

because the Agency views this as a noncontroversial revision and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives relevant adverse comments, the EPA will publish a timely withdrawal in the **Federal Register**. All relevant public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by June 10, 1998.

ADDRESSES: Written comments on this action should be addressed to Thomas H. Diggs, Chief, Air Planning Section, at the EPA Region 6 Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

Air Quality Division, Louisiana Department of Environmental Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Mr. Eaton R. Weiler, of the EPA Region 6 Air Planning Section at the above address, telephone (214) 665-2174.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is published in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: April 23, 1998.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 98-12431 Filed 5-8-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-6012-3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to grant a petition submitted by Occidental Chemical Corporation (Occidental Chemical), to exclude (or delist) certain solid wastes generated at its Ingleside, Texas, facility from the lists of hazardous wastes contained in 40 CFR 261.24, 261.31, and 261.32, (hereinafter all sectional references are to 40 CFR unless otherwise indicated). This petition was submitted under § 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273, and under § 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 excluded from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA). The EPA is also proposing the use of a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment, based on the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents that may be released from the petitioned waste, once it is disposed. The EPA is requesting public comments on this proposed decision and on the applicability of the fate and transport model used to evaluate the petition.

DATES: Comments will be accepted until June 25, 1998. 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 Acting Director, Robert E. Hanneschlager, Multimedia Planning and Permitting Division, whose address appears below, by May 26, 1998. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: Send three copies of your comments. Two copies should be sent to the William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD-O), Environmental Protection Agency EPA, 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-97-TXDEL-OCCIDENTAL."

Requests for a hearing should be addressed to the Acting Director, Robert E. Hanneschlager, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

The RCRA regulatory docket for this proposed rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202 and is available for viewing in the EPA Library on the 12th Floor from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665-6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this notice, contact Jon Rinehart, Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX 75202, (214) 665-6789.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 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. 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 EPA 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 EPA to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains nonhazardous based on the hazardous waste characteristics.

In addition, mixtures containing listed hazardous wastes are also considered hazardous wastes as are wastes derived from the treatment, storage, or disposal of listed hazardous waste. See § 261.3(a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to the EPA on procedural grounds. *Shell Oil Co. v. EPA*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278). These references should be consulted for more information regarding mixtures and residues.

B. Approach Used to Evaluate This Petition

Occidental Chemical's petition requests a delisting for listed hazardous wastes. In making the initial delisting determination, the EPA evaluated the petitioned wastes 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 nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the wastes remained hazardous based on the factors for which the wastes were originally listed, EPA would have proposed to deny the petition.) The EPA then evaluated the wastes with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the wastes to be hazardous. The EPA considered whether the wastes are acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the wastes, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the wastes, plausible and specific types of management of the petitioned wastes, the quantities of wastes generated, and waste variability.

For this delisting determination, the EPA used such information gathered to identify plausible exposure routes (i.e., ground water, surface water, air) for hazardous constituents present in the petitioned wastes. The EPA determined that disposal in a Subtitle D landfill/surface impoundment is the most reasonable, worst-case disposal scenario for Occidental Chemical's petitioned wastes, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, the EPA is proposing to use a particular fate and transport model, the EPA Composite Model for Landfills (EPACML), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned wastes after disposal and to determine the potential impact of the disposal of Occidental Chemical's petitioned wastes on human health and the environment. Specifically, the EPA used the maximum estimated waste volumes 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 health-

based levels at an assumed risk of 10^{-6} used in delisting decision-making for the hazardous constituents of concern.

The EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned wastes in a landfill/surface impoundment, 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, may not pose a threat to human health or the environment. In most cases, 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, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model.

The EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, the EPA determined that it would be unnecessary to request ground water monitoring data. Specifically, Occidental Chemical currently disposes of a part of the petitioned wastes (Rockbox Residue and Limestone Sludge) generated at its facility in an off-site, RCRA hazardous waste landfill (which is not owned/operated by Occidental Chemical).¹ This landfill did not begin accepting this petitioned waste generated by the Occidental Chemical facility until 1991. This petitioned waste comprises a small fraction of the total waste managed in the unit. Therefore, the EPA believes that any ground water monitoring data from the landfill would not be meaningful for an evaluation of the specific effect of this petitioned waste on ground water. Finally, there are presently no data from groundwater monitoring wells available, therefore there is no data to evaluate.

From the evaluation of Occidental Chemical's delisting petition, a list of constituents was developed for the verification testing conditions. Proposed maximum allowable leachable concentrations for these constituents were derived by back-calculating from

¹ The other portion of waste proposed to be excluded is not disposed but is instead treated onsite prior to discharge. Discharge of the waste is regulated under Section 402 of the Clean Water Act.

the delisting health-based levels through the proposed fate and transport model for a landfill management scenario. These concentrations (i.e., "delisting levels") are part of the proposed verification testing conditions of the exclusion.

Similar to other facilities seeking exclusions, Occidental Chemical's exclusion (if granted) would be contingent upon the facility conducting analytical testing of representative samples of the petitioned wastes at Ingleside. This testing would be necessary to verify that the treatment system is operating as demonstrated in the petition submitted on January 3, 1997. Specifically, the verification testing requirements, would be implemented to demonstrate that the processing facility will generate

nonhazardous wastes (i.e., wastes that meet the EPA's verification testing conditions). The EPA's proposed decision to delist wastes from Occidental Chemical's facility is based on the information submitted in support of today's rule, i.e., description of the wastewater treatment system and analytical data from the Ingleside facility.

Finally, the HSWA 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

Occidental Chemical Corporation, Ingleside, Texas 78362.

A. Petition for Exclusion

Occidental Chemical Corporation, located in Ingleside, Texas, petitioned the EPA for an exclusion for 128 cubic yards of Rockbox Residue, 148,284 cubic yards of Caustic Neutralized Wastewater, and 1,114 cubic yards of Limestone Sludge per calendar year resulting from its hazardous waste treatment process. The resulting wastes are presently listed, in accordance with § 261.3(c)(2)(i) (i.e., the "derived from" rule), as EPA Hazardous Waste No. K019, K020, F001, F003, F005, and F025. The listed constituents of concern for these waste codes are listed in Table 1.

TABLE 1.—HAZARDOUS WASTE CODES ASSOCIATED WITH WASTEWATER STREAMS

| Waste code | Basis for characteristics/listing |
|-----------------|--|
| K019/K020 | Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride. |
| F001 | Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons. |
| F003 | N.A Waste is hazardous because it fails the test for the characteristic of ignitability, corrosivity, or reactivity. |
| F005 | Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, 2-nitropropane. |
| F025 | Chloromethane, dichloromethane, trichloromethane, carbon tetrachloride, chloroethylene, 1,1-dichloroethane, 1,2-dichloroethane, trans-1,2-dichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethylene, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, tetrachloroethylene, pentachloroethane, hexachloroethane, 3-chloropropene, dichloropropene, dichloropropene, 2-chloro-1,3-butadiene, hexachloro-1,3-butadiene, hexachlorocyclopentadiene, benzene, chlorobenzene, dichlorobenzene, 1,2,4-trichlorobenzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, naphthalene. |

Occidental Chemical petitioned to exclude the Rockbox Residue, Caustic Neutralized Wastewater, and Limestone Sludge treatment residues because it does not believe that the petitioned wastes meet the criteria for which they were listed. Occidental Chemical further believes that the wastes are not hazardous for any other reason (i.e., there are no additional constituents or factors that could cause the wastes to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the HSWA. 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 Occidental Chemical's petition.

