

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		<p>Carbon disulfide—2.3 Tributyl phosphate—<math>1.2 \times 10^{-1}</math> (6) Recordkeeping and Data Submittals. (a) Energy shall maintain records of all waste characterization, and waste processing strategies required by Condition (1), and verification sampling data, including QA/QC results, in the facility operating record for a period of no less than three (3) years. However, this period is automatically extended during the course of any unresolved enforcement action regarding the 200 Area ETF or as requested by EPA. (b) No less than thirty (30) days after receipt of verification data indicating a failure to meet delisting criteria of Condition (5), Energy shall notify the Regional Administrator. This notification shall include a summary of waste characterization data for the associated influent, verification data, and any corrective actions taken according to Condition (3)(b)(i). (c) Records required by Condition (6)(a) must be furnished on request by EPA or the State of Washington and made available for inspection. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: “Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928). I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the (those) identified section(s) of the document for which I cannot personally verify its (their) truth and accuracy, I certify as the official having supervisory responsibility of the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to Energy, I recognize and agree that this exclusion of waste will be void as if it never had effect to the extent directed by EPA and that the Energy will be liable for Energy’s reliance on the void exclusion.” (7) Treated Effluent Disposal Requirements. Energy may at any time propose alternate reuse practices for treated effluent managed under terms of this exclusion in lieu of disposal at the SALDS. Such proposals must be in writing to the Regional Administrator, and demonstrate that the risks and potential human health or environmental exposures from alternate treated effluent disposal or reuse practices do not warrant retaining the waste as a hazardous waste. Upon written approval by EPA of such a proposal, non-hazardous treated effluents may be managed according to the proposed alternate practices in lieu of the SALDS disposal requirement in paragraph (3)(a). The effect of such approved proposals shall be explicitly limited to approving alternate disposal practices in lieu of the requirements in paragraph (3)(a) to dispose of treated effluent in SALDS.</p>
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[FR Doc. 05–15329 Filed 8–2–05; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 268

[RCRA–2004–0009; FRL–7947–8]

#### Land Disposal Restrictions: Site-Specific Treatment Variances for Heritage Environmental Services LLC and Chemical Waste Management, Chemical Services, Inc

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) is today granting two site-specific treatment standard variances from the Land Disposal Restrictions (LDR) treatment

standards to Chemical Waste Management, Chemical Services LLC (CWM), and to Heritage Environmental Services LLC (Heritage), to treat a selenium-bearing hazardous waste from the glass manufacturing industry. This final rule follows a proposed rule and a subsequent request for comment. These facilities intend to treat and dispose of selenium-bearing hazardous waste from Guardian Industries Corp. (Guardian) at their RCRA permitted facilities in Model City, New York and Indianapolis, Indiana, respectively. Based on treatment data on a new proprietary chemical stabilization technology provided by Heritage, EPA is issuing variances so that both facilities may treat the Guardian waste to an alternate treatment standard of 11 mg/L selenium, as measured by the TCLP.

Upon promulgation of this final rule, CWM and Heritage may dispose of the treated waste in permitted RCRA

Subtitle C landfills, provided they meet the applicable LDR treatment standards for any other hazardous constituents in the waste. EPA is granting these variances because the chemical properties of the wastes differ significantly from the waste used to establish the current LDR standard for selenium (5.7 mg/L, as measured by the Toxicity Characteristic Leaching Procedure (TCLP)), and the petitions have adequately demonstrated that the waste cannot be treated to meet this treatment standard.

**DATES:** This final rule is effective August 3, 2005.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. RCRA–2004–0009. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose

disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m.–4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0271.

This **Federal Register** notice and related materials on Land Disposal Restrictions may also be viewed on the EPA Web site at <http://www.epa.gov/fedrgstr/EPA-WASTE/>, and at <http://www.epa.gov/epaoswer/hazwaste/ldr>.

