when an inherent secondary entrapment protection device senses an obstruction and initiates a reversal, a control activation shall not move the door downward until the operator reverses the door a minimum of 2 inches (50.8 mm). The test is to be performed as described in § 1211.7(b)(3).

5. Section 1211.14 is amended by revising paragraph (b)(2) to read as follows:

§ 1211.14 [Amended]

(a) * * *

(b) *Specific required instructions.*

(1) * * *

(2) The User Instructions shall include the following instructions:

Important Safety Instructions

Warning—To reduce the risk of severe injury or death:

1. Read and Follow all Instructions.

2. Never let children operate, or play with door controls. Keep the remote control away from children.

3. Always keep the moving door in sight and away from people and objects until it is completely closed. No One Should Cross the Path of the Moving Door.

4. NEVER GO UNDER A STOPPED PARTIALLY OPEN DOOR.

5. Test door opener monthly. The garage door MUST reverse on contact with a 1½ inch object (or a 2 by 4 board laid flat) on the floor. After adjusting either the force or the limit of travel, retest the door opener. Failure to adjust the opener properly may cause severe injury or death.

6. For products requiring an emergency release, if possible, use the emergency release only when the door is closed. Use caution when using this release with the door open. Weak or broken springs may allow the door to fall rapidly, causing injury or death.

7. Keep Garage Door Properly Balanced. See owner's manual. An improperly balanced door could cause severe injury or death. Have a qualified service person make repairs to cables, spring assemblies and other hardware.

8. Save These Instructions.

Dated: January 11, 2007.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E7–580 Filed 1–17–07; 8:45 am]

BILLING CODE 6335–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 302

[EPA–HQ–RCRA–2006–0984, FRL–8270–7]

RIN 2050–AG15

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Amendment to Hazardous Waste Code F019

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend today the list of hazardous wastes from non-specific sources (called F-wastes) under 40 CFR 261.31 by modifying the scope of the EPA Hazardous Waste No. F019 (Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process). The Agency would be amending the F019 listing to exempt wastewater treatment sludges from zinc phosphating, when such phosphating is used in the motor vehicle manufacturing process. EPA is proposing two options that would require that the wastes be disposed in a landfill unit that meets certain liner design criteria. These proposed modifications to the F019 listing would not affect any other wastewater treatment sludges either from the chemical conversion coating of aluminum, or from other industrial sources. Additionally, this action would amend the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) list of Hazardous Substances and Reportable Quantities under 40 CFR 302.4 so that the F019 listing description is consistent with the proposed amendment to F019 under 40 CFR 261.31.

DATES: Comments must be received on or before March 19, 2007. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before February 20, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2006–0984 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *rcra.docket@epamail.epa.gov,* Attention Docket ID No. EPA–HQ–RCRA–2006–0984.
- *Mail:* Comments may be submitted by mail to: OSWER Docket, Office of Solid Waste, U.S. Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–RCRA–2006–0984. Please include a total of three copies of your comments. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.
- *Hand Delivery:* Deliver your comments to: EPA Docket Center, Public Reading Room, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA–2006–0984. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays) and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2006–0984. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as a part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects

or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in *www.regulations.gov* index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. The Public Meeting Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the OSWER Docket and the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Mr. James Michael of the Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (E-mail address and telephone number: *michael.james@epa.gov,* (703) 308–8610). For information on the procedures for submitting CBI data, contact Ms. LaShan Haynes (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (E-mail address and telephone number: *haynes.lashan@epa.gov,* (703) 605–0516).

