parties interested in commenting should do so at this time.

DATES: Written comments must be received by January 20, 1999.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Kern County Air Pollution Control District, 2700 M Street, Suite 290, Bakersfield, CA 93003.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION: This document concerns Kern County Air Pollution Control District Rule 404, Particulate Matter Concentration—Valley Basin; Rule 408, Fuel Burning Equipment; Rule 411.1, Steam-enhanced Crude Oil Production Well Vents; Rule 414.2, Refinery Process Vacuum Producing Devices or Systems; Rule 414.3, Refinery Process Unit Turnaround; and Rule 414.4, Polystyrene Foam Manufacturing, submitted to EPA on May 25, 1995 by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: November 9, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–33736 Filed 12–18–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6206–2]

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

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant a petition submitted by Aluminum Company of America (Alcoa), Pittsburgh, Pennsylvania, to exclude (or ''delist''), on a one-time basis, certain solid wastes generated by its wastewater treatment plant and interred at the Stolle Landfill located in Sidney, Ohio from the lists of hazardous wastes contained in Subpart D of 40 CFR Part 261. This landfill was used exclusively by Stolle Corporation, a wholly-owned subsidiary of Alcoa, for disposal of its wastewater treatment plant (WWTP) filter cake from 1981 to 1992. This action responds to a ''delisting'' petition 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 the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

DATES: EPA is requesting public comments on this proposed decision. Comments must be received in writing by February 4, 1999. 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 Robert Springer, Director, Waste, Pesticides and Toxics Division, at the address below, by January 20, 1999. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: Two copies of any comments should be sent to Peter Ramanauskas, Waste Management Branch (DW–8J), U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604.

Requests for a hearing should be addressed to Robert Springer, Director, Waste, Pesticides and Toxics Division (D–8J), U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604.

The RCRA regulatory docket for this proposed rule is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call Peter Ramanauskas at (312) 886–7890 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Peter Ramanauskas at the address above or at (312) 886–7890.

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 its wastes excluded, a petitioner must show that wastes generated at its facility do not meet any of the criteria for which the wastes were listed. See § 260.22(a)(1) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require 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. See § 260.22(a)(2). Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, corrosivity, reactivity, and toxicity), and must present sufficient information for EPA to determine whether the waste contains any other constituents at hazardous levels. Although wastes which are ''delisted'' (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste,

generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See § 261.3(a)(2)(iv) and (c)(2)(I), referred to as the ''mixture'' and ''derived-from'' rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the ''mixture/derived from'' rules and remanded them to 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). EPA plans to address issues related to waste mixtures and residues in a future rulemaking.

B. Approach Used To Evaluate This Petition

Alcoa's petition requests a delisting for a listed hazardous waste. In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA tentatively agreed with the petitioner, pending public comment, that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.

EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that other factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, and considered the concentration of the constituents in the waste, the toxicity of the constituents, their tendency to migrate and to bioaccumulate, their persistence in the environment if released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (i.e., ground water, surface water, air) for hazardous constituents present in the petitioned waste. As Alcoa's waste is presently landfilled, EPA determined that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, EPA used a fate and transport model to predict the maximum concentrations of hazardous constituents that may be released from the petitioned waste and to determine the potential impact of Alcoa's petitioned waste on human health and the environment. Specifically, EPA used the estimated waste volume and the maximum reported extract concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. The calculated receptor well 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 maximum concentrations detected in the leachate were then compared directly to the maximum allowable levels determined by the volume dependent dilution attenuation factor times the health-based level.

EPA believes that this fate and transport model represents a reasonable worst-case scenario for the petitioned waste, 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 (Parts 260 through 266 and 268). 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, should not pose a threat to human health or the environment.

EPA also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions which can provide significant additional information important to fully characterize the potential impact (if any) of the disposal of a petitioned waste on human health and the environment. To support the delisting of the Stolle WWTP filter cake described in its petition as EPA Hazardous Waste Numbers F006 and F019, groundwater samples expected to be representative of groundwater resources in the immediate vicinity of the Stolle landfill were used to assess impacts to groundwater.