**FOR FURTHER INFORMATION CONTACT:** For more detailed information on specific aspects of this rulemaking, contact Juan Parra at (703) 308–0478 or [parra.juan@epa.gov](mailto:parra.juan@epa.gov), Office of Solid Waste (MC 5302 W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

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### I. Background

#### A. What Is the Basis for LDR Treatment Variances?

Under section 3004(m) of the Resource Conservation and Recovery Act (RCRA), 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." EPA interprets this language to authorize treatment standards based on the performance of best demonstrated available technology (BDAT). This interpretation was upheld by the D.C. Circuit in *Hazardous Waste Treatment Council vs. EPA*, 886 F. 2d 355 (D.C. Cir. 1989).

The Agency recognizes that there may be wastes that cannot be treated to levels specified in the regulations (*see* 40 CFR 268.40) because an individual waste matrix or concentration can be substantially more difficult to treat than those wastes the Agency evaluated in establishing the treatment standard (51 FR 40576, November 7, 1986). For such wastes, EPA has a process by which a generator or treater may seek a treatment variance (*see* 40 CFR 268.44). If granted, the terms of the variance establish an alternative treatment standard for the particular waste at issue.

#### B. What Is the Basis of the Current Selenium Treatment Standard?

In the Third Third rule (55 FR 22521, June 1, 1990), the Agency developed performance standards for selenium based on stabilization as BDAT. At that time, EPA had information indicating that wastes containing high concentrations of selenium were rarely generated and land disposed. The Agency also stated that it believed that, for most waste containing high concentrations of selenium, recovery of the selenium was feasible using recovery technologies currently employed by copper smelters and copper refining operations. The Agency further stated that it did not have any performance data for selenium recovery, but available information indicated that recovery of elemental selenium from certain types of scrap material and other types of waste was practiced in the

United States. No comments or data were received on this issue in the Third Third rulemaking docket.

The Agency set the national treatment standard for selenium nonwastewaters using performance data from the stabilization of a characteristically hazardous mineral processing waste (waste code D010), which we determined at that time to be the most difficult-to-treat selenium waste. This untreated waste contained up to 700 ppm total selenium and 3.74 mg/L selenium in the TCLP leachate. The resulting post-treatment levels of selenium in the TCLP leachate were between 0.154 mg/L and 1.80 mg/L, which led to our establishment of a national treatment standard of 5.7 mg/L for D010 selenium non-wastewaters. This D010 mineral processing waste also contained toxic metals (*i.e.*, arsenic, cadmium, and lead) above characteristic levels. The treatment technology used to establish the selenium levels also resulted in meeting the LDR treatment standards for these non-selenium metals. The reagent to waste ratios varied from 1.3 to 2.7.

In the Phase IV final rule, the Agency determined that a treatment standard of 5.7 mg/L, as measured by the TCLP, continued to be appropriate for D010 non-wastewaters (63 FR 28556, May 26, 1998). The Agency also changed the universal treatment standard (UTS) for selenium nonwastewaters from 0.16 mg/L to 5.7 mg/L.

### II. What Is the Basis for Today's Determination?

#### A. Background for Today's Determination

On April 9, 2004, EPA received a treatment standard variance petition from CWM<sup>1</sup> to stabilize a glass manufacturing waste from Guardian Industries in Jefferson Hills, Pennsylvania (Guardian).<sup>2</sup> On November 19, 2004, EPA promulgated a direct final rule to grant a site-specific treatment standard of 28 mg/L selenium, as measured by the TCLP, to CWM in Model City, New York because we believed this action to be non-controversial. EPA also published a parallel proposed rule seeking comments on this site-specific treatment standard. In the parallel proposed rule, EPA proposed to allow CWM to treat the Guardian waste to an alternative

<sup>1</sup> All information and data in CWM's site-specific treatment standard variance petition can be found in the RCRA docket (RCRA–2004–0009) for this rulemaking.

