result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

F. Enhancing the Intergovernmental Partnership under Executive Order 12875

In compliance with Executive Order 12875, the EPA has involved State and local governments in the development of this rule. State and local air pollution control associations participated in the regulatory negotiation and have also provided regulatory review. State and local air pollution control representatives participated in the regulatory negotiation and have also provided input into subsequent regulatory development.

List of Subjects in 40 CFR Part 59

Environmental protection, Air pollution control, Architectural coatings, Consumer and commercial products, Incorporation by Reference, Ozone, Regulatory negotiation, Volatile organic compound.

TABLE 1.—ARCHITECTURAL COATING VOLATILE ORGANIC COMPOUND CONTENT LEVELS

[Unless otherwise specified, units are in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation excluding the volume of any water, exempt compounds, or colorant added to tint bases.]

Coating category	Effective Apr. 1, 1997
Antenna coatings	530
Antifouling coatings	400
Anti-graffiti coatings	600
Bituminous coatings and mastics	500
Bond breakers	600
Chalkboard resurfacers	450
Concrete curing compounds	350
Concrete protective coatings	400
Dry fog coatings	400
Extreme high durability coatings	800
Fire-retardant/resistive coatings:	
Clear	850
Opaque	450
Flat coatings:	
Exterior	250
Interior	250
Floor coatings	400
Flow coatings	650
Form release compounds	450
Graphic arts coatings (sign paints)	500
Heat reactive coatings	420
High temperature coatings	650
Impacted immersion coatings	780
Industrial maintenance coatings	450
Lacquers (including lacquer sanding sealers)	680
Magnesite cement coatings	600

TABLE 1.—ARCHITECTURAL COATING VOLATILE ORGANIC COMPOUND CONTENT LEVELS—Continued

[Unless otherwise specified, units are in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation excluding the volume of any water, exempt compounds, or colorant added to tint bases.]

Coating category	Effective Apr. 1, 1997
Mastic texture coatings	300
Metallic pigmented coatings	500
Multi-colored coatings	580
Nonferrous ornamental metal lacquers and surface protectants	870
Nonflat coatings:	
Exterior	380
Interior	380
Nuclear coatings	420
Pretreatment wash primers	780
Primers and undercoaters	350
Quick-dry coatings:	
Enamels	450
Primers, sealers, and undercoaters	450
Repair and maintenance thermoplastic coatings	650
Roof coatings	250
Rust preventative coatings	400
Sanding sealers (other than lacquer sanding sealers)	550
Sealers (including interior clear wood sealers)	400
Shellacs:	
Clear	650
Opaque	550
Stains:	
Clear and semitransparent	550
Opaque	350
Low solids	[1] 120
Swimming pool coatings	600
Thermoplastic rubber coatings and mastics	550
Traffic marking coatings	150
Varnishes	450
Waterproofing sealers and treatments:	
Clear	600
Opaque	400
Wood preservatives:	
Below ground wood preservatives	550
Clear and semitransparent	550
Opaque	350
Low solids	[1] 120

[1] Units are grams of VOC per liter of coating, including water and exempt compounds, thinned to the maximum thinning recommended by the manufacturer.

Dated: June 18, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96–16009 Filed 6–24–96; 8:45am]

BILLING CODE 6560–50–P

40 CFR Part 261

[SW–FRL–5525–3]

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

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant a petition to Bekaert Steel Corporation (Bekaert) of Rogers, Arkansas to exclude (or ''delist''), certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 (hereinafter all sectional references are to 40 CFR unless otherwise indicated). This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of 40 CFR Parts 260 through 266, 268 and 273, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator specific'' basis from the hazardous waste lists. This proposed decision is based on an evaluation of waste-specific information provided by the petitioner. If this proposed decision is finalized, the petitioned waste will be conditionally excluded from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

DATES: The EPA is requesting public comments on this proposed decision. Comments will be accepted until August 9, 1996. Comments postmarked after the close of the comment period will be stamped ''late.''

