

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 260

[FRL-6505-5]

Proposed Exclusion from the Definition of Solid Waste; Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant a variance from EPA's hazardous waste requirements for certain materials reclaimed by the World Resources Company (WRC) from metal-bearing sludges. This action responds to a petition submitted by WRC requesting that the Agency exclude from the RCRA definition of solid waste its concentrate material that is partially reclaimed from metal-bearing sludges and sold to smelters. If the Agency finalizes this action, the variance will be limited to five years.

DATES: EPA will accept public comments on its proposed decision until February 7, 2000.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F-99-WRCP-FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters, 401 M St., SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA address below. Comments may also be submitted electronically to: *rcra-docket@epamail.epa.gov*. Comments in electronic format should also be identified by the docket number F-99-WRCP-FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M St. SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC) located at Crystal Gateway 1, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The docket is open from 9 a.m. to 4 p.m., Monday through

Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603-9230. The public may copy a maximum of 100 pages from the regulatory docket at no charge. Additional copies cost \$0.15/page. The index is available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing it.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund/EPCRA/UST Hotline at (800) 424-9346 (toll free) or TDD (800) 553-7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412-9810 or TDD (703) 412-3323. For more detailed information on specific aspects of this rulemaking, contact Ms. Marilyn Goode, U.S. Environmental Protection Agency, MC 5304W, 401 M Street SW, Washington, DC 20460, (703) 308-8800, electronic mail: *goode.marilyn@epa.gov*.

SUPPLEMENTARY INFORMATION: The index to the docket record is available on the Internet. Follow these instructions to access the information electronically:

WWW: *http://www.epa.gov/epaoswer/osw/hazwaste.htm#id*.

FTP: *ftp.epa.gov*.

Login: Anonymous

Password: Your Internet Address

Files are located in /pub/epaoswer.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document. EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Table of Contents

- I. Background
 - A. Authority
 - B. Summary of Petition
 - 1. Applicability of the Variance
 - 2. Description of WRC's Partial Reclamation Process
- II. Summary of Regulatory Provisions Governing Petitions
- III. Evaluation of WRC's Petition Against Each of the Established Evaluation Factors

- A. The Degree of Processing the Material has Undergone and the Degree of Further Processing that is Required
- B. Value of the Material After it Has Been Partially Reclaimed
- C. The Degree to Which the Partially Reclaimed Material is Like an Analogous Raw Material
- D. The Extent to Which an End Market for the Partially Reclaimed Material is Guaranteed
- E. The Extent to Which the Partially Reclaimed Material is Handled to Minimize Loss
- IV. Summary of the Agency's Proposed Decision
- V. Request for Comments
- VI. Effect of Variance in Arizona
- VII. Administrative Requirements

I. Background

A. Authority

Under 40 CFR 260.30(c), facilities may petition EPA to exclude from the definition of solid waste material that has been reclaimed but must be reclaimed further before recovery is complete. To qualify for the exclusion, the material resulting from initial reclamation must be commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). Petitioners must provide sufficient information to EPA to allow the Agency to make a determination that the material is not a solid waste, pursuant to criteria set forth at 40 CFR 260.31(c).

B. Summary of Petition

Pursuant to 40 CFR 260.30(c), WRC submitted to EPA a petition for a variance from classification as solid waste for metal-rich concentrate material produced at its facility in Phoenix, Arizona. WRC produces the concentrate primarily from sludges generated by electroplating operations. The sludges are rich in metals, and are generally classified as hazardous wastes. WRC then sells the partially reclaimed material to primary smelters for metals extraction. Currently, the partially reclaimed material produced at the Phoenix facility is fully regulated as hazardous waste, must be managed and sold as hazardous waste, and off-site shipments must be accompanied by a hazardous waste manifest. In support of its variance application, WRC provided data and information in its application about each of the factors listed in 40 CFR 260.31(c).

1. Applicability of the Variance

At its Phoenix facility, WRC principally reclaims wastewater treatment sludges (F006) received from generators who conduct electroplating and metal finishing operations. From

these sludges, WRC "produces" a metal-rich concentrate material. In addition, the facility also receives and partly reclaims hazardous wastes listed as F019 (wastewater treatment sludges from chemical conversion coating of aluminum) and D004 through D011 (characteristic hazardous wastes). WRC's petition, and the proposed exclusion addressed in this notice, pertain only to the metal-bearing sludges listed as hazardous wastes F006 and F019 and partially reclaimed at WRC's Phoenix, Arizona facility. Other hazardous wastes managed by WRC at its Arizona facility and all hazardous wastes managed at other WRC facilities are not addressed in this proposed decision and must continue to be managed as solid and/or hazardous wastes in accordance with all applicable RCRA regulatory requirements.

