Dated: November 9, 2001.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7103–6]

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 or Agency) today is proposing to grant a petition submitted by Nissan North America, Inc., Smyrna, Tennessee (Nissan), to exclude (or ''delist'') a certain hazardous waste from the list of hazardous wastes under RCRA regulation. Nissan will generate the petitioned waste by treating wastewater from Nissan's automobile assembly plant when aluminum is one of the metals used to manufacture automobile bodies. The waste so generated is a wastewater treatment sludge that meets the definition of F019. Nissan petitioned EPA to grant a generator-specific delisting, because Nissan believes that its F019 waste does not meet the criteria for which this type of waste was listed. EPA reviewed all of the waste-specific information provided by Nissan, performed calculations, and determined that the waste could be disposed in a landfill without harming human health and the environment. Today's proposed rule proposes to grant Nissan's petition to delist its F019 waste, and requests public comment on the proposed decision. If the proposed delisting becomes a final delisting, Nissan's petitioned waste will no longer be classified as F019, and will not be subject to regulation as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The waste will still be subject to local, State, and Federal regulations for nonhazardous solid wastes.

DATES: EPA is requesting public comments on this proposed decision. Comments will be accepted until January 3, 2002. Comments postmarked after the close of the comment period will be stamped ''late.'' These ''late'' comments may not be considered in formulating a final decision.

Any person may request a hearing on this proposed decision by filing a request with Richard D. Green, Director of the Waste Management Division, EPA, Region 4, whose address appears below, by December 4, 2001. The request must contain the information prescribed in section 260.20(d).

ADDRESSES: Send two copies of your comments to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303. Send one copy to Nina Vo, Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535. Identify your comments at the top with this regulatory docket number: R4–01–01–NissanP. Comments may also be submitted by e-mail to *sophianopoulos.judy@epa.gov.* If files are attached, please identify the format.

Requests for a hearing should be addressed to Richard D. Green, Director, Waste Management Division, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

The RCRA regulatory docket for this proposed rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The docket contains the petition, all information submitted by the petitioner, and all information used by EPA to evaluate the petition.

The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies.

Copies of the petition are available during normal business hours at the following addresses for inspection and copying: U.S. EPA, Region 4, Library, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8190; and Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535. The EPA, Region 4, Library is located near the Five Points MARTA station in Atlanta. The Tennessee Department of Environment and Conservation is located in downtown Nashville near the intersection of Church Street and 4th Avenue North, about 0.2 mile northwest of Riverfront Park and 0.2 mile southwest of Bicentennial Park. Documents are also available for viewing and downloading at the Web site of EPA, Region 4: *http://www.epa.gov/region4/index.html.* At this site, click on ''Waste,'' ''Resource Conservation and Recovery Act (RCRA),'' ''RCRA Program, and then on ''New'' under ''Enforcement and Compliance.''

FOR FURTHER INFORMATION CONTACT: For general and technical information about this proposed rule, contact Judy Sophianopoulos, South Enforcement and Compliance Section, (Mail Code 4WD–RCRA), RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8604, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background
- A. What Laws and Regulations Give EPA the Authority to Delist Wastes?
- B. How did EPA Evaluate this Petition?
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- 3. Why is the EPACMTP an improvement over the EPACML?
- 4. Where can technical details on the EPACMTP be found?
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II. Disposition of Delisting Petition
- A. Summary of Delisting Petition Submitted by Nissan North America, Inc., Smyrna, Tennessee (Nissan)
- B. What Delisting Levels Did EPA Obtain with DRAS and EPACMTP?
- C. Should the Multiple Extraction Procedure (MEP) be Used to Evaluate this Delisting Petition?
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IV. Effective Date

V. Paperwork Reduction Act

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VIII. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement and Fairness Act

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I. Background

A. What Laws and Regulations Give EPA the Authority To Delist Wastes?

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 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they 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 Sec. 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, sections 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility [1] should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. *See* section 260.22(a) and the background documents for the listed wastes. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. *See* section 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are ''delisted'' (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on the hazardous waste characteristics (i.e., characteristics which may be promulgated subsequent to a delisting decision.)

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 Section 261.3(a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the ''mixture/derived-from'' rules and remanded them to the EPA on procedural grounds. *Shell Oil Co.* v. *EPA, 950 F.2d 741 (D.C. Cir. 1991).* On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278), and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. On May 16, 2001, EPA amended the mixture and derived-from rules for certain types of wastes (66 FR 27218 and 66 FR 27266). The mixture and derived-from rules are codified in 40 CFR 261.3, paragraphs (a)(2)(iv) and (c)(2)(i). EPA plans to address all waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with sections 260.20 and 260.22, by generators within their Regions (National Delegation of Authority 8–19), in States not yet authorized to administer a delisting program in lieu of the Federal program. On March 11, 1996, the Regional Administrator of EPA, Region 4, redelegated delisting authority to the Director of the Waste Management Division (Regional Delegation of Authority 8–19).

B. How Did EPA Evaluate This Petition?

This petition requests a delisting for a hazardous waste listed as F019. In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in Section 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous 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 such additional factors could cause the waste to be hazardous. *See* section 260.22(a) and (d). The EPA considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

1. What Is the EPACML Model That EPA Used in the Past for Determining Delisting Levels?

In the past, EPA used the EPA Composite Model for Landfills (EPACML) fate and transport model, modified for delisting, as one approach for determining the delisting levels for petitioned waste. *See* 56 FR 32993–33012, July 18, 1991, for details on the use of the EPACML model to determine the concentrations of constituents in a waste that will not result in groundwater contamination. With the EPACML approach, as used in the past, EPA calculated a delisting level for each hazardous constituent by using the maximum estimated waste volume to determine a Dilution Attenuation Factor (DAF) from a table of waste volumes and DAFs previously calculated by the EPACML model, as modified for delisting. *See* 56 FR 32993–33012, July 18, 1991. The maximum estimated waste volume is the maximum number of cubic yards of petitioned waste to be disposed of each year. The delisting level for each constituent was equal to the DAF multiplied by the maximum contaminant level (MCL) which the Safe Drinking Water Act allows for that constituent in drinking water. The delisting level is a concentration in the waste leachate that will not cause the MCL to be exceeded in groundwater underneath a landfill where the waste is disposed. This method of calculating delisting levels resulted in conservative levels that were protective of

[1] Although no one produces hazardous waste intentionally, many industrial processes result in the production of hazardous waste, as well as useful products and services. A ''generating facility'' is a facility in which hazardous waste is produced, and a ''generator'' is a person who produces hazardous waste or causes hazardous waste to be produced at a particular place. Please see 40 CFR 260.10 for regulatory definitions of ''generator,'' ''facility,'' ''person,'' and other terms relating to hazardous waste, and 40 CFR part 262 for regulatory requirements for generators.

groundwater, because the model did not assume that the landfill had the controls required of Subtitle D landfills. A Subtitle D landfill is a landfill subject to RCRA Subtitle D nonhazardous waste regulations, and to State and local nonhazardous waste regulations.