<sup>2</sup> The Agency previously granted a site-specific treatment standard variance for selenium (39.4 mg/L, as measured by the TCLP) for this same waste to Heritage on February 11, 2004 (*see* 69 FR 6567).

treatment standard of 28 mg/L selenium, as measured by the TCLP (November 19, 2004, 69 FR 67695). EPA received comments from Heritage and Niagara Health Science Report Inc. (Niagara) that we deemed adverse. Heritage also provided performance data on treatability studies conducted on the Guardian waste in their comments to the CWM rule. As a result, EPA subsequently withdrew the direct final rule to evaluate these comments and to make a decision on a future action (December 23, 2004, FR 76863).

On February 28, 2005, EPA sought additional comments from the stakeholders of this rule on an option to use the new performance data provided by Heritage. Under this approach, Heritage's proprietary stabilization technology would be the basis for an alternative treatment standard for the Guardian waste. EPA received additional comments from Heritage and Niagara on this approach.

#### B. Waste Characteristics

Guardian Industries Corp. is a specialty glass manufacturing facility. Emissions from its glass furnace are first subject to lime injection, and subsequently captured in an electrostatic precipitator. Lime is added to remove sulphur compounds and selenium from the glass furnace gases.

The Guardian waste is a dry powder with a bulk density of about 0.4 g/cm<sup>3</sup>, and contains no free liquids or organic constituents. The calcium content is high, approximately 30%, since the waste contains lime injected to the furnace exhaust. Concentrations of total selenium in the untreated waste vary between 10,000 ppm and 85,000 ppm (1%–8.5%). The dust is a D010 characteristic waste because the selenium concentration exceeds 1.0 mg/L, as measured by the TCLP. The rate of variation in the amount of waste is related to demand, and ranges from 20–50 tons/month.

The land disposal restrictions found in 40 CFR 268.40(e) require characteristic wastes to meet the universal treatment standards (UTS) in 40 CFR 286.48 for all underlying hazardous constituents (UHCs) before the waste is land disposed. Analytical data on the raw Guardian waste indicate that the only underlying hazardous constituent present is chromium. The UTS level for chromium is 0.6 mg/L, as measured by the TCLP. The untreated waste contains, in some samples, chromium at levels sufficient such that

the waste exceeds the toxicity characteristic level of 5 mg/L, and is a D007 waste.

#### C. What Criteria Govern a Treatment Variance?

Under 40 CFR 268.44(h), facilities can apply for a site-specific variance in cases where a waste that is generated under conditions specific to only one site cannot be treated to the specified levels. In such cases, the generator or treatment facility may apply to the Administrator, or EPA's delegated representative, for a site-specific variance from a treatment standard. 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 developing the treatment standard, the waste cannot be treated by the best demonstrated available technology (BDAT) to specified levels or by the specified methods. (Note that there are other grounds for obtaining treatment variances, but this is the only provision relevant to the present petition.)

All information and data used in the development of these proposed treatment standard variances can be found in the OSWER Docket (RCRA–2004–0009) for this rulemaking.

#### D. New Treatment Technology for Selenium-Bearing Wastes

Heritage states that shortly after receiving the treatability variance for selenium (39.4 mg/L, as measured by the TCLP) on February 11, 2004 (60 FR 6567), they developed a new, proprietary, stabilization technology that they used to treat the Guardian waste. Based on data from the application of this new technology, Heritage submitted comments to EPA in response to the CWM rule suggesting a new TCLP selenium criterion of 10 mg/L, as measured by the TCLP, for the Guardian waste, in contrast to CWM's proposed treatment standard variance of 28 mg/L, as measured by the TCLP.

The performance data were obtained from stabilization optimization testing conducted by Heritage on the waste generated by Guardian. Heritage used two stabilization technologies to verify the performance of treatment recipes against the new stabilization method. The first two treatment recipes tested were Heritage's previously approved treatment recipe (0.35 parts ferrous sulfate, 1 part cement, 1 part cement kiln dust) and CWM's treatment recipe

from the proposed variance (0.20 parts ferrous sulfate, 1.0 part cement kiln dust). Five samples were treated using all three stabilization technologies. In addition to lab-scale testing, Heritage verified the effectiveness of the new stabilization recipe on the Guardian waste via several rounds of full-scale demonstrations. All information and data provided by Heritage can be found in the RCRA docket (RCRA–2004–0009). Collectively, the TCLP tests on all treated Guardian waste samples indicate a significant reduction in leachability. The new chemical stabilization treatment recipe obtained results that were one order of magnitude lower than the other two treatment recipes tested. The reduction in all cases, however, was not enough to meet the LDR treatment standard of 5.7 mg/L for selenium, as measured by the TCLP.