The Agency notes that sludges that are hazardous only because they exhibit a characteristic of hazardous waste that are reclaimed are currently excluded from classification as solid waste pursuant to 40 CFR 261.2(c)(3). Therefore, sludges that are reclaimed by WRC and designated as hazardous wastes D004 through D011 are not solid wastes. In addition, if this variance is finalized and if these characteristic sludges are mixed with the listed metal-bearing sludges covered by the variance prior to or during the reclamation process at WRC's Phoenix facility, the mixture will not be classified as a solid waste provided the mixture is sent off-site for further reclamation and is handled in accordance with all the conditions of this variance.

2. Description of WRC's Partial Reclamation Process

Operations at WRC's Phoenix facility are governed by a Consent Agreement and Consent Order (CA/CO) executed by EPA Region IX, WRC, and the Arizona Department of Environmental Quality, hereafter referred to as "ADEQ" (see In the Matter of World Resources Company, EPA I.D. No. AZD980735500, United States Environmental Protection Agency, Region IX, September 3, 1996). The CA/CO includes a requirement to submit an application for a treatment and storage permit to ADEQ. At the Arizona facility, WRC accepts F006 raw material (as well as other metal-bearing sludges) that it judges to be acceptable for recycling based on laboratory and process testing of generated sludges. WRC prepares a waste profile for the wastestreams received from each generator, which includes physical descriptions and constituent content. The material is unloaded, examined, and sampled on receiving pads in a

processing enclosure. WRC dries the received waste through evaporative processes. The material is spread out in a controlled area, mechanically furrowed, and periodically rotor-tilled to facilitate drying. The physical characteristics of the material changes from a wet cohesive nonfree-flowing mass into a granular free-flowing form. The moisture content of the F006 received is reduced by one-half. The entire processing area is located on a concrete pad which covers several acres, with a compacted native soil and flexible membrane liner underneath the pad.

The F006 is then blended by mechanical mixing with other waste streams received from various generators to achieve concentrates that meet the contractual specifications (e.g., recoverable metals contents) of its customers. Other than water, WRC neither adds any materials to, nor removes any materials from the F006 and F019 metal-bearing sludges that it receives from generators and processes. The resulting concentrate contains metal hydroxides and oxides of iron, aluminum and magnesium. WRC markets the concentrates as copper, nickel, and tin concentrates to smelters that recover various metals contained in these concentrates.

II. Summary of Regulatory Provisions Governing Petitions

40 CFR 260.30 provides that the EPA Administrator may grant a variance from the classification of solid waste, on a case-by-case basis, for materials that have been reclaimed but must be reclaimed further before recovery is completed. Such a variance generally is contingent upon the material resulting from the initial reclamation being "commodity-like." If this variance is finalized, the concentrates partially reclaimed from metal-bearing sludges F006 and F019 that are shipped to smelters may travel without a hazardous waste manifest and will not be subject to any RCRA controls other than the conditions of this variance (discussed in section IV of this notice). Incoming hazardous waste received by WRC at the Phoenix facility is not covered by the variance and must be manifested and managed as a hazardous waste until shipped to smelters for further reclamation.

40 CFR 260.31(c) specifies five criteria for evaluating whether a specific material qualifies for a "partially reclaimed material" variance from the definition of solid waste. In addition, 40 CFR 260.31(c)(6) allows EPA to consider "other relevant factors" when determining whether or not to grant a

requested variance for materials that have been reclaimed, but must be reclaimed further. The first evaluation criterion (40 CFR 260.31(c)(1)) is the degree of processing a material has undergone and the degree of further processing that is required for the material to be rendered "commodity-like." Materials that have undergone substantial processing to reclaim valuable or recyclable materials (but still must undergo a degree of further processing) generally satisfy this criterion. Materials that are still substantially "waste-like" and that need a significant degree of further processing or "treatment" to be rendered "commodity-like" do not satisfy the evaluation criterion.