B. Background

On January 3, 1997, Occidental Chemical petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, an annual volume of Rockbox Residue, Caustic Neutralized Wastewater, and

Limestone Sludge which are generated as a result of the treatment of offgases from onsite incinerators. Specifically, in its petition, Occidental Chemical requested that the EPA grant an exclusion for 128 cubic yards of Rockbox Residue, 148,284 cubic yards of Caustic Neutralized Wastewater, and 1,114 cubic yards of Limestone Sludge generated per calendar year.

In support of its petition, Occidental Chemical submitted: (1) Descriptions of its wastewater treatment processes and the incineration activities associated with petitioned wastes; (2) results of the total constituent list for 40 CFR part 264 Appendix IX volatiles, semivolatiles, and metals except for pesticides, herbicides and PCBs; (3) results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals; (4) results for reactive sulfide, (5) results for reactive cyanide; (6) results for pH; (7) results of the total basis for dioxin and furan; and (8) results of dioxin and furan TCLP extract.

Occidental Chemical is an active plant that produces ethylene dichloride (EDC), vinyl chloride monomer (VCM), chlorine, and caustic soda. The plant utilizes chlorine, ethylene, and oxygen as feedstock and utilizes two permitted, onsite RCRA incinerators to burn process vent gases, intermediate wastes generated during the production of EDC and VCM (K019, K020, and F025), waste paint thinner (F001, F003, F005), and occasionally waste oil. These two incinerators have been in continuous operation since 1991. Occidental Chemical has previously classified three waste streams (Rockbox Residue, Caustic Neutralized Wastewater and Limestone Sludge) generated from the treatment of the offgas from the incinerators as hazardous based on the "derived from" rule in § 261.3(c)(2)(i).

The combustion products from the incinerators contain hydrochloric acid (HCl). Incinerator offgases are treated in the Incinerator Offgas Treatment System. In this system, the emissions are passed through absorption columns, dehumidifier columns, and caustic scrubbers to remove the HCl. Blowdown

water from the dehumidifier columns and caustic scrubber columns are routed to the Rockbox Tank (the Rockbox) as the first step in neutralizing the HCl. Excess HCl from the aqueous HCl storage tanks is commingled with the blowdown water and routed to the Rockbox. The influent to Rockbox normally contains 3 to 7 percent HCl. At times when excess HCl is not produced, the influent to the Rockbox is predominantly blowdown from the dehumidifier and caustic scrubber columns.

The Rockbox contains crushed limestone with small amounts of inert materials (silica oxide). These inert materials accumulate in the bottom of the Rockbox as the crushed limestone is utilized in the neutralization process. The accumulation of inert materials is the Rockbox Residue. The Rockbox Residue is a "third generation" waste since it is the residue of treating wastewater used to quench gaseous emissions from the incineration of listed wastes.

The pH of the effluent leaving the Rockbox is between 1 and 5. The effluent is passed through a primary pH adjustment tank where air is released into the water to remove carbon dioxide. Additionally, sodium hydroxide may be added to this tank. Mixing with air minimizes the formation of calcium carbonate precipitate upon introduction of caustic soda. The effluent is then passed through the secondary pH adjustment tank where caustic soda (sodium hydroxide) is added to raise the pH of the water to a pH between 7 and 9. The stream, consisting of water and calcium carbonate precipitant in suspension, flows through a clarifier where the sludge is settled out. The aqueous effluent from the clarifier tank is the Caustic Neutralized Wastewater which Occidental Chemical seeks to delist. This waste stream consists of an aqueous phase that no longer exhibits

the hazardous waste characteristic of corrosivity.

The settled solids (calcium carbonate) from the clarifier are dewatered on a belt filter press and are dropped directly into rolloff bins for disposal. Water removed during the operation of the filter press is returned to the clarifier. The remaining filter cake is the Limestone Sludge, which Occidental Chemical also seeks to delist.

Rockbox Residue is generated on a batch basis every one to two years. For the past two years (1995 and 1996), the Rockbox Residue was generated annually. This is probable due to a higher than average concentration of inerts in the limestone purchased for the Rockbox. The Rockbox Residue is disposed of in an offsite permitted hazardous waste landfill.

Caustic Neutralized Wastewater and Limestone Sludge are generated on a continuous basis. The Caustic Neutralized Wastewater is treated in an onsite unit which has in an National Pollution Discharge Elimination System (NPDES) permitted outfall. The Limestone Sludge is transported to an offsite hazardous waste landfill for disposal.

Occidental Chemical 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 part § 264, as well as dioxins and furans. Based on the knowledge of process they determined that herbicides, pesticides and PCBs would be excluded from the Appendix IX analyte list. The EPA has included the dioxins and furans on the list, due to the incineration of chlorinated compounds. Using the list of constituents of concern, Occidental analyzed the four composite samples for the total concentrations (i.e., mass of a particular constituent per mass of waste) of the volatiles and semivolatiles, and metals from Appendix IX. These four

samples were also analyzed to determine whether the waste exhibited ignitable, corrosive, or reactive properties as defined under 40 CFR 261.21, 261.22, and 261.23, including analysis for total constituent concentrations of cyanide, sulfide, reactive cyanide, and reactive sulfide. These four samples were also analyzed for Toxicity Characteristic Leaching Procedure (TCLP) concentrations (i.e., mass of a particular constituent per unit volume of extract) of all the volatiles, semivolatiles, and metals on the Appendix IX list. This list was developed based on the availability of test methods and process knowledge. Two sampling events were conducted, one in 1995 and one in 1996.

C. EPA Analysis

Occidental Chemical used SW-846 Methods 8260A, 8270B, 6010, 8290 to quantify the total constituent concentrations of 40 CFR part 264, Appendix IX Volatiles (including 2-ethoxyethanol, chloroethylene, vinylidene chloride and trichloromethane), Appendix IX Semivolatiles (excluding PCBs, Pesticides, Herbicides) Appendix IX Metals, and Appendix IX Dioxins/Furans. Occidental Chemical used SW-846 Methods 9045, 9030, 9010, 1311 to quantify pH, Reactive Sulfide, and Reactive Cyanide. Occidental Chemical used SW-846 Methods 8260A, 8270B, 6010, 8290 to quantify the constituents from the TCLP extract. These analyses were performed on all three of the petitioned wastes: the Rockbox Residue, Limestone Sludge, and the Caustic Neutralized Wastewater. The Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater do not meet the definitions for reactivity and corrosivity as defined by §§ 261.22 and 261.23. Table 2 presents the maximum total constituent and leachate concentrations for the Rockbox Residue.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS ROCKBOX RESIDUE ²

| Constituents | Total constituent analyses (mg/kg) | Leachate analyses (mg/l) |
|-------------------------------|------------------------------------|--------------------------|
| Acetone | <0.02 | <0.1 |
| Bromodichloromethane | 0.007 | <0.02 |
| Bromoform | 0.022 | 0.02 |
| Bromomethane | <0.01 | <0.05 |
| Chlorodibromomethane | 0.027 | <0.02 |
| Chloroform | 0.008 | <0.02 |
| Dichloromethane | <0.005 | 0.11 |
| Ethylbenzene | <0.005 | 0.04 |
| 2,3,7,8-TCDD Equivalent | 0.000321 | 0.0000000531 |
| Barium | 1.5 | 0.666 |
| Chromium | <1.0 | 0.13 |
| Copper | 1.1 | <0.25 |
| Lead | <1.0 | <0.07 |