2. What Is the DRAS That Uses the New EPACMTP Model to Calculate Not Only Delisting Levels, But Also To Evaluate the Effects of the Waste on Human Health and the Environment?

The EPA is proposing to use the Delisting Risk Assessment Software (DRAS),[2] developed by EPA, Region 6, to evaluate this delisting petition. The DRAS uses a new model, called the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP). The EPACMTP improves on the EPACML model in several ways. EPA is proposing to use the DRAS to calculate delisting levels and to evaluate the impact of Nissan's petitioned waste on human health and the environment. Delisting levels are the maximum allowable concentrations for hazardous constituents in the waste, so that disposal in a landfill will not harm human health and the environment by contaminating groundwater, surface water, or air.

Today's proposal provides background information on the mechanics of the DRAS, and the use of the DRAS in delisting decision-making. Please see the EPA, Region 6, *RCRA Delisting Technical Support Document* (RDTSD) for a complete discussion of the DRAS calculation methods. The RDTSD, and **Federal Register**s, 65 FR 75637–75651, December 4, 2000, and 65 FR 58015–58031, September 27, 2000, are the sources of the DRAS information presented in today's preamble, and are included in the RCRA regulatory docket for this proposed rule.

The DRAS performs a risk assessment for petitioned wastes that are disposed of in the two waste management units of concern: surface impoundments for liquid wastes and landfills for non-liquid wastes. Nissan's petitioned waste is solid, not liquid, and will be disposed in a landfill; therefore, only the application of DRAS to landfills will be discussed in this preamble.

DRAS calculates releases from solid-phase wastes in a landfill, with the following assumptions: (1) The wastes are disposed in a Subtitle D landfill and covered with a 2-foot-thick native soil layer; (2) the landfill is unlined or effectively unlined due to a liner that will eventually completely fail. The two parameters used to characterize landfills are (1) area and (2) depth (the thickness of the waste layer). Data to characterize landfills were obtained from a nationwide survey of industrial Subtitle D landfills.[3] Parameters and assumptions used to estimate infiltration of leachate from a landfill are provided in the *EPACMTP Background Document and User's Guide*, Office of Solid Waste, U.S. EPA, Washington, DC, September 1996.

DRAS uses the EPACMTP model to simulate the fate and transport of dissolved contaminants from a point of release at the base of a landfill, through the unsaturated zone and underlying groundwater, to a receptor well at an arbitrary downstream location in the aquifer (the rock formation in which the groundwater is located). DRAS evaluates, with the EPACMTP model, the groundwater exposure concentrations at the receptor well that result from the chemical release and transport from the landfill (*Application of EPACMTP to Region 6 Delisting Program: Development of Waste Volume-Specific Dilution Attenuation Factors*, U.S. EPA, August 1996). For the purpose of delisting determinations, receptor well concentrations for both carcinogens and non-carcinogens from finite-source degraders and non-degraders are determined with this model. Delisted waste is a finite source, because in a finite period of time, the waste's constituents will leach and move out of the landfill. If EPA makes a final decision to delist Nissan's F019 waste, Nissan must meet the delisting levels and dispose of the waste in a Subtitle D landfill, because EPA determined the delisting levels based on a landfill model.

3. Why Is the EPACMTP an Improvement Over the EPACML?

The EPACMTP includes three major categories of improvements over the EPACML.

The improvements include:

1—Incorporation of additional fate and transport processes (e.g., degradation of chemical constituents; fate and transport of metals);

2—Use of enhanced flow and transport equations (e.g., for calculating transport in three dimensions); and

3—Revision of the Monte Carlo methodology (e.g., to allow use of site-specific, waste-specific data) (*EPACMTP Background Document and User's Guide*, Office of Solid Waste, U.S. EPA, Washington, DC, September 1996).

A summary of the key enhancements which have been implemented in the EPACMTP is presented here and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR **Federal Register** proposal docket (60 FR 66344, December 21, 1995). For more information, please contact Judy Sophianopoulos, South Enforcement and Compliance Section, (Mail Code 4WD–RCRA), RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8604, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call. You may also contact her by e-mail: *sophianopoulos.judy@epa.gov.*

The EPACML accounts for: One-dimensional steady and uniform advective flow; contaminant dispersion in the longitudinal, lateral, and vertical directions; and sorption. However, advances in groundwater fate and transport have been made in recent years and EPA proposes and requests public comment on the use of the EPACMTP, which is a more advanced groundwater fate and transport model, for this RCRA delisting.

The EPACML was limited to conditions of uniform groundwater flow. It could not handle accurately the conditions of significant groundwater mounding and non-uniform groundwater flow due to a high rate of infiltration from the waste disposal units. These conditions increase the transverse horizontal, as well as the vertical, spreading of a contaminant plume.

The EPACMTP model overcomes the deficiencies of the EPACML in the

[2] For more information on DRAS and EPACMTP, please see 65 FR 75637–75651, December 4, 2000 and 65 FR 58015–58031, September 27, 2000. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). URL addresses for Region 6 delisting guidance and software are the following:

1. Delisting Guidance Manual *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dlistpdf.htm.*

2. Delisting Risk Assessment Software (DRAS) *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm.*

3. DRAS Technical Support Document (DTSD) *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dtsd.htm.*

4. DRAS Users Guide *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/uguide.pdf.*

Region 6 has made them available to the public, free of charge.