Any person may request a hearing on this proposed decision by filing a request with Jane N. Saginaw, Regional Administrator, whose address appears below, by July 10, 1996. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments. Two copies should be sent to William Gallagher, Delisting Program, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202. A third copy should be sent to the Arkansas Department of Pollution Control and Ecology, P.O. Box 8913, 8001 National Drive, Little Rock, Arkansas 72219–8913. Identify your comments at the top with this regulatory docket number: ''F–96–ARDEL–BEKAERT.''

Requests for a hearing should be addressed to the Regional Administrator, Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

The RCRA regulatory docket for this proposed rule is located at the Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202 and is available for viewing in the EPA library on the 12th floor from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The docket may also be viewed at the Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72219–8913. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION, CONTACT: For technical information concerning this notice, contact David Vogler, Delisting Program (6PD–O), Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–7428.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, the 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 § 261.31 and § 261.32. These wastes are listed as hazardous because they typically and frequently 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 hazardous. 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 should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show 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. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. 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 Agency to determine whether the waste contains any of the other identified constituents 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 waste remains non-hazardous based on the hazardous waste characteristics.

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 Agency on procedural grounds. See *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). On December 21, 1995, the EPA proposed rules related to waste mixtures and residues at 60 *FR* 66344 and invited public comment. These references should be consulted for more information regarding mixtures and residues.

B. Approach Used To Evaluate This Petition

Bekaert's petition requests a delisting for a listed hazardous waste. In making the initial delisting determination, the 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 agreed with the petitioner that the waste is non-hazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, the EPA would have proposed to deny the petition.) The 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. 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.

For this delisting determination, the EPA used such information to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. The EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for Bekaert's petitioned waste, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, the EPA used a particular fate and transport model to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the disposal of Bekaert's petitioned waste on human health and the environment. Specifically, the EPA used the maximum estimated waste volume and the maximum reported extract concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the current Maximum Contaminant Levels (MCLs) promulgated under the Safe Drinking Water Act (SWDA) or health-based levels derived from Verified Reference Doses (RfDs). The value used for copper is an action level for treatment of a water supply in lieu of a MCL (40 CFR § 141.80).

The EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of

RCRA Subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. Because a delisted waste is no longer subject to hazardous waste control, the EPA is generally unable to predict and does not presently control how a waste will be managed after delisting. Therefore, the EPA does not currently consider extensive site-specific factors when applying the fate and transport model.

The EPA also considers the applicability of groundwater monitoring data during the evaluation of delisting petitions. The EPA normally requests groundwater monitoring data for wastes currently managed or have ever been managed in a land based management unit. Groundwater monitoring data provides significant additional information important to fully characterize the potential impact (if any) of the disposal of a petitioned waste on human health and the environment. In this case, the EPA determined that the groundwater monitoring data was not applicable to the evaluation of the petitioned waste. Specifically, Bekaert currently disposes of the petitioned waste generated from its filter press which is part of their wastewater treatment facility in an off-site RCRA hazardous waste landfill (which is not owned/operated by Bekaert). This landfill did not begin accepting the petitioned waste generated by the filter press until September 1991. In other words, the petitioned waste comprises a small fraction of the total waste managed in the off-site units. The Agency, therefore, believes that any ground-water monitoring data from the landfill would not be meaningful for an evaluation of the specific effect of the petitioned waste on ground water. However, the potential impact of these wastes on ground water is predicted through the application of a fate and transport model.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

Bekaert Steel Corporation, One Bekaert Drive, Rogers, Arkansas, 72757

A. Petition for Exclusion

Bekaert, located in Rogers, Arkansas, manufactures steel cord by reducing the diameter of steel rods followed by electroplating and further reduction. 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 its waste filter cake 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)–(4). Today's proposal to grant this petition for delisting is the result of the EPA's evaluation of Bekaert's petition.

B. Background

On September 11, 1995, Bekaert petitioned the EPA to exclude, from the lists of hazardous wastes contained in 40 CFR § 261.31 and § 261.32, its wastewater filter cake generated from its wastewater treatment system. Bekaert subsequently provided additional information to complete its petition.

In support of its petition, Bekaert submitted: (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.