SUPPLEMENTARY INFORMATION:

I. General Information

A. Who is Potentially Affected by This Proposed Rule?

This regulation could directly affect businesses that generate certain wastes from the manufacturing of motor vehicles in the (1) automobile manufacturing industry and (2) light truck/utility vehicle manufacturing industry (NAICS codes 336111 and 336112, respectively). Other motor vehicle manufacturing industries (e.g., heavy duty truck or motor home manufacturing (NAICS code 336120)) are not affected by this rule. The wastes affected by this proposed rule are wastewater treatment sludges generated from the chemical conversion coating of aluminum using a zinc phosphating process and are currently listed as EPA Hazardous Waste No. F019 (see 40 CFR 261.31). If the rule is promulgated in either of the two ways it is proposed today, these wastes would not be hazardous waste, provided the wastes are disposed in a landfill unit that meets certain liner design criteria. Impacts on potentially affected entities are summarized in Section VI of this Preamble. The document, ''Estimate of Potential Economic Impacts for USEPA's Proposed Amendment to RCRA Hazardous Wastecode F019 to Exclude Motor Vehicle Manufacturing Industries,'' presents an analysis of potentially affected entities (hereinafter, referred to as the Economics Background Document). This document is available in the docket established in support of today's proposed rule. Entities potentially affected by this action are at least 14 current generators within the motor vehicle manufacturing industry consisting of six auto and eight light truck/utility vehicle plants and up to 39 other facilities in these two industries that may begin applying aluminum parts and could potentially generate F019 waste.

To determine whether your facility is affected by this action, you should examine 40 CFR Parts 260 and 261 carefully, along with the proposed regulatory language amending Chapter I of the Code of Federal Regulations (CFR). This language is found at the end of this **Federal Register** notice. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information submitted on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR part 2.

2. *Tips for Preparing your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternative and substitute language for your requested changes.
- Describe any assumptions that you used and provide any technical information and/or data that you used.
- If you estimate potential burden or costs, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Preamble Outline

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

I. Legal Authority

EPA proposes these regulations under the authority of Sections 2002 and 3001(b) and (f), 3004(d)–(m) and 3007(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended, most importantly by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6912, 6921(b), 6924(d)–(m) and 6927(a). These statutes combined are commonly referred to as the ''Resource Conservation and Recovery Act'' (RCRA) and will be referred to as such for the remainder of this Notice.

Because EPA is modifying the national listing of F019, EPA believes the appropriate statutory authority is that found in section 3001 (b), rather than the authority in section 3001 (f). RCRA section 3001 (f) pertains solely to the exclusion of a waste generated at a particular facility in response to a petition. Accordingly, neither the procedures nor the standards established in that provision, or in EPA's regulations at 40 CFR 260.22 are applicable to this rulemaking.

Section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602(a) is the authority under which the CERCLA aspects of this rule are promulgated.

II. List of Acronyms

ACRONYMS

Acronym	Definition
BRS	Biennial Reporting System
CBI	Confidential Business Information
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
COPCs	Constituents of Potential Concern
CWA	Clean Water Act
DAF	Dilution and Attenuation Factor
DRAS	Delisting Risk Assessment Software
EPA	Environmental Protection Agency
ICR	Information Collection Request
IWEM	Industrial Waste Management Evaluation Model
LDR	Land Disposal Restrictions
MCL	Maximum Contamination Limit
NAICS	North American Industrial Classification System
NTTAA	National Technology and Transfer Act
OMB	Office of Management and Budget
OSWER	Office of Solid Waste and Emergency Response
PRA	Paperwork Reduction Act
POTW	Publicly Owned Treatment Works ppm parts per million
RCRA	Resource Conservation and Recovery Act
RFA	Regulatory Flexibility Act
RQ	Reportable Quantity
SIC	Standard Industrial Classification
TRI	Toxics Release Inventory
UMRA	Unfunded Mandates Reform Act
WWT	Wastewater Treatment

III. Overview

Purpose of the Proposed Rule

The Agency is proposing to amend the list of hazardous wastes from non-specific sources under 40 CFR 261.31 by modifying the scope of EPA Hazardous Waste No. F019, which currently reads: ''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 Agency is proposing to amend the F019 listing to exempt the wastewater treatment sludge generated from zinc phosphating, when zinc phosphating is used in the automobile assembly process and provided the waste is disposed in a landfill unit subject to certain liner design criteria. Specifically, under the two options proposed today, these wastes would not be hazardous if they are disposed in a landfill unit subject to, or otherwise meeting, certain liner requirements. Wastes that meet this condition would be exempted from the listing from their point of generation, and would not be subject to any RCRA Subtitle C management requirements for generation, storage, transport, treatment, or disposal (including the land disposal restrictions). Generators of such wastes may be exempted from the F019 listing if they meet the condition for exemption, and they maintain adequate records. EPA is proposing to require generators to keep records showing that they used a landfill that meets the design requirements.