[3] *Nationwide Survey of Industrial Subtitle D Landfills*, Westat, 1987.

following way: The subsurface as modeled with the EPACMTP consists of an unsaturated zone beneath a landfill and a saturated zone, the underlying water table aquifer. Contaminants move vertically downward through the unsaturated zone to the water table. The EPACMTP simulates one-dimensional, vertically downward flow and transport of contaminants in the unsaturated zone, as well as two-dimensional or three-dimensional groundwater flow and contaminant transport in the underlying saturated zone. The EPACML used a saturated zone module that was based on a Gaussian distribution of the concentration of a chemical constituent in the saturated zone. The module also used an approximation to account for the initial mixing of the contaminant entering at the water table (saturated zone) underneath the waste unit. The module accounting for initial mixing in the EPACML could lead to unrealistic groundwater concentrations. The enhanced EPACMTP model incorporates a direct linkage between the unsaturated zone and saturated zone modules which overcomes these limitations of the EPACML. The following mechanisms affecting contaminant migration are accounted for in the EPACMTP model: Transport by advection and dispersion, retardation resulting from reversible linear or nonlinear equilibrium sorption on the soil and aquifer solid phase, and biochemical degradation processes. The EPACML did not account for biochemical degradation, and did not account for sorption as accurately as the EPACMTP.

The EPACMTP consists of four major components:

1—A module that performs one-dimensional analytical and numerical solutions for water flow and contaminant transport in the unsaturated zone beneath a waste management unit;

2—A numerical module for steady-state groundwater flow subject to recharge from the unsaturated zone;

3—A module of analytical and numerical solutions for contaminant transport in the saturated zone; and

4—A Monte Carlo module for assessing the effect of the uncertainty resulting from variations in model parameters on predicted receptor well concentrations.

4. Where Can Technical Details on the EPACMTP Be Found?

For more information on DRAS and EPACMTP, please see 65 FR 75637–75651, December 4, 2000; 65 FR 58015–58031, September 27, 2000; and 66 FR 9781–9798, February 12, 2001. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). A summary of DRAS is presented in 66 FR 9781–9798, February 12, 2001. Footnote 2 in Preamble Section I.B.2. above lists the URL addresses for Region 6 guidance on DRAS.

5. What Methods Is EPA Proposing To Use To Determine Delisting Levels for This Petitioned Waste?

Nissan submitted to the EPA analytical data from its Smyrna, Tennessee plant. Samples of wastewater treatment sludge were collected from roll-off containers over a one-month period, in accordance with a sampling and analysis plan approved by EPA and the Tennessee Department of Environment and Conservation. A summary of analytical data is presented in Table 1 of section II below, with analytical details in the Table footnotes.

After reviewing the analytical data and information on processes and raw materials that Nissan submitted in the delisting petition, EPA developed a list of constituents of concern and calculated delisting levels and risks using DRAS and EPACMTP DAFs as described above. EPA requests public comment on this proposed method of calculating delisting levels and risks for Nissan's petitioned waste.

EPA also requests comment on three additional methods of evaluating Nissan's delisting petition and determining delisting levels: (1) Use of the Multiple Extraction Procedure (MEP), SW–846 Method 1320[4], to evaluate the long-term resistance of the waste to leaching in a landfill; (2) setting limits on total concentrations of constituents in the waste that are more conservative than results obtained by DRAS for total concentrations; and (3) setting delisting levels at the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) levels in 40 CFR 268.48. The UTS levels for Nissan's constituents of concern are the following:

Arsenic: 5.0 mg/l TCLP; Barium: 21 mg/l TCLP; Cadmium: 0.11 mg/l TCLP; Chromium: 0.60 mg/l TCLP; Cyanide Total: 590 mg/kg; Cyanide Amenable 30 mg/kg; Lead: 0.75 mg/l TCLP; Nickel: 11 mg/l TCLP; Silver: 0.14 mg/l TCLP; Vanadium: 1.6 mg/l; Zinc: 4.3 mg/l TCLP; Acetone: 160 mg/kg; Bis-2-ethylhexyl phthalate: 28 mg/kg; 2-Butanone: 36 kg/kg; Isobutyl alcohol: 170 mg/kg; 4-Methyl phenol: 5.6 mg/kg; Di-n-octyl phthalate: 28 mg/kg; Phenol: 6.2 mg/kg; and Xylenes: 30 mg/kg.

The EPA provides 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

A. Summary of Delisting Petition Submitted by Nissan North America, Inc., Smyrna, Tennessee (Nissan)

Nissan manufactures light-duty vehicles and is seeking a delisting for the sludge that will be generated by treating wastewater from its manufacturing operations, when aluminum will be used to replace some of the steel in the vehicle bodies. Wastewater treatment sludge does not meet a hazardous waste listing definition when steel-only vehicle bodies are manufactured. However, the wastewater treatment sludge generated at manufacturing plants where aluminum is used as a component of vehicle bodies, meets the listing definition of F019 in Section 261.3.[5]

Nissan petitioned EPA, Region 4, on October 12, 2000, to exclude this F019 waste, on an upfront, generator-specific basis, from the list of hazardous wastes in 40 CFR part 261, subpart D.

The hazardous constituents of concern for which F019 was listed are hexavalent chromium and cyanide (complexed). Nissan petitioned the EPA to exclude its F019 waste because Nissan does not use either of these constituents in the manufacturing process. Therefore, Nissan does not believe that the waste meets the criteria of the listing.

Nissan claims that its F019 waste will not be hazardous because the constituents of concern for which F019 is listed will be present only at low concentrations and will not leach out of the waste at significant concentrations. Nissan also believes that this waste will not be hazardous for any other reason (i.e., there will be no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as

[4] "SW–846" means EPA Publication SW–846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods." Methods in this publication are referred to in today's proposed rule as "SW–846," followed by the appropriate method number.

[5] "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."

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 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the EPA's evaluation of Nissan's petition.