Bekaert manufactures steel cord which is sold to the tire manufacturing industry for use in reinforcing tires. The steel cord is produced from steel rod which has been reduced in size and electroplated with a copper and zinc alloy.

The manufacturing processes contribute to the petitioned waste from the following sources: water from the caustic scrubbers, water from the hydrochloric acid scrubbers, water from the rinse used to remove soap from wire, water from the cooling water bath following fluidized bed heater, waste acid from the hydrochloric acid pickling, water from the rinse following the zinc plating bath, water from the cooling bath following induction heating, phosphoric acid from the phosphoric acid bath, water from the phosphoric acid rinse bath and the spent oil/water mixture (non-petroleum) used as a lubricant in the process.

Wastewaters from the manufacturing process are collected and stored in four central tanks prior to discharge to the wastewater treatment plant. The petitioned waste is generated from the wastewater treatment plant and not directly from the manufacturing process. Wastewaters are transferred from the holding tanks to a treatment tank where it is neutralized with sodium hydroxide. After neutralization, one of several methods are employed to remove solids: (1) A polymer is added to promote flocculation. This wastewater is then sent to a sludge thickening tank from which the sludge is sent to the filter press; (2) the wastewater is routed to an ultrafiltration unit to remove solids which are routed to the filter press; or (3) the wastewater is routed to a clarifier where a polymer is added to aid in solids precipitation. The solids are routed to the sludge thickening tank and then to the filter press.

The petitioned waste is dropped from the filter press at the end of the wastewater treatment process into a 18×8×5 foot hopper. The F006 filter press cake is currently sent to a permitted hazardous waste facility for disposal.

To collect representative samples, petitioners are normally requested to divide the unit into four quadrants (not exceeding 10,000 square feet per quadrant) and randomly collect five full-depth core samples from each quadrant. The five full-depth core samples are then composited (mixed) by quadrant to produce a total of four composite samples. See *Test Methods for Evaluating Solid Wastes: Physical/ Chemical Methods*, U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and *Petitions to Delist Hazardous Wastes—A Guidance Manual*, (second edition), U.S. EPA, Office of Solid Waste, (EPA/530–R–93–007), March 1993.

Bekaert submitted analytical results from five composite filter cake samples collected from the hoppers at five different days taken at intervals during a period between May 25, 1995, and July 10, 1995. This was done to demonstrate that the waste composition did not vary with time. In order account for spatial variability, grab samples were collected from four randomly selected sample locations based on a grid pattern that divided each hopper into ten grids. The entire depth (approximately five feet) of each hopper was sampled. A composite of the four grab samples was obtained to represent that day's sample.

Bekaert developed a list of constituents of concern from comparing a list of all raw materials used in the plant that could potentially appear in the petitioned waste with those found in 40 CFR § 261, Appendix VIII, as well as the following six constituents not found in Appendix VIII: acetone, ethylbenzene, isophorone, 4-methyl-2-pentanone, styrene, and total xylenes. Based on this review, it was not anticipated that any of the Appendix VIII organic compounds or any of the six additional organic compounds would be present in the petitioned waste.

Using the list of constituents of concern, Bekaert analyzed the five composite samples for the total concentrations (*i.e.*, mass of a particular constituent per mass of waste) of the eight TCLP metals, antimony, beryllium, copper, nickel, thallium, zinc, selected volatile and semi-volatile organic constituents, and oil and grease content. These five samples were also analyzed to determine whether the waste exhibited ignitable, corrosive, or reactive properties as defined, respectively, under § 261.21, § 261.22, and § 261.23, including analysis for total constituent concentrations of cyanide, sulfide, reactive cyanide, and reactive sulfide. These five samples were also analyzed for TCLP concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of the eight TC metals, and antimony, beryllium, copper, nickel, thallium, and zinc.

C. Agency Analysis

Bekaert used SW–846 Methods 7041, 7091, 7191, and 7196A, in respective order, to quantify the total constituent concentrations and leachable (TCLP) concentrations of antimony, beryllium, chromium, and hexavalent chromium; and SW–846 Method 6010A was used to quantify total constituent concentrations and leachable (TCLP) concentrations of arsenic, barium, cadmium, copper, lead, nickel, selenium, silver, thallium, and zinc in samples. SW–846 methods 7471 and 7470 were used to determine total and leachable (in respective order) constituent concentrations for mercury.