The second evaluation criterion (§ 260.31(c)(2)) requires an evaluation of the economic value of the material that has been reclaimed, but must be further reclaimed. This criterion is also useful in determining whether a material is indeed "commodity-like." To satisfy this criterion, petitioners must demonstrate that the initial reclamation process increases or contributes to the value of the material and that there is a market for the reclaimed material. Petitioners generally can demonstrate that this factor is met by providing sales information, including quantities of the material sold, additional demand for the material (if any), and the price paid for the material by purchasers.

The third evaluation criterion (40 CFR 260.31(c)(3)) is the degree to which the reclaimed material is like an analogous raw material. Petitioners must demonstrate that the partially reclaimed material is similar to an analogous raw material or feedstock for which the material may be substituted in a production or reclamation process. In addition, the petitioner should demonstrate that the partially reclaimed material does not contain significant concentrations of hazardous constituents not found in an analogous raw material and that do not contribute to the value of the partially reclaimed material when used for its intended purpose.

Under the fourth evaluation criterion (40 CFR 260.31(c)(4)), petitioners must demonstrate that an end market for the partially reclaimed material is guaranteed. Petitioners must demonstrate that there is a secure demand and long-term market for the partially reclaimed material and that the chance of large quantities of the material being stockpiled due to insufficient demand is unlikely. If a petitioner cannot demonstrate that the material enjoys a consistent level of demand, with reasonable expectations for the

same or greater level of demand once a variance is granted, there may be risk of the material being stockpiled or stored for a significant period of time in containers or other storage units that do not have to meet RCRA Subtitle C storage standards. Such situations may pose significant risks to human health or the environment.

The fifth evaluation criterion (40 CFR 260.31(c)(5)) concerns the extent to which the partially reclaimed material is handled to minimize loss. Petitioners must demonstrate that the material is handled as if it were a valuable commodity and in a manner that is protective of human health and the environment.

In addition to the five evaluation factors discussed above, EPA may consider other relevant factors in determining whether or not to grant a variance from the definition of solid waste for materials that have been reclaimed but must be reclaimed further before recovery is complete (40 CFR 260.31(c)(6)). These other factors may be raised by the petitioner, the Agency, or other interested parties. Such factors may be directly applicable to EPA's decision to grant a variance, or may be indirectly applicable, but relevant in assigning priorities for evaluating a particular petition. For example, EPA might choose to evaluate the long-term viability of the recycling or reuse market for the partially reclaimed material and the contribution that a variance may play in expanding or stabilizing this market. In addition, EPA might wish to assess past or ongoing releases at facilities managing the partially reclaimed material, or the degree to which corrective action activities are being conducted at facilities managing the material.

III. Evaluation of WRC's Petition Against Each of the Established Evaluation Factors

A. The Degree of Processing the Material has Undergone and the Degree of Further Processing That is Required

The processing steps performed by WRC include sampling and testing incoming batches of sludge, evaporating water from the sludges, and blending certain listed metal-bearing sludges from different sources to form a metal concentrate. The procedure is not elaborate, and the lack of substantial physical processing could, under different circumstances, lead the Agency to conclude that this criterion had not been met. However, despite the elementary nature of the physical processing, EPA has concluded that the company is nevertheless performing a

valuable service for generators of F006 by testing, drying, and blending their sludges to ensure that the resultant materials are judged by smelters to be acceptable feedstocks. Many smelters are reluctant to take F006 sludges directly from electroplating operations because of the administrative, handling, and quality control activities necessary to manage the relatively small volumes generated by individual electroplaters and to ensure that materials sent to smelters are appropriate and acceptable for the smelting process. The blending, drying, consolidating, and analytical processes conducted by WRC may eliminate the amount of pre-processing and quality control of sludges that would otherwise be necessary at the smelting facility. In support of this view, WRC has long-term contracts with generators of F006 sludges to perform this testing, drying, and blending service, and the contracts appear to ensure acceptability of the material by smelting facilities. In addition, the Agency notes that WRC's concentrate has considerably higher economic value than "as-generated" F006 sludges. This indicates that, despite the simple nature of the physical processing involved, the resultant product is more "commodity-like" than "waste-like," and thus the intent of this criterion would be satisfied.