From the evaluation of the delisting petition, proposed maximum allowable leachate concentrations were developed for a list of constituents by back-calculating from the delisting health-based levels through the proposed fate and transport model.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require 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

Aluminum Company of America, Alcoa Corporate Center, 201 Isabella Street, Pittsburgh, Pennsylvania 15212–5858

A. Petition for Exclusion

Stolle Products [a.k.a. Stolle Plant #2, formerly a division of Stolle Corporation, a wholly-owned subsidiary of the Aluminum Company of America (Alcoa); currently a division of American Trim, L.L.C.], located at 1501 Michigan Street in Sidney, Ohio, fabricates, assembles, and finishes aluminum and steel automotive, appliance, and decorative products. The metal finishing operations, which consist of sulfuric acid anodizing, chemical conversion coating, and painting, generate wastewaters that are treated in an on-site wastewater treatment plant (WWTP) which ultimately generates a filter cake. Through 1987, metal finishing operations also included electroplating with rinsewater from the electroplating process discharged to the WWTP. The WWTP filter press sludge generated from this process is presently listed as EPA Hazardous Waste No. F006—''Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.'' and F019—''Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.'' (40 CFR 261.31). F006 waste is listed for cadmium, hexavalent chromium, nickel, and complexed cyanide and F019 waste is listed for hexavalent chromium and complexed cyanide (40 CFR 261 Appendix VII).

Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See Section 222 of HSWA, 42 U.S.C. 6921(f), and § 260.22.

B. Background

On May 13, 1996, Alcoa petitioned EPA to exclude the estimated total volume of 16,772 cubic yards of WWTP filter press sludge previously disposed of in the Stolle landfill from the list of hazardous wastes contained in § 261.31 because it believed that the petitioned waste did not meet any of the criteria under which the waste was listed and that there were no additional constituents or factors that could cause the waste to be hazardous. Subsequently, Alcoa provided additional information to complete its petition. In support of its petition, Alcoa submitted detailed descriptions of its manufacturing and wastewater treatment processes, a schematic diagram of the wastewater treatment process, and analytical testing results for representative samples of the petitioned waste, including (1) the hazardous characteristics of ignitability, corrosivity, and reactivity; (2) total oil and grease; (3) Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311) analyses for volatile and semi-volatile organic compounds, herbicides, pesticides, polychlorinated biphenyls (PCBs), metals, fluoride, and cyanide (using deionized water instead of acid); (4) total sulfide, total cyanide and total fluoride; (5) total constituent analysis for 40 CFR 264 Appendix IX metals (plus hexavalent chromium for which F006 and F019 wastes are listed), VOCs, SVOCs, pesticides and herbicides, and PCBs.

Between 1981 and 1992, the facility's metal finishing operations, which consisted of sulfuric acid anodizing, chemical conversion coating, painting, and/or electroplating (through 1987) generated wastewaters which were routed to and treated in an on-site WWTP. The resulting filter cake was disposed of in the Stolle landfill. Since October 1992, filter cake generated during Stolle Plant #2 WWTP operation has been collected in roll-off containers for disposal off site at a RCRA Subtitle C permitted facility.

The Stolle Plant #2 WWTP is an industrial wastewater pretreatment facility which discharges treated water to the City of Sidney sanitary sewer system for final treatment in a Publicly Owned Treatment Works (POTW). Industrial waste streams produced during Stolle Plant #2 manufacturing processes and discharged to the WWTP may be generally characterized as (1) anodizing process rinse waters containing suspended and dissolved metal salts, acids, alkalies, surfactants and organic contaminants; (2) anodizing process dumps which include concentrated acids and alkalies containing high levels of dissolved solids; (3) acid and alkali cleaner dumps and rinse water containing surfactants, wetting agents, phosphates, and organic contaminants; (4) hexavalent and total chromium wastes; (5) spent deionizer regenerants and softener backwash water containing dissolved solids, acids, and caustics; (6) spent dyes and; (7) miscellaneous plant wastes.

Treatment at the WWTP is a continuous operation. From 1981 to 1992 industrial wastewater discharged from Stolle Plant #2 would flow to a modulation lagoon which functioned as a holding/surge basin prior to treatment in the WWTP. The lagoon was used to equalize batch discharges and peak loading such that wastewater could be fed to the WWTP at a constant flow rate to maximize efficient operation of the WWTP. Wastewater gravity-flowed from the lagoon to the lime neutralization tank. Spent acid anodizing solution from the anodizing process, which was stored in a 20,000 gallon waste sulfuric acid tank, was slowly metered into the wastewater stream as it flowed from the lagoon to the lime neutralization tank. Lime slurry was used for neutralization and metals complexing to form metal hydroxide. The mixture overflowed the lime neutralization tank and gravity-flowed to two Lamella settlers consisting of Lamella clarifiers and flocculators. In the clarifiers, the metal hydroxides precipitated, flocculated, and settled. Settling properties were improved through polymer addition to the clarifiers. Treated effluent was then discharged to the Sidney sanitary sewer system.

The sludge precipitated in the Lamella clarifiers was pumped to a sludge thickener for solids concentration prior to dewatering. The thickener supernatant (overflow) flowed by gravity directly to the effluent discharge piping, while the thickened sludge flowed by gravity to a sludge pit. Sludge was drawn from the sludge pit and pumped to a plate-and-frame filter press (formerly a belt filter press from 1981 to 1983) for dewatering. The resulting filter cake (30 to 40 percent solids) was disposed of in Stolle's on-site landfill.

The landfill contains three trenches averaging approximately 570 feet in length by 15 feet in width with a 4 foot fill depth and five area fill cells of varying dimensions with an 8 foot fill depth. The trench and cell floors are comprised of indigenous silt/clay having a permeability range of 8.8×10^{-9} cm/sec to 1.2×10^{-8} cm/sec.

Once filled, all trenches and cells (except Cell #5) were capped with approximately two feet of well-compacted soil of low permeability and were graded to prevent surface water ponding. A vegetated cover consisting of native grass was established. Cell #5 was closed in 1993 before it was completely full. The closure of Cell #5 began with placement of 220 tons of Type C rock fill in the cell followed by compaction to assure a stable subgrade prior to placing additional lifts of soil. Forty-eight tons of pozzalime were added to the cell bottom for additional stabilization. The remaining cell area was filled with 3,753 cubic yards of fill material in 6 to 8 inch lifts and compacted to at least 95% of standard proctor and plus or minus 3% of optimum moisture content as defined by ASTM D698 and Alcoa Engineering Standards.

Construction of an Ohio EPA approved landfill cap was completed in October, 1996. The engineered cap system consists of a 24-inch compacted clay layer immediately above the waste material. A 60 mil flexible membrane liner (FML) was placed over the compacted clay layer. A drainage layer consisting of high density polyethylene (HDPE) drainage netting and woven filtration geotextile was installed above the FML. The final cover consists of 24 inches of native soil obtained from an on-site borrow area followed by 6 inches of topsoil which was vegetated with indigenous grass. The cap system includes surface and subsurface drainage controls.

Alcoa submitted a signed Certification of Accuracy and Responsibility statement presented in 40 CFR 260.22(i)(12). The EPA reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate the estimated waste volume. EPA accepts Alcoa's estimate.

C. Waste Analysis

Alcoa performed a full 40 CFR 264 Appendix IX analytical scan and other analyses on the filter cake samples from the Stolle landfill, as well as on the groundwater samples from the monitoring well network associated with the landfill, less dioxins and furans (combustion or incineration processes were non-existent at Stolle Plant #2; consequently, dioxins and furans were not expected to be present in the filter cake and were not included on the analytical parameter list).

For Alcoa's petition, one filter cake composite sample was collected from each landfill sector (i.e. trench and cell). By collecting a composite sample from each landfill sector, the results of filter cake sampling are representative of filter cake variability over time since each

trench and cell contains filter cake generated over a one to two year period. One composite filter cake sample was prepared for each of the eight landfill sectors. Composite samples consisting of material retrieved from four soil borings per sector were analyzed for Appendix IX constituents and other constituents. Composite filter cake samples collected from landfill sectors 1, 3, 6, and 8 were not analyzed for pesticides/PCBs or herbicides as per agreement with the EPA.

To quantify the filter cake total constituent and leachate concentrations, Alcoa used the following SW–846 Methods: 6010 for antimony, barium, beryllium, cadmium, chromium, cobalt, copper, nickel, silver, tin, vanadium, and zinc; 7060 for arsenic; 7421 for lead; 7471 for total mercury and 7470 for leachate mercury; 7740 for selenium; 7841 for thallium; 3060/7196 for hexavalent chromium; 9010 for cyanide (total and complexed); 9030 for sulfide; 8080 for PCBs; 8080/8140 for pesticides; 8150 for herbicides; 8240 for volatile organic compounds; and 8270 for semi-volatile organic compounds. EPA Method 340.2 was used to determine fluoride concentration. Alcoa used these methods along with the Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311) to determine leachate concentrations of metals, cyanide, fluoride, herbicides, pesticides, PCBs, volatile organic compounds, and semi-volatile organic compounds. Using SW–846 Methods 9070/9071, Alcoa determined that the samples of the petitioned waste had oil and grease contents below detectable limits. If the total oil & grease concentrations had been greater than or equal to 1%, the Oily Waste Extraction Procedure, Method 1330, would have been required. Characteristic testing of the filter cake samples included analysis of ignitability (SW–846 Method 1010) and corrosivity (SW–846 Method 9045). Samples were not analyzed for reactive cyanide and reactive sulfide as total concentrations of cyanide and sulfide did not exceed 250 ppm and 500 ppm respectively.

Table 1 presents the maximum total and leachate concentrations for 15 metals, total cyanide, total sulfide, and fluoride.

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

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS[1] WWTP FILTER CAKE

Inorganic constituents	Total constituent analyses (mg/kg)	TCLP leachate analyses (mg/l)
Antimony	25.0	<0.025
Arsenic	13.0	0.011
Barium	630.0	0.120
Beryllium	1.2	<0.001
Chromium (total)	3300.0	0.004
Chromium (hexavalent)	1.5	NA
Cobalt	34.0	0.019
Copper	1500.0	0.070
Lead	110.0	<0.001
Mercury	0.29	<0.0002
Nickel	2700.0	7.7
Selenium	0.87	<0.005
Tin	240.0	<0.053
Vanadium	13.0	0.008
Zinc	5700.0	0.590
Cyanide (total)	<2.1	<0.01
Sulfide (total)	16.0	NA
Fluoride	13.5	0.34

[1] 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.

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

NA Denotes that the constituent was not analyzed.

Alcoa analyzed the samples of petitioned waste for 55 volatile and 115 semi-volatile organic compounds. Table 2 presents the maximum total and leachate concentrations for all detected organic constituents in Alcoa's waste samples.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS[1] WWTP FILTER CAKE

Organic constituents	Total constituents anlayses (mg/kg)	TCLP leachate analyses (mg/l)
Acetone	0.34	0.240
Methylene Chloride	0.016	0.028
Tetrachloroethene	0.006	<0.005
Bis(2-ethylhexyl)phthalate	2.5	0.001

[1] 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.

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

To support the delisting of the WWTP filter cake described in its petition as EPA Hazardous Waste Numbers F006 and F019, groundwater samples expected to be representative of groundwater resources in the immediate vicinity of the Stolle landfill were collected and analyzed to assess impacts, if any, to groundwater. A total of six monitoring wells in the landfill monitoring network were sampled quarterly for twelve quarters, with the exception of the first and second quarterly sampling events for which only four monitoring wells were sampled. Each groundwater sample from the first six quarters (with the exception of the second quarterly sampling event) was analyzed for the same set of Appendix IX parameters as the landfill samples. The second quarter and the remaining six quarters of groundwater samples were collected in support of landfill closure and were therefore analyzed for a reduced set of metals which included aluminum, cadmium, calcium, chromium (total and hexavalent), iron, lead, manganese, nickel, sodium, and zinc; and reduced sets of volatile and semi-volatile organic compounds. Analysis for PCBs, pesticides, herbicides, cyanide, fluoride, and sulfide was eliminated after the sixth quarter of data. Analysis for volatile and semi-volatile organic compounds was not done after the seventh quarter of data. These changes were made with approval by the Ohio Environmental Protection Agency (OEPA).

To quantify groundwater concentrations, Alcoa used the following SW–846 Methods: 6010 for barium, cobalt, copper, nickel, tin, and zinc; 7041 for antimony; 7060 for arsenic; 7421 for lead; 7740 for selenium; 7841 for thallium; 7091 for beryllium; 7131 for cadmium; 7191 for chromium; 7761 for silver; 7911 for vanadium; 7470 for mercury; 8240 for VOCs; 8270 for SVOCs; 8080 for PCBs; 8080/8140 for pesticides; 8150 for herbicides; 3060/7196 for hexavalent chromium; 9010 for cyanide; and 9030 for sulfide. EPA Method 340.2 was used for fluoride analysis. Table 4 presents maximum groundwater concentrations for organic and inorganic constituents.

EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with the petition binds the petitioner to present truthful and accurate results.

D. EPA Evaluation

EPA has reviewed the sampling procedures used by Alcoa and has determined that they satisfy EPA criteria for collecting representative samples.

Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. EPA, therefore, evaluated Alcoa's petitioned waste using the modified EPA Composite Model for Landfills (EPACML) which predicts the potential for ground water contamination from wastes that are landfilled. See 56 *FR* 32993 (July 18, 1991), 56 *FR* 67197 (December 30, 1991), and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worst-case contaminant levels in 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 DAFs generated using the EPACML vary from a maximum of 100 for smaller annual volumes of waste (i.e., less than 1,000 cubic yards per year) to DAFs approaching ten for larger annual volume wastes (i.e., 400,000 cubic yards per year). EPA requests comments on the use of the EPACML as applied to the evaluation of Alcoa's waste.

Typically, EPA uses the maximum annual waste volume to derive a petition-specific DAF. The DAFs are currently calculated assuming an ongoing process that generates wastes for 20 years. Therefore, the DAF was adjusted as appropriate for a one-time exclusion. Alcoa's maximum waste volume of 16,772 cubic yards is adjusted by a divisor of 20 to estimate a maximum annual waste volume of 839 cubic yards per year. This adjusted waste volume corresponds to a DAF of 100. In EPA's evaluation, a DAF of 100 times the health based level used in delisting decision making was used to determine the maximum allowable leachate concentration for the waste in the Stolle landfill (see Table 3).

TABLE 3.—EPACML: MAXIMUM ALLOWABLE LEACHATE CONCENTRATIONS WWTP FILTER CAKE

Inorganic and organic constituents	TCLP leachate analyses (mg/l)	Levels of regulatory concern
Arsenic	0.011	5.0
Barium	0.120	200.0
Chromium	0.004	10.0
Cobalt	0.019	[3] 210.0
Copper	0.070	[3] 140.0
Nickel	7.700	[2 3] 70.0
Vanadium	0.008	20.0
Zinc	0.590	1000.0
Fluoride	0.340	400.0
Acetone	0.240	400.0
Methylene Chloride	0.028	0.5
Bis(2-ethylhexyl)phthalate	0.001	0.6

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

[2] The Maximum Contaminant Level promulgated under the Safe Drinking Water Act was vacated and remanded and subsequently removed from the Code of Federal Regulations on June 29, 1995 (60 FR 33926).

[3] Based on the oral reference dose from ''Risk-Based Concentration Table, April 1998'', and the equation used for calculating delisting health-based levels found in the document referenced below.

Note: See the RCRA public docket for today's notice for the specific reference doses and the calculation of the health-based levels of regulatory concern.

For inorganic constituents, the maximum reported leachate concentrations of arsenic, barium, chromium, cobalt, copper, nickel, vanadium, zinc, and fluoride in the WWTP filter cake were well below the health-based levels of concern used in delisting decision-making. EPA did not evaluate the mobility of the remaining inorganic constituents (i.e., antimony, beryllium, cadmium, chromium (total and hexavalent), lead, mercury, selenium, silver, thallium, tin, and cyanide) from Alcoa's waste because they were not detected in the leachate using the appropriate analytical test methods (see Table 1). EPA believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. If a constituent cannot be detected when using the appropriate analytical method with an adequate detection limit, EPA assumes that the constituent is not present and therefore does not present a threat to human health or the environment.

EPA also evaluated the potential hazards of the organic constituents detected in the TCLP extract of Alcoa's samples (i.e., acetone, methylene chloride, Bis(2-ethylhexyl)phthalate). The maximum detected leachate concentrations in Alcoa's waste were significantly below the respective levels of concern.

After reviewing Alcoa's processes, EPA accepts Alcoa's analysis that no other hazardous constituents, other than those tested for, are likely to be present in the waste, and that any migration of hazardous constituents from the waste would result in concentrations below delisting health-based levels of concern. In addition, on the basis of test results and information provided by Alcoa pursuant to § 260.22, EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity.

In its evaluation of Alcoa's petition, EPA also considered the potential impact of the petitioned waste via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersal, EPA believes that no appreciable air releases are likely from Alcoa's waste as the landfill has been capped. Therefore, there is no substantial present or potential hazard to human health from airborne exposure to constituents from Alcoa's petitioned waste.

EPA examined potential impacts to the groundwater in the vicinity of the landfill through evaluation of Alcoa's submitted groundwater data (see Table 4).

TABLE 4.—MAXIMUM GROUNDWATER CONSTITUENT CONCENTRATIONS [1] LANDFILL GROUNDWATER MONITORING WELLS

Inorganic and organic constituents	Total constituent analyses (mg/1)	Health based level (mg/1)
Acetone	0.011	4.0
Aluminum	2.7	[6] 35.0
Antimony	[2] 0.022	0.006
Arsenic	0.027	0.05
Barium	0.62	2.0
Beryllium	[2] 0.018	0.004
Bis(2-ethylhexyl)phthalate	[3] 0.054	0.006
Carbon Disulfide	0.022	4.0
Cobalt	0.015	[6] 2.1
Chromium	[2] 0.66	0.1
Hexavalent Chromium	0.023	0.1
Copper	0.018	1.3
Cyanide	0.013	0.2
Ethyl Benzene	0.012	0.7
Fluoride	2.8	4.0
Iron	5.3	[6] 10.5
Lead	0.005	0.015
Manganese	0.4	[6] 0.7
Naphthalene	0.001	1.0
Nickel	[2] 1.3	0.7
Phenol	0.14	20.0
Tin	0.094	[6] 21
Thallium	[5] 0.003	0.002
Vanadium	0.011	0.2
Vinyl Chloride	[4] 0.002	0.002
Xylenes	0.022	10.0
Zinc	4.1	7.0

[1] 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.
[2] Statistical outlier.
[3] Less than 10 times equipment blank concentration; therefore, considered non-detect.
[4] Less than the practical quantitation limit.
[5] Detection limit.
[6] Based on the oral reference dose from ''Risk-Based Concentration Table, April 1998'', and the equation used for calculating delisting health-based levels found in the document referenced below.
Note: See the RCRA public docket for today's notice for the specific reference doses and the calculation of the health-based levels.

For inorganic constituents, elevated levels of chromium, nickel, beryllium, and antimony were each detected on a single occasion. Elevated levels of chromium and nickel were detected only during the second quarter sampling event. Elevated levels of beryllium and antimony were detected only during the fourth quarter sampling event. Statistical tests determined that the elevated points were statistical outliers that did not fit the distribution of the

rest of the data and were not representative of actual groundwater conditions. During the fourth quarter, thallium was detected at the detection limit and one-thousandth of a mg/L greater than the HBL. Thallium was not detected in any of the groundwater samples during the first six quarters of groundwater sampling. Therefore, there are no apparent trends in the data to indicate that thallium is actually present in the groundwater.

Bis(2-ethylhexyl)phthalate was detected at an elevated level during the third quarter sampling event. Because this compound does not leach from the landfill filter cake at appreciable levels, and is a common field contaminant, a statistical test was performed which determined that the elevated level is a statistical outlier. Bis(2-ethylhexyl)phthalate was also detected at an elevated level during the fifth quarter sampling event. The associated method blank was found to have 6 ppb of this common field contaminant. Following standard laboratory data validation techniques for common contaminants, the level was qualified and considered non-detect because it was less than ten times the concentration detected in the associated equipment blank. During the sixth quarter sampling event, vinyl chloride was detected at a concentration equal to the MCL. However, this result was qualified as estimated as it was less than the practical quantitation limit.