The motor vehicle manufacturing industry incorporates aluminum into vehicle parts and bodies for the purpose of making them lighter-weight and thus more capable of increasing gas mileage. However, when aluminum is incorporated into the body of an automobile, the conversion coating step in the manufacturing process results in the generation of a RCRA-listed hazardous waste (F019) in the form of a wastewater treatment sludge from the

conversion coating process, while the wastewaters from the conversion coating of steel in the same industry do not generate a listed hazardous waste. By removing the regulatory controls under RCRA, EPA is facilitating the use of aluminum in motor vehicles. The Agency believes that the incorporation of aluminum will be advantageous to the environment since lighter-weight vehicles are capable of achieving increased fuel economy and associated decreased exhaust air emissions.

IV. Background

A. How EPA Regulates Hazardous Waste

EPA's regulations establish two ways of identifying solid wastes as hazardous under RCRA. A waste may be considered hazardous if it exhibits certain hazardous properties (''characteristics'') or if it is included on a specific list of wastes EPA has determined are hazardous (''listing'' a waste as hazardous) because the Agency found them to pose substantial present or potential hazards to human health or the environment. EPA's regulations in the Code of Federal Regulations (40 CFR) define four hazardous waste characteristic properties: ignitability, corrosivity, reactivity, and toxicity (see 40 CFR 261.21–261.24). As a generator, you must determine whether or not a waste exhibits any of these characteristics by testing, or by using your knowledge of the process that produced the waste (see § 262.11(c)).

EPA may also conduct a more specific assessment of a waste or category of wastes and ''list'' them if they meet criteria set out in 40 CFR 261.11. Under the third criterion, identified in 40 CFR 261.11 (a)(3), the Agency may list a waste as hazardous if it contains hazardous constituents identified in 40 CFR part 261, Appendix VIII, and if EPA concludes that ''the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.'' EPA places chemicals on the list of hazardous constituents in Appendix VIII ''if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms.'' See 40 CFR 261.11(a)(3). When listing a waste, the Agency also adds any hazardous constituents that serve as the basis for listing the waste to 40 CFR part 261, Appendix VII.

The regulations at 40 CFR 261.31 through 261.33 contain the various hazardous wastes the Agency has listed to date. Section 261.31 lists waste generated from non-specific sources, known as ''F-wastes,'' and contain wastes that are usually generated by various industries or types of facilities. Today's proposed regulations would revise the listing for one of these wastes, F019.

If a waste exhibits a hazardous characteristic, or is listed as a hazardous waste, then it is subject to federal requirements under RCRA. Facilities that generate, transport, treat, store or dispose of such waste must meet hazardous waste management requirements, including the need to obtain permits to operate, are commonly referred to as ''Subtitle C'' facilities. (Subtitle C is the subsection of RCRA that governs the management of hazardous waste. EPA standards and procedural regulations implementing Subtitle C are found generally at 40 CFR parts 260 through 273.)

The RCRA regulations provide a form of relief for listed wastes through a site-specific process known as ''delisting.'' The regulations governing the delisting process are given at 40 CFR 260.20 and 260.22. These regulations set out a procedure and standards by which persons may demonstrate that a specific waste from a particular generating facility should not be regulated as a listed hazardous waste under Subtitle C of RCRA. Under these regulations, any person may petition EPA to remove its waste from regulation by excluding it from the lists of hazardous wastes contained in Part 261. EPA has granted delistings to various facilities that generate or manage F019 wastes, including motor vehicle manufacturing plants. (See Section IV.D.) As a condition to some of the granted delistings, the facility generating that waste must periodically sample and analyze the waste for the presence and quantity of specific chemical constituents of concern. This periodic sampling and analysis is called ''verification sampling.'' In some cases, facilities submit the results of the verification sampling and analysis to EPA to ensure that the waste's continuing status of nonhazardous is appropriate.