Using SW 846 Method 9070, Bekaert determined that the petitioned waste had a maximum oil and grease content of 5700 mg/kg.

Characteristic testing was conducted on the samples of the petitioned waste, including analysis for reactive cyanide and reactive sulfide (SW–846 Methods 7.3.3.2 and 7.3.4.1, respectively), ignitability (ASTM D–4982B), and corrosivity (SW–846 Method 9045). Bekaert used SW–846 Methods 9012 and 4500 to quantify concentrations of the total and complexed cyanide, respectively, in the samples. Bekaert used Method 9030A to quantify the total constituent concentrations of sulfide in the samples.

Table 1 presents the maximum total constituent and leachate concentrations for the eight TC metals, antimony, beryllium, copper, nickel, thallium, and zinc for the composite samples of the petitioned waste. Table 1 also presents maximum reactive cyanide and reactive sulfide concentrations.

The detection limits presented in Table 1 represent the lowest concentrations quantifiable by Bekaert when using the appropriate SW–846 or Agency-approved analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the ''cleanliness'' waste matrices varies and ''dirty'' waste matrices may cause interferences, thus raising the detection limits).

Bekaert used SW–846 Methods 8240 and 8270 to quantify the total constituent concentrations of 30 volatile and 71 semi-volatile organic compounds, respectively, in the waste samples. This suite of constituents included all of the organic constituents listed in § 261.24 as well as other organic compounds commonly analyzed for in hazardous waste samples. Bekaert used SW–846 Methods 8240, 8270, 8150A, 3510A, and 8080 to quantify the leachable concentrations of 11 volatile, 13 semi-volatile, 2 chlorinated herbicides, and 7 pesticides (all organic compounds), respectively, in the waste samples, following extraction by SW–846 Method 1311 (TCLP). This suite of constituents included all of the organic constituents listed in § 261.24. Table 2 presents the maximum total and leachate concentrations of all detected organic constituents in Bekaert's waste and waste extract samples. Lastly, on the basis of explanations and analytical data provided by Bekaert, none of the analyzed samples exhibited the characteristics of ignitability, corrosivity, or reactivity. See § 261.21, § 261.22 and § 261.23.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS (PPM) [1] FILTER PRESS WASTE

Inorganic constituents	Total constituent analyses (mg/kg)	TCLP leachate analyses (mg/l)
Antimony	< 0.50	0.34
Arsenic	< 5.00	< 0.05
Barium	2.5	1.3
Beryllium	< 0.10	< 0.05
Cadmium	3.1	< 0.05
Chromium	68	< 0.05
Chromium (hexavalent)	< 5.0	< 0.05
Copper	580	12
Lead	< 5.0	< 0.10
Mercury	< 0.125	< 0.005
Nickel	43	1.1
Selenium	6.4	0.091
Silver	1.2	0.2
Thallium	< 10	< 0.10
Zinc	16000	470
Cyanide (complexed) (total)	0.31	0.030
Cyanide (soluble)	< 0.13	NA
Cyanide (reactive)	< 0.050	NA
Sulfide (reactive)	<10	NA

< Denotes that the constituent was not detected at the detection limit specified in the table.

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not represent the specific levels found in one sample.

NA Denotes that the constituent was not analyzed.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS (PPM) [1] FILTER PRESS SLUDGE

Organic constituents	Total constituent analyses (mg/kg)	TCLP leachate analyses (mg/l)
Methyl Ethyl Ketone	0.120	< 0.100
Dichloromethane	0.008	NA
4-Methylphenol	<1.0	0.067

< Denotes that the constituent was not detected at the detection limit specified in the table.

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not represent the specific levels found in one sample.

NA Denotes that the constituent was not analyzed.

Bekaert submitted a signed certification stating that the maximum volume of filter cake generated on an annual basis is 1,022 cubic yards of waste. The EPA reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. The EPA accepted Bekaert's certified estimate of 1,022 cubic yards of annual generated waste. The petition was evaluated at a waste volume of 1,250 cubic yards of annual generated which is a more conservative approach and also allows for future fluctuations in waste output.

The EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The EPA, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting a final exclusion.

D. Agency Evaluation

The EPA considered the appropriateness of alternative waste management scenarios for Bekaert's petitioned waste and decided, based on the information provided in the petition, that disposal in a municipal solid waste landfill is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The EPA, therefore, evaluated Bekaert's petitioned waste using the modified EPACML which predicts the potential for groundwater contamination from wastes that are landfilled. See 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991), and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worst-case contaminant levels in groundwater at a compliance point (*i.e.,* a receptor well serving as a drinking water supply). Specifically, the model estimated the dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from groundwater recharge for a specific volume of waste. The EPA requests comments on the use of the EPACML as applied to the evaluation of Bekaert's petitioned waste.

For the evaluation of Bekaert's petitioned waste, the EPA used the EPACML to evaluate the mobility of the hazardous inorganic constituents detected in the extract of samples of Bekaert's petitioned waste. The EPA intends to evaluate petitions for generated wastes on a case-by-case basis. The DAFs are currently calculated assuming an ongoing process generates wastes for 20 years. EPA's evaluation, using a DAF of 96, maximum annual waste volume estimate of 1,250 cubic yards and the maximum reported TCLP leachate concentrations (see Table 1), yielded compliance-point concentrations (see Table 3) that are below the current health-based levels used in delisting decision-making.

The maximum reported or calculated leachate concentrations of antimony, barium, copper, nickel, selenium, silver, and zinc in the petitioned waste yielded compliance point concentrations below the health-based levels used in delisting decision-making. The EPA did not evaluate the mobility of the remaining inorganic constituents (*i.e.,* arsenic, beryllium, cadmium, chromium, lead, mercury, and thallium) in Bekaert's waste because they were not detected in the leachate using the appropriate analytical test methods (see Table 1). The EPA believes that it is inappropriate to evaluate nondetectable concentrations of a constituent of concern in its modeling efforts if the nondetectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), the EPA assumes that the constituent is not present and therefore does not present a threat to human health or the environment.

TABLE 3.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (PPM) PETITIONED WASTE

Inorganic constituents	Compliance point concentrations [1] (mg/l)	Levels of regulatory concern [2] (mg/l)
Antimony	0.0036	0.006
Barium	0.014	2.0
Copper	0.13	1.3
Nickel	0.012	0.1
Selenium	0.00096	0.05
Silver	0.002	0.2
Zinc	4.90	10.

[1] Using the maximum TCLP leachate level and based on a DAF of 96 calculated using the EPACML for an annual volume of 1,250 cubic yards.

[2] See *Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions,* December 1994 located in the RCRA public docket for today's notice.

The EPA also evaluated the potential hazard of methyl ethyl ketone, 4-methylphenol (p-cresol), and dichloromethane, the only organic constituents detected in the total concentrations or TCLP extract of samples of Bekaert's petitioned waste. Process information submitted by Bekaert demonstrates that organic constituents are unlikely to be present in the waste. Furthermore, the organic analysis submitted indicated only trace levels of these three constituents. In any case, the Agency notes that if the total levels (0.120, < 1.00, 0.008 mg/kg, in respective order) of these trace constituents were evaluated using the EPACML (conservatively assuming the total concentration of the constituents would leach), the compliance levels (.00125, < 0.0104, 0.0000842 mg/l) at the theoretical compliance point would still be well below health-based levels (20, 2, 0.005 mg/l, in respective order).

As reported in Table 1, reactive cyanide and reactive sulfide were not detected in Bekaert's petitioned waste. The detection limits are less than 0.050 mg/kg and less than 10 mg/kg, respectively. These detection limit concentrations are below the EPA's interim standards of 250 and 500 ppm, respectively. See *Interim Agency Thresholds for Toxic Gas Generation,* July 12, 1985, internal Agency Memorandum in the RCRA public docket. Therefore, reactive cyanide and reactive sulfide levels are not of concern.