In support of its petition, Nissan submitted: (1) Descriptions of its manufacturing and wastewater treatment processes, the generation point of the petitioned waste, and the manufacturing steps that will contribute to its generation; (2) Material Safety Data Sheets (MSDSs) for materials used to manufacture vehicles; (3) the minimum and maximum annual amounts of wastewater treatment sludge typically generated, and an estimate of the maximum annual amount expected to be generated in the future; (4) results of analysis of the currently generated waste at the Nissan plant in Smyrna, Tennessee for the chemicals in Appendix IX of 40 CFR part 264: 17 metals; cyanide; 58 volatile organic compounds and 124 semi-volatile organic compounds; and, in addition to the Appendix IX list, hexavalent chromium ; (5) results of analysis for those chemicals (i.e., Appendix IX list, hexavalent chromium) and fluoride in the leachate obtained from this waste by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311); (6) results of determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity, in this waste; (7) results of determinations of hexavalent chromium and percent solids; and (8) results of a dye tracer study and source inventory of Nissan's industrial wastewater system.

The Nissan assembly plant in Smyrna, Tennessee, manufactures light-duty vehicles. Nissan's Standard Industrial Classification (SIC) code is 3711. The manufacturing process that will cause F019 to be generated is conversion coating, when applied to vehicles that contain aluminum. Conversion coating takes place in three of Nissan's four paint plants and treats the metal surface of each vehicle body before painting to provide resistance to corrosion and to prepare the metal surface for optimum paint adhesion. Wastewater from all plant operations is treated at Nissan's industrial wastewater pretreatment plant. The wastewater is monitored for compliance with Nissan's Significant Industrial User's permit before discharging to the Town of Smyrna publicly owned treatment works. Treatment results in the formation of insoluble metal hydroxides. Wastewater treatment sludge is generated when these metal hydroxides are dewatered in a filter press. The sludge that exits from the filter press will be classified as F019 when the vehicle bodies contain aluminum, and the exit from the filter press will be the point of generation of F019.

Nissan currently generates from 1,000 to 1,500 tons of wastewater treatment sludge per year at its Smyrna, Tennessee assembly plant, and estimated a future maximum annual generation rate of 2,000 tons.

Table 1 below summarizes the hazardous constituents and their concentrations in Nissan's wastewater treatment sludge generated from the manufacture of steel-only vehicle bodies at the Smyrna, Tennessee plant.

TABLE 1.— NISSAN NORTH AMERICA, INC., SMYRNA, TENNESSEE: WASTEWATER TREATMENT SLUDGE PROFILE

Parameters [1]	NS–01a NS–02a [2]	NS–03a	NS–04a	NS–05a	Max.	Mean	S.D.	C.V. [3]
Metals								
Arsenic	4.2 3.0	3.2U	4.3	4.3	4.3	3.8	0.64	17
Arsenic—TCLP	0.050U 0.050U	0.050U	0.050U	0.050U	0.050U	NA	NA	NA
Barium	6,200 6,600	3,400	2,100	3,400	6,600	4340	1959	45.1
Barium—TCLP	0.14 0.15	0.14	0.11	0.13	0.15	0.134	0.0152	11.3
Cadmium	0.61U 0.60U	0.81	0.71U	0.81U	0.81	0.708	0.103	14.5
Cadmium—TCLP	0.010U 0.010U	0.010U	0.010U	0.010U	0.010U	NA	NA	NA
Chromium—Total	100 120	130	160	150	160	132	23.9	18.1
Chromium—Total TCLP	0.050U 0.050U	0.050U	0.050U	0.050U	0.050U	NA	NA	NA
Hexavalent Chromium	0.80UN* 6.7N*	2.6U	2.9UN	3.2U	6.7	3.24	2.15	66.3
Hexavalent Chromium—TCLP	0.25U 0.25U	0.050U	0.050U	0.050U	0.25U	NA	NA	NA
Cobalt	22 24	21	8.7	16	24	18.3	6.14	33.5
Cobalt—TCLP	0.19 0.16	0.13	0.062	0.080	0.19	0.12	0.053	43.0
Copper	820* 870*	1,600	750	820	1,600	972	354	36.4
Copper—TCLP	0.050U	0.050U	0.050U	0.050U	0.05U	NA	NA	NA
Lead	210 230	390	320	320	390	294	73.7	25.1
Lead—TCLP	0.050U 0.050U	0.050U	0.050U	0.050U	0.050U	NA	NA	NA
Nickel	3,000 3,100	4,200	4,100	4,100	4,200	3,700	595.8	16.1
Nickel—TCLP	32 33	46	41	31	46	36.6	6.58	18.0

TABLE 1.— NISSAN NORTH AMERICA, INC., SMYRNA, TENNESSEE: WASTEWATER TREATMENT SLUDGE PROFILE—Continued

Parameters [1]	NS–01a NS–02a [2]	NS–03a	NS–04a	NS–05a	Max.	Mean	S.D.	C.V. [3]
Silver	0.61U 0.60U	0.68	0.71U	0.81U	0.81U	0.682	0.0853	12.5
Silver—TCLP	0.010U 0.010U	0.010U	0.010U	0.010U	0.010U	NA	NA	NA
Tin	700 710	590	600	810	810	682	90.4	13.2
Tin—TCLP	0.10U 0.01U	0.10U	0.10U	0.10U	0.10U	NA	NA	NA
Vanadium	190 190	52	18	48	190	99.6	83.6	83.9
Vanadium—TCLP	0.050U 0.050U	0.050U	0.050U	0.050U	0.050U	NA	NA	NA
Zinc	15,000 17,000	15,000	20,000	17,000	20,000	16,800	2,049	12.2
Zinc—TCLP	17 16	17	16	7.2	17	14.6	4.19	28.6
Inorganic Non-Metals								
Total Cyanide	3.2 3.1	2.9	1.4	1.0	3.2	2.32	1.04	44.7
Total Cyanide—TCLP	0.0095 0.0073	0.0050U	0.0050U	0.0050U	0.0095	0.00636	0.00202	31.7
Fluoride—TCLP	0.23 0.22	2.1	1.7	1.8	2.1	1.21	0.911	75.3
Hazardous Waste Characteristics								
Corrosivity: Measured pH [Regulatory limit: ≤2.0 or ≥12.5].	8.2 8.0	9.1	9.0	9.2	9.2 Minimum: 8.0	8.7	0.56	6.4
Ignitability: Measured Flash Point, °F [Regulatory limit: <140°F].	>212 >212	>212	>212	>212	>212	>212	0	0
Reactive Sulfide: Measured hydrogen sulfide released, mg/kg [Interim Guidance Level: 500 mg/kg].	260 210	66U	280U	320	320	227	98.4	43.3
Reactive Cyanide: Measured hydrogen cyanide released, mg/kg [Interim Guidance Level: 250 mg/kg].	0.61U 0.60U	0.66U	0.71U	0.81U	0.81U	NA	NA	NA
Other Properties								
Percent Solids	41 42	38	35	31	42	37.4	4.51	12.0