EPA believes from its analysis of the data submitted by Heritage that the most effective stabilization recipe for this waste consists of 1 part cement, 0.5 parts lime, 0.28 parts aluminum sulfate, and 0.017 parts calcium polysulfide (CaS<sub>x</sub>), resulting in a reagent to waste ratio of 1.8. Water is also added to make a thick paste that upon curing solidifies into a hard cemented material.

#### E. Determination of the New Alternative Treatment Standard for the Guardian Waste

When the Agency developed the national treatment standard of 5.7 mg/L for D010 selenium non-wastewaters, as measured by the TCLP, it used data with reagent to waste ratios that varied from 1.3 to 2.7 to calculate the treatment standard. The Heritage selenium variance that was previously granted for the Guardian waste reflected a reagent to waste ratio of 2.35 (69 FR 6567, February 11, 2004). Heritage, treating the same Guardian waste with their proprietary chemical stabilization technology, achieved a reagent to waste ratio of 1.8. The Agency notes that, by keeping the reagent to waste ratio to minimal levels, treatment facilities minimize the amount of treated waste to be disposed in hazardous waste landfills. The Agency recommends that CWM and Heritage use a reagent to waste ratio of 1.8 as an upper limit.

Using the BDAT methodology,<sup>3</sup> the Agency has calculated an alternative treatment standard of 11 mg/L, as measured by the TCLP, based on eight data points that were the result of stabilization treatment using a reagent to waste ratio of 1.8 for the Guardian

<sup>3</sup> BDAT Background Document for Quality Assurance/Quality Control Procedures and Methodology, October 23, 1991.

waste. Treated selenium concentrations for the eight samples ranged from 4.8 mg/L to 8.0 mg/L selenium, as measured

by the TCLP. Table 1 shows the results of leaching, as measured by the TCLP,

of the Guardian waste treated using the new stabilization recipe.

TABLE 1.—SUMMARY OF GUARDIAN WASTE

Heritage verification testing		
Guardian sample ID/ test ID	Total selenium content-estimate (percent)	Selenium concentration in treated waste TCLP (mg/L )
1183982/280 .....	6.7% (67,000 ppm)	7.0
1183983/281 .....	5.8% (58,000 ppm)	7.6
1184104/283 .....	7.2% (60,000 ppm)	6.9
1184304/284 .....	6.3% (72,000 ppm)	6.8
1183982/280 .....	6.7% (67,000 ppm)	7.0
Sample 1: full scale field test .....	Not available .....	8.0
Sample 1: full scale field test .....	Not available .....	4.8
Sample 1: full scale field test .....	Not available .....	6.3

*F. Availability of the Heritage Treatment Technology*

The new chemical stabilization technology developed by Heritage has a patent application pending for approval by mid 2006. EPA considers this technology to be the “best available treatment technology” (BDAT) for treating the Guardian waste and is using the performance data provided by Heritage as the basis for a site-specific treatment standard variance for the Guardian waste. EPA addressed the issue of the use of proprietary or patented technologies for establishing BDAT in the Solvents & Dioxin rule (November 7, 1986, 51 FR 40572). In that rule, EPA stated that it considers a technology that is proprietary or patented to be available, “if the Agency determines that the treatment method can be purchased from the proprietor or is a commercially available treatment.” (See 51 FR 40588, November 7, 1986.)

EPA is aware that the level achieved by Heritage’s proprietary stabilization technology as the best available technology treatment standard for the Guardian waste may necessitate actual use of the Heritage technology. Heritage has indicated that it will offer its use through a licensing arrangement. EPA has examined the Heritage licensing agreement and believes that it allows for the technology to be reasonably available for use by other entities. A boilerplate of the licensing agreement can be found in EDOCKET under Docket ID RCRA–2004–0009.

**III. Same Site-Specific Treatment Standard Variance for Heritage**

In the November 19, 2004 notice, we proposed to modify the existing selenium alternative treatment standard of 39.4 mg/L, as measured by the TCLP

(69 FR 67647), that EPA had previously granted to Heritage (69 FR 6567, February 11, 2004) for the same waste based on a variance petition submitted by CWM in which they demonstrated that a more stringent treatment standard—28 mg/L, as measured by the TCLP—was achievable. Based on comments received on that proposal, on February 28, 2005, EPA sought additional comments from stakeholders on using the new performance data provided by Heritage as BDAT for both CWM and Heritage, so that both treaters could treat the Guardian waste to the same treatment standard. EPA did not receive any comments against using this approach to set the alternative treatment standard to 11 mg/L selenium, as measured by the TCLP, for the Guardian waste.

**IV. What Is the Basis for EPA’s Approval of CWM’s and Heritage’s Request for an Alternative D010 Treatment Standard?**

After careful review of the petition submitted by CWM, and of the comments received on EPA’s proposals to modify the site-specific treatment standards for the Guardian waste at both the CWM and Heritage facilities, EPA concludes that the requirements for a treatment standard variance under 40 CFR 268.44(h)(1) are satisfied. CWM and Heritage have demonstrated that Guardian’s glass manufacturing waste differs significantly in chemical composition from the waste used to establish the original selenium treatment standard. Selenium TCLP concentrations in the untreated waste are one or two orders of magnitude higher than TCLP concentrations in the waste used to develop the treatment standard for D010 hazardous wastes. Data from CWM and Heritage

demonstrate that wastes containing high concentrations of selenium are not easily treated. Furthermore, both facilities are using stabilization as the treatment technology, which is consistent with EPA’s determination that stabilization is the best available treatment technology for this waste.

An added benefit of stabilizing the Guardian waste is that the hazardous components of the electrostatic precipitator dust are put into a solid matrix. The solid matrix substantially lowers the surface area potentially exposed to leaching from that of very fine untreated dust. The TCLP results show that, even when the solid is ground to less 9.5 mm, the solidified waste should reduce leaching potential after the waste is disposed of in a hazardous waste landfill.

Therefore, EPA is today granting these two site-specific variances from the D010 treatment standards for the Guardian waste stream in question since the waste cannot be treated to the level specified in the regulations with a reasonable waste to reagent ratio. Today’s alternative treatment standard will provide sufficient latitude for CWM and Heritage to treat the other metal (chromium) present in the waste to LDR treatment standards and, by raising the selenium treatment standard, will avoid the difficulty posed by the different solubility curves of selenium and chromium. EPA is amending 40 CFR 268.44 to note that Chemical Waste Management, Chemical Services LLC and Heritage Environmental Services, LLC would be subject to a selenium treatment standard of 11 mg/L, as measured by the TCLP.

## V. What Are the Terms and Conditions of the Variances?

In establishing an alternative treatment standard of 11 mg/L for selenium in the Guardian waste, as measured by the TCLP, EPA is not specifying that a specific recipe or methodology be used to reach the alternative treatment standard. The Agency notes that, to avoid questions of impermissible dilution, Heritage and CWM will need to keep the reagent to waste ratios within acceptable bounds. No specific ratios are being established in today's rule because the Agency does not desire to prevent further optimization of the treatment process. However, the Agency recommends that both facilities use a reagent to waste ratio of 1.8 to 1 as an upper limit, where the reagents are measured on a dry weight basis. This is the ratio used in the treatability study that forms the basis for establishing today's alternative treatment standard.

In addition, the Agency is requiring that Heritage and CWM not place the stabilized waste from Guardian directly on the operation layer on the floor of the landfill, nor in the area of a stand pipe or leachate sump pump. This restriction of the placement of the waste in the cell would minimize potential leaching in the landfill.

Upon promulgation of this final rule, CWM and Heritage may treat the Guardian waste to an alternate treatment standard of 11mg/L selenium, as measured by the TCLP. CWM and Heritage may dispose of the treated wastes<sup>4</sup> in a RCRA Subtitle C landfill provided they meet all the applicable LDR treatment standards for any other hazardous constituents in the wastes.

It is a technically necessary compromise that the alternative selenium standard for the Guardian waste is higher than the LDR treatment standard of 5.7 mg/L for selenium. As noted above and in the May 12, 1997, **Federal Register** (62 FR 26045), treatment cannot be optimized for both acid and base-soluble metals due to their different solubility curves. Because another toxic metal (chromium) is being immobilized to meet its respective universal treatment standard, we consider, under the circumstances, that threats are being minimized if the alternative selenium treatment standards are met, as required by 3004(m).

<sup>4</sup>Note that disposal in a Subtitle C landfill is required because the treated wastes are still characteristic for selenium (*i.e.*, the waste has TCLP values above the toxicity characteristic level for selenium of 1.0 mg/L).

## VI. Response to Comments

The Agency received comments from two parties on the November 19, 2004, proposed rule. This **Federal Register** notice discusses the major issues raised by the commenters. Detailed responses to all comments raised can be found in the Response to Comments Document which is in the OSWER Docket (RCRA-2004-0009) for this rulemaking.

The first commenter was the waste treatment company, Heritage Environmental Services LLC, which had previously received a variance for the Guardian waste (*see* 69 FR 6567, February 11, 2004). Heritage submitted performance data showing that its new stabilization technology was successful in achieving additional stabilization of selenium and chromium in the Guardian waste. Heritage proposed that EPA establish a new selenium variance level of 10 mg/L for CWM, as measured by the TCLP, based upon their performance data. EPA agrees with the comment submitted by Heritage, but the Agency has calculated an alternative treatment standard of 11 mg/L, as measured by the TCLP, and is requiring the same standard for both facilities (CWM and Heritage).

The second commenter was Niagara Health Science Report Inc. (Niagara). Niagara commented that the proposed standard would not provide any incentive for the waste industry to develop alternative recovery technologies for selenium-bearing hazardous wastes. The Agency's preference would be to recover the selenium in an environmentally sound manner over stabilization and land disposal. However, there has been no recorded domestic production of secondary selenium in 2002, 2003, and 2004.<sup>5</sup> In addition, our discussions with the glass manufacturing industry, our research on commodity reports regarding selenium production and demand, and conference calls with commercial vendors indicate that all potential selenium recovery technologies being considered remain pilot projects and have been shown not to be economically viable for treatment of wastes containing low concentration of selenium. Consequently, EPA believes that the development of an environmentally protective secondary selenium recovery system in the U.S. is not reasonably expected in the near future.

On February 28, 2005, EPA sought additional comments from the stakeholders on using the new performance data provided by Heritage

<sup>5</sup>"Selenium"; U.S. Geological Survey—Minerals Yearbooks.

as BDAT for the Guardian waste. Heritage submitted a response that expressed their support for the Agency to establish an alternative treatment standard of 11 mg/L, as measured by the TCLP.

Niagara commented that there is no critical need to grant a variance for the Guardian waste to CWM since Heritage had demonstrated their ability to achieve a TCLP selenium criterion of 10 mg/L. The Agency agrees that Heritage has developed a treatment methodology that performs better than the stabilization technologies that were used to develop the proposed alternative treatment standard for the Guardian waste. The Agency is, therefore, establishing a site-specific treatment standard based upon the performance of the Heritage technology. As a result, Guardian will have the option of sending their waste to either treater/disposal facility to be treated to the same level of performance.

## VII. Administrative Requirements

### A. Executive Order 12866: Regulatory Planning and Review

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 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. These variances only change the treatment standard applicable to a D010 waste stream that is treated at the CWM Chemical Services LLC facility in Model City, New York, and the Heritage Environmental Services LLC facility in Indianapolis, Indiana.

### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These site-specific treatment standard variances do not impose information collection burden on CWM (Model City) and Heritage given their petitions contains the information needed to determine effectiveness of treatment. All information and data used in the development of these treatment standard variances can be found in the RCRA docket (RCRA-2004-0009) for this rulemaking. These actions also do not change in any way the paperwork requirements already applicable to this waste. It, therefore, does not affect the requirements under the Paperwork Reduction Act.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (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 a 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 as defined by the Small Business Administration's (SBA) regulations at 13

CFR 121.201; (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 final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. None of the entities involved in this final rule are small entities as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201.

### D. 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, 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 adopts 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, educating, and advising

small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector, and it does not impose any Federal mandate on State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. This rule also does not create new regulatory requirements; rather, it merely establishes alternative treatment standards for a specific waste that replace standards already in effect. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

### E. 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 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."

This final rule does not have federalism implications. It will not have substantial direct effect 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. Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Thus, Executive Order 13132 does not apply to this rule.

### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA

to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This final rule does not have tribal implications, as specified in Executive Order 13175.

Today’s final rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule issues two site-specific treatment standard variances from the LDR treatment standards for a specific characteristic selenium waste that will be disposed in existing, permitted hazardous waste landfills. Accordingly, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks*

“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 final rule is not subject to Executive Order 13045 because it does not meet either of these criteria. The waste described in these site-specific treatment standard variances will be treated by Heritage Environmental Services, LLC or Chemical Waste Management, Chemical Services LLC, and then disposed of in existing, permitted RCRA Subtitle C landfills, ensuring that there will be no risks that may disproportionately affect children.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act of 1995*

Section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (“NTTAA”), Pub. L. 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.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

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 variances apply to a D010 waste stream at the Heritage Environmental Services, LLC facility in Indianapolis, Indiana and at the Chemical Waste Management, Chemical Services LLC. facility in Model City, New York. These selenium wastes will be disposed of in existing, permitted RCRA Subtitle C landfills, ensuring protection to human health and the environment. Therefore, the Agency does not believe that today’s rule will result in any disproportionately negative impacts on minority or low-income communities.

*K. Congressional Review Act*

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 the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today’s action under section 801 because this is a rule of particular applicability, applying only to a specific waste type at two facilities under particular circumstances.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804 (2). This rule will be effective August 3, 2005.

**List of Subjects in 40 CFR Part 268**

Environmental protection, Hazardous waste, Variance, Selenium.

Dated: July 26, 2005.

**Thomas P. Dunne,**

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response (OSWER).*

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

**PART 268—LAND DISPOSAL RESTRICTIONS**

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

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

■ 2. Section 268.44, the table in paragraph (o) is amended by:

■ a. Revising the entry for “Guardian Industries Corp.”

■ b. Revising footnote number 11.

The revisions and additions read as follows:

**§ 268.44 Variance from a treatment standard.**

\* \* \* \* \*

(o) \* \* \*

WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40.

Facility name <sup>1</sup> and address	Waste code	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
			Concentration (mg/L)	Notes	Concentration (mg/kg)	Notes
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Guardian Industries Jefferson Hills, PA (6), (11), and (12).	D010 Standards under 268.40	Selenium	NA	NA	11 mg/L TCLP.	NA
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

Note: NA means Not Applicable.

<sup>1</sup> A facility may certify compliance with these treatment standards according to provisions in 40 CFR 268.7.

<sup>6</sup> Alternative D010 selenium standard only applies to electrostatic precipitator dust generated during glass manufacturing operations.

<sup>11</sup> D010 wastes generated by this facility may be treated by Heritage Environmental Services, LLC at their RCRA permitted treatment facility in Indianapolis, Indiana or by Chemical Waste Management, Chemical Services Inc. at their RCRA permitted treatment facility in Model City, New York.

\* \* \* \* \*  
 [FR Doc. 05-15325 Filed 8-2-05; 8:45 am]  
 BILLING CODE 6560-50-P

**DEPARTMENT OF THE INTERIOR**

**Office of the Secretary**

**43 CFR Part 39**

[1090-AA93]

**Administrative Wage Garnishment**

**AGENCY:** Office of the Secretary, Interior.  
**ACTION:** Final rule and request for comments.

**SUMMARY:** The Department of the Interior (the Department) adopts the authority established under the Debt Collection Improvement Act (DCIA) to use administrative wage garnishment to collect delinquent non-tax debts. The DCIA allows a Federal agency collecting delinquent non-tax debt from an employee of a non-Federal entity to issue a wage garnishment order without first obtaining a court order. In order to establish procedures enabling the Department to use this authority, the Department adopts, without change, the administrative wage garnishment regulations issued by the Department of the Treasury, and designates the Office of Hearings and Appeals to conduct hearings under this authority.

**DATES:** This rule is effective September 2, 2005. Comments must be received by October 3, 2005.

**ADDRESSES:** You may submit comments, identified by the number 1090-AA93 by any of the following methods:

—Federal rulemaking portal: <http://www.regulations.gov> Follow the instruction for submitting comments.

—E-mail: [William\\_Webber@ios.doi.gov](mailto:William_Webber@ios.doi.gov) Include the number 1084-AA00 in the subject line of the message.  
 —Fax: (202) 208-6940.  
 —Mail: William Webber, Focus Leader, Asset and Debt Management, Office of Financial Management, U.S. Department of the Interior, 1849 C Street, NW., Mail Stop 5412 MIB, Washington, DC 20240.  
 —Hand delivery: Office of Financial Management, U.S. Department of the Interior, 1849 C Street, NW., Room 5412, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** William Webber, Focus Leader, Asset and Debt Management, Office of Financial Management, U.S. Department of the Interior, 1849 C Street, NW., Mail Stop 5412 MIB, Washington, DC 20240; (202) 208-5684.

**SUPPLEMENTARY INFORMATION:** The Department is adding a new part 39 to 43 CFR to implement administrative wage garnishment provisions under section 31001(o) of the Debt Collection Improvement Act of 1966 (DCIA), Public Law 104-134, 110 Stat. 1321-358 (April 25, 1996), codified at 31 U.S.C. 3720D. Under this statute, the Department is adopting the administrative wage garnishment regulation issued by the Department of the Treasury at 31 CFR 285.11. Under the DCIA, a Federal agency that is collecting delinquent non-tax debt may administratively garnish the debtor's wages using a hearing process under the agency's own regulations or in accordance with regulations promulgated by the Secretary of the Treasury, if the agency adopts those regulations by reference. The DCIA allows a Federal agency collecting delinquent non-tax debt from a non-Federal employee to issue a wage garnishment order without first obtaining a court order. Should a debtor submit a written request for a hearing

concerning the existence or amount of a debt, the administrative wage garnishment hearing procedures established in Treasury's regulations will be utilized by the Department to provide the debtor an opportunity to contest the garnishment. The Office of Hearings and Appeals will conduct the necessary hearings.

The Department's debt collection program does not require procedures different from those established by the Department of the Treasury, and therefore the Department hereby adopts the Treasury regulation without modifications, except to designate the Offices of Hearing and Appeals to conduct the hearings.

**Procedural Matters**

*Need To Issue a Direct Final Rule*

The Department has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply because of the exception under 5 U.S.C. 553(b)(3)(B), which allows the agency to suspend the notice and public procedure when the agency finds for good cause that those requirements are impractical, unnecessary, and contrary to the public interest. Because this rule commits the Department to follow without change an existing regulation of the Department of the Treasury, which has already been the subject of a proposed rule and public comment when promulgated by Treasury, we have determined that publication of a proposed rule and solicitation of comments is not necessary. While we are not required to solicit comments under the Administrative Procedure Act, the Department is soliciting comments to allow further public input regarding these procedures and will