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS ROCKBOX RESIDUE ²—Continued

| Constituents | Total constituent analyses (mg/kg) | Leachate analyses (mg/l) |
|------------------------|------------------------------------|--------------------------|
| Selenium | <1.0 | 0.11 |
| Tin | 2 | <0.10 |
| Vanadium | 1.3 | <0.50 |
| Zinc | 23 | <0.4 |
| Reactive Sulfide | <50 | |
| Reactive Cyanide | <10 | |
| pH | 3.19 | |

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

² These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

Tables 3 and 4 present the maximum total constituent and leachate concentrations for the Limestone Sludge. Table 5 presents the maximum total constituent and leachate concentrations for the Caustic Neutralized Wastewater.

TABLE 3.—MAXIMUM TOTAL ORGANIC CONSTITUENT AND LEACHATE CONCENTRATIONS LIMESTONE SLUDGE ³

| Constituent | Total constituent analyses (mg/kg) | Leachate analyses (mg/l) |
|-------------------------------|------------------------------------|--------------------------|
| Acetone | 0.034 | 0.27 |
| Bromoform | 0.031 | <0.02 |
| Chlorodibromomethane | 0.012 | <0.02 |
| Dichloromethane | <0.005 | 0.54 |
| Ethylbenzene | <0.005 | 0.03 |
| 1,1,1-Trichloroethane | 0.011 | <0.1 |
| Toluene | <0.005 | 1.8 |
| Trichlorofluoromethane | 0.011 | <0.02 |
| Xylene | <0.020 | 0.11 |
| Diethylphthalate | <0.00001 | <0.04 |
| 2,3,7,8-TCDD Equivalent | 0.00135 | 0.00000000018 |
| Reactive Sulfide | <50 | |
| Reactive Cyanide | <10 | |
| pH | 9.55 | |

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

³ These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

TABLE 4.—MAXIMUM TOTAL INORGANIC CONSTITUENT AND LEACHATE CONCENTRATIONS LIMESTONE SLUDGE ⁴

| Constituent | Total constituent analyses (mg/kg) | Leachate analyses (mg/l) |
|-----------------|------------------------------------|--------------------------|
| Antimony | 2.6 | <0.6 |
| Arsenic | 18.4 | <0.1 |
| Barium | 15.2 | 0.14 |
| Beryllium | 0.5 | <0.1 |
| Chromium | 25.2 | <0.1 |
| Cobalt | 2.4 | <0.1 |
| Copper | 41.2 | <0.1 |
| Lead | 13 | <0.1 |
| Nickel | 64.4 | 0.47 |
| Selenium | <0.001 | 0.1 |
| Silver | 1.1 | <0.1 |
| Vanadium | 138 | <0.1 |
| Zinc | 58 | 0.11 |

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

⁴ These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

TABLE 5.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS CAUSTIC NEUTRALIZED WASTEWATER ⁵

| Constituent | Total constituent analyses |
|----------------------------|----------------------------|
| Acetone | 0.01 |
| Bromoform | 0.054 |
| Chlorodibromomethane | 0.015 |

TABLE 5.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS CAUSTIC NEUTRALIZED WASTEWATER ⁵—Continued

| Constituent | Total constituent analyses |
|-------------------------------|----------------------------|
| 2,3,7,8-TCDD Equivalent | 0.0000000006 |
| Arsenic | 0.01 |
| Barium | 0.18 |
| Lead | 0.1 |
| Silver | 0.08 |
| Vanadium | 0.007 |
| Zinc | 0.49 |
| Reactive Sulfide | <50 |
| Reactive Cyanide | <10 |
| pH | 11.8 |

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

⁵ These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

Occidental Chemical used SW-846 Methods 8260A and 8270B to quantify the total constituent concentrations of 54 volatile and 117 semivolatile organic compounds, respectively in the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater. This suite of constituents included all of the nonpesticide organic constituents listed in § 261.24. Also, Occidental Chemical used SW-846 Methods 8260A and 8270B to quantify the leachable concentrations of 54 volatile and 117 semivolatile organic compounds, respectively, in the Rockbox Residue, Limestone Sludge, and the Caustic Neutralized Wastewater, following extraction by SW-846 Method 1311 (TCLP). This suite of constituents included all of the organic constituents listed in § 261.24 (except the pesticides). In addition, the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater were analyzed for TCLP metals.

Occidental Chemical submitted a signed certification stating that, based on projected annual waste generation, the maximum annual generation rate will be 128 cubic yards of Rockbox Residue, 148,284 cubic yards of Caustic Neutralized Wastewater, and 1,114 cubic yards of Limestone Sludge. The EPA reviews a petitioner's estimates and, on occasion, has requested a petitioner to reevaluate the estimated waste volume. The EPA accepted Occidental Chemical's certified estimates. 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 an exclusion.

D. EPA Evaluation

The EPA considered the appropriateness of alternative waste management scenarios for Occidental Chemical's Rockbox Residue, Caustic Neutralized Wastewater, and Limestone Sludge. The EPA decided, based on the information provided in the petition, that disposal of the Rockbox Residue and Limestone Sludge in a municipal solid waste landfill is the most reasonable, worst-case scenario for the Rockbox Residue and the Limestone Sludge. The disposal of the Caustic Neutralized Wastewater in a surface impoundment would be the most reasonable worst case scenario. Under a landfill/surface impoundment disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The EPA, therefore, evaluated Occidental Chemical's petitioned wastes using the modified EPA Composite Model for Landfills/Surface Impoundments (EPACML) which predicts the potential for ground water contamination from wastes that are landfilled/placed in a surface impoundment. 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 ground water 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 ground water

recharge for a specific volume of waste. The EPA requests comments on the use of the EPACML as applied to the evaluation of Occidental Chemical's petitioned wastes (Rockbox Residue, Caustic Neutralized Wastewater, and Limestone Sludge).

For the evaluation of Occidental Chemical's petitioned wastes, the EPA used the EPACML to evaluate the mobility of the hazardous constituents detected in the extract of samples of Occidental Chemical's Rockbox Residue and the Limestone Sludge. The total analysis was utilized for the Caustic Neutralized Wastewater. Typically, the EPA uses the maximum annual waste volume to derive a petition-specific DAF. The DAFs are currently calculated assuming an ongoing process generates wastes for 20 years.