However, the Agency has a potential concern about the legitimacy of the WRC reclamation process. This concern is whether the F006 and F019 sludges accepted and blended to form a concentrate have sufficiently high levels of metals to contribute to an end product that is acceptable to smelters. If listed sludges containing low or virtually no metal content are accepted at the facility and blended with other materials (e.g., non-RCRA wastes from electroplating operations) to produce a material that is acceptable to smelters, the facility may actually be "treating" the low metal-content sludge and not legitimately recycling the RCRA hazardous waste. Since metal recovery is the ultimate purpose for the recycling or reclamation operation, the minimum metal content of the incoming hazardous wastes is an important factor in evaluating the legitimacy of the process and the applicability of the variance. Having a recoverable amount of metals in each of the F006 and F019 incoming sludges is a necessary condition for WRC's process to be judged a legitimate reclamation operation.

To address this legitimacy concern, the Agency is proposing to condition the exclusion for the partially reclaimed material on the requirement that all F-

listed sludges received destined for partial reclamation to produce the concentrate material must have a minimum copper, nickel or tin content of two percent on a dry-weight basis, or the equivalent economic value in precious metals (e.g., gold, silver, platinum, or palladium). To set this condition, EPA analyzed smelter specifications for incoming materials and concluded, generally, that metal-bearing secondary materials with a content of less than two percent on a dry weight basis for copper, nickel, or tin (or an equivalent precious metal value) are not acceptable material at smelters. The minimum metal content for F-listed sludge materials received by WRC is based upon information collected by the Agency on smelter specifications for minimum metal content in an ore or reclaimed material. This information is available in the rulemaking docket for this proposed variance. The minimum metal content based on smelter specifications (rather than use of a higher minimum for metals) is also designed to provide incentives for recycling F006 and F019.

To ensure compliance with the minimum metal content condition for F-listed metal-bearing sludges received by WRC's Phoenix facility, the Agency is placing an additional condition upon the facility to ensure that WRC adequately monitors the metals content of the hazardous waste materials received for reclamation. Upon receipt of any non-conforming shipment of sludge material, WRC must contact the generator and notify the generator that WRC cannot accept further material due to the low metal content of the waste. However, WRC may accept one additional non-conforming shipment if it arrives within fourteen days of the first shipment. The Agency is allowing the facility to receive two non-conforming shipments over a period of 14 days to provide WRC with sufficient time to contact the generator and discuss a remedy or designate a different waste management alternative. The 14-day period allows WRC to receive shipments that may already be in transport at the time the facility discovers that the first shipment is not in compliance with the metal content condition of the exclusion. After this 14-day grace period, WRC may not accept additional materials from that generator until WRC determines that the generator's subsequent sludge shipments will meet the minimum metal content requirements of this variance.

To ensure that all concentrates covered by this variance are sent to smelters rather than to disposal

facilities, WRC has also agreed to provide to ADEQ an annual audit, performed by an independent third party mutually acceptable to WRC and ADEQ, to be completed within the six months following the end of each calendar year. The scope of the annual audit will cover WRC's concentrate shipments during the year to certify that all outgoing shipments of concentrate were: (1) Made to metal smelting facilities; (2) documented and shipped in accordance with all applicable U.S. Department of Transportation regulations; and (3) documented to have reached the designated destination.

B. The Value of the Material After It Has Been Partially Reclaimed

The concentrate produced by WRC has a positive economic market value and is purchased by metals smelters. WRC provided sales data to the Agency for the period of January 1, 1994 to June 30, 1995 documenting that the facility sold its partially reclaimed material to smelters and received a positive economic value (after taking into account average transportation costs).

C. The Degree to Which the Partially Reclaimed Material is Like an Analogous Raw Material

WRC asserts that its partially reclaimed materials are analogous to virgin ores used as raw materials by metal smelters. WRC's partially reclaimed materials are marketed by WRC as copper, nickel, and tin concentrates. Each concentrate contains various mixes of these metals, as well as precious metals such as gold, silver, platinum and palladium. WRC submitted analytical data to the Agency indicating that its concentrates contain recoverable levels of metals and metals concentrate at levels higher than the metal content specifications for incoming materials for smelters.

The Agency conducted an analysis comparing the toxic constituents in the metals concentrates managed by WRC with the constituents in analogous virgin ore concentrates. The Agency found, for the most part, that the concentration levels for the toxic constituents found in the WRC concentrates are comparable to the concentrations of toxic constituents typically found in virgin metal concentrates. The exception is cyanide. Metals concentrates reclaimed by WRC have higher concentrations of cyanide than typically found in virgin ore concentrates.

