting levels for land disposal as proposed in Preamble section II.B. are met.

EPA is finalizing it's decision to exclude Bekaert's petitioned waste from being listed as F006, based on descriptions of waste management and waste history, evaluation of the results of waste sample analysis, and on the requirement that Bekaert's petitioned waste must meet proposed delisting levels before disposal. Thus, EPA's decision is based on verification testing conditions. When the rule becomes effective, the exclusion will be valid only if the petitioner demonstrates that the petitioned waste meets the verification testing conditions and delisting levels in the amended Table 1 of Appendix IX of 40 CFR part 261. When the rule becomes final and EPA approves that demonstration, the petitioned waste would not be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270. Although management of the waste covered by this petition would, upon final promulgation, be relieved from Subtitle C jurisdiction, the waste would remain a solid waste under RCRA. As such, the waste must be handled in accordance with all applicable Federal, State, and local solid waste management regulations. Pursuant to RCRA section 3007, EPA may also sample and analyze the waste to determine if delisting conditions are met.

III. Limited Effect of Federal Exclusion

Will this Rule Apply in All States?

This Direct Final Rule, if promulgated, would be issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal and State programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws. Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, *i.e.*, to make their own delisting decisions. Therefore, this exclusion, if promulgated, would not apply in those authorized States. If the petitioned

waste will be transported to any State with delisting authorization, Bekaert must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Effective Date

This rule, if made final, will become effective 45 days from this date of publication, unless adverse comments are received. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for the petitioner. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective 45 days from this date of publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

V. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VI. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

VII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. EPA finds that today's 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 delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

VIII. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement and Fairness Act

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

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

IX. Executive Order 12866

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

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

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

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

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

OMB has exempted this direct final rule from the requirement for OMB

review under section (6) of Executive Order 12866.

X. Executive Order 13045

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

XI. Executive Order 13084 Affecting Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. Today's rulemaking does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this direct final rule.

XII. 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 45 days from the date of this publication as a direct final rule in the **Federal Register**.

XIII. Executive Order 13132

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

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

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

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

List of Subjects in 40 CFR Part 261

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

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

Dated: May 12, 2003.

James S. Kutzman,

Acting Director, Waste Management Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Table 1 of appendix IX, part 261 add the following wastestream 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
*	*	* * * * *
Bekaert Industries, Inc.	Dyersburg, TN	Dewatered wastewater treatment plant (WWTP) sludge (EPA Hazardous Waste No. F006) generated at a maximum annual rate of 1,250 cubic yards per calendar year after December 31, 2002 and disposed of in a Subtitle D landfill. For the exclusion to be valid, Bekaert must implement a testing program that meets the following Paragraphs:

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

Facility	Address	Waste description
		(1) Delisting Levels: All leachable concentrations for those constituents listed below in (i) and (ii) must not exceed the following levels (mg/l). The petitioner must use an acceptable leaching method, for example SW 846, Method 1311 to measure constituents in the waste leachate. Dewatered WWTP sludge (i) Inorganic Constituents Antimony 0.60; Arsenic <0.20; Barium 50; Chromium 1.0; Copper 100; Lead <0.10; Nickel 10.0; Selenium <0.20; Silver 1.0; Zinc 125; and mercury <0.005. (2) Waste Holding and Handling: (A) Bekaert must store the dewatered WWTP sludge as described in its RCRA permit, or continue to dispose of as hazardous all dewatered WWTP sludge generated, until they have completed verification testing described in Paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied. (B) Levels of constituents measured in the samples of the dewatered WWTP sludge that do not exceed the levels set forth in Paragraph (1) are non-hazardous. Bekaert can manage and dispose the nonhazardous dewatered WWTP. (A) Initial Verification Testing: After EPA grants the final exclusion, Bekaert must do the following: (i) Collect and analyze composites of the dewatered WWTP sludge. (ii) Make two composites of representative grab samples (according to SW 846 methodologies) collected. (iii) Analyze the waste, before disposal, for all of the constituents listed in Paragraph 1. (iv) Sixty (60) days after this exclusion becomes final, report to EPA the operational and analytical test data, including quality control information. (B) Subsequent Verification Testing: Following written notification by EPA, Bekaert may substitute the testing conditions in (3)(B) for (3)(A). Bekaert must continue to monitor operating conditions, and analyze representative samples (according to SW 846 methodologies) each quarter of operation during the first year of waste generation. The samples must represent the waste generated during the quarter. (4) Changes in Operating Conditions: If Bekaert significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), they must notify EPA in writing; they may no longer handle the waste generated from the new process as nonhazardous until the waste meets the delisting levels set in Paragraph (1) and they have received written approval to do so from EPA. (5) Data Submittals: Bekaert must submit the information described below. If Bekaert fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. Bekaert must: (A) Submit the data obtained through Paragraph 3 to the Region 4 RCRA Enforcement & Compliance, U.S. EPA, 61 Forsyth St SW, Atlanta, Georgia 30303 8909, within the time specified. (B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the State of Tennessee request them for inspection. (D) A company official having supervisory responsibility should send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: 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. 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. If 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. (6) Reopener (A) If, anytime after disposal of the delisted waste, Bekaert possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at a level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data.

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

Facility	Address	Waste description
		(B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, Bekaert must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (C) If Bekaert fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate 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. (D) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Regional Administrator or his delegate 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 or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (7) Notification Requirements: Bekaert must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision: (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if they ship the delisted waste into a different disposal facility.
*	*	* * * * *

[FR Doc. 03–13568 Filed 5–30–03; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR PART 3800

[WO–300–1990–PB–24 1A]

RIN 1004–AD44

Mining Claims Under the General Mining Laws; Final Rule; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the regulations for mining claims under the General Mining Laws published in the **Federal Register** on November 21, 2000 (65 FR 69998).

DATE: Effective on January 20, 2001.

FOR FURTHER INFORMATION CONTACT: You may contact Michael Schwartz on (202) 452–5198. Individuals who use a telecommunications device for the deaf (TDD) may contact Mr. Schwartz through the Federal Information Relay Service on 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Need for Correction

The regulations as published contain a nonexistent cross reference section which may confuse or mislead the public.

In § 3809.202(d), we have a cross reference to a nonexistent § 3809.800(c) which could mislead or confuse the public. Therefore, we are changing the cross reference from § 3809.800(c) to § 3809.802.

List of Subjects in 43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Land Management Bureau, Mines, Public Lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

Dated: May 21, 2003.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

■ Accordingly, 43 CFR part 3800 is corrected by making the following correcting amendment:

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

■ 1. The authority citation for part 3800 continues to read as follows:

Authority: 5 U.S.C. 552; 16 U.S.C. 1131–1136, 1271–1287, 1901; 25 U.S.C. 463; 30 U.S.C. 21 *et seq.*, 21A, 22 *et seq.*, 36, 621 *et seq.*, 1601; 43 U.S.C. 2, 154, 299, 687b–687b–4, 1068 *et seq.*, 1201, 1701 *et seq.*; 62 Stat. 162.

■ 2. Revise § 3809.202(d) to read as follows:

§ 3809.202 Under what conditions will BLM defer to State regulation of operations?

* * * * *

(d) Appeal of State Director decision. The BLM State Director's decision will be a final decision of BLM and may be appealed to the Assistant Secretary for Land and Minerals Management, but not to the Department of the Interior Office of Hearings and Appeals. The items you should include in the appeal are the same as the items you must include under § 3809.802.

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