A solid waste, that is determined not to be a listed and/or characteristic hazardous waste, may be managed at ''Subtitle D'' facilities. These facilities are approved by state and local governments and generally impose less stringent requirements on management of wastes than Subtitle C facilities. Subtitle D is the statutory designation for that part of RCRA that deals with disposal of nonhazardous solid waste. EPA regulations affecting Subtitle D facilities are found at 40 CFR parts 240 through 247, and 255 through 258. Regulations for Subtitle D landfills that accept municipal waste (''municipal solid waste landfills'') are in 40 CFR part 258.

B. Overview of F019 Listing

Hazardous Waste No. F019 is defined as ''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 hazardous constituents for which the waste is listed are hexavalent chromium and cyanide (complexed). The F019 wastewater treatment sludge is generated from the rinses and overflows from the chemical conversion coating of aluminum. Chemical conversion coating processes involve the application of a coating to a previously deposited metal or a base metal for increased corrosion protection, lubricity, preparation of the surface for additional coatings, or formulation of a special surface appearance. This manufacturing operation includes chromating, phosphating, metal coloring and immersion plating.

Phosphate conversion coatings produce a mildly protective layer of insoluble crystalline phosphate on the surface of a metal. Phosphate coatings are used to provide a more suitable base for paints and other inorganic coatings, to condition the surfaces for cold forming operations by providing a base for drawing compounds and lubricants, and to impart corrosion resistance to the metal surface by the coating itself or by providing a suitable base for rust-preventive oils or waxes. Phosphate conversion coatings are formed by the immersion of iron, steel or zinc plated steel in a dilute solution of phosphoric acid plus other reagents. Phosphate conversion coatings can also involve spray-on applications.

C. Regulatory History of F006/F019

On May 19, 1980, EPA published an interim final rule listing ''wastewater treatment sludges from electroplating operations'' as EPA Hazardous Waste No. F006. See 40 CFR 261.31 (45 FR 33112). The hazardous constituents for which this waste was listed are cadmium, hexavalent chromium, nickel and complexed cyanide. In response to comments on the interim final regulation, the listing was modified on November 12, 1980 (45 FR 74884) to read as follows: ''wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc

plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and, (6) chemical etching and milling of aluminum.''

Additionally, in response to other comments, the Agency separated ''wastewater treatment sludges from the chemical conversion coating of aluminum'' from the F006 listing and listed them as F019. Commenters had argued that these sludges should not be listed as F006 because they do not contain all four of the constituents for which F006 was listed. That is, commenters contended that these wastes do not typically contain cadmium and nickel. EPA agreed that these wastes did not typically contain cadmium and nickel, but maintained that, since the wastes contain hexavalent chromium and complexed cyanides, they should nevertheless be regulated. The Agency, therefore, listed them as hazardous waste, F019, and only listed hexavalent chromium and complexed cyanides as the constituents of concern for these wastes in Appendix VII of Part 261.[1]

On December 2, 1986 (51 FR 43350), EPA issued an interpretive rule stating that the Agency had re-evaluated its previous interpretations of the scope of the application of F006 and had determined that those interpretations were overly broad. As a result, the Agency stated that the following processes were not included in the F006 listing: chemical conversion coating, electroless plating and printed circuit board manufacturing. EPA further clarified that the F006 listing includes wastewater treatment sludges from: (1) Common and precious metals electroplating, except tin, zinc (segregated basis), aluminum and zinc plating on carbon steel; (2) anodizing, except sulfuric acid anodizing of aluminum; (3) chemical etching and milling, except when performed on aluminum; and, (4) cleaning and stripping, except when associated with tin, zinc, and aluminum plating on carbon steel. While this interpretation removed chemical conversion coating from the scope of F006, it did not affect the F019 listing. That is, wastewater treatment sludges from the chemical conversion coating of aluminum continued to be regulated as F019.