As a result of its comparative analysis of the toxic constituents in WRC concentrate materials and virgin metal concentrates, as well as the results of a

ground water risk screening analysis conducted by the Agency (and explained below), the Agency is proposing to set a limit on the level of cyanide in WRC metals concentrate as a condition of the variance. The Agency is proposing to condition its proposed grant of the variance on the requirement that the level of cyanide in WRC's metal concentrate (produced at the Phoenix facility) is below the best demonstrated available technology (BDAT) treatment standards for cyanide at 40 CFR 268.40 (i.e., 590 ppm cyanide.) For a more detailed discussion of the proposed cyanide limit, see Section E. below.

D. The Extent to Which an End Market for the Partially Reclaimed Material is Guaranteed

The concentrate produced by WRC appears to have a stable long-term market. WRC has multi-year contracts for the sale of its reclaimed materials with at least four smelters. Additional market information provided by WRC indicates that its purchasers have additional excess smelting capacity that exceeds WRC's production capabilities.

E. The Extent to Which the Partially Reclaimed Material is Handled to Minimize Loss

Operations at WRC's Phoenix facility are governed by the CA/CO described in section I.B.2 of this document, and will be covered by a RCRA Part B treatment and storage permit. Incoming material is accompanied by a hazardous waste manifest, and all processing is performed on a concrete pad, with a compacted native soil and flexible membrane liner beneath the pad. Treatment and storage activities prior to shipment off-site are subject to all applicable 40 CFR Part 265 standards, including general facility standards, preparedness and prevention, groundwater protection and monitoring, closure and post-closure requirements, and financial responsibility.

The partially reclaimed materials produced by WRC's Phoenix facility are shipped to smelters by either highway or rail. The Department of Transportation (DOT) regulations specify that the materials must be classified and handled as a hazardous material due to the fact that the materials contain nickel hydroxide. Shipments of materials classified by DOT as hazardous materials are subject to the marking, labeling, and shipping requirements of 49 CFR part 172, including the requirement that the materials must be accompanied by a shipping paper, or bill of lading, completed in accordance with Subpart C of 49 CFR part 172. Copies of these

papers must be retained by the shipper and carrier for a period of one year.

WRC has demonstrated that its partially reclaimed metal-bearing sludges are managed in a way that is designed to prevent loss, both at the Phoenix facility and at the smelters. WRC also points out that the company enters into recycling agreements with the generators from whom WRC receives F006 sludge (as well as other metal-bearing sludges). These agreements obligate WRC to recycle all of the wastes and to annually certify to the generators that all shipments of the waste are accepted and recycled. Therefore, WRC has the incentive to handle all incoming wastes in a manner that prevents releases or losses to the environment. WRC also points out that the value of its recycled material represents a significant investment by WRC that can only be recovered by delivering the reclaimed material to smelters in accordance with its sales contracts.

EPA agrees that the economic value of the partially reclaimed material produced by WRC and the facility's contractual relationships with smelters provide sufficient incentives for WRC to prevent releases to the environment. In addition, the Agency notes that granting this variance may produce environmental benefits by increasing the volume of F006 that is recycled, thus reducing copper and nickel mining which have caused environmental concerns in the past.

However, to address all concerns about safe handling of WRC concentrate, the Agency is proposing to condition the grant of the variance on the requirement that WRC include a provision in its contractual agreements with metal smelting facilities that smelters receiving partially reclaimed materials from WRC do not store the materials on the land. In this manner, metal concentrates produced by WRC from listed hazardous wastes and transported to smelting facilities will be precluded from land storage. In addition, EPA is proposing to condition the grant of the variance on the requirement that WRC send a one-time notification of the variance and its conditions to any countries where metal smelters accepting WRC concentrate are located.

To evaluate the potential for releases of cyanide from the partially reclaimed material stored at smelters, the Agency conducted a ground water risk screening analysis to assess the risk levels associated with potential releases of cyanide from electroplating sludges. To accomplish this analysis, EPA conducted a risk screening that modeled total cyanide concentrations of 590

ppm, the current treatment standard for F006 under the land disposal restriction program (40 CFR 268.40.) The purpose of EPA's risk screening analysis for cyanide in electroplating sludge was to determine whether or not the concentration of cyanide in the ground water at a receptor well down gradient of a waste pile of electroplating sludge will exceed the Federal Drinking Water Standard limit of 0.20 mg/L. The risk screening analysis was performed using EPA's Composite Model for Leachate Migration and with Transformation Products (EPACMTP, EPA 1997, 1996a, 1996b, 1996c).