Parameters [1]	NS–01b NS–02b	NS–03b	NS–04b	NS–05b	Max.	Mean	S.D.	C.V. [3]
Volatile Organic Compounds								
Acetone	0.570 0.530	4.500	0.130J	0.015U	4.500	1.15	1.89	164
Acetone—TCLP	0.120D	0.160D	0.093JD	0.240BD	0.240BD	0.137	0.0663	48.4
2-Butanone	0.150J 0.230J	1.000	0.028U	0.029U	1.000	0.287	0.407	142
2-Butanone—TCLP	0.020U 0.020U	0.020U	0.020U	0.020U	0.020U	NA	NA	NA
Isobutyl alcohol	0.024U 0.024U	7.4	0.73	0.029U	7.4	1.64	3.24	198
Isobutyl alcohol—TCLP	0.020UD 0.020UD	0.020UD	0.830D	0.020UD	0.830	0.182	0.362	199
Xylenes (all isomers)	0.320 0.440	2.700	0.270	0.0029U	2.700	0.746	1.10	148
Xylenes (all isomers)—TCLP	0.0020U 0.0020U	0.033D	0.007JD	0.011JD	0.033	0.0110	0.0129	117
Semi-volatile Organic Compounds								

Parameters [1]	NS–01a NS–02a [2]	NS–03a	NS–04a	NS–05a	Max.	Mean	S.D.	C.V. [3]
Bis(2-ethylhexyl) phthalate	520JD 430JD	45.0J	92.0J	22.0U	520	222	235	106
Bis(2-ethylhexyl) phthalate—TCLP	0.004U 0.004U	0.020U	0.020U	0.020U	0.020U	NA	NA	NA
Di-n-octyl phthalate	390D 320D	110	150	22.0JD	390	198	152	76.8
Di-n-octyl phthalate—TCLP	0.004U 0.004U	0.020U	0.020U	0.020U	0.020U	NA	NA	NA
4-Methylphenol	17.0JD 5.1JD	4.2U	5.1U	3.4U	17.0	6.96	5.66	81.3
4-Methylphenol—TCLP	0.100D 0.096D	0.040U	0.040U	0.040U	0.100	0.0632	0.0318	50.3
Phenol	10.0JD 3.40JD	2.10U	2.60U	1.70U	10.0	3.96	3.44	86.8
Phenol—TCLP	0.036D 0.038D	0.028JD	0.015JD	0.010U	0.038	0.0254	0.0125	49.1

[1] Parameters are the chemicals or properties analyzed.

[2] The first set of results for each chemical shows the concentrations determined by total analysis of the samples in milligrams of chemical per kilogram of waste (mg/kg). The second set of results for each chemical shows the concentrations determined by analysis of the TCLP extracts of the samples in milligrams of chemical per liter of TCLP extract of the waste (mg/L). The TCLP results are in the row where the name of the chemical is followed by ''—TCLP.'' B = Compound detected in blank; D = Sample had to be diluted; E = Parameter concentration estimated due to matrix interference; J = Estimated result; the actual result is likely to be greater than zero but less than the estimated value; N = Predigested spike recovery not within control limits; NA = Not applicable; U = Not detected above the method detection limit, which is the value preceding the U; * = Duplicate analysis was not within control limits. The metals, antimony, beryllium, mercury, selenium, and thallium were not detected by total analysis of samples and are not included in the table in order to save space. Xylene (including all its isomers), 2-butanone (methyl ethyl ketone or MEK), isobutyl alcohol, and acetone were the only volatile organic compounds (VOCs) found at a level equal to or greater than 1 part per million by total analysis of the waste and are the only VOCs included in the table. For the same reason, bis(2-ethylhexyl) phthalate, di-n-octyl phthalate, 4-methylphenol (p-cresol) [6], and phenol are the only semi-volatile organic compounds included in the table. Columns 2 through 4 in the table heading contain sample identification numbers. ''NS'' stands for Nissan samples; numbers 01 through 05 are sequential numbers linking samples to the roll-offs from which they were collected. Numbers 01 and 02 were from the first roll-off sampled (see Note 4 below), and Numbers 03 through 05 were from roll-offs two through four, respectively. The letter ''a'' denotes a composite sample and the letter ''b'' denotes a grab sample. As described in the petition, four randomly selected roll-offs were sampled over the time period, by collecting one composite sample per roll-off. Each composite sample was a mixture of twelve vertical core samples. Each vertical core sample was approximately six to ten inches in depth and one inch in diameter; three vertical core samples were collected at each of four randomly selected locations per roll-off. Grab samples of each roll-off were collected for VOC analysis (see Note 4 below).

[3] The last four columns contain a statistical analysis of the analytical results. Max. = maximum concentration found; Mean. = mean or average concentration found = sum of concentrations divided by the number of samples; S.D.= standard deviation = the square root of [(sum of squares of the differences between each measured concentration and the mean)divided by (the number of samples minus 1)]; C.V. = coefficient of variation, expressed as a percent = 100 times the standard deviation divided by the mean concentration. Statistical analyses were performed only if the parameter was detected in more than one sample. If a chemical was not detected in any of the samples, NA (not applicable) was written in the last three columns. Detection limits reported by the laboratory were used in the statistical calculations when chemicals were not detected (U) in some of the samples. This is a conservative assumption, which is likely to result in overestimation of the mean concentration.

[4] One of the four composite samples was collected from a roll-off that was representative of plant maintenance activities and split into two samples for analysis: Sample Number NS–01a and its field duplicate, NS–02a. NS–01b was a grab sample from this roll-off, for VOC analysis, and NS–02b was a field duplicate of this sample. Composite samples NS–03a, NS–04a, and NS–05a were collected from three roll-offs that were representative of routine plant operations. Grab samples NS–03b, NS–04b, and NS–05b were collected from these three roll-offs for VOC analysis.