Analytical results indicate no adverse impact to groundwater quality as a result of the disposal of filter cake in the Stolle landfill. Alcoa continues to monitor the groundwater through the landfill monitoring well network under regulation of the OEPA.

EPA also considered the potential impact of the petitioned wastes via a surface water route. The Stolle landfill was constructed with a perimeter embankment to prevent lateral migration of water. Clay, with a maximum permeability of 10^{-6}cm/sec, was used for embankment construction. In addition, as a requirement by the OEPA, Stolle was required to construct an underdrain system for collection and discharge of surface water to prevent ponding. Since 1984, all water collected via the underdrain system has been released to the Sidney sanitary sewer system for treatment. EPA believes that containment structures at the Stolle landfill, including the engineered cap, can effectively control surface water run-off. Furthermore, the concentrations of any hazardous constituents in the run-off will tend to be lower than the extraction procedure test results reported in today's notice because of the aggressive acidic media used for extraction in the TCLP. EPA believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution/attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of the solubility of a toxic constituent in water, and are indicative of the fraction of the constituents that may be mobilized in surface water, as well as ground water. The reported TCLP data shows that the constituents that might leach from Alcoa's waste to surface water are likely to be below the health-based levels of concern. EPA, therefore, concludes that Alcoa's waste is not a significant hazard to human health or the environment via the surface water exposure pathway.

E. Conclusion

Based on descriptions of the process from which the petitioned waste is derived, descriptions of Alcoa's wastewater treatment process, and analytical characterization of the petitioned waste, EPA believes that Alcoa has successfully demonstrated that the petitioned waste is not hazardous. EPA, therefore, proposes to grant a one-time exclusion to Alcoa for its WWTP filter cake described in its petition as EPA Hazardous Waste Nos. F006 and F019. If made final, the proposed exclusion will apply only to the approximately 16,772 cubic yards of petitioned waste present in the Stolle landfill.

III. Effect on State Authorizations

This proposed exclusion, if promulgated, would be issued under the Federal (RCRA) delisting program. States, however, may impose more stringent regulatory requirements than EPA, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States (e.g., Louisiana and Illinois) are authorized to administer a delisting program in lieu of the Federal program (i.e., to make their own delisting decisions). Therefore, this proposed exclusion, if promulgated, would not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, Alcoa must obtain delisting authorization from that State before the waste may be managed as nonhazardous in the State.

IV. Effective Date

This rule, if made final, will become effective immediately upon such 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 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. The proposal to grant an exclusion is not major, 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 non-hazardous. There is no additional impact, therefore, due to today's proposed rule. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

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 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.

VII. 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 (P.L. 96–511, 44 USC 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

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

IX. Children's Health Protection

Under Executive Order (''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.

List of Subjects in 40 CFR Part 261

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

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

Dated: November 24, 1998.

Robert Springer,

Director, Waste, Pesticides and Toxics Division.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

2. In Table 1 of Appendix IX 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
*	*	* * * * *
Aluminum Company of America.	750 Norcold Ave., Sidney, Ohio 45365.	1. Wastewater treatment plant (WWTP) sludges generated from the chemical conversion coating of aluminum (EPA Hazardous Waste No. F019) and WWTP sludges generated from electroplating operations (EPA Hazardous Waste No. F006) and stored in an on-site landfill. This is a one-time exclusion for approximately 16,772 cubic yards of landfilled WWTP filter cake. This exclusion was published on [insert publication date of the final rule]. 2. The constituent concentrations measured in the TCLP extract may not exceed the following levels (mg/L): Arsenic—5; Barium—200; Chromium—10; Cobalt—210; Copper—140; Nickel—70; Vanadium—20; Zinc—1000; Fluoride—400; Acetone—400; Methylene Chloride—0.5; Bis(2-ethylhexyl)phthalate—0.6. 3. (a) If, anytime after disposal of the delisted waste, Alcoa possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in Condition (2) is at a level in the leachate higher than the delisting level established in Condition (2), or is at a level in the ground water or soil higher than the health based level, then Alcoa must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