Through a number of delistings and the Agency's evaluation for today's proposal, EPA has since learned that one of the chemical conversion coating operations—zinc phosphating—may not result in the generation of a hazardous wastewater treatment sludge. (See discussion below describing the zinc phosphating process.) Therefore, EPA is proposing today to amend the F019 listing to exempt the wastewater treatment sludges from zinc phosphating, when such phosphating is used at motor vehicle manufacturing plants, provided certain disposal conditions are met.

EPA is not reopening any aspect of the F019 listing other than those specifically identified in this proposal, and will not respond to any comments that address issues beyond the specific proposals outlined in this notice.

D. Description of the Zinc Phosphating-Conversion Coating Process at Motor Vehicle Manufacturing Plants

The zinc phosphating process at motor vehicle manufacturing plants is a multiple stage immersion process. The number of stages in the zinc phosphating process may vary from plant to plant, but they generally involve: cleaning and surface preparation, rinsing, conversion coating and rinsing.

Cleaning and surface preparation: The purpose of this stage is to remove the physical contaminants from the surface of the assembled vehicle body so that the conversion coating will be applied evenly and continuously across the metal surfaces. Typical surface contaminants are metal working oil, rust protection oil, dirt and oxides from corrosion. Since the surface of the metal becomes part of the coating, this stage is particularly important. Improper processing can result in blisters or poor appearance in the metal finish. Cleaning and surface preparation is typically done first with water and surfactants followed by an alkaline solution. The alkaline solution removes microscopic layers of metal to ensure that metal is exposed and available for the chemical conversion reactions.

Rinsing: The rinse stage stops the metal removal by washing away the alkaline solution. Rinsing is done with water followed by an alkaline rinse conditioner, which prepares the metal surface for the conversion coating process.

Conversion coating: During this stage, the conversion coating process converts the metal surface of the assembled vehicle bodies by dissolving the metal and forming ''sites'' into which the zinc phosphate coating is deposited. The zinc phosphate coating provides a stable, corrosion resistant base for painting. The phosphated conversion coating bath contains phosphoric acid with certain metals (zinc and manganese) and accelerators such as nickel. Fluoride is added to control crystal structure and maintain the composition of the bath. Hexavalent chromium and complexed cyanides are not used in this zinc phosphating conversion coating process.[2]

Rinsing: Once the conversion coating process is completed, the assembled vehicle bodies go through a water rinse to stop the conversion coating process and to remove any excess salts from the metal surfaces. A final acidic rinse is then used to seal the pores in the zinc phopshate coating and to remove any excess materials from the metal surfaces. During this final rinse, a sealant is added for additional corrosion protection. From here, the assembled vehicle bodies then proceed to the painting process.

E. Amount of F019 Sludge Generated by the Motor Vehicle Manufacturing Industry

As of 2003, 11 automobile manufacturing plants (NAICS 336111) generated a total of 5,300 tons per year of F019 sludge ranging between 177 and 1,249 tons per year per plant (average of 477 tons per year per plant), and 12 light truck/utility vehicle manufacturing plants (NAICS 336112) generated a total of 9,300 tons per year of F019 sludge ranging between 112 to 1,620 tons per year per plant (average of 772 tons per year per plant). As of year-end 2005, EPA regional offices have delisted 47 former F019 generators in 19 industries, including 35,000 cubic yards (i.e., about 35,000 tons) per year of F019 sludge formerly generated by 15 motor vehicle manufacturing plants. Historically, between 1995 and 2003, the annual count of F019 generators in the motor vehicle manufacturing industries affected by this proposed rule has fluctuated between 10 to 22 generators, and between 8,000 to 13,000 tons per year of F019 sludge generated.