The DAF for the waste volume of Rockbox Residue is 128 cubic yards/year assuming 20 years of generation is 100. The DAF for the waste volume of Caustic Neutralized Wastewater is 148,284 cubic yards/year assuming 20 years of generation is 7. The DAF for the waste volume of Limestone Sludge is 1,114 cubic yards/year assuming 20 years of generation is 100.

The EPA's evaluation of the Rockbox Residue using a DAF of 100, a maximum waste volume estimate of 128 cubic yards, and the maximum reported TCLP concentrations (see Table 2), yielded compliance point concentrations (see Table 5) that are below the current health based levels.

The EPA's evaluation of the Limestone Sludge using a DAF of 100, for the Limestone Sludge a maximum waste volume estimate of 1,114 cubic yards, and the maximum reported TCLP concentrations (see Tables 3 and 4), yielded compliance point concentrations (See Table 7) that are below the current health based levels.

The EPA's evaluation of the Caustic Neutralized Wastewater using a DAF of

7, a maximum waste volume estimate of 148,284, cubic yards, and the maximum reported TCLP concentrations (see Table 5), yielded compliance point concentrations (See Table 8) that are below the current health based levels.

TABLE 6.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS ROCKBOX RESIDUE

| Constituents | Compliance point concentrations (mg/l) ⁶ | Levels of concern (mg/l) ⁷ |
|-------------------------------|---|---------------------------------------|
| Acetone | 0.00106 | 4.0 |
| Bromdichloromethane | 0.0002 | 0.0014 |
| Bromoform | 0.0002 | 0.01 |
| Bromomethane | 0.0005 | 0.05 |
| Chlorodibromomethane | 0.0002 | 0.001 |
| Chloroform | 0.0002 | 0.01 |
| Dichloromethane | 0.0011 | 0.01 |
| Ethylbenzene | 0.0004 | 0.7 |
| 2,3,7,8-TCDD Equivalent | 0.0000000000531 | 0.0000000006 |
| Barium | 0.0066 | 2.0 |
| Chromium | 0.0013 | 0.1 |
| Copper | 0.0025 | 1.3 |
| Lead | 0.0005 | 0.015 |
| Selenium | 0.0011 | 0.05 |
| Tin | 0.0010 | 2.1 |
| Vanadium | 0.005 | 0.3 |
| Zinc | 0.004 | 10.0 |

⁶ Using the maximum TCLP leachate concentration, based on a DAF of 100 for a maximum annual volume of 128 cubic yards.

⁷ See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," May 1996 located in the RCRA Public Docket for today's notice.

TABLE 7.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATION LIMESTONE SLUDGE

| Constituents | Compliance point concentrations (mg/l) ⁸ | Levels of concern (mg/l) ⁹ |
|-------------------------------|---|---------------------------------------|
| Acetone | 0.0027 | 4.0 |
| Bromoform | 0.0002 | 0.01 |
| Chlorodibromomethane | 0.0002 | 0.001 |
| Dichloromethane | 0.0054 | 0.01 |
| Ethylbenzene | 0.0003 | 0.7 |
| 1,1,1-Trichloroethane | 0.0002 | 0.2 |
| Toluene | 0.02 | 7.0 |
| Trichlorofluoromethane | 0.0002 | 10.0 |
| Xylene | 0.0011 | 20.0 |
| Diethyl phthalate | 0.0001 | 30.0 |
| 2,3,7,8-TCDD Equivalent | 0.00000000000183 | 0.0000000006 |
| Antimony | 0.06 | 0.006 |
| Arsenic | 0.0005 | 0.05 |
| Barium | 0.0014 | 2.0 |
| Beryllium | 0.0005 | 0.004 |
| Chromium | 0.0005 | 0.1 |
| Cobalt | 0.005 | 2.1 |
| Copper | 0.0025 | 1.3 |
| Lead | 0.0005 | 0.015 |
| Nickel | 0.0047 | 0.7 |
| Selenium | 0.001 | 0.05 |
| Silver | 0.00025 | 0.02 |
| Vanadium | 0.005 | 0.3 |
| Zinc | 0.0011 | 10.0 |

⁸ Using the maximum TCLP leachate concentration, based on a DAF of 100 for a maximum annual of 1,114 cubic yards.

⁹ See Table 6.

TABLE 8.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS CAUSTIC NEUTRALIZED WASTEWATER

| Constituents | Compliance point concentrations (mg/l) ¹⁰ | Levels of concern (mg/l) ¹¹ |
|-------------------------------|--|--|
| Acetone | 0.00143 | 4.0 |
| Bromoform | 0.01 | 0.01 |
| Chlorodibromomethane | 0.001 | 0.001 |
| 2,3,7,8-TCDD Equivalent | 0.000000000012 | 0.0000000006 |
| Arsenic | 0.00143 | 0.05 |
| Barium | 0.03 | 2.0 |

TABLE 8.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS CAUSTIC NEUTRALIZED WASTEWATER—Continued

| Constituents | Compliance point concentrations (mg/l) ¹⁰ | Levels of concern (mg/l) ¹¹ |
|----------------|--|--|
| Lead | 0.01 | 0.015 |
| Silver | 0.01 | 0.02 |
| Vanadium | 0.001 | 0.3 |
| Zinc | 0.07 | 10.0 |

¹⁰ Using the maximum total concentration, based on a DAF of 7 for a maximum annual volume of 148,248 cubic yards.

¹¹ See Table 6.

The maximum reported or calculated leachate concentrations of bromoform, chlorodibromomethane, dichloromethane, ethylbenzene, 2,3,7,8-TCDD Equivalent, barium, chromium, and selenium in the Rockbox Residue yielded compliance point concentrations well below the health based levels used in the delisting decision-making. The EPA did not evaluate the mobility of the remaining constituents (e.g., acetone, bromodichloromethane, copper, lead) from Occidental Chemical's waste because they were not detected in the leachate using the appropriate analytical test methods (see Table 2). The EPA does not evaluate nondetectable concentrations of a constituent of concern in its modeling efforts if the nondetectable value was obtained using the appropriate analytical method; the EPA then assumes that the constituent is not present and therefore does not present a threat to human health or the environment.

The maximum reported or calculated leachate concentrations of acetone, bromoform, chlorodibromomethane, 2,3,7,8-TCDD Equivalent, arsenic, barium, lead, silver, vanadium, and zinc in the Caustic Neutralized Wastewater yielded compliance point concentrations well below the health based levels used in the delisting decision-making.

The maximum reported or calculated leachate concentrations of acetone, dichloromethane, ethylbenzene, toluene, xylene, 2,3,7,8-TCDD Equivalent, barium, nickel, selenium, and zinc in the Limestone Sludge yielded compliance point concentrations well below the health based levels used in the delisting decision-making. The EPA did not evaluate the mobility of the remaining constituents (e.g., bromoform, beryllium, chromium, cobalt, copper, lead) from Occidental Chemical's waste because they were not detected in the leachate using the appropriate analytical test methods (see Table 3). As explained above, the EPA does not evaluate

nondetectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method.