EPA concluded after reviewing Nissan's waste management and waste history information that no other hazardous constituents, other than those tested for, are likely to be present in Nissan's petitioned waste. In addition, on the basis of test results and other information provided by Nissan, pursuant to section 260.22, EPA concluded that the petitioned waste will not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See Sections 261.21, 261.22, and 261.23, respectively.

During its evaluation of Nissan's petition, EPA also considered the potential impact of the petitioned waste on media other than groundwater. With regard to airborne dispersal of waste, EPA evaluated the potential hazards resulting from airborne exposure to waste contaminants from the petitioned waste using an air dispersion model for releases from a landfill. The results of this evaluation indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from Nissan's petitioned waste. (A description of EPA's assessment of the potential impact of airborne dispersal of Nissan's petitioned waste is presented in the RCRA public docket for today's proposed rule.)

EPA evaluated the potential impact of the petitioned waste on surface water resulting from storm water runoff from a landfill containing the petitioned waste, and found that the waste would not present a threat to human health or the environment. (See the docket for today's proposed rule for a description of this analysis). In addition, EPA believes that containment structures at municipal solid waste landfills can effectively control runoff, as Subtitle D regulations (*see* 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. While some contamination of surface water is possible through runoff from a waste disposal area, EPA believes that the dissolved concentrations of hazardous constituents in the runoff are likely to be lower than the TCLP results reported in today's proposed rule, because of the aggressive acidic medium used for extraction in the TCLP. EPA also believes that, in general, leachate derived from the waste will not directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents may occur. Transported contaminants would be further diluted in the receiving water body. Subtitle D controls would minimize significant releases to surface water from erosion of undissolved particulates in runoff.

B. What Delisting Levels Did EPA Obtain With DRAS and EPACMTP?

In order to account for possible variability in the generation rate, EPA calculated delisting levels using Nissan's estimated maximum generation rate of 2,000 tons of wastewater treatment sludge per year. EPA converted the 2,000 tons to a waste volume of 2,400 cubic yards, by using the density of water for the density of the sludge. While the sludge is certainly more dense than water, using the lower density results in a higher value for the waste volume, and a lower, more conservative, Dilution Attenuation Factor (DAF).

Delisting levels and risk levels calculated by DRAS, using the EPACMTP model, are presented in Table 2 below. DRAS found that the major pathway for human exposure to this waste is groundwater ingestion, and the majority of the delisting and risk levels for the TCLP leachate of the waste were calculated based on that pathway. EPA requests public comment on using DRAS-calculated values based on MCLs, when these would result in more conservative delisting levels. The input values required by DRAS were the chemical constituents in Nissan's petitioned waste; their maximum reported concentrations in the TCLP extract of the waste and in the unextracted waste (*See* Table 1, Preamble Section II.A.); the maximum annual volume to be disposed (2,400 cubic yards) in a landfill; the desired risk level, which was chosen to be no worse than 10^{-6} for carcinogens; and a hazard quotient of no greater than 1 for non-carcinogens. The carcinogenic constituents detected in the waste are cadmium, hexavalent chromium, and bis(2-ethylhexyl) phthalate. Cadmium also has non-carcinogenic toxic effects. Allowable total concentrations in the waste, as calculated by DRAS for the waste, itself, not the TCLP leachate, were all at least 1,000 times greater than the actual maximum total concentrations found in the waste, and are not included in Table 2, since many amount to metal or cyanide concentrations of several per cent. However, in addition to limits on the concentrations of constituents in the TCLP leachate of the petitioned waste, EPA does propose to set the following limits on total concentrations, in units of milligrams of constituent per kilogram of unextracted waste (mg/kg): Barium: 20,000; Cadmium: 500; Chromium: 1,000; Cyanide (Total, not Amenable): 200; Lead: 2,000; and Nickel: 20,000. EPA asks for public comment on these limits which were chosen to be both protective of human health and the environment and to be realistic, attainable values for wastewater treatment sludges that contain metals and cyanide. The maximum reported total concentrations for Nissan's petitioned waste were all well below these limits. The limit for cyanide was chosen so that the waste could not exhibit the reactivity characteristic for cyanide by exceeding the interim guidance for reactive cyanide of 250 mg/kg of releasable hydrogen cyanide (SW–846, Chapter Seven, Section 7.3.3.)

TABLE 2.—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR NISSAN'S PETITIONED WASTE

Constituent	Delisting Level (mg/l TCLP)/ Delisting level in TCLP Based on MCL	DAF	DRAS-Calculated Risk for Maximum Concentration of Carcinogen in Waste	DRAS-Calculated Hazard Quotient for Maximum Concentration of Non-Carcinogen in Waste
Inorganic Constituents				
Arsenic	2.63×10^{-3}/2.70	54	9.5×10^{-6}	
Barium	206*/157*	78.2		8.98×10^{-4}.
Cadmium	1.58*/0.422	84.4	5.78×10^{-15}	0.00316.
Chromium	6.10×10^{5}*/1.08×10^{3}*		1.08×10^{4}	1.23×10^{-7}.
Hexavalent Chromium	Not Calculable; Risk Based on Inhalation of Particles in Air.	43.6	9.11×10^{-14}	
Copper	2.96×10^{4}/2.56×10^{4}▼	1.97×10^{4}		3.23×10^{-5}.
Cyanide	38.0/10.1	50.6		2.50×10^{-4}.
Lead	211*	1.41×10^{4}		Not Calculable; No Reference Dose for Lead.
Nickel	79.4	106		0.579.
Zinc	789	70		0.0216.
Organic Constituents				
Acetone	201	53.4		0.00125.
Bis(2-ethylhexyl)phthalate	0.0787/0.321	53.4	1.64×10^{-7}	
4-Methylphenol	10	53.4		0.0119.
Di-n-octyl phthalate	0.0984	75.9		0.102.
Isobutyl alcohol	602	53.4		0.00145.
Phenol	1,200	53.4		3.47×10^{-5}.
Xylenes	2,810/534	53.4		2.23×10^{-5}.
Total Hazard Quotient for All Waste Constituents.				0.726.
Total Carcinogenic Risk for the Waste (due to Arsenic, Cadmium, Hexavalent Chromium, and Bis(2-ethylhexyl) phthalate).			9.66×10^{-6}.	

* These levels are all greater than the Toxicity Characteristic (TC) regulatory level in 40 CFR 261.24. A waste cannot be delisted if it exhibits a hazardous characteristic; therefore, the delisting level for each of these constituents could not be greater than the TC level of 100 for Barium; 1.0 for Cadmium; 5.0 for Chromium; and 5.0 for Lead.

▼ The Safe Drinking Water Act standard for copper is a recommended secondary standard, rather than an enforceable MCL.

EPA proposes to use the delisting levels in the TCLP leachate calculated by the DRAS, using the EPACMTP (Table 2), in combination with the limits on total concentrations proposed in the paragraph preceding Table 2. These proposed delisting levels are summarized in Table 3, below. EPA is proposing to base the delisting levels for chromium on analysis for total chromium, not hexavalent chromium, for the following reasons: (1) Hexavalent chromium was undetected in the TCLP leachate of the petitioned waste; (2) the maximum reported concentration of total chromium in the unextracted waste was only 160 mg/kg; and (3) the maximum reported concentration of hexavalent chromium in the unextracted waste was only 6.7 mg/kg. EPA is not proposing delisting levels for cobalt, copper, silver, tin, vanadium, zinc, acetone, isobutyl alcohol, phenol, and xylenes, because the DRAS-calculated TCLP levels for these constituents are at least two orders of magnitude greater than the maximum reported concentrations in the TCLP leachate of the petitioned waste. EPA is not proposing delisting levels for arsenic for the following reasons: (1) TCLP leachate concentration was non-detect; (2) total concentration in the unextracted waste was below the background soil concentration for most of Tennessee, below the national average background, and three orders of magnitude below the DRAS allowable total concentration; and (3) DRAS found no ecological risk at the maximum reported concentrations and a human cancer risk within the range of 10^{-4} to 10^{-6} assuming a TCLP concentration equal to one-half the reporting limit of the analytical laboratory.

TABLE 3.—SUMMARY OF DELISTING LEVELS FOR NISSAN'S PETITIONED WASTE

Constituent	DRAS-Calculated Delisting Level (mg/l TCLP)	Proposed Total Concentrations (mg/kg in unextracted waste)
Inorganic Constituents		
Barium	*100.0	20,000
Cadmium	0.422	500.
Chromium	*5.0	1,000
Cyanide	10.1	200 (Total, not Amenable)
Lead	*5.0	2,000
Nickel	79.4	20,000
Organic Constituents		
Bis(2-ethylhexyl) phthalate	0.0787	
Di-n-octyl phthalate	0.0984	
4-Methylphenol	10	

* DRAS-calculated delisting level was higher than the TC level; therefore, the delisting level was set at the TC level.

C. Should the Multiple Extraction Procedure (MEP) Be Used To Evaluate This Delisting Petition?

EPA developed the MEP test (SW–846 Method 1320) to help predict the long-term resistance to leaching of stabilized wastes, which are wastes that have been treated to reduce the leachability of hazardous constituents. The MEP consists of a TCLP extraction of a sample followed by nine sequential extractions of the same sample, using a synthetic acid rain extraction fluid (prepared by adding a 60/40 weight mixture of sulfuric acid and nitric acid to distilled deionized water until the pH is 3.0 ± 0.2). The sample which is subjected to the nine sequential extractions consists of the solid phase remaining after, and separated from, the initial TCLP extract. EPA designed the MEP to simulate multiple washings of percolating rainfall in the field, and estimates that these extractions simulate approximately 1,000 years of rainfall. (*See* 47 FR 52687, Nov. 22, 1982.)

MEP data can be used to indicate whether a petitioned waste would be expected to leach hazardous constituents over the life of a landfill.[7] The average life of a landfill is approximately 20 years. (*See* 56 FR 32993, July 18, 1991; and 56 FR 67197, Dec. 30, 1991.)

EPA requests public comment on whether the MEP should be used in the evaluation of Nissan's petitioned waste.

D. Conclusion

After reviewing Nissan's processes, the EPA concludes that (1) no hazardous constituents of concern are likely to be present in Nissan's waste at levels that would harm human health and the environment; and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. *See* 40 CFR 261.21, 261.22, and 261.23, respectively.

EPA believes that Nissan's petitioned waste will not harm human health and the environment when disposed in a nonhazardous waste landfill if the delisting levels for land disposal as proposed in Preamble section II.B. are met.

EPA proposes to exclude Nissan's petitioned waste from being listed as F019, based on descriptions of waste management and waste history, evaluation of the results of waste sample analysis, and on the requirement that Nissan's petitioned waste must meet proposed delisting levels before disposal. Thus, EPA's proposed decision is based on verification testing conditions. If the proposed rule becomes effective, the exclusion will be valid only if the petitioner demonstrates that the petitioned waste meets the verification testing conditions and delisting levels in the amended Table 1 of Appendix IX of 40 CFR part 261. If the proposed rule becomes final and EPA approves that demonstration, the petitioned waste would not be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270. Although management of the waste covered by this petition would, upon final promulgation, be relieved from Subtitle C jurisdiction, the waste would remain

[7] This estimate would be based on the following type of calculation for a 100-gram sample, using nickel as an example: % nickel leached out over a long period of time = 100 × (total number of milligrams of nickel in all the sample MEP extracts) ÷ the number of milligrams of nickel originally present in the 100-gram sample.

a solid waste under RCRA. As such, the waste must be handled in accordance with all applicable Federal, State, and local solid waste management regulations. Pursuant to RCRA section 3007, EPA may also sample and analyze the waste to determine if delisting conditions are met.

III. Limited Effect of Federal Exclusion

Will This Rule Apply in All States?

This proposed rule, if promulgated, would be issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, 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 States. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal and State programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws. Furthermore, some States 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, Nissan must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Effective Date

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for the petitioner. 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, pursuant to 5 U.S.C. 553(d).