F. Composition of the F019 Sludge

The F019 sludge from motor vehicle manufacturers is generated from dewatering of wastewater, typically

[1] Note that aluminum conversion coating using the zinc phosphating process utilizes nickel, as noted in section IV.D.; thus, nickel is a potential constituent of concern in the waste at issue in this proposed amendment.

[2] The analytical data for sludge samples show the presence of chromium and cyanide. Chromium appears to arise, in part, from the use of trivalent chromium in ''sealing'' during the rinsing step in the process; the source of trace levels of cyanide is not clear. However, levels of hexavalent chromium and cyanide were not present at levels of concern based on EPA's risk assessment (i.e., the ''Technical Support Document: Assessment of Potential Risks from Managing F019 Waste from Motor Vehicle Manufacturing Industry'' in the docket for this proposed rulemaking); also see Section V.B.

yielding a pressed ''filter cake'' with a solids content that ranges between 30% and 50% by weight. Reviewing the Material Safety Data Sheets for the chemicals used in, and prior to, the conversion coating process indicates that a wide range of elements can be expected to be present in the wastewaters and the sludges resulting from wastewater treatment.

The specific chemical constituents that are found in motor vehicle manufacturers' F019 sludge, listed in order of frequency found, are nickel, fluoride, zinc, barium, copper and chromium (all found in 100% of a selected number of samples reviewed); tin, formaldehyde, lead, cobalt, mercury, sulfide and xylenes (found in 70–99% of a selected number of samples reviewed); acrylamide, vanadium, arsenic, cyanide, hexavalent chromium, and ethylbenzene (found in 50–69% of a selected number of samples reviewed).

G. How F019 Sludge Is Currently Managed

According to data from the 2003 RCRA Hazardous Waste Biennial Report (*http://www.epa.gov/enviro/html/brs/brs_query.html*), F019 sludges generated by motor vehicle manufacturers are disposed in RCRA Subtitle C regulated facilities, after de-watering, stabilization and/or other treatment. Although two of the 17 generators in the motor vehicle manufacturing industry reportedly disposed their F019 sludges onsite (about 300 tons/year), all of the 22 automobile and light truck/utility vehicle manufacturing plants in 2003 reported managing F019 sludges offsite at RCRA Subtitle C regulated landfills in six states (IL, LA, MI, OK, PA, and SC), located at transport distances of 19 to 1,500 miles (average 400 miles).

EPA recognizes that several recent rulemakings related to RCRA-listed hazardous wastes have proposed conditional exemptions from the regulatory definition of ''solid waste'' when such wastes, by virtue of their being recycled, are treated more as commodities than as wastes. For example, see 68 FR 61588, October 28, 2005. The Agency is not aware of any recycling or reclamation of F019 sludges; therefore, EPA believes that current market conditions do not support the recycling of F019 waste for the purposes of recovering the metal content of such waste. EPA requests comment on whether our understanding is accurate and whether recycling of F019 waste is economically feasible under today's market conditions. If recycling of F019 wastes becomes economically feasible or beneficial in the future, the Agency will consider its options for how to address this, including through a subsequent rulemaking, such as the ongoing rulemaking related to the definition of solid waste.

V. Approach Used in This Proposed Listing Amendment

A. Concentration-Based Approach vs. Disposal in a Landfill Meeting Certain Liner Design Criteria

On April 22, 2005, EPA, through a posting on EPA's website, indicated that the Agency was in the process of considering a possible amendment to the F019 hazardous waste listing under RCRA. This possible amendment would have exempted waste water treatment sludges from the zinc phosphating processes at automotive assembly plants in the motor vehicle manufacturing industry when concentrations of constituents of concern in those wastes fell below risk-based exemption levels. On the F019 Web page, EPA provided waste sampling data and the methodology that the Agency would use in considering the revision of the F019 listing using a concentration-based approach. Interested parties were invited to review and comment on the information collected to support the possible amendment that EPA was considering. The comment period for the web posting closed on June 1, 2005. Twelve comments were received. All commