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

Facility	Address	Waste description
* * *	* * *	* * *

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* * *	* * *	* * *
Eastman Chemical Company	Longview,Texas	Wastewater treatment sludge, (at a maximum generation of 82,100 cubic yards per calendar year) (EPA Hazardous Waste Nos. K009, K010) generated at Eastman. Eastman must implement the testing program described in Table 1 of this Appendix. Waste Excluded From Non-Specific Sources for the petition to be valid.
* * *	* * *	* * *

TABLE 3.—WASTE EXCLUDED FROM COMMERCIAL CHEMICAL PRODUCTS, OFF SPECIFICATION SPECIES, CONTAINER RESIDUES, AND SOIL RESIDUES THEREOF

Facility	Address	Waste description
Eastman Chemical Company	Longview, Texas	Wastewater treatment sludge, (at a maximum generation of 82,100 cubic yards per calendar year) generated by Eastman (EPA Hazardous Waste Nos. U001, U002, U028, U031, U069, U088, U112, U115, U117, U122, U140, U147, U154, U159, U161, U220, U226, U239, U359). Eastman must implement the testing program described in Table 1 of this Appendix. Waste Excluded From Non-Specific Sources for the petition to be valid.
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[FR Doc. 00–30632 Filed 12–1–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–6910–9]

Land Disposal Restrictions: Notice of Intent to Grant a Site-Specific Treatment Variance to Dupont Environmental Treatment—Chambers Works Wastewater Treatment Plant, Deepwater, New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing to grant a site-specific treatment variance from the Land Disposal Restrictions (LDR) standards for wastewater treatment sludge generated at the Dupont Environmental Treatment (DET)—Chambers Works Wastewater Treatment Plant located in Deepwater, New Jersey. This sludge is derived from the treatment of multiple listed, including K088, and characteristic hazardous waste. DET requests this treatment variance because they contend that the chemical properties of the sludge differ significantly from the waste used to establish the LDR treatment standard for arsenic in K088 nonwastewaters. Accordingly, we propose to grant an alternate treatment standard of 5.0 mg/L Toxicity Characteristic Leaching Procedure (TCLP) for the arsenic in the wastewater treatment sludge generated at this facility.

If promulgated, DET may then dispose of their wastewater treatment sludge in their on-site RCRA Subtitle C landfill provided the sludge complies with the specified alternate treatment standard for arsenic in K088 nonwastewaters and meets all other applicable LDR treatment standards.

DATES: Comments must be received by December 26, 2000. Comments received after the close of the comment period will be stamped ''late'' and may or may not be considered by the Agency.

ADDRESSES: Commenters should submit an original and two copies of their comments referencing Docket Number F–2000–DPVP–FFFFF to: (1) If using regular U.S. Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA–HQ), 1200 Pennsylvania Avenue, NW, Washington DC 20460–0002, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202.

You may view public comments and supporting materials in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 am to 4 pm Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling 703–603–9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost $0.15 per page. (The index is available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them).

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). The RCRA Hotline is open Monday-Friday, 9 am to 6 pm, Eastern Standard Time. For more detailed information on specific aspects of this proposal, contact Elaine

Eby at 703–308–8449, eby.elaine@epa.gov, or write her at the Office of Solid Waste, 5302W, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002.

SUPPLEMENTARY INFORMATION:

Electronic Comment Submission

You may submit comments electronically by sending electronic mail through the Internet to: rcra-docket@epa.gov. You should identify comments in electronic format with the docket number F–2000–DPVP–FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters or any type of encryption. If possible, EPA's Office of Solid Waste (OSW) would also like to receive an additional copy of the comments on disk in WordPerfect 6.1 file format.

You should not submit electronically any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington DC 20460–0002.

Availability of Rule on Internet

Please follow these instructions to access the rule: From the World Wide Web (WWW), type http://www.epa.gov/epaoswer/hazwaste/ldr/index.html.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RIC listed in the **ADDRESSES** section at the beginning of this document.

EPA's responses to comments, whether the comments are written or electronic, will be published in the **Federal Register** or in a response to comments document placed in the official record for this action. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

How Can I Influence EPA's Thinking on This Rule?

We invite you to provide different views on options we propose, new approaches we haven't considered, new data, how this rule may effect you, or other relevant information. Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and why you feel that way.
- Provide solid technical data to support your views.
- Tell us which parts you support, as well as those you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Make sure to submit your comments by the deadline in this notice.
- Be sure to include the name, date, and docket number with your comments.

The Agency will consider the public comments during development of the final rule related to this action. The Agency urges commenters submitting data in support of their views to include data evidence that appropriate quality assurance/quality control (QA/QC) procedures were followed in generating the data. Data the Agency cannot verify through QA/QC documentation may be given less consideration or disregarded in developing regulatory options for the final rule. For guidance see Final Best Demonstrated Available Technology (BDAT) Background Document for Quality Assurance/Quality Control Procedures and Methodology; USEPA, October 23, 1991.

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I. Why and How Are Treatment Variances Granted?

Under section 3004(m) of the Resource Conservation and Recovery Act (RCRA) as amended by the Hazardous and Solid Waste Amendments of 1984, EPA is required to set ''levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.'' We have interpreted this language to authorize treatment standards based on the performance of best demonstrated available technology (BDAT). This interpretation was sustained by the court in Hazardous Waste Treatment Council vs. EPA, 886 F. 2d 355 (D.C.Cir.1989).

We recognize that there may be wastes that cannot be treated to levels specified in the regulation (see 40 CFR 268.40) (51 FR 40576, November 7, 1986). For such wastes, a treatment variance exists (40 CFR 268.44) that, if granted, becomes the treatment standard for the waste at issue.

Treatment variances may be generic or site-specific. A generic variance can result in the establishment of a new treatability group and a corresponding treatment standard that applies to all wastes that meet the criteria of the new waste treatability group (55 FR 22526, June 1, 1990). A site-specific variance applies only to a specific waste from a specific facility. Under 40 CFR 268.44(h), a generator or treatment facility may apply to the Administrator, or EPA's delegated representative, for a site-specific variance in cases where a waste that is generated under conditions specific to only one site and cannot or should not be treated to the specified level(s). The applicant for a site-specific variance must demonstrate that because the physical or chemical properties of the waste differ significantly from the waste analyzed in development of the treatment standard, the waste cannot be treated by BDAT to the specified levels or by the specified method(s). Although there are other grounds for obtaining treatment variances, we will not discuss those in this notice because this is the only provision relevant to the present petition.

Dupont Environmental Treatment—Chambers Works submitted their request for a treatment variance in February 2000. All information and data used in the development of this proposal can be found in the RCRA docket supporting this rule.[1]

[1] For purposes of this document, the term sludge, waste water treatment plant sludge, dewatered sludge, biosludge, and dewatered biosludge are used interchangeably and refer to the treated waste that has been dewatered and subject to analytical testing.

II. Why is Dupont Environmental Treatment Seeking a Treatment Variance?

Dupont Environmental Treatment—Chambers Works (herein referred to as ''DET'') operates a wastewater treatment plant (herein referred to as ''WWTP'') in Deepwater, New Jersey. The wastewater treatment performed at this facility can be described as an enhanced biological degradation system consisting of neutralization, equalization, primary clarification, secondary aeration and clarification, tertiary aeration and clarification, and sludge dewatering. Various pretreatment operations also are conducted on-site. DET WWTP operates as both a commercial treatment facility, for industrial and RCRA hazardous waste, and as an internal treatment operation, for Dupont's numerous manufacturing operations. DET WWTP processes approximately 16 million gallons of wastewater per day or 5.84 billion gallons per year, making it the largest wastewater treatment facility in the United States.

In December 1997, DET entered into a contractual agreement with Safety Kleen, Incorporated to treat wastewater from Safety Kleen's Waynoka, Oklahoma facility. The wastewater consists of approximately 87% multi-source leachate from an on-site Subtitle C landfill in Oklahoma (F039 waste) and 13% commercial wastewater pretreated by Safety Kleen. A portion of this commercial wastewater was shipped to Safety Kleen as K088 waste, i.e., potliner waste from primary aluminum reduction, originating as landfill leachate from a Reynolds Metals Company facility in Gum Springs, Arkansas. During the last three months of 1998, Safety Kleen shipped 192,000 gallons of this wastewater, i.e., the multi-source leachate and the commercial wastewater, to DET for treatment. In 1999, Safety Kleen transported approximately 1.3 million gallons of additional wastewater to DET.[2]

In February 2000, DET concluded, albeit belatedly, that there was a possibility that the continued treatment of Safety Kleen's wastewater, containing the K088 waste designation, at their WWTP could result in noncompliance for DET's WWTP sludge with the K088 nonwastewater treatment standard for total arsenic.[3] While compliance monitoring samples, taken since October 1998, show that the dewatered sludge meets both the Universal Treatment Standard (UTS) for arsenic of 5.0 mg/L TCLP and the K088 arsenic treatment standard of 26.1 mg/kg, screening samples taken in 1999 suggest that the total arsenic concentration in the dewatered sludge could exceed the 26.1 mg/kg treatment standard in future compliance monitoring tests.[4] However, these data do not meet EPA quality assurance and quality control requirements. Therefore, it is impossible for us to rely on these data in our deliberations.

On February 28, 2000, DET submitted a petition to EPA requesting a treatment variance from the K088 treatment standard for arsenic nonwastewaters generated at their facility. DET acknowledges that the WWTP sludge has not yet exceeded the treatment standard, based on compliance testing samples taken since late 1998. However, DET is concerned that, in the future, the sludge may exceed the treatment standard. DET states that, even if the arsenic standard is exceeded, the total arsenic concentration can not be reduced to meet the existing treatment standard. DET believes that requesting a treatment variance prior to an actual violation of the treatment standard is an appropriate and necessary action.

As part of their petition, in accordance with the requirements of 40 CFR 268.44, DET contends that their waste, i.e., the dewatered WWTP sludge carrying the K088 waste designation, differs significantly from the waste used to establish the treatment standard for total arsenic in K088 waste. DET states that the dewatered sludge is at least a second derivative treatment residue that bears no resemblance, in physical form or composition, to generated potliners or typically thought of generated residues from potliner treatment. DET maintains that for their waste, the TCLP is an appropriate analytical test for measuring arsenic mobility because of the neutral pH characteristic of the sludge. Additionally, DET states that no further treatment can be applied to the sludge because arsenic is an element, and as such cannot be destroyed to meet the existing treatment standard—a totals analysis test.

Based on these findings, DET requests that EPA grant a variance from the 26.1 mg/kg treatment standard for arsenic in K088 nonwastewaters for their wastewater treatment sludge. DET requests an alternative standard of 5.0 mg/L TCLP for arsenic in K088 waste. This level is the same as the old treatment standard for arsenic in K088 nonwastewaters, i.e., the standard that existed prior to the September 21, 1998 rulemaking and the current UTS for arsenic nonwastewaters. DET contends that the old standard is more appropriate for their waste because: (1) the TCLP measures mobility of arsenic; (2) the sludge's neutral pH is well-suited for evaluating whether arsenic could migrate and cause harm to human health and the environment; and (3) the arsenic in the WWTP sludge cannot be destroyed.

III. EPA's Analysis of DET's Petition

As just discussed, the waste at issue here is a dewatered WWTP sludge resulting from the treatment of wastewater carrying the K088 waste designation.[5] We agree with DET's main point—that this waste is significantly different from the waste on which the 26.1 mg/kg standard for total arsenic in K088 nonwastewaters is based. In addition, we agree that there is no available treatment to reduce the amount of total arsenic contained in the waste.

The 26.1 mg/kg standard for arsenic in K088 waste, promulgated in 1998, was developed based on performance data from a high temperature thermal treatment process for spent aluminum potliners from primary aluminum reduction used at a Reynolds Metals facility in Gum Springs, Arkansas. Specifically, the treatment standard was derived from an assay of the total acid soluble arsenic in K088 waste after spent potliner had been crushed, mixed with lime and sand, and sent through a

[2] In addition to the F039 and K088 waste designations, this wastewater contains eighteen additional RCRA hazardous waste codes.