Table 1.—Wastes Excluded From Non-Specific Sources—Continued

Facility	Address	Waste description
		(c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify the facility in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. The facility shall have 10 days from the date of the Regional Administrator's notice to present such information. (d) Following the receipt of information from the facility described in paragraph (c) or (if no information is presented under paragraph (c) the initial receipt of information described in paragraph (a)), the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.
*	*	* * * * *

[FR Doc. 98–33710 Filed 12–18–98; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 514 and 520

[Docket No. 98–29]

Carrier Automated Tariff Systems

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission proposes to add new regulations establishing the requirements for carrier automated tariff systems in accordance with the Shipping Act of 1984, as modified by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998. At the same time, the Commission is repealing its current rules regarding tariffs and service contracts at 46 CFR part 514.

DATES: Submit comments on or before January 20, 1999.

ADDRESSES: Address all comments concerning this proposed rule to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001.

FOR FURTHER INFORMATION CONTACT:
Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001, (202) 523–5740
and
Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001, (202) 523–5796

SUPPLEMENTARY INFORMATION: The Ocean Shipping Reform Act of 1998 (''OSRA''), Pub. L. 105–258, 112 Stat. 1902, amends the Shipping Act of 1984 (46 U.S.C. app. sec. 1702 *et seq.*) (''1984 Act'') in several areas, significantly altering the manner by which the United States regulates international ocean shipping. One of the most noteworthy changes is in the treatment of common carrier tariffs, the publications which contain the rates and charges for their transportation services. Currently, common carriers and conferences file their tariffs with the Federal Maritime Commission's (''FMC'' or ''Commission'') Automated Tariff Filing and Information System (''ATFI''). Under OSRA, carriers no longer have to file with the Commission, but are required to publish their rates in private, automated tariff systems. (Section 8(a)(1) of the 1984 Act). These tariffs must be made available electronically to any person, without limits on time, quantity, or other such limitation, through appropriate access from remote locations, and a reasonable charge may be assessed for such access, except for Federal agencies. (Section 8(a)(2)). In addition, the Commission is charged with prescribing the requirements for the ''accessibility and accuracy'' of these automated tariff systems. The Commission also can prohibit the use of such systems, if they fail to meet the requirements it establishes. (Section 8(g)).

The Commission is, accordingly, proposing new regulations at 46 CFR part 520, to implement the changes occasioned by OSRA. In addition, the Commission is proposing to remove existing part 514, which deals mainly with the filing of tariffs in ATFI.

In anticipation of the passage of OSRA, the Commission published a notice of inquiry (''NOI'') in the **Federal Register** on July 2, 1998, Docket No. 98–10, *Inquiry Into Automated Tariff Filing Systems as Proposed by the Pending Ocean Shipping Reform Act of 1998.* The Commission sought comments from the ocean transportation industry and the general public on how best to establish requirements for carriers' automated tariff systems. To this end, the Commission proposed fifteen questions to better focus discussion on the proper areas. The Commission subsequently received comments from eighteen commenters, representing all segments of the ocean transportation industry. Several of these commenters were trade associations representing substantial memberships.

These comments proved useful to the Commission in preparing this proposed rule. Although there was no unanimity among commenters, there was general consensus on some issues. For example, most commenters agreed that tariff information should be retained for 5 years and that there should be some standardization of tariff information. Moreover, some comments enabled the Commission to better focus its efforts in one direction or another.

One of the primary functions of the publication of tariffs is to provide the shipping public with accessible and reliable information on the price and service options to move particular commodities from point A to point B. Consistent with OSRA's common carriage principles, shippers should be able to use this information to compare competing carriers' offerings and to assess whether they are being unreasonably discriminated against vis-à-vis their competitors. In addition, public tariff information enables carriers to monitor their competitors and to gain a complete picture of the marketplace in a particular trade.

An equally important function of tariff publication is to permit the Commission to monitor the rate activity of carriers and conferences. In light of