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

During the evaluation of Occidental Chemical's petition, the EPA also considered the potential impact of the petitioned wastes 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 Occidental Chemical's petitioned wastes is unlikely. Therefore, no appreciable air releases are likely from Occidental's wastes under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Occidental Chemical's wastes in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from Occidental Chemical's Rockbox Residue, Caustic Neutralized Wastewater, or the Limestone Sludge. A description of the EPA's assessment of the potential impact of Occidental Chemical's wastes, regarding 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 wastes via a

surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the 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 run-off will tend to be lower than the levels in the TCLP leachate analyses reported in today's notice due to the aggressive acidic medium used for extraction in the TCLP. The EPA believes that, in general, leachate derived from the wastes is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of 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.

Based on the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, the EPA evaluated the potential impacts on surface water if Occidental Chemical's waste were released from a municipal solid waste landfill through runoff 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 Occidental Chemical's Rockbox Residue, the Caustic Neutralized Wastewater, and the Limestone Sludge wastes are not a present or potential substantial hazard to human health and the environment via the surface water exposure pathway.

E. Conclusion

The EPA believes that the descriptions of the Occidental Chemical hazardous waste process and analytical characterization, in conjunction with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis to grant Occidental Chemical's petition for an exclusion of the Rockbox Residue, Limestone Sludge, and Caustic Neutralized Wastewater. The EPA believes the data submitted in support of the petition show Occidental Chemical's process can render the Rockbox Residue, Limestone Sludge, and Caustic Neutralized Wastewater non-hazardous. The EPA has reviewed the sampling procedures used by Occidental Chemical and has determined they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations in the Rockbox Residue, Limestone Sludge, and Caustic Neutralized Wastewater. The data submitted in support of the petition show that constituents in Occidental Chemical's waste are presently below health-based levels used in the delisting decision-making. The EPA believes that Occidental Chemical has successfully demonstrated that the Rockbox Residue, Limestone Sludge, and Caustic Neutralized Wastewater is non-hazardous.

The EPA's decision to exclude this waste is based on descriptions of the incineration and the wastewater treatment activities associated with the petitioned waste and characterization of the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater. If the proposed rule is finalized, the petitioned wastes will no longer be subject to regulation under parts 262 through 268 and the permitting standards of part 270. The EPA therefore, proposes to grant an exclusion to the Occidental Chemical Corporation, located in Ingleside, Texas, for the Rockbox Residue, Limestone Sludge, and Caustic Neutralized Wastewater described in its petition.

F. Verification Testing Conditions

(1) *Delisting Levels:* All concentrations for the following constituents must not exceed the following levels (ppm). For the Rockbox Residue and the Limestone Sludge, constituents must be measured in the waste leachate by the method specified in 40 CFR § 261.24. The constituents for the Caustic Neutralized Wastewater must be measured in total constituents.

(A) Caustic Neutralized Wastewater

(i) Inorganic Constituents

Arsenic—0.35; Barium—14; Lead—0.11; Silver—0.14; Vanadium—2.1; Zinc—70

(ii) Organic Constituents

Acetone—28; Bromoform—0.07;

Chlorodibromomethane—0.01; 2,3,7,8-TCDD Equivalent—0.00000004

(B) Rockbox Residue

(i) Inorganic Constituents

Barium—100; Chromium—5; Copper—130; Lead—1.5; Selenium—1; Tin—210; Vanadium—30; Zinc—1000

(ii) Organic Constituents

Acetone—400; Bromodichloromethane—0.14; Bromoform—1.0; Chlorodibromomethane—0.1; Chloroform—1.0; Dichloromethane—1.0; Ethylbenzene—70; 2,3,7,8-TCDD Equivalent—0.000000531

(C) Limestone Sludge

(i) Inorganic Constituents

Antimony—0.6; Arsenic—5; Barium—100; Beryllium—0.4; Chromium—10; Cobalt—210; Copper—130; Lead—1.5; Nickel—70; Selenium—1; Silver—2.0; Vanadium—30; Zinc—1000

(ii) Organic Constituents

Acetone—400; Bromoform—1, Chlorodibromomethane—0.10; Dichloromethane—1.0; Ethylbenzene—70; 1,1,1-Trichloroethane—20; Toluene—700; Trichlorofluoromethane—1000; Xylene—2000; Diethyl phthalate—3000; 2,3,7,8-TCDD Equivalent—0.0000006

This paragraph provides the levels of constituents for which Occidental Chemical must test the leachate from the Rockbox Residue, and the Limestone Sludge, and the water in the Caustic Neutralized Wastewater, below which these wastes would be considered non-hazardous. The exclusion is effective when it is signed, but the disposal can not be implemented until the verification sampling is completed. If these constituent levels are exceeded then that waste is considered to be hazardous and must be managed as hazardous waste. If the annual testing of the waste does not meet the delisting requirements described in Paragraph 1, the facility must notify the Agency according to the Paragraph 6. The exclusion will be suspended until a decision is reached by the Agency. The facility shall provide sampling results which support the rationale that the delisting exclusion should not be withdrawn. The EPA selected the set of inorganic and organic constituents specified after reviewing information about the composition of the waste, descriptions of Occidental Chemical's treatment process, previous test data provided for the three waste and the respective health-based levels used in delisting decision-making. The EPA established the proposed delisting levels for this paragraph by back-calculating the Maximum Allowable Leachate (MALs) concentrations from the health-based levels for the constituents of concern using the EPACML chemical-specific DAFs of 100, 100, and 7 (See, previous discussions in Section D—

Agency Evaluation) i.e., $MAL = HBL \times DAF$). These delisting levels correspond to the allowable levels measured in the TCLP extract of the waste.

(2) *Waste Holding and Handling:*

Occidental Chemical must store in accordance with its RCRA permit, or continue to dispose of as hazardous all Rockbox Residue and the Limestone Sludge generated, and continue to discharge the Caustic Neutralized Wastewater generated in compliance with Occidental Chemical's NPDES permit until the verification testing described in Condition (3)(A) and (B), as appropriate, is completed and valid analyses demonstrate that condition (3) is satisfied. If the levels of constituents measured in the samples of the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. Occidental Chemical must continue to treat and discharge the Caustic Neutralized Wastewater as provided by the terms of its NPDES permit. If constituent levels in a sample exceed any of the delisting levels set in Condition (1), the waste generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA and Occidental Chemical's NPDES permit.

The purpose of this paragraph is to ensure that any Rockbox Residue and Limestone Sludge which might contain hazardous levels of inorganic and organic constituents are managed and disposed of in accordance with Subtitle C of RCRA. Holding the Rockbox Residue and Limestone Sludge until characterization is complete will protect against improper handling of hazardous material. Further, inasmuch as Occidental Chemical has a permit to discharge under the NPDES program, it must continue to fully meet those permit requirements and may, according to this exception, only dispose of the Caustic Neutralized Wastewater as provided by that permit. If the EPA determines that the data collected under this condition do not support the data provided for the petition or Occidental Chemical is no longer meeting the terms of its NPDES permit, the exclusion will not cover the three wastes.