[3] On September 21, 1998, EPA promulgated interim replacement standards for K088 waste. (See 63 FR 51254, September 24, 1998). As part of that rulemaking, the treatment standard for arsenic in K088 nonwastewaters was set at 26.1 mg/kg. That standard has been in effect since September 21, 1998 and applies to all K088 treatment sludge generated at DET WWTP since the effective date.

[4] Compliance data are generated by a contract laboratory based on TCLP analysis for metals on a secondary sludge sample from the treatment operation. The analysis is done quarterly for monitoring LDR compliance in accordance with DET's waste analysis plan. The compliance analysis for the TCLP extraction follows EPA protocol as specified in SW–846, Method 1311. Metals analysis is run by inductively coupled plasma via SW–846 Method 6010B, except for mercury which is done by SW–846 Method 7470A. Appropriate quality assurance/quality control is conducted by the contract laboratory in accordance with SW–846 requirements. DET's compliance data submitted to the Agency for the last quarter of 1998 show total arsenic concentrations in the WWTP sludge of 16 mg/kg. Quarterely compliance testing for 1999 show total asenic concentrations of 13.0, 12.3, 10.0 and <9.9 mg/kg. All TCLP data for arsenic in the WWTP sludge show concentrations of arsenic less than 0.10 mg/L.

[5] It should be noted that the WWTP sludge at issue here is generated by the biological treatment of a relatively small quantity of wastewater carrying the K088 waste designation. This K088 wastewater accounts for less than 0.002% of the total annual throughput at DET WWTP.

high-temperature rotary kiln resulting in a fused waste residue.

As previously discussed, prior to 1998, the treatment standard for arsenic was 5.0 mg/L TCLP, based on the Reynolds treatment process that, at that time, treated much of the K088 generated in the United States (63 FR 51257, September 24, 1998). However, to address subsequent concerns regarding the elevated concentrations of arsenic in Reynold's landfill leachate, Reynolds changed the type of sand used in their thermal process to a sand with lower concentrations of arsenic. These 1998 revisions, to the K088 arsenic standards, were intended to cap arsenic concentrations in the treated potliner and to lock-in the Reynolds treatment process change, *i.e.,* the change in sand type. Therefore, the reason for our shift to a 26.1 mg/kg total arsenic standard has no basis in appropriate treatment levels for WWTP sludge carrying the K088 waste code solely due to the derived-from regulations.

In addition, Reynolds thermal treatment of K088 waste generates an extremely alkaline residue for which the TCLP was found to be a poor predictor of arsenic mobility. See *Columbia Falls* v. *EPA,* 139F.3d 914 (D.C. Cir 1998); see also 63 FR 28571, May 26, 1998 (EPA's interpretation of the court's opinion). This decision also provided additional impetus for our 1998 change to a total arsenic standard. As previously noted, the WWTP sludge from DET, conversely, is not alkaline. It is at a pH between 6.5 and 7.5 to ensure no adverse effect on the treatment microbes, and the expected sludge disposal conditions at DET are also in a neutral pH range.[6]

Based on this information, we conclude that an alternative treatment standard of 5.0 mg/L TCLP for arsenic in K088 dewatered sludge generated at DET's WWTP is warranted for several reasons. First, the sludge generated at DET's WWTP is not the same type of waste that was used to develop the 26.1 mg/kg treatment standard for arsenic in K088 nonwastewaters, nor does it present the same situation regarding the use of a total arsenic standard to lock-in treatment process parameters. Second, the sludge will be disposed of in a Subtitle C hazardous waste landfill with pH conditions in the range of 6.5 to 8.5 and not under the alkaline conditions, *i.e.,* pH conditions of 12 and above, that resulted in mobilization of arsenic at Reynold's K088 landfill. Thus, the conditions that prompted the change in the K088 treatment standard are absent for this site. Third, the TCLP remains an adequate measure of treatment efficiency for DET's WWTP sludge due to the non-alkaline sludge matrix and the expected disposal conditions. Therefore, we believe that a TCLP standard of 5.0 mg/L is a reasonable measure of demonstrating that threats posed by the waste's disposal have been minimized. Fourth, the alternative standard of 5.0 mg/L TCLP is currently the standard applicable to arsenic in all other hazardous wastes, except K088 nonwastewaters. Fifth, data submitted to the Agency shows that DET's dewatered WWTP sludge consistently maintains both a neutral pH and TCLP levels of arsenic far less than 5.0 mg/L. Finally, arsenic concentrations in the WWTP sludge cannot be treated to a lower treatment standard based on a totals analysis, i.e., arsenic must be immobilized, as an element cannot be destroyed.