The approach used by the Agency in the risk screening analysis assumed two waste management scenarios representing a median or central tendency risk level scenario and a high-end risk scenario. The "central tendency" risk level scenario included a waste pile directly on the ground with a total area of 465.40 square meters and located 430 meters from the nearest drinking water well. The "high end value" risk level scenario simulated a waste pile having a total area of 18,575.7 square meters and located 102 meters from the nearest drinking water well.¹

The results of the model simulations for both scenarios indicated that concentrations of cyanide in the ground water do not exceed the maximum Federal Drinking Water Standard of 0.20 mg/L. The maximum receptor well concentration for the central tendency scenario was zero and that of the high-end scenario was 0.0175 mg/L. The most important parameter responsible for the low concentrations of cyanide in these results is the assumed rapid hydrolysis rate of cyanide, $8.4y^{-1}$. This rate corresponds to a half-life of approximately 30 days. The model results predict that the cyanide will have been completely transformed before it reaches the receptor in the central tendency scenario. In the high-end case, the ground water travel time is sufficiently short that cyanide reaches the well, although the maximum concentration is below the drinking water standard. If these results are compared to corresponding scenarios that assume no hydrolysis, the maximum receptor well concentration for the central tendency is 0.07 mg/L and the maximum receptor well concentration for the high-end scenario is 17.79 mg/L.² In the case of no

hydrolysis, the predicted concentration of cyanide in ground water exceeds the Federal Drinking Water Standard by a multiple of 0.35 under the central tendency scenario and by a multiple of 88.45 under the high-end scenario.

Given these results, the Agency has determined that it is important to establish a limit on the level of cyanide in the partially reclaimed materials produced and sold by WRC. The Agency has decided to establish this limit at 590 ppm cyanide, which was used as the model cyanide concentration in its risk screening analysis. This level is the limit established as the BDAT treatment standard limit under the Land Disposal Restrictions Program. WRC claims that its partially reclaimed product does not exceed a cyanide concentration limit of 590 ppm. The Agency points out that if the partially reclaimed material should exceed the established concentration limit for cyanide and the facility must treat the material to reduce the cyanide concentration, the material would no longer qualify for this variance. Under such circumstances, the material is substantially "waste-like." In addition, the facility would have to manage the material as a RCRA hazardous waste and comply with all applicable hazardous waste management requirements (e.g. storage, transportation, and land disposal restriction (LDR) requirements)).

IV. Summary of the Agency's Proposed Decision

The Agency is proposing to conditionally grant the petitioner's (WRC's) request for a variance from classification as solid waste for the metal concentrate partially reclaimed from materials listed as hazardous waste F006 and F019 received at its Arizona facility, which are sold to metal smelters or other metal recovery facilities after being partially reclaimed by WRC. The Agency is proposing to grant this variance for a time period of five years, subject to the following conditions:

(1) Metal-bearing sludges F006 and F019 accepted by the facility from off-site and used in the production of the partially reclaimed concentrate materials must have a metals concentration level of no less than two percent on a dry weight basis, or an equivalent economic value in precious metals (e.g., gold, silver, platinum, or palladium). In addition, the facility may only process two shipments of listed sludge materials that do not meet the two percent metals concentration level from a single generator within a 14-day time period before taking action to ensure that subsequent shipments will meet the minimum metal content.

Specifically, WRC may not accept more than one non-conforming shipment from a generator, unless the second non-conforming shipment is received within 14 days following the first event. Thereafter, WRC may not accept additional materials from that generator until WRC determines that the generator's subsequent sludge shipments will meet the minimum metal content requirements of this condition.

(2) WRC shall provide to ADEQ an annual audit, performed by an independent third party mutually acceptable to WRC and ADEQ, to be completed within the six months following the end of each calendar year. The scope of the annual audit will cover WRC's concentrate shipments during the year to certify that all shipments were: (1) Made to metal smelting facilities; (2) documented and shipped in accordance with all applicable U.S. Department of Transportation regulations; and (3) documented to have reached the designated destination.

(3) The partially reclaimed concentrate materials must have a cyanide concentration of no greater than 590 ppm and may not be placed on the land at metal smelting facilities. To ensure compliance with this condition, WRC must place a provision stipulating no land placement of the materials in its contractual agreements with smelting facilities.