Complexed cyanide was identified in one of the five samples analyzed at a total concentration of 0.31 mg/kg and at a leachable (TCLP extract) concentration of 0.030 mg/1. The leachable amount found in the one sample of waste is below the appropriate health-base

number of 0.2 mg/1 (see docket) even without considering the dilution effects of the fate and transport of the constituent. Therefore, since Bekaert does not use cyanide in any of their processes and the complexed cyanide was identified in only one sample at concentrations below the health-based concentration, complexed cyanide is not considered of concern.

The EPA concluded, after reviewing Bekaert's processes, that no other hazardous constituents of concern, other than those tested for, are likely to be present or formed as reaction products or by-products in Bekaert's waste proposed for exclusion. In addition, on the basis of explanations and analytical data provided by Bekaert, pursuant to § 260.22, the EPA concludes that the waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See § 261.21, § 261.22, and § 261.23, respectively.

During the evaluation of Bekaert's petition, the EPA also considered the potential impact of the petitioned waste via non-ground water routes (*i.e.*, air emission and surface runoff). With regard to airborne dispersion in particular, the EPA believes that exposure to airborne contaminants from Bekaert's petitioned waste is unlikely. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Bekaert's waste in an open landfill. The results of this worst-case analysis 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 the EPA's assessment of the potential impact of Bekaert's waste, with regard to airborne dispersion of waste contaminants, is presented in the RCRA public docket for today's proposed rule.

The EPA also considered the potential impact of the petitioned waste via a surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water run-off. Subtitle D regulations (see 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in today's notice, due to the aggressive acid medium used for extraction in the TCLP test. The EPA believes that, in general, leachate derived from the waste is unlikely to enter a surface water body directly without first travelling through the saturated subsurface zone where further dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of the solubility of a toxic constituent in water, and are indicative of the fraction of the constituent that may be mobilized in surface water, as well as ground water. The reported TCLP extraction data shows that the metals that might be released from Bekaert's waste to surface water would be likely to remain undissolved or leach in concentrations that would be below health-based levels of concern. Finally, any transported constituents would be further diluted in the receiving surface water body.

Based on the reasons discussed above, the EPA believes that contamination of surface water through run-off from the waste disposal area is very unlikely. Nevertheless, the EPA evaluated potential impacts on surface water if Bekaert's waste were released from a municipal solid waste landfill through run-off and erosion. *See*, the RCRA public docket for today's proposed rule. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below the EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that Bekaert's petitioned waste is not a substantial present or potential hazard to human health and the environment via the surface water exposure pathway.

E. Conclusion

The EPA has reviewed the sampling procedures used by Bekaert and has determined that they satisfy the EPA criteria for collecting representative samples. The data submitted in support of the petition demonstrates, after careful evaluation, that constituents in Bekaert's waste are present at the compliance point below the health-based levels used in the delisting decision-making. The EPA believes that Bekaert has successfully demonstrated that the petitioned waste is non-hazardous.

The EPA, therefore, proposes to grant an exclusion to Bekaert Steel Corporation, located in Rogers, Arkansas, for the petitioned waste described in its petition as EPA Hazardous Waste No. F006. The EPA's decision to exclude this waste is based on descriptions of the process from which the petitioned waste is derived, descriptions of Bekaert's wastewater treatment process, and characterization of the petitioned waste. If the proposed rule is finalized, the petitioned waste will no longer be subject to regulation under Parts 262 through 268 and the permitting standards of Part 270.

If made final, the proposed exclusion will apply only to 1,250 cubic yards of petitioned waste generated annually, on a calendar year basis, through operation of Bekaert's wastewater treatment filter press. The facility would be required to obtain a new exclusion if either its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition (for example, significantly higher levels of hazardous constituents) or increase in volume occur. Accordingly, the facility would be required to file a new petition for the altered waste. Additionally, the facility must treat waste generated either in excess of 1,250 cubic yards per year or generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be removed from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

F. Annual Testing

If a final exclusion is granted, the petitioner will be required to demonstrate, on an annual basis, that the characteristics of the petitioned waste remain as originally described. In order to confirm that the characteristics of the waste do not change significantly, the facility must, on an annual basis, analyze a representative composite sample for the constituents listed in § 261.24 as well as antimony, copper, nickel and zinc using the method specified therein. Sampling and analysis must be completed by July 1 of each year. Each year's analytical results (including quality control information) must be compiled, certified according to 260.22(i)(12), maintained on-site for a minimum of five years, and made available for inspection upon request by any employee or representative of EPA or the State of Arkansas. Failure to maintain the required records on site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA.