IV. EPA's Proposal to Grant a Site-Specific Treatment Variance to DET

Based on these conclusions, we propose to grant DET's petition for a site-specific treatment variance for their WWTP sludge. After consideration of public comment and a determination to grant this variance, we will amend 40 CFR part 268 to state that wastewater treatment sludge generated by Dupont Environmental Treatment—Chambers Works Wastewater Treatment Plant in Deepwater, New Jersey is subject to an arsenic treatment standard of 5.0 mg/L TCLP for all RCRA wastes. We also will stipulate that the waste must be land disposed in their on-site Subtitle C landfill assuming the waste meets all applicable federal, state and local requirements.

V. Administrative Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because this proposed rule does not create any new regulatory requirements, it is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. This treatment variance does not create any new regulatory requirements. Rather, it establishes an alternative treatment standard for a regulated constituent. This action, therefore, does not require a regulatory flexibility analysis.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local,

[6] Compliance monitoring samples taken quarterly in 1999 show that the pH landfill leachate values at DET's onsite hazardous waste landfill, where the WWTP sludge was disposed were as follows: 7.46, 8.35, 6.59, and 8.34.

and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing education, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not include a Federal mandate that may result in estimated costs of $100 million or more in the aggregate to either State, local, or tribal governments or the private sector in one year. The proposed rule would not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. States, tribes, and local governments would have no compliance costs under this rule. EPA has also determined that this proposal contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

D. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today's proposed rule is not subject to Executive Order 13045 because it does not meet either of these criteria. The subject wastes will comply with all other treatment standards and be disposed of in a RCRA Subtitle C landfill. Therefore, we have identified no risks that may disproportionately affect children.

E. Environmental Justice Executive Order 12898

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today's proposed rule applies to wastes that will be treated and disposed of in a RCRA Subtitle C hazardous waste landfill, ensuring a high degree of protection to human health and the environment. Therefore, the Agency does not believe that today's action will result in any disproportionately negative impacts on minority or low-income communities relative to affluent or non-minority communities.

F. Paperwork Reduction Act

This proposed rule would only change the treatment standards applicable to a subcategory of K088 wastes and does not change in any way the paperwork requirements already applicable to these wastes, it does not affect requirements under the Paperwork Reduction Act.

G. National Technology Transfer and Advancement Act of 1995

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards based on new methodologies. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input to the development of

regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposal does not significantly or uniquely affect the communities of Indian tribal governments. Today's proposal does not create a mandate on State, local or tribal governments, The proposal would not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

I. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implication.'' ''Policies that have federalism implication'' is defined in the Executive Order to include regulation that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local government, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that had federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing proposed regulation.

If EPA complies by consulting Executive Order 13132, it requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of state and local officials have been met. Also when EPA transmits a draft final rule with federalism implication to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus the requirements of section 6 of the Executive Order do not apply to this proposed rule.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: November 6, 2000.

Timothy Fields, Jr.,

Assistant Administrator for Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. In § 268.44, the table in paragraph (o) is amended by adding in alphabetical order a new entry for ''Dupont Environmental Treatment—Chambers Works Wastewater, Deepwater, NJ'' to read as follows:

PART 268—LAND DISPOSAL RESTRICTIONS.

* * * * *

§ 268.44 Variance from a treatment standard.

* * * * *

(o) * * *

TABLE—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40

Facility name [1] and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
*	*	*	*	*	*		*
Dupont Environmental Treatment—Chambers Works Wastewater Treatment Plant, Deepwater, NJ.	K088	Standards under § 268.40	Arsenic	1.4	NA	5.0 mg/L TCLP	NA
*	*	*	*	*	*	*	

[1] A facility may certify compliance with these treatment standards according to provisions in 40 CFR 268.7.

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Note: NA means Not Applicable.

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