V. 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 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VI. National Technology Transfer and Advancement Act

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 proposed rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based Measurement System (''PBMS''), EPA proposes not to require the use of specific, prescribed analytical methods, except when required by regulation in 40 CFR parts 260 through 270. Rather the Agency plans to allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

VII. 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 on any 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.

VIII. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement and Fairness 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 that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have a significant economic impact on a substantial number of small entities.

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

IX. Executive Order 12866

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (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 of policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order.

OMB has exempted this proposed rule from the requirement for OMB review under section (6) of Executive Order 12866.

X. Executive Order 13045

The Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has 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. This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084 Affecting Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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 meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. Today's proposed rulemaking does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

XII. Submission to Congress and General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States.

The EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability, etc. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedures, or practice that do not substantially affect the rights or obligations of non-agency parties. *See* 5 U.S.C. 804(3). This rule will become effective on the date of publication as a final rule in the **Federal Register**.

XIII. Executive Order 13132

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 implications.''

''Policies that have federalism implications'' is defined in the Executive Order to include regulations 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 government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose 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 governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on 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, because it affects only one facility.

List of Subjects in 40 CFR Part 261

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

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

Dated: November 5, 2001.

James S. Kutzman,

Acting Director, Waste Management 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, part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* *	*	* * * *
Nissan North America, Inc	Smyrna, Tennessee	Wastewater treatment sludge (EPA Hazardous Waste No. F019) that Nissan North America, Inc. (Nissan) generates by treating wastewater from the automobile assembly plant located at 983 Nissan Drive in Smyrna, Tennessee. This is a conditional exclusion for up to 2,400 cubic yards of waste (hereinafter referred to as ''Nissan Sludge'') that will be generated each year and disposed in a Subtitle D landfill after [insert date of final rule.] Nissan must demonstrate that the following conditions are met for the exclusion to be valid. (1) *Delisting Levels:* All leachable concentrations for these metals, cyanide, and organic constituents must not exceed the following levels (ppm): Barium-100.0; Cadmium-0.422; Chromium-5.0; Cyanide-10.1, Lead-5.0; and Nickel-79.4; Bis(2-ethylhexyl) phthalate-0.0787; Di-n-octyl phthalate -0.0984; and 4-Methylphenol-10.0. These concentrations must be measured in the waste leachate obtained by the method specified in 40 CFR 261.24, except that for cyanide, deionized water must be the leaching medium. The total concentration of cyanide (total, not amenable) in the waste, not the waste leachate, must not exceed 200 mg/kg. Cyanide concentrations in waste or leachate must be measured by the method specified in 40 CFR 268.40, Note 7. The total concentrations of metals in the waste, not the waste leachate, must not exceed the following levels (ppm): Barium-20,000; Cadmium-500; Chromium-1,000; Lead-2,000; and Nickel-20,000. (2) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies, where specified by regulations in 40 CFR parts 260–270. Otherwise, methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the Nissan Sludge meet the delisting levels in Condition (1). (A) *Initial Verification Testing:* Nissan must collect and analyze a representative sample from each of the first eight rolloff boxes of Nissan sludge generated in its wastewater treatment system after [insert date of final rule]. Nissan must analyze for the constituents listed in Condition (1). Nissan must report analytical test data, including quality control information, no later than 60 days after generating the first Nissan Sludge to be disposed in accordance with the delisting Conditions (1) through (7). (B) *Subsequent Verification Testing:* If the initial verification testing in Condition (2)(A) is successful, i.e., delisting levels of condition (1) are met for all of the eight rolloffs described in Condition (2)(A), Nissan must implement an annual testing program to demonstrate that constituent concentrations measured in the TCLP extract and total concentrations measured in the unextracted waste do not exceed the delisting levels established in Condition (1). (3) *Waste Holding and Handling:* Nissan must store as hazardous all Nissan Sludge generated until verification testing, as specified in Condition (2)(A), is completed and valid analyses demonstrate that Condition (1) is satisfied. If the levels of constituents measured in the composite samples of Nissan Sludge do not exceed the levels set forth in Condition (1), then the Nissan Sludge is non-hazardous and must be managed in accordance with all applicable solid waste regulations. If constituent levels in a composite sample exceed any of the delisting levels set forth in Condition (1), the batch of Nissan Sludge generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA. (4) *Changes in Operating Conditions:* Nissan must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are implemented. EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify Nissan in writing that the Nissan Sludge must be managed as hazardous waste F019 until Nissan has demonstrated that the wastes meet the delisting levels set forth in Condition (1) and any levels established by EPA for the additional constituents of concern, and Nissan has received written approval from EPA. If EPA determines that the changes do not result in additional constituents of concern, EPA will notify Nissan, in writing, that Nissan must verify that the Nissan Sludge continues to meet Condition (1) delisting levels.

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

Facility	Address	Waste description
		(5) *Data Submittals:* Data obtained in accordance with Condition (2)(A) must be submitted to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, Mail Code: 4WD–RCRA, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303. This submission is due no later than 60 days after generating the first batch of Nissan Sludge to be disposed in accordance with delisting Conditions (1) through (7). Records of analytical data from Condition (2) must be compiled, summarized, and maintained by Nissan for a minimum of three years, and must be furnished upon request by EPA or the State of Tennessee, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). (6) *Reopener Language:* (A) If, at any time after disposal of the delisted waste, Nissan 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 the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, Nissan must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (B) If the testing of the waste, as required by Condition (2)(B), does not meet the delisting requirements of Condition (1), Nissan must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (C) Based on the information described in paragraphs (6)(A) or (6)(B) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take 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. (D) If EPA determines that the reported information does require Agency action, EPA will notify the facility in writing of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Nissan with an opportunity to present information as to why the proposed action is not necessary. Nissan shall have 10 days from the date of EPA's notice to present such information. (E) Following the receipt of information from Nissan, as described in paragraph (6)(D), or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment, given the information received in accordance with paragraphs (6)(A) or (6)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise. (7) *Notification Requirements:* Nissan must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[I.D. 062501B]

RIN 0648–AN62

Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearing notice; extension of public comment period.

SUMMARY: Notice is hereby given that the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, will extend the public comment period, through December 31, 2001, for the purpose of receiving comments on the proposed rule to amend the regulations protecting sea turtles to enhance their effectiveness