The purpose of this testing requirement is to ensure that the quality of the petitioned waste remains as originally described by the petitioner. The Agency believes that the data obtained will assist EPA or the State in determining whether the petitioner's manufacturing processes have been significantly altered, or if the waste is more variable than originally described by the petitioner. The Agency also believes that the annual retesting of the petitioned waste is not overly burdensome to the facility and notes that these data will assist the facility in complying with § 262.11(c) which requires generators to determine whether their wastes are hazardous, as defined by the Toxicity Characteristic (see 40 CFR 261.24).

III. Limited Effect of Federal Exclusion

This proposed exclusion, 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 State. Since a petitioner's waste may be regulated under a dual system (both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authorities to determine the current status of their wastes under State law.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, i.e., to make their own delisting decisions. Therefore, this proposed exclusion, if promulgated, would not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, 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 immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six-months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. 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, the EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C.§ 553(d).

V. Regulatory Impact

Under Executive Order 12866, the EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions. This proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of the EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from the EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact due to today's rule. Therefore, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

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 any impact on any small entities.

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

VII. Paperwork Reduction Act

Information collection and recordkeeping 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 (Pub. L. 96–511, 44 U.S.C. § 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, the 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, the EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before the 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 the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local or tribal governments or the private sector. The EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon state, local or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

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: June 11, 1996.

Jane N. Saginaw,

Regional Administrator.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

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

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

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Bekaert Steel Corporation.	Rogers, Arkansas	Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations (at a maximum annual rate of 1,250 cubic yards to be measured on a calendar year basis) after [insert publication date of the final rule]. In order to confirm that the characteristics of the waste do not change significantly, the facility must, on an annual basis, before July 1 of each year, analyze a representative composite sample for the constituents listed in 261.24 as well as antimony, copper, nickel, and zinc using the method specified therein. The annual analytical results, including quality control information, must be compiled, certified according to § 260.22(i)(12) of this chapter, maintained on site for a minimum of five years, and made available for inspection upon request of any employee or representative of EPA or the State of Arkansas. Failure to maintain the required documents on site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. *Notification Requirements:* Bekaert Steel Corporation must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.
*	*	* * * * *

[FR Doc. 96–15884 Filed 6–24–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 261

[SW–FRL–5525–2]

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

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant a petition to the Texas Eastman Division of Eastman Chemical Company (Texas Eastman) to exclude (or ''delist''), certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.24, 261.31, 261.32 and 261.33 (hereinafter all sectional references are to 40 CFR unless otherwise indicated). This petition was submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of 40 CFR Parts 260 through 266, 268 and 273, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator specific'' basis from the hazardous waste lists. This proposed decision is based on an evaluation of waste-specific information provided by the petitioner. If this proposed decision is finalized, the petitioned waste will be conditionally excluded from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

DATES: The EPA is requesting public comments on this proposed decision. Comments will be accepted until August 9, 1996. Comments postmarked after the close of the comment period will be stamped ''late.''

Any person may request a hearing on this proposed decision by filing a request with Jane N. Saginaw, Regional Administrator, whose address appears below, by July 10, 1996. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments. Two copies should be sent to William Gallagher, Delisting Program, Multimedia Planning and Permitting Division (6PD-O), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202. A third copy should be sent to the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753. Identify your comments at the top with this regulatory docket number: ''F–96–TXDEL–TXEASTMAN.''

Requests for a hearing should be addressed to the Regional Administrator, Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

The RCRA regulatory docket for this proposed rule is located at the Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202 and is available for viewing in the EPA library on the 12th floor from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The docket may also be viewed at the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION, CONTACT: For technical information concerning this notice, contact Michelle Peace, Delisting Program (6PD-O), Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–7430.