(3) *Verification Testing Requirements:*

Sample collection and analyses, including quality control procedures, must be performed according to SW-846 methodologies. If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing, Occidental Chemical may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Occidental Chemical must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing

in Condition (3)(A) may be replaced by Condition (3)(B).

(A) *Initial Verification Testing:* (i) During the first 40 operating days of the Incinerator Offgas Treatment System after the final exclusion is granted, Occidental Chemical must collect and analyze composites of the Limestone Sludge, and the Caustic Neutralized Wastewater. Daily composites must be composed of representative grab samples collected every 6 hours during each unit operating cycle. The two wastes must be analyzed, prior to disposal, for all of the constituents listed in Paragraph 1. Occidental Chemical must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 90 days after the generation of the two wastes.

(ii) When the Rockbox unit is decommissioned for cleanout after the final exclusion is granted, Occidental Chemical must collect and analyze composites of the Rockbox Residue. The waste must be sampled after each decommissioning. Two composites must be composed of representative grab samples collected from the Rockbox unit. The waste must be analyzed, prior to disposal, for all of the constituents listed in Paragraph 1. No later than 90 days after the Rockbox is decommissioned for cleanout the first two times after this exclusion becomes final, Occidental Chemical must report the operational and analytical test data, including quality control information.

If the EPA determines that the data from the initial verification period demonstrates the treatment process is effective, Occidental Chemical may request that EPA allow it to perform verification testing on a quarterly basis for the Limestone Sludge and the Caustic Neutralized Wastewater. The Rockbox Residue will be sampled during periodic maintenance. If approved in writing by EPA, then Occidental Chemical may begin verification testing quarterly of the Limestone Sludge and the Caustic Neutralized Wastewater.

The EPA believes that an initial period of 40 days is sufficient for a facility to collect sufficient data to verify the data provided for the Limestone Sludge and the Caustic Neutralized Wastewater in the 1997 petition is representative of the waste to be delisted. If the EPA determines that the data collected under this condition do not support the data provided for the petition, the exclusion will not cover the generated wastes. If the EPA determines that the data from the initial verification period reflected in (3)(A)(i) demonstrates that the treatment process is effective, EPA will notify Occidental Chemical in writing that the testing conditions in (3)(A)(i) may be replaced with the testing conditions in (3)(B). EPA also believes it is sufficient for Occidental Chemical to collect

verification data for the Rockbox Residue when the Rockbox unit is decommissioned for cleanout.

(B) *Subsequent Verification Testing:* Following written notification by EPA, Occidental Chemical may substitute the testing conditions in (3)(B) for (3)(A)(i). Occidental Chemical must continue to monitor operating conditions, and analyze samples representative of each quarter of operation during the first year of waste generation. The samples must represent the waste generated over one quarter. (This provision does not apply to the Rockbox Residue.)

The EPA believes that the concentrations of the constituents of concern in the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater may vary somewhat over time. As a result, in order to ensure that Occidental Chemical's treatment process can effectively handle any variation in constituent concentrations in the three wastes, the EPA is proposing a subsequent verification testing condition. The proposed subsequent testing would verify that the incinerator offgas system is operated in a manner similar to its operation during the initial verification testing and that the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater, do not exhibit unacceptable levels of toxic constituents. Therefore, the EPA is proposing to require Occidental Chemical to analyze representative samples of the Limestone Sludge, and the Caustic Neutralized Wastewater on a quarterly basis during the first year of waste generation (commencing on the anniversary date of the final exclusion) as described in Condition (3)(B). The Rockbox Residue will be sampled when the unit is out of commission for routine maintenance.

(C) *Termination of Organic Testing for Limestone Sludge and Caustic Neutralized Wastewater:* Occidental Chemical must continue testing as required under Condition (3)(B) for organic constituents specified in Condition (1)(A)(ii) and (1)(C)(ii) until the analyses submitted under Condition (3)(B) show a minimum of two consecutive quarterly samples below the delisting levels in Conditions (1)(A)(ii) and (1)(C)(ii). Occidental Chemical may then request that quarterly organic testing be terminated. After EPA notifies Occidental Chemical in writing it may terminate quarterly organic testing. Following termination of the quarterly testing, Occidental Chemical must continue to test a representative composite sample for all constituents listed in Condition (1) on an annual basis (no later than twelve months after final exclusion). If the waste exceeds the delisting levels then the waste will not be delisted.

The EPA is proposing to terminate the subsequent testing conditions for

organics as allowed in Condition (1)(A)(ii) and (1)(C)(ii) after Occidental Chemical has demonstrated the delisting levels for the waste are consistently met. If the annual testing of the wastes does not meet the delisting requirements described in Paragraph 1, the facility must notify the Agency according to the requirements in Paragraph 6. The exclusion will be suspended until a decision is reached by the Agency. The facility shall provide sampling results which support the rationale that the delisting exclusion should not be withdrawn. In order to confirm that the characteristics of the wastes do not change significantly over time, Occidental Chemical must continue to analyze a representative sample of the wastes for organic constituents on an annual basis (no later than twelve months after the final exclusion). If Occidental Chemical changes operating conditions as described in Condition (4), then Occidental Chemical must reinstate all testing in Condition (3)(A), pending a new demonstration under this condition for termination. Occidental Chemical must continue Organic Testing of the Rockbox Residue for that waste to be excluded.

(4) *Changes in Operating Conditions:* If Occidental Chemical significantly changes the process described in its petition or implements any processes which generate(s) the waste(s) and which may or could affect the composition or type waste(s) generated as established under Condition (1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process), or its NPDES permit is changed, revoked or not reissued, or if it intends to manage the Caustic Neutralized Wastewater other than by discharge under its NPDES permit, Occidental Chemical must notify the EPA in writing and may no longer handle the wastes generated from the new process, or no longer discharge as nonhazardous until the wastes meet the delisting levels set in Condition (1) and it has received written approval to do so from EPA.

Condition (4) would allow Occidental Chemical the flexibility of modifying its processes (e.g., changes in equipment or change in operating conditions) to improve its treatment process. However, Occidental Chemical must demonstrate that the change would not affect the composition or type of waste and request approval from the EPA. Wastes generated during the new process demonstration must be managed as a hazardous waste until written approval has been obtained and Condition (1) is satisfied. If Occidental Chemical changes operating conditions as described in Condition (5), then Occidental Chemical must reinstate all testing in Condition (3) pending a new

demonstration under this condition for termination.

(5) *Data Submittals*: The data obtained through Condition 3 must be submitted to Mr. William Gallagher, Chief, Region 6 Delisting Program, EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733, Mail Code, (6PD-O) within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

To provide appropriate documentation that Occidental Chemical's facility is properly treating the waste, all analytical data obtained through Condition (3), including quality control information, must be compiled, summarized, and maintained on site for a minimum of five years. Condition (5) requires that these data be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Texas.

If made final, the proposed exclusion will apply only to 128 cubic yards of Rockbox Residue, 1,114 cubic yards of Limestone Sludge, and 148,284 cubic yards of Caustic Neutralized Wastewater generated annually at the wastewater system at the Occidental Chemical facility after successful verification

testing. Except as described in Condition (4), the facility would be required to submit a new petition if the treatment process specified for the Incinerator Offgas Treatment System is significantly altered. Occidental Chemical would be required to file a new delisting petition for any new manufacturing or production process(es), or significant changes from the current process(es) described in its petition which generates the three wastes or which may or could affect the composition or type of waste generated. Additionally if there is any change to Occidental Chemical's NPDES permit or if it wishes to manage the Caustic Neutralized Wastewater other than by discharge under its NPDES permit, except as provided in Condition (4), Occidental would also be required to file a new delisting petition. The facility must manage any of the waste in excess of 128 cubic yards of Rockbox Residue, 1,114 cubic yards of Limestone Sludge, and 148,284 cubic yards of Caustic Neutralized Wastewater generated from a changed process as hazardous until a new exclusion is granted.

Although management of the wastes covered by this petition would not be subject to 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.

(6) *Reopener*.

(a) If Occidental Chemical discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then Occidental Chemical must report any information relevant to that condition, in writing, to the Regional Administrator or his delegate within 10 days of discovering that condition.

(b) Upon receiving information described in paragraph (a) regardless of its source, the Regional Administrator or his delegate will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment.

The purpose of paragraph 6 is to require Occidental Chemical to disclose new or different information related to a condition at the facility or disposal of the waste if it had or has bearing on the delisting. This will allow EPA to reevaluate the exclusion if new or additional information is provided to the Agency by Occidental Chemical

which indicates that information on which EPA's decision was based was incorrect or circumstances have changed such that information is no longer correct or would cause EPA to deny the petition if then presented. Further, although this provision expressly requires Occidental Chemical to report differing site conditions or assumptions used in the petition within 10 days of discovery, if EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions located at § 268.6.

EPA has recognized that current delisting regulations contain no express procedure for reopening a decision if additional information is received and although it believes that it has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978), *et seq.* (APA), to take this action, EPA believes that a clear statement of its authority in the context of delistings is merited in light of Agency experience. (See, e.g., Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste did not leach in the actual disposal site as it had been modeled thus leading the Agency to repeal the delisting.) Until such time as EPA codifies an express reopener provision in the exclusion regulations, EPA will include language similar to that expressed above in delistings. EPA is considering the inclusion of a more specific regulatory process both defining when a delisting should be reopened and the result of reopening a granted exclusion and is soliciting comments on this process. Since each delisting is waste-specific and facility-specific or process-specific, EPA is currently reluctant to adopt a rule which might inadvertently, for example, cause an immediate repeal where specific circumstances would not merit so precipitous a result. In the meantime, in the event that an immediate threat to human health or the environment presents itself, EPA will continue to rely on its authority under the APA to make a good cause finding to justify an emergency rulemaking suspending notice and comment. APA section 553(b).

(7) *Notification Requirements*: Occidental Chemical 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.

IV. Effective Date

EPA intends that this rule, should 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, 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, 5 USC 553(d).

V. Regulatory Impact

Under Executive Order (EO) 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to manage its waste as nonhazardous. There is no additional impact therefore, due to today's proposed 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. Children's Health Protection

Under EO 13045, for all significant regulatory actions as defined by EO 12866, EPA must provide an evaluation of the environmental health or safety effect of a proposed rule on children and an explanation of why the proposed rule is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This proposal is not a significant regulatory action and is exempt from EO 13045.

VII. Regulatory Flexibility Act

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

This rule if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations. 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.

VIII. Paperwork Reduction Act

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

IX. Unfunded Mandates Reform Act

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

affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. 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.

X. Intergovernmental Partnership

Under EO 12875, EPA may not promulgate any regulation which creates an unfunded mandate upon state, local or tribal government. 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 (See Section IX (UMRA) above) and accordingly, this action is exempt from the requirements of EO 12875.

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: April 17, 1998.

Robert Hanneschlager,

Acting Director, Multimedia Planning and Permitting Division.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

2. In Tables 1 and 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 1. WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

| Facility | Address | Waste description |
|---------------------------|-----------------------------|--|
| * Occidental Chemical, | * Ingleside, Texas | * Limestone sludge, (at a maximum generation of 1,114 cubic yards per calendar year) Rockbox Residue, (at a maximum generation of 128 cubic yards per calendar year) and Caustic Neutralized Wastewater, (at a maximum generation of 148,282 cubic yards per calendar year) generated by Occidental Chemical using the wastewater treatment proc- ess to treat the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater (EPA Hazardous Waste No. F025, F001, F003, and F005) generated at Occidental Chemical. Occidental Chemical must implement a testing program that meets the following condi- tions for the exclusion to be valid: (1) <i>Delisting Levels:</i> All concentrations for the following constituents must not exceed the levels (ppm). For the Rockbox Residue and the Limestone Sludge, constituents must be measured in the waste leachate by the method specified in 40 CFR Part 261.24. The constituents for the Caustic Neutralized Wastewater must be measured in total constitu- ents. (A) Caustic Neutralized Wastewater. (i) Inorganic Constituents Arsenic-0.35; Barium-14; Lead-0.11; Silver-0.14; Vanadium-2.1; Zinc-70. (ii) Organic Constituents Acetone-28; Bromoform-0.07; Chlorodibromomethane-0.01; 2,3,7,8-TCDD Equivalent-0.00000004. (B) Rockbox Residue. (i) Inorganic Constituents Barium-200; Chromium-10; Copper-130; Lead-1.5; Selenium-1; Tin-210; Vanadium-30; Zinc-1000. (ii) Organic Constituents Acetone-400; Bromodichloromethane-0.14; Bromoform-1.0; Chlorodibromomethane-0.1; Chloroform-1.0; Dichloromethane-1.0; Ethylbenzene-70; 2,3,7,8-TCDD Equivalent-0.000000531. (C) Limestone Sludge. (i) Inorganic Constituents Antimony-0.6; Arsenic-5; Barium-200; Beryllium-0.4; Chromium- 10; Cobalt-210; Copper-130; Lead-1.5; Nickel-70; Selenium-1; Silver-2.0; Vanadium-30; Zinc-1000. (ii) Organic Constituents Acetone-400; Bromoform-1; Chlorodibromomethane-0.1; Dichloromethane-1.0; Ethylbenzene-70; 1,1,1-Trichloroethane-20; Toluene-700; Trichlorofluoromethane-1000; Xylene-2000; Diethyl phthalate-3000; 2,3,7,8-TCDD Equivalent-0.0000006. (2) <i>Waste Holding and Handling:</i> Occidental Chemical must store in accordance with its RCRA permit, or continue to dispose of as hazardous waste all Rockbox Residue, and the Limestone Sludge generated, and continue to discharge the Caustic Neutralized Wastewater generated in compliance with Occidental Chemical's NPDES permit until the verification testing described in Condition (3)(A) and (3)(B), as appropriate, is com- pleted and valid analyses demonstrate that condition (3) is satisfied. If the levels of con- stituents measured in the samples of the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. Occidental Chemical must continue to treat and discharge the Caustic Neutralized Wastewater as provided by the terms of its NPDES permit. If constituent levels in a sample exceed any of the delisting levels waste generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA and Occidental Chemical's NPDES permit. (3) <i>Verification Testing Requirements:</i> Sample collection and analyses, including quality control procedures, must be performed according to SW-846 methodologies. If EPA judges the incineration process to be effective under the operating conditions used dur- ing the initial verification testing, Occidental Chemical may replace the testing required in condition (3)(A) with the testing required in Condition (3)(B). Occidental Chemical must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B). (A) <i>Initial Verification Testing:</i> (i) During the first 40 operating days of the Incinerator Offgas Treatment System after the final exclusion is granted, Occidental Chemical must collect and analyze composites of the Limestone Sludge, and the Caustic Neutralized Wastewater. Daily composites must be composed of representative grab samples col- lected every 6 hours during each unit operating cycle. The two wastes must be ana- lyzed, prior to disposal, for all of the constituents listed in Paragraph 1. Occidental Chemical must report the operational and analytical test data, including quality control information, obtained during this initial period no later 90 days after the generation of the two wastes. |

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

| Facility | Address | Waste description |
|----------|---------|---|
| | | <p>(ii) When the Rockbox unit is decommissioned for cleanout, after the final exclusion is granted, Occidental Chemical must collect and analyze composites of the Rockbox Residue. Two composites must be composed of representative grab samples collected from the Rockbox unit. The waste must be analyzed, prior to disposal, for all of the constituents listed in Paragraph 1. No later than 90 days after the Rockbox is decommissioned for cleanout the first two times after this exclusion becomes final, Occidental Chemical must report the operational and analytical test data, including quality control information.</p> <p>(B) <i>Subsequent Verification Testing:</i> Following written notification by EPA, Occidental Chemical may substitute the testing conditions in (3)(B) for (3)(A)(i). Occidental Chemical must continue to monitor operating conditions, analyze samples representative of each quarter of operation during the first year of waste generation. The samples must represent the waste generated over one quarter. (This provision does not apply to the Rockbox Residue.)</p> <p>(C) <i>Termination of Organic Testing for the Limestone Sludge and the Caustic Neutralized Wastewater:</i> Occidental Chemical must continue testing as required under Condition (3)(B) for organic constituents specified in Condition (1)(A)(ii) and (1)(C)(ii) until the analyses submitted under Condition (3)(B) show a minimum of two consecutive quarterly samples below the delisting levels in Condition (1)(A)(ii) and (1)(C)(ii). Occidental Chemical may then request that quarterly organic testing be terminated. After EPA notifies Occidental Chemical in writing it may terminate quarterly organic testing. Following termination of the quarterly testing, Occidental Chemical must continue to test a representative composite sample for all constituents listed in Condition (1) on an annual basis (no later than twelve months after the final exclusion).</p> <p>(4) <i>Changes in Operating Conditions:</i> If Occidental Chemical significantly changes the process which generate(s) the waste(s) and which may or could affect the composition or type waste(s) generated as established under Condition (1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process), or its NPDES permit is changed, revoked or not reissued, or if it intends to manage the Caustic Neutralized Wastewater other than by discharge under its NPDES permit, Occidental Chemical must notify the EPA in writing and may no longer handle the wastes generated from the new process or no longer discharges as nonhazardous until the wastes meet the delisting levels set in Condition (1) and it has received written approval to do so from EPA.</p> <p>(5) <i>Data Submittals:</i> The data obtained through Condition 3 must be submitted to Mr. William Gallagher, Chief, Region 6 Delisting Program, U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733, Mail Code, (6PD-O) within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:</p> <p>Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 USC § 1001 and 42 USC § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.</p> <p>As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.</p> <p>In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.</p> <p>(6) <i>Reopener.</i></p> <p>(a) If Occidental Chemical discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then Occidental Chemical must report any information relevant to that condition, in writing, to the Director of the Multimedia Planning and Permitting Division or his delegate within 10 days of discovering that condition.</p> <p>(b) Upon receiving information described in paragraph (a) from any source, the Director or his delegate will determine whether the reported condition requires further action. Further action may include revoking the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment.</p> |

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

| Facility | Address | Waste description |
|----------|---------|--|
| | | (7) <i>Notification Requirements:</i> Occidental Chemical must provide a one-time written notification to any State Regulatory Agency to which or through which the debited 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. |
| * | * | * |

TABLE 2. WASTES EXCLUDED FROM SPECIFIC SOURCES

| Facility | Address | Waste description |
|---------------------------|------------------------|--|
| | | |
| Occidental Chemical | Ingleside, Texas | Limestone sludge, (at a maximum generation of 1,114 cubic yards per calendar year) Rockbox Residue, (at a maximum generation of 128 cubic yards per calendar year) and Caustic Neutralized Wastewater, (at a maximum generation of 148,282 cubic yards per calendar year) generated by Occidental Chemical using the wastewater treatment process to treat the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater (EPA Hazardous Waste No. K019, K020. Occidental Chemical must implement a testing program that meets conditions found in Table 1. Wastes Excluded From Non-Specific Sources for the petition to be valid. |
| * | * | * |

[FR Doc. 98-12427 Filed 5-8-98; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR 61

[IB Docket No. 98-60; FCC 98-78]

Policies and Rules for Alternative Incentive Based Regulation of Comsat Corporation

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has issued a notice of proposed rulemaking to consider replacing traditional rate of return regulation with an alternative incentive based regulation plan for Comsat Corporation ("Comsat") with respect to Comsat's provision of INTELSAT switched voice, private line and occasional-use video services to those markets where the Commission finds it dominant. The Commission believes that its current rate of return regulation that would be applicable to Comsat's dominant markets may no longer be an efficient or effective means of regulating Comsat's rates and may not create adequate efficiency incentives for Comsat. Therefore, the Commission invites interested parties to file comments in response to the Commission's tentative conclusions set forth in the notice of proposed

rulemaking regarding alternative incentive based regulation for Comsat's dominant markets.

DATES: Interested parties may file comments by May 26, 1998 and reply comments by June 5, 1998.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Daniel Connors, International Bureau, Satellite Policy Branch, (202) 418-0755; or Kathleen Campbell, International Bureau, Satellite Policy Branch (202) 418-0753.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in IB Docket No. 98-60 that is contained in the Commission's Order and Notice of Proposed Rulemaking; FCC 98-78, adopted April 24, 1998, and released April 28, 1998. The complete text of the Order and Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C., and from the Commission's world-wide-web page on the Internet (<http://www.fcc.gov>), and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037. Because this Notice of Proposed Rulemaking contains information

collections that affect less than 10 persons and, therefore, is not subject to the Paperwork Reduction Act of 1995, Public Law 104-13. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Certification certifying that the proposed rule will not impact small entities.

1. The Initial Regulatory Flexibility Certification necessary to comply with the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, is set forth below.

2. The Paperwork Reduction Act does not apply to the rules adopted herein because such rules apply to less than 10 persons.

Initial Regulatory Flexibility Certification

3. The Regulatory Flexibility Act ("RFA") requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." U.S.C. § 605(b). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." *Id.* § 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. *Id.* § 601(3). A small business concern is one which: (a) is