(4) WRC must send a one-time notification of the variance and its conditions to any country where metal smelters accepting WRC concentrate are located. In addition, WRC must include on its Material Safety Data Sheet shipped with the concentrate a notification that the concentrate may contain up to 590 ppm cyanide and that low pH environments can result in the production of hydrogen cyanide gas.

The Agency reiterates that this proposed conditional variance from classification as solid waste for the metal concentrate reclaimed from listed hazardous wastes F006 and F019 at WRC's Phoenix, Arizona facility does not affect the regulatory status of any other hazardous wastes handled by WRC at the Phoenix facility. In addition, the proposed variance does not apply to or affect the regulatory status of any wastes managed at any other WRC facility.

V. Request for Comments

The Agency will accept and consider comments on this proposed decision until the date shown at the beginning of this notice. After EPA reviews and considers any public comments received on the proposed decision, the

¹ "Ground Water Risk Screening Analysis for Cyanide in Electroplating Sludge Managed in Waste Piles," HydroGeoLogic Inc., June 1997.

² Model runs were made with and without the hydrolysis rate to isolate the impact of storage time duration from the overwhelming effect of hydrolysis rate.

Agency will publish a final decision in response to the petition.

VI. Effect of Variance in Arizona

EPA notes that Arizona is authorized to administer and enforce the RCRA hazardous waste program pursuant to section 3006 of RCRA. Generally, when EPA grants a variance under 40 CFR 260.30, the variance would be automatically effective only in unauthorized States. However, there are two circumstances that make this variance effective in the State of Arizona. First, WRC, EPA Region IX and the Arizona Department of Environmental Quality (ADEQ) executed a Consent Agreement and Consent Order (CA/CO) that finalized regulatory requirements for the WRC recycling facility at Phoenix. Under the CA/CO, if EPA makes a favorable decision regarding WRC's petition for a variance, Arizona is obligated to "honor and give legal effect to the variance determination within the State of Arizona." Second, Arizona's regulations at A.A.C. R18-8-260(J) (Supp. 98-2) (which incorporates and modifies 40 CFR 260.30 entitled "Variances from classification as a solid waste") provides that "any person wishing to submit a variance petition shall submit the petition, under this subsection, to EPA. Where the Administrator of EPA has granted a variance from classification as a solid waste under 40 CFR 260.30, 260.31, and 260.33, the Director shall accept the determination, provided the Director determines that the action is consistent with the policies and purposes of the HWMA" (the Hazardous Waste Management Act underlying Arizona's authorized status). Since the Director has made such a determination, no further action will be necessary before the variance takes effect under state law upon promulgation by EPA.

VII. Administrative Requirements:

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a "regulatory action" subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive

Order 13084 (63 FR 27655, May 10, 1998). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: December 3, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99-31965 Filed 12-8-99; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018-AF54

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: These proposed regulations would authorize the incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry (Industry) exploration, development, and production operations in the Beaufort Sea and adjacent northern coast of Alaska. The operations are

similar to and include all activities covered by our original 5-year Beaufort Sea incidental take regulations effective from December 16, 1993, through December 15, 1998, and current regulations in effect from January 28, 1999, through January 30, 2000, except that these proposed regulations would also allow incidental, unintentional takes resulting from subsea pipeline activities placed offshore at the Northstar facility in the Beaufort Sea. We are proposing that this rule be effective for 3 years, from January 31, 2000, through January 31, 2003.

We propose a finding that the total expected takings of polar bear and Pacific walrus during oil and gas industry exploration, development, and production activities will have a negligible impact on these species, and no unmitigable adverse impacts on the availability of these species for subsistence use by Alaska Natives. We base this finding on results from 6 years of monitoring interactions between marine mammals and Industry, and using oil spill trajectory models and polar bears density models to determine the likelihood of impacts to polar bears should an accidental oil release occur.

DATES: Comments on this proposed rule must be received by January 10, 2000.

ADDRESSES: You may submit comments by any of the following methods:

1. By mail to: John Bridges, Office of Marine Mammals Management, US Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503.

2. By FAX by sending to: 907-786-3816.

3. By Internet, electronic mail by sending to: FW7MMM@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: RIN 1018-AF54" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at US Fish and Wildlife Service, Office of Marine Mammals Management, 907-786-3810 or 1-800-362-5148.

4. By hand-delivery to: Office of Marine Mammals Management, US Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: John Bridges, Office of Marine Mammals Management, US Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, Telephone 907-786-3810 or 1-800-362-5148.

SUPPLEMENTARY INFORMATION: