

Discussion of Comments and Amendments

The Coast Guard did not receive any letters commenting on the NPRM published on January 9, 1991, in the *Federal Register* (56 FR 824). No public hearing was requested, and none was held. This rule adopts the NPRM without substantive changes. This rule adds text to the prefatory language of 33 CFR 151.53, adds text in the form of a new paragraph (f), and adds text to Note 2 to appendix A to §§ 151.51 through 151.77; these added texts, respectively, list, define, and emphasize the North Sea as a Special Area under Annex V. This rule also deletes the text in § 151.77(c) exempting the loss of synthetic material incidental to the repair of fishing nets, though it does leave the text exempting the accidental loss of synthetic fishing nets themselves.

Regulatory Evaluation

The Coast Guard considers this rule not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures [44 FR 11040 (February 26, 1979)].

The Coast Guard prepared a Final Regulatory Evaluation for the final rule carrying out Annex V. A copy of this evaluation is available in the docket for inspection or copying at the office of the Marine Safety Council, U.S. Coast Guard Headquarters, room 3406, 2100 Second Street SW., Washington, DC 20593-0001. Office hours are between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. The Coast Guard expects the economic impact of this rule to be so minimal that a new Regulatory Evaluation is not necessary. This rule makes only minor changes to the rules previously evaluated and adopted. It affects only U.S.-flag ships operating in the North Sea, and those few fishing vessels losing synthetic material during the repair of fishing nets despite exercising all reasonable precautions.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard must consider whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Again, the Coast Guard prepared a Final Regulatory Evaluation for the final

rule carrying out Annex V. The Coast Guard conducted, as a part of this evaluation, a regulatory flexibility analysis, which certified that that rule would not have a significant economic impact on a substantial number of small entities. This rule makes only minor changes to that rule. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*].

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and has concluded that preparation of an Environmental Impact Statement is not necessary. The Coast Guard conducted an Environmental Assessment for the final rule carrying out Annex V; this led to a Finding of No Significant Impact. This rule makes only minor changes to that rule. The Environmental Assessment and Finding of No Significant Impact are available in the docket for inspection or copying at the address in the "Regulatory Evaluation" section of this preamble.

List of Subjects in 33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE AND MUNICIPAL OR COMMERCIAL WASTE

1. The citation of authority for subpart A of part 151 is revised to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b); E.O. 11735, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

2. Section 151.53 is amended by revising the introductory text and adding a new paragraph (f) before the note, to read as follows:

§ 151.53 Special areas for Annex V of MAROL 73/78.

For the purposes of §§ 151.51 through 151.77, the special areas are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the Red Sea area, the Gulfs area, and the North Sea area, which are defined as follows:

(f) The North Sea area means the North Sea proper, including seas within the North Sea southwards of latitude 62° N and eastwards of longitude 4° W; the Skagerrak, the southern limit of which is determined east of the Skaw by latitude 57°44.8' N; and the English Channel and its approaches eastwards of longitude 5° W. The discharge restrictions in § 151.71 are effective in the North Sea area on February 18, 1991.

3. Section 151.77 is amended by revising paragraph (c), to read as follows:

§ 151.77 Exceptions for emergencies.

(c) The accidental loss of synthetic fishing nets, provided all reasonable precautions have been taken to prevent such loss.

4. Appendix A to §§ 151.51 through 151.77 is amended by revising Note 2, to read as follows:

Appendix A to §§ 151.51 through 151.77—Summary of Garbage Discharge Restrictions.

Note 2: Special areas under Annex V are the Mediterranean, Baltic, Black, Red, and North Seas areas and the Gulfs area. (33 CFR 151.53)

Dated: April 2, 1991.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91-9789 Filed 4-26-91; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF04

Death Pension Eligibility—Wartime Service

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its

adjudication regulations concerning eligibility for death pension. This change is necessary because VA General Counsel has pointed out that those regulations do not clearly reflect the statutory requirement that the veteran's service must have been during a period of war. The intended effect of this change is to clarify the wartime service eligibility requirement for death pension benefits.

EFFECTIVE DATE: April 29, 1991.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In a memorandum dated October 11, 1990, VA General Counsel held that 38 CFR 3.3(b)(3)(iii) and 3.3(b)(4)(iii) do not clearly reflect the provisions of 38 U.S.C. 541 and 542; specifically, that the veteran's service must have been during a period of war. We are amending 38 CFR 3.3(b)(3) and 3.3(b)(4) to clarify this eligibility requirement. As a result of this amendment, the cross-reference contained in § 3.1(d)(2) is being amended.

VA is issuing a final rule to amend the provisions of 38 CFR 3.3(b)(3) and 3.3(b)(4). This change is necessary to clarify the regulatory provisions in accordance with the memorandum of VA General Counsel. Because this amendment does not constitute a substantive change, publication as a proposal for public notice and comment is unnecessary. For these reasons, this amendment is effective on April 29, 1991.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). In any case, this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601-612. This amendment will not directly affect any small entity.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

- (1) It will not have an annual effect on the economy of \$100 million or more.
- (2) It will not cause a major increase in costs or prices.
- (3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or

on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets.

(The Catalog of Federal Domestic Assistance program number is 64.105.)

List of Subjects in 38 CFR Part 3

Administrative practices and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: March 26, 1991.

Edward J. Derwinski,
Secretary of Veterans Affairs.

PART 3—[AMENDED]

38 CFR part 3, Adjudication, is amended as follows:

§ 3.1 [Amended]

1. In § 3.1(d)(2), remove the words "(See § 3.3(b)(4)(iii))" and add, in their place, the words "(See §§ 3.3(b)(3)(i) and 3.3(b)(4)(i))". The authority citation for this paragraph is revised as follows: (Authority: 38 U.S.C. 210(c)).

2. In § 3.3, paragraphs (b) (3) and (4) are revised to read as follows:

§ 3.3 Pension.

* * * * *

(b) * * *

(3) *Section 306 death pension.* A monthly benefit payable by the Department of Veterans Affairs to a surviving spouse or child because of a veteran's nonservice-connected death. Basic entitlement exists if:

(i) The veteran (as defined in § 3.1(d) and (d)(2)) had qualifying service as specified in paragraph (a)(2)(i), (ii), or (iii) of this section; or

(ii) The veteran was, at time of death, receiving or entitled to receive compensation or retired pay for service-connected disability based on wartime service; and

(iii) The surviving spouse or child (A) was in receipt of section 306 pension on December 31, 1978, or (B) had a claim for pension pending on that date, or (C) filed a claim for pension after that date but within 1 year after the veteran's death, if the veteran died before January 1, 1979; and

(iv) The surviving spouse or child meets the income and net worth requirements of 38 U.S.C. 541, 542 or 543 as in effect on December 31, 1978, and all other provisions of title 38, United States Code in effect on December 31, 1978, applicable to section 306 pension.

Note: The pension provisions of title 38, United States Code, as in effect on December 31, 1978, are available in any VA regional office.)

(4) *Improved death pension, Public Law 95-588.* A benefit payable by the Department of Veterans Affairs to a veteran's surviving spouse or child because of the veteran's nonservice-connected death. Payments are made monthly unless the amount of the annual benefit is less than 4 percent of the maximum annual rate payable to a veteran under 38 U.S.C. 521(b), in which case payments may be made less frequently than monthly. Basic entitlement exists if:

(i) The veteran (as defined in § 3.1(d) and (d)(2)) had qualifying service as specified in paragraph (a)(3)(i), (ii), (iii), or (iv) of this section (38 U.S.C. 541(a)); or

(ii) The veteran was, at time of death, receiving or entitled to receive compensation or retired pay for a service-connected disability based on service during a period of war. (The qualifying periods of war are specified in paragraph (a)(3) of this section.) (38 U.S.C. 541(a)); and

(iii) The surviving spouse or child meets the net worth requirements of § 3.274 and has an annual income not in excess of the applicable maximum annual pension rate specified in §§ 3.23 and 3.24.

(Authority: 38 U.S.C. 541 and 542).

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[FR Doc. 91-10036 Filed 4-26-91; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3951-4]

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

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for specified wastes to be generated by USX Corporation, Chicago, Illinois. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators

the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: April 29, 1991.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., room M-2427, Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-89-UXFP-FFFFF." The public may copy material from any regulatory docket at a cost of \$0.15 per page.

FOR FURTHER INFORMATION CONTACT:

For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7392.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

USX Corporation (USX), located in Chicago, Illinois, petitioned the Agency to exclude from hazardous waste control a specific waste it intends to generate. After evaluating the petition, on July 20, 1989, EPA proposed to exclude USX's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32, conditional upon USX meeting certain sampling, analysis, and reporting requirements. (See 53 FR 30406).

USX petitioned the Agency for an "upfront" exclusion. A petitioner requests an upfront exclusion for wastes that have not yet been generated or that will be subject to further treatment. When treatment is planned, an upfront delisting petition requests that an exclusion be granted based on untreated waste characteristics, full-scale or pilot-

scale treatment data if available, and process descriptions. As a condition of an upfront exclusion, the Agency may impose batch testing requirements, which often include analytical testing of representative samples obtained from the full-scale system. These data can be used to verify that the treatment system, once on-line, is operating as described in the petition. The Agency may also specify verification testing limitations (*i.e.*, the maximum allowable levels of hazardous constituents of concern in the waste) in the conditions of the granted exclusion. When the actual levels of the constituents of concern are below these levels, the waste will not be considered hazardous. If the actual levels of the constituents are above these levels, the waste is still considered to be hazardous and must be retreated or disposed in accordance with RCRA subtitle C requirements.

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

II. Disposition of Petition

USX Corporation, Chicago, Illinois

1. Proposed Exclusion

USX petitioned the Agency for an upfront exclusion of its chemically stabilized electric arc furnace dust (CSEAFD), presently listed as EPA Hazardous Waste No. K061. USX based its petition on the claim that the constituents of concern, although present in the waste, were in an essentially immobile form (*i.e.*, cement-like). Furthermore, to support its claim that both the non-listed and listed constituents of concern would not be present in the fully-cured CSEAFD above health-based levels of concern, USX submitted results from total constituent, EP toxicity, and multiple extraction procedure (MEP) analyses (used to assess stabilized wastes) for all the EP toxic metals, nickel, cyanide, antimony, beryllium, and thallium. USX did not submit results from MEP analyses for barium and cyanide. (See 54 FR 30410, July 20, 1989). The total constituents analyses were performed on representative samples of the untreated electric arc furnace dust. The EP and MEP leachate analyses were performed on representative samples of the fully-cured CSEAFD as generated using a laboratory-scale treatment system. The verification testing conditions attached to the exclusion are designed to ensure that these constituents will not be present in the fully-cured CSEAFD at concentrations above the health-based levels used in delisting decision-making. See 54 FR 30406, July 20, 1989 for a more detailed

explanation of why EPA proposed to grant USX's petition for its fully-cured CSEAFD.

2. Agency Response to Public Comments

The Agency received public comments on the proposed rule from one commenter. The commenter opposed the Agency's proposed decision to exclude the fully-cured CSEAFD. The objections raised by the commenter are discussed below.

Petition-Specific Comments

The commenter believed that the Agency did not provide sufficient information on the particle size and physical nature (including pH) of both the intermediate and final waste forms. The commenter asserted that this information was needed to evaluate the potential for waste dispersal and exposure by routes in addition to leaching. The commenter, therefore, believed that their ability to provide "meaningful" public comment was seriously restricted.

The agency disagrees with the commenter. First, USX provided adequate data characterizing the physical and chemical composition of both the untreated waste and the CSEAFD. These data were provided in the exclusion petition. (See 54 FR 30406, July 20, 1989). With regards to information concerning the pH of the CSEAFD, although this information was not specifically provided in the *Federal Register* notice, the notice stated that the CSEAFD did not exhibit the characteristic of corrosivity. (See 54 FR 30411, July 20, 1989). The fully-cured CSEAFD is a solid material, therefore, the pH cannot be directly measured. However, the petition did contain pH measurements on mixtures of the waste and distilled water. USX provided pH data on four concentrated samples of fully-cured CSEAFD suspended in water and all four samples had a pH of 12.3.

In regards to information concerning particle size, the proposed rule stated that USX's waste possessed a rigid, friable texture similar to that of a clay soil. (See 54 FR 30409, July 20, 1989). The Agency believes that this information is sufficient to perform a worst-case evaluation because relative particle size can be inferred based on the physical description of the waste. In regards to information concerning the intermediate form of the CSEAFD, the Agency did not evaluate the intermediate form because the exclusion only covers the final, fully-cured CSEAFD. (The Agency notes that the intermediate waste (*i.e.*, uncured CSEAFD) is still a hazardous waste subject to all of the information

submitted by USX. Information that was not claimed to be confidential is available in the RCRA public docket for public inspection.

The commenter stated that the CSEAFD still exhibits one of the criteria for which it was listed—the presence of significant concentrations of the inorganic constituents of concern (*i.e.*, cadmium, chromium, and lead). The commenter also stated that the waste contains significant concentrations of nickel. The commenter, therefore, believed that the petition should be denied because USX did not meet the regulatory requirements of 40 CFR 261.11(a)(3)(ii) and (vii). Specifically, the commenter asserted that because the waste contains significant concentrations of both the listed and non-listed constituents (*i.e.*, cadmium, chromium, lead, and nickel), the petitioner must make a demonstration showing that the petitioned waste, under all plausible types of mismanagement scenarios, is non-hazardous.

First, the Agency considered in its analysis of the petitioned waste all of the factors listed in 40 CFR 261.11(a)(3), including all plausible mismanagement scenarios (see 54 FR 30407, July 20, 1989). EPA, therefore, disagrees with the commenter's assertion that granting this petition would be inconsistent with the regulations.

In regards to the presence of the cadmium, chromium, lead, and nickel in the petitioned waste, the Agency agrees that the presence in K061 wastes of significant total constituent concentrations of the inorganic constituents of concern was one of the criteria for listing K061 wastes as "T" (toxic) wastes. See 40 CFR 261.11(a)(3)(ii) and "Background Document, Resource Conservation and Recovery Act, subtitle C, Hazardous Waste Management, section 3001, Identification and Listing of Hazardous Waste," 1980. The Agency also believes that the data presented in the Background Document broadly characterize the physical/chemical nature of untreated electric arc furnace dusts and that these data are not representative of the physical/chemical nature of USX's stabilized electric arc furnace. EPA, therefore, uses elevated concentrations of constituents as an indicator of potential hazard as it is reasonable to expect that as the concentration of an unbound or loosely bound metal present in a waste increases, the potential for the metal to leach from the waste also increases. (Generally, the higher the total concentrations of an unbound or loosely bound metal, the higher the potential EP leachate

concentrations.) Thus, wastes having significant concentrations of unbound or loosely bound metals are more likely to impact the underlying ground water than wastes having lower concentrations of unbound or loosely bound metals are more likely to impact the underlying ground water than wastes having lower concentrations of unbound or loosely bound metals. In this specific case, the metals in USX's waste are tightly bound within the waste matrix. The Agency's conclusion that all of the inorganic constituents (including, cadmium, chromium, lead, and nickel) are bound in the waste matrix and thus are not available for leaching is supported by the results of both the EP and MEP leachate analyses, which showed that the inorganic constituents would not leach at hazardous levels from USX's waste under conditions similar to those found in municipal waste landfills. (See 54 FR 30411, July 20, 1989). As a result, the Agency believes that the total levels of cadmium, chromium, lead and nickel present in USX's waste, in this specific case, are not an appropriate indicator of hazard to human health and the environment.

Furthermore, EPA evaluated the waste's potential impact on human health using either the maximum EP or MEP leachate concentration (whichever was greater) and the vertical and horizontal spread (VHS) model. For the volume of waste generated by USX (35,000 tons/year), the VHS model predicts a dilution factor of approximately 6.3. The VHS model analysis provides a conservative and reasonable worst-case evaluation of the behavior of the leachate from the waste in an underlying aquifer. The predicted compliance-point concentrations resulting from this conservative analysis were below the levels of concern used for delisting purposes. See 54 FR 30411, July 20, 1989 for a description of the modeling analysis of USX's waste.

As indicated above, the commenter believed that the Agency failed to consider all plausible mismanagement scenarios in its evaluation of the petitioned waste. Specifically, the commenter asserted that because the Agency based its evaluation exclusively on the "worst-case scenario" of land disposal, the proposed rule provides no basis for determining if the waste would be hazardous under other plausible mismanagement scenarios. The commenter, therefore, believed that EPA only considered the leachable levels of hazardous constituents and did not consider the waterborne dispersal, airborne dispersal, or direct dermal contact with the waste potentially

occurring through other plausible mismanagement scenarios.

The Agency does not believe that it is likely for other mismanagement scenarios to occur. With regard to possible airborne dispersal, the Agency believes that the commenter's concerns regarding airborne dispersal of the waste are unfounded. First, the Agency notes that USX's untreated the uncured wastes will continue to be regulated as hazardous wastes. Therefore, the regulatory requirements under RCRA for transport and storage will provide some control of any releases of either the untreated or uncured wastes to the atmosphere. With regard to USX's fully-cured CSEAFD, USX must either dispose of their fully-cured CSEAFD waste on-site or ensure that the fully-cured CSEAFD 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. (See 54 FR 30413, July 20, 1989).

While the commenter is correct in noting that the listing background document characterized K061 wastes as being fine particles of dust, the CSEAFD produced by USX is not a fine "dust," but rather has a texture of a clay soil. Therefore, EPA does not believe that airborne exposure to hazardous contaminants from USX's fully-cured CSEAFD is likely to present a hazard to human health or the environment due to its physical form. However, in order to fully respond to the specific comment, the Agency evaluated the hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents from USX's fully-cured CSEAFD. Specifically, EPA used the methodology documented in "Rapid Assessment of Exposure to Particulate Emissions from Surface Contamination sites," U.S. Environmental Protection Agency, Office of Health and Environmental Assessment, EPA/600/8-85/002, February 1985, to estimate respirable particulate emissions from wind erosion of surfaces with an "unlimited reservoir" of erodible particles. The worst-case emission rate derived from this methodology then was input to the Agency's Ambient Air Dispersion Model (AADM), a steady-state, Gaussian plume dispersion model to predict the concentrations of the inorganic constituents 1000 feet downwind of the facility. For a complete description and discussion of the AADM, see 50 FR 48963, November 27, 1985.

In this specific analysis, the Agency assumed conservative values for all variables likely to influence the

potential for soil erosion including wind velocity and vegetation. The Agency, however, modified the assumptions regarding unit dimensions used in the AADM to more closely resemble a landfill (*i.e.*, unit depth was changed from one foot to eight feet as used in the VHS model). The results of this conservative, worst-case analysis indicated that no substantial present or potential hazard to human health or the environment from airborne exposure to both the listed and non-listed inorganic constituents from USX's fully-cured CSEAFD is likely. For a complete description of the Agency's modeling and analysis of air emissions from USX's fully-cured CSEAFD see "Docket Report on Evaluation of Air Emissions resulting from USX Corporation's Fully-Cured CSEAFD," October 16, 1989 (located in the docket for this rule).

With regard to waterborne dispersal of the waste, it is again important to note that USX's waste will be stabilized and handled as hazardous until it is fully-cured. With regard to waterborne dispersal of the fully-cured CSEAFD, it is important to note that the VHS model analysis described in the proposal shows that leachate from the waste that travels through ground water will not exceed health-based levels. The Agency acknowledges that it may also be possible for surface water runoff to transport contaminants from the waste to a nearby surface water body. However, the Agency does not believe that analysis of such overland transport of contaminants as a reasonable exposure route for the petitioned waste would compel a different result for this petition. As described in the proposed rule, the Agency believes that landfill disposal is a reasonable worst-case management scenario for USX's fully-cured CSEAFD. Contamination of surface water might occur, therefore, through runoff from the petitioned waste. However, EPA believes that the concentrations of any hazardous constituents in that runoff will tend to be lower than the levels in either the EP or MEP leachate analyses reported in the proposal, due to the acidic medium of the EP and MEP tests. Furthermore, any transported constituents would be further diluted in the surface water body.

Finally, the Agency believes that, in general, the leachate derived from this waste will not directly enter a surface water body without first travelling through the saturated (subsurface) zone where dilution and attenuation of hazardous constituents may occur. The VHS model takes this saturated zone into account as it predicts the ultimate

fate and transport of hazardous constituents.

The commenter believed that the Agency did not consider the potential toxicity of USX's CSEAFD with regard to dioxin content. The commenter based its concern of the possibility of dioxin contamination on data obtained through the Agency's National Dioxin Study, Tier 4 Combustion Report. (See "National Dioxin Study Tier 4 Combustion Sources: Engineering Analysis Report," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, EPA-450/4-84-014h, September, 1987.)

The Agency disagrees with the commenter. EPA evaluated USX's petition and did not believe that any other hazardous constituents, including dioxins, were present in USX's waste. In response to the commenter's specific concern regarding the possibility of dioxin contamination, EPA reviewed the Tier 4 report cited by the commenter. Although data presented in the Tier 4 report indicated that dioxins were present in wastes generated by secondary copper smelters and wire reclamation incinerators, the Agency considers it highly unlikely for dioxins to be present in USX's waste. As discussed in the Tier 4 report, the principal reasons for the possible presence of dioxins in wastes generated by secondary copper smelters and wire reclamation incinerators are the presence of dioxin-forming precursors in raw materials and low combustion temperatures.

Specifically, the report noted that secondary copper smelters' raw materials can contain quantities of polyvinyl chloride wire insulation (telephone wire), electrical parts, and other sources of copper (including circuit boards and electrical switches). Wire reclamation incinerators can process polyvinyl chloride wire insulation and polychlorinated biphenyls (PCBs)-containing transformer cores and parts. These types of raw materials contain dioxin-forming precursors.

The report also found that combustion temperatures maintained by both secondary copper smelters and wire reclamation incinerators are low enough to promote to formation of dioxins. Surveyed secondary copper smelting furnaces operated at approximately 1500 °F, and wire reclamation incinerators operated at approximately 1000 °F (some had afterburners operating at 1900 °F).

The Agency reviewed the list of scrap materials USX reported it uses to charge its furnaces and notes that USX's scrap materials do not consist of coated

wiring, electronic scrap, or other materials containing dioxin-forming precursors. The Tier 4 report states that secondary copper smelters and wire reclamation incinerators are less likely to generate dioxin-containing wastes if they do not use polyvinyl coated wire and low combustion temperatures. In addition, the Tier 4 report stated that dioxins generally are destroyed at temperatures above 800 °C (1472 °F), especially in incinerators with residence times of 1.5-2.0 seconds or more. USX's furnaces heat molten steel to 3000 °F. Therefore, USX's furnaces run at more than twice the temperature required to destroy polychlorinated dibenzo-p-dioxins (PCDDs), PCBs, and polychlorinated dibenzofurans (PCDFs). EPA, based on the above discussion, does not believe that it is reasonable to expect dioxins to be present in USX's waste.

EPA's Modeling Approach

The commenter believed that the VHS model understates the health and environmental risks of disposal of USX's waste following delisting for the reasons discussed below.

First, the commenter asserted that USX's waste alone contributes amounts of cadmium, chromium (total and hexavalent), lead, and selenium that are substantial percentages of the regulatory levels of concern (*i.e.*, the predicted compliance-point concentrations for cadmium, chromium (total and hexavalent), lead, and selenium are close to their respective regulatory levels of concern). The commenter, therefore, stated that disposing of this waste with any other contaminant source within the same landfill could readily cause exceedences of the regulatory levels of concern.

The Agency believes that the commenter is implying that wastes should not be delisted unless the predicted at-the-well concentrations of the contaminants are significantly less than their respective regulatory levels of concern (*i.e.*, some unspecified percentage reduction of the regulatory level of concern) in order to safeguard against the impact of other potential contamination sources. The Agency is not able to modify the VHS model to assess the effects of additional contaminant sources on the underlying aquifer within the same disposal site. The Agency, therefore, does not have any technical basis to support a determination of an appropriate percentage reduction and believes that some stipulated percentage reduction would be arbitrary. In light of the conservative nature of the VHS model

(e.g., no degradation, infinite source), EPA will continue to allow wastes to exhibit compliance-point concentrations up to 100 percent of the regulatory levels of concern.

Second, the commenter was also troubled by the compliance-point concentration for both lead and cadmium since EPA is considering lowering the drinking water standard for both constituents to 0.005 mg/l. The commenter believes that the waste should be considered hazardous since, if the 0.005 mg/l standard for both these constituents is adopted, the calculated compliance-point concentration for lead would exceed the standard by a factor of three-fold and the calculated compliance-point concentration for cadmium would be approximately two-thirds of the new standard.

In making delisting decisions, the Agency uses the existing health-based levels cited in "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," November 1989 (located in the RCRA public docket). EPA has no way of predicting the final drinking water standards until they are actually promulgated (the standards could be less than or greater than the proposed level or the 0.005 mg/l level cited by the commenter). Neither can the Agency be certain exactly when the new standards might be promulgated. Without new final drinking water standards, the Agency does not believe it is fair to the petitioner to postpone a final rulemaking until new drinking water standard for both lead and cadmium are promulgated.

Third, the commenter was further troubled with the predicted compliance-point concentration for lead because the commenter believed that USX's MEP leachate data indicated that "lead continued to leach appreciably throughout all nine iterations of the MEP, with no significant decrease even in the ninth round relative to the first extractions." The commenter asserted that USX failed to adhere to the MEP

analytical method (SW-846 Method Number 1320) because the analyses were not contained until the MEP concentration decreased relative to concentrations detected on day seven or eight. See "Test Methods of Evaluating Solid Waste: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986. The commenter, therefore, believed that because it was unclear whether the lead leaching would continue or even increase with additional rounds of extraction, they had no confidence in EPA's conclusion that the "fully-cured CSEAFD treatment residue exhibits long-term stability."

The commenter's concern regarding the day nine MEP concentration was also motivated by the results cited in a column leaching study performed on municipal solid waste incinerator residues stabilized using only Portland Cement (Type II).¹ The study indicated initially very low leachability of lead, followed by a sharp increase. The authors concluded that the leaching was attributed to both the amphoteric nature of lead (i.e., the ability of lead to become solubilized under either acidic or basic conditions) and the presence of organic material in the incinerator residue. The commenter also cited a previous notice where the Agency indicated that the addition of portland cement to a pesticide manufacturing residue (EPA Hazardous Waste number K031) actually increased the leachability of arsenic (another amphoteric metal). (See 54 FR 1101, January 11, 1989).

The Agency believes that the results from the above studies are not applicable to USX's CSEAFD and provide no evidence that lead or arsenic

will leach from USX's CSEAFD. First, the USX EAF dust is a different matrix than municipal incinerator residue and pesticide residue. USX's waste does not contain organic material or elevated concentrations of arsenic (i.e., K031 wastes can have levels of arsenic in excess of one percent). USX's process (i.e., the "CHEMFIX" process) also relies on several additives in addition to portland cement (Type I). In addition, the leachate concentrations obtained from the MEP analyses of the four CSEAFD samples were all lower than the initial leachate level obtained in the study by Holland, et al. (1989).

Furthermore, the Agency notes that it is difficult to draw comparisons between the data obtained from the column leaching test and the data obtained from the MEP leachate tests due to significant differences in analytical procedures and assumptions regarding leachate generation. Specifically, the data obtained from the column leaching test was generated by continuously leaching 36.1 kg of crushed solidified incinerator residue having a particle size of less than one-half inch in a 60 inch (height) × 10 inch (diameter) column. The data obtained from the MEP leachate tests were generated by nine days of successive leaching of 0.1 kg of ground CSEAFD having a particle size of less than 9.5 mm (<0.37 inches). Additionally, the column leaching test utilized a liquid to solids (L/S) ratio of 0.6 while each day of the MEP test utilized a L/S ratio of 20. The Agency, therefore, is unable to compare the results obtained from two very different leaching procedures.

In regards to the analytical data characterizing USX's CSEAFD, the Agency believes that the Table summarizing the maximum MEP levels (from all four MEP analyses) presented in the proposed notice may have misled the commenter to conclude that USX's stabilization process was ineffective. (See Table 4, 54 FR 30410, July 20, 1989). Data from all four MEP analyses for lead are presented in Table 1.

¹ Holland, P.J., et al., "Evaluation of Leachate Properties and Assessment of Heavy Metal Immobilization from Cement and Lime Amended Incinerator Residues," *Proceedings of the International Conference on Municipal Waste Combustion*, sponsored by U.S. EPA and Environment Canada, held April 11-14, 1989 in Hollywood, Florida, Vol. 1. Pages 4B-25-4B-43.

TABLE 1.—MEP LEACHATE CONCENTRATIONS—LEAD FULLY-CURED CSEAFD (MG/L)

Sample dates	Days/Concentrations								
	1	2	3	4	5	6	7	8	9
7/13	0.007	0.005	<0.023	<0.005	<0.005	<0.005	<0.005	<0.005	<0.005
7/16	<0.005	0.007	<0.005	<0.005	<0.005	<0.005	<0.005	<0.005	<0.005
11/3	0.025	0.095	0.020	<0.005	0.009	0.026	0.022	0.034	0.046
11/11	0.009	0.031	0.011	0.095	0.024	0.037	0.018	0.046	0.013

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

As indicated by the MEP data presented in Table 1, the MEP concentration of lead obtained from the ninth extraction was either nondetect or lower than the MEP levels obtained on day seven or eight for all but one of the four analyses. The Agency, therefore, concluded that the CSEAFD exhibited long-term stability when subjected to an aggressive analytical procedure (which included grinding the sample to pass through a 100X mesh screen and successive extractions with an acidic solution (pH 3)). The commenter is correct in noting that for one sample (11/3), the day nine extraction concentration exceeded the level demonstrated on day seven. However, based on data from the other three tests, the Agency believes that the MEP concentration of lead is not of concern.

The data do not suggest, as the commenter asserted, that "lead continued to leach appreciably throughout all nine iterations of the MEP." * * * EPA notes that the data did exhibit minor fluctuations, which in part, resulted from analytical variation. The Agency also notes that the MEP test is an extremely aggressive test which is used to provide additional information to support the results obtained from the standard EP test. The observed concentrations of lead never approached the maximum allowable concentration of 0.315 mg/l (back-calculated using the dilution factor obtained from the VHS model and the health-based level for lead: $6.3 \times 0.05 \text{ mg/l} = 0.315 \text{ mg/l}$). The Agency, therefore, is not concerned with the minor fluctuations exhibited by the data.

Fourth, the commenter believes that the Agency's assumption of 500 feet as the distance from the facility boundary to the nearest downgradient drinking water well underestimates potential ground-water contamination because 24 percent of the original 38 state agencies interviewed reported that drinking water wells were located within 500 feet of landfills. (See 50 FR 7898, February 26, 1985). The commenter reasoned that the Agency's use of the 76th percentile (500 feet) as a reasonable worst-case distance could mean that the VHS would underestimate potential ground-water contamination at up to 1,500 sites nationwide (i.e., 1,500 sites represents approximately 24 percent of the over 6,000 existing municipal solid waste landfills). Lastly, the commenter cited data on actual distances to drinking water wells collected by EPA and used in proposing revisions to the federal criteria for municipal solid waste landfills. These nationwide data indicate a median distance from landfill

to the nearest drinking water well as approximately 1,370 feet. The commenter also stated that two states had a median distance of 1,000 feet and that one state had a median distance of 797 feet.

The Agency believes that the commenter has neither provided adequate data or methodology to calculate an improved distance from facility boundary to the nearest drinking-water well. As noted by the commenter, the median nationwide distance from the unit boundary to the nearest drinking-water well is 1,370 feet, which is nearly three-times greater than the current assumption of 500 feet. The Agency notes that the survey from which the 500 foot distance (and the 24 percent of wells located within 500 feet) was limited since the results usually were only best estimates and the values reported frequently were given as a range. (See 50 FR 7896, February 26, 1985). The Agency, more importantly, also believes that it is unnecessary to calculate an improved distance from facility boundary to the nearest drinking-water well because of the conservative assumptions regarding well placement. Specifically, the model assumes that the drinking-water well is in the exact position to receive the highest concentration of the contaminant (i.e., the bottom of the well is just at the top of the aquifer and the well is exactly in line with the disposal facility and the ground water flow). (See 50 FR 7896, February 26, 1985). Furthermore, the model does not consider finite sources, attenuation, hydrolysis, adsorption, precipitation, or any other chemical/physical processes that will reduce the concentration of the contaminants. To construct a reasonable worst-case model, it is unreasonable to use only absolute worst-case assumptions because the assumptions will compound such that the overall model will be unreasonable. The Agency, therefore, believes that the VHS model has a number of conservative assumptions which, when used with the selection of 500 feet as the distance from facility boundary to the nearest downgradient drinking-water well, will provide results that are protective of human health and the environment.

Fifth, the commenter believed that the VHS model was incapable of predicting the behavior of even modest volumes of waste disposed over time (i.e., petitioned wastes in excess of 2,000 cubic yards disposed of every year over the course of a landfill's useful operating life). The Agency addressed these comments in a recent notice finalizing another exclusion. (See 54 FR 34178-

34179, August 18, 1989). The commenter reviewed the responses made in the August 18, 1989 notice, but still considers the VHS model to be incapable of predicting the behavior of petitioned wastes in excess of 2,000 cubic yards disposed of every year over the course of a landfill's useful operating life.

The Agency continues to maintain that the VHS model performs a reasonable, worst-case analysis and provides dilution factors for waste volumes in excess of 2,000 cubic yards that are fully protective of human health and the environment. Based on the quantity of waste to be disposed of, the VHS model calculates a dilution factor ranging between 6.3 and 32.3. (See 50 FR 48886, 48899, November 27, 1985). (The maximum and minimum dilution factors occur at waste volumes of less than, or equal to 475 cubic yards and equal to, or greater than 8,000 cubic yards, respectively.) We note that for a waste volume of 2,000 cubic yards, the VHS model predicts a dilution factor of 8.98 and for USX's waste volume (34,500 cubic yards), the VHS model predicts a dilution factor of 6.3.

The Agency also maintains that, while the predicted dilution factor remains constant after the waste volume increases above 8,000 cubic yards, the VHS model does not have an "upper limit" as the commenter infers. Rather, the assumptions made in the VHS model regarding the dimensions of the disposal unit prevent the predicted dilution factor from falling below 6.3. For a discussion of the assumptions made in the disposal unit dimensions for the VHS model, See 53 FR 48900, November 27, 1985.

The Agency continues to maintain that it is unrealistic to modify the VHS model to account for cumulative volumes (i.e., multiple years of waste disposed of at the same landfill cell). Specifically, large volumes of waste generally result from continuously operating processes; therefore, the waste is periodically disposed of and, as such, is distributed throughout the entire landfill, as the landfill is filled (see below). The Agency believes that periodic disposal of a continuously generated waste over the course of time (e.g., ten years) would likely increase mixing (i.e., dilution) of the petitioned waste with other non-hazardous wastes and fill material (e.g., native soils) at the Subtitle D landfill. Subsequently, due to this long-term mixing, the waste's effect on the underlying aquifer would be reduced. The Agency also believes the VHS model's assumption that the entire annual waste volume is disposed of in the same landfill cell is a reasonable

worst case and is protective of human health and the environment. The Agency, however, will continue to use the total volume when the petitioner is attempting to obtain a "one-time" delisting for waste no longer generated.

Sixth, the commenter claims that the VHS model is incapable of evaluating large volumes of wastes disposed in several trenches because of EPS's assumptions that different cells overlie different aquifers, that cells only leach for one year, that a typical municipal landfill uses more than one cell annually, and that municipal landfills are lined.

The Agency considers the commenter's claims that EPA assumes that different cells overlie different aquifers and that cells only leach for one year to be incorrect. The Agency does not assume that different cells overlie different aquifers. In fact, the Agency assumes that all of the leachate enters the aquifer (without dilution by other municipal wastes and fill material in the unsaturated zone) and is then directly intersected at the downgradient compliance point. Furthermore, the conservative assumptions incorporated into the VHS model make the Agency's evaluation of successive trenches, leaching at different rates (rates which in time would approach zero in order to conserve mass) unnecessary because the Agency is being more conservative by assuming that the waste will leach at the maximum rate throughout time. Specifically, the VHS model incorporates the following conservative assumptions: infinite source (*i.e.*, the waste leaches at the maximum observed leachate concentration indefinitely, ignoring mass-balance relationships), no degradation or retardation of contaminant transport, 100 percent of the leachate enters the aquifer, there is no liner or leachate collection system, and that the compliance-point well directly intersects the contaminated ground-water plume.

Lastly, it is common engineering practice for typical municipal landfill operations to involve the use of successive lifts or cells which are covered daily with clean fill.² Specifically, wastes are placed in a lift (or cell), compacted, and covered with clean fill daily. Successive lifts are placed next to each other and then on top of one another until the final grade of the landfill is reached. Therefore, it is not unreasonable for EPA to assume

that wastes disposed of throughout the entire year will be placed in cells with other wastes and clean fill material, and that the location of these cells will change as the landfill manages its operation. Finally, the Agency did not assume, as the commenter suggested, that municipal waste landfills are lined. On the contrary, EPA makes the reasonable worst case assumption that no engineered barriers are in place. Therefore, the Agency continues to maintain that the VHS model performs a reasonable, conservative analysis and provides dilution factors that are fully protective of human health and the environment.

Seventh, the commenter stated that the Agency did not restrict the coverage of the exclusion to a specific amount of waste. The commenter noted that, although the preamble specified that the proposed exclusion would apply only to the processes covered by the original demonstration, USX is not prevented from increasing its waste generation. (See 54 FR 30413, July 20, 1989).

In order to clarify the scope of the exclusion, the Agency has decided to modify the final rule to include a limitation on the waste generation rate. The Agency does not believe that the petitioner will be adversely affected by such a limitation because, as noted in the preamble to the proposed rule: (1) The petitioner provided (and certified as correct) an accurate estimate of the maximum annual waste generation rate, and (2) the exclusion is only valid for the maximum annual waste volume certified in the petition. The Agency, therefore, has modified the final rule to include the certified generation rate (35,000 tons) as an upper limit on the exclusion.

Conditional Testing and Reporting Requirements

The commenter stated that if the Agency granted USX an exclusion, the conditional requirements of the exclusion should include analyses for total constituent concentrations and MEP constituent concentrations of the hazardous constituents.

The Agency disagrees with the commenter. The Agency believes that the reasonable worst-case disposal scenario for this waste will be disposal in a municipal landfill, where soil conditions would be mildly acidic. EPA believes that the EP extraction procedure is the appropriate analytical tool to evaluate the potential leachability of this waste in an acidic environment. For this waste, EPA believes that continued evaluation of the EP leachable concentrations as required by the conditions of this exclusion will

be adequate to protect human health and the environment. Furthermore, the Agency does not have health-based standards regulating the total constituent concentrations of any of the EP toxic metals (now TC metals) or nickel. To require USX to continually monitor for the total constituent concentrations of all the EP toxic metals and nickel will not ensure further protection of human health or the environment in a meaningful manner.

Lastly, the Agency does not believe it is necessary to require USX to perform continuous MEP analyses. First, the Agency's belief that the stabilization process is effective is substantiated by the analytical data obtained from the previous MEP leachate tests. Additionally, if the stabilization process were ineffective and an increase in the leachability of the hazardous constituents from the waste were to occur, the Agency believes that the EP (now replaced by the TCLP) leachate analyses would measure such an increase.

Inconsistencies Between the Delisting Program and the Land Disposal Restrictions Program

The commenter believed that the Agency's decision to exclude USX's waste was inconsistent with the Land Disposal Prohibition Provisions of the 1984 HSWA amendments. Specifically, the commenter stated that the proposed "delisting levels" (*i.e.*, the maximum allowable EP leachate concentrations) for lead and nickel exceed the Agency's promulgated best demonstrated available technology (BDAT) treatment levels for lead and nickel in K061 wastes (see 54 FR 30406, July 20, 1989, and 53 FR 31164, August 17, 1988, respectively).

The Agency agrees with the commenter that there are differences in approach between some of the decision criteria used in individual delisting decisions and those used in the Land Disposal Restrictions Program (LDRP). However, these differences are appropriate given the separate functions of the two programs and their different regulatory coverage. The Delisting Program and the LDRP are fundamentally different in that the Delisting Program's standards are health-based and the LDRP's treatment standards are technology-based. See RCRA section 3001 (42 U.S.C. 6921) and RCRA section 3004(M) (42 U.S.C. 6924(m)), respectively. The Agency, however, believes that both the health-based and technology-based approaches of the Delisting Program and the LDRP, respectively, are protective of human health and the environment.

² Tchobanoglous, George, "Solid Wastes: Engineering Principles and Management Issues," McGraw-Hill Series in Water Resources and Engineering, McGraw-Hill Publishing, Co., Copyright 1977, pages 316-325.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the CSEAFD, when subject to the verification testing requirements specified in the exclusion, should be excluded from hazardous waste control. The Agency, therefore, is granting a final conditional exclusion to USX Corporation, located in Chicago, Illinois, for its fully-cured chemically stabilized electric arc furnace dust treatment residue, described in its petition as EPA Hazardous Waste No. K061. The exclusion only applies to 35,000 tons of chemically stabilized electric arc furnace dust generated annually by the processes covered by the original demonstration. The facility would require a new exclusion if its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated either in excess of 35,000 tons per year or from changed processes as hazardous until a new exclusion is granted.

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

III. Limited Effect of Federal Exclusion

The final exclusion for USX is being granted under the Federal (RCRA) delisting program. On April 30, 1990, the State of Illinois received authorization to administer a number of RCRA programs, including delisting, in lieu of the Federal program. EPA would normally transfer the delisting petition file to the State for further action. In this case, however, USX has indicated that the delisted waste may be transported for disposal to another State not authorized for delisting. Because any decision by an authorized State to delist a waste would only have effect within

that State, a Federal delisting would still be needed for out of State transport as nonhazardous waste. Furthermore, because EPA was close to issuing the final exclusion for USX, the Agency believes it is appropriate to follow through with its decision. While a Federal delisting will not have any immediate effect within an authorized State, such action may expedite the implementation of the final exclusion by allowing Illinois the option of adopting the Federal rule directly, and thereby avoiding the need for the State to complete its own time-consuming administrative process for delisting. Therefore, the Agency has decided to proceed with the final rulemaking and is granting a Federal delisting to USX.

IV. Effective Date

This rule is effective April 29, 1991. 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 reduces, rather than increases, 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 promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective April 29, 1991. These reasons also provide a basis for making this rule effective April 29, 1991, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

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

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final 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.

List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling and Reporting and Recordkeeping Requirements.

Dated: April 17, 1991.

Jeffery D. Denit,

Deputy Director Office of Solid Waste.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

2. In table 2 of appendix IX, add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste Description
USX Steel Corporation, USS Division, Chicago, Illinois Southworks Plant, Gary Works.		Fully-cured chemically stabilized electric arc furnace dust/sludge (CSEAFD) treatment residue (EPA Hazardous Waste No. K061) generated from the primary production of steel after April 29, 1991. This exclusion (for 35,000 tons of CSEAFD per year) is conditioned upon the data obtained from USX's full-scale CSEAFD treatment facility. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, USX must implement a testing program for the petitioned waste. This testing program must meet the following conditions for the exclusion to be valid: (1) <i>Testing:</i> Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW-846 methodologies. (A) <i>Initial Testing:</i> During the first four weeks of operation of the full-scale treatment system, USX must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions), and the total concentrations of reactive sulfide and reactive cyanide. USX must report the analytical test data, including quality control information, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) <i>Subsequent Testing:</i> USX must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. USX then must analyze each weekly composite sample for all of the EP toxic metals, and nickel. The analytical data, including quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Illinois. (2) <i>Delisting levels:</i> If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/l, total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be re-treated until it meets these levels or managed and disposed of in accordance with Subtitle C of RCRA. (3) <i>Data submittals:</i> Within one week of system start-up USX must notify the Section Chief, Delisting Section (see address below) when their full-scale stabilization system is on-line and waste treatment has begun. The data obtained through condition (1)(A) must be submitted to the Section Chief, Delisting Section, CAD/OSW (OS-333), U.S. EPA, 401 M Street, S.W., Washington, DC 20460 within the time period specified. At the Section Chief's request, USX must submit any other analytical data obtained through conditions (1)(A) or (1)(B) within the time period specified by the Section Chief. Failure to submit the required data obtained from conditions (1)(A) or (1)(B) within the specified time period or maintain the required records for the specified time will be considered by the Agency, at its discretion, sufficient basis to revoke USX's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement: "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. § 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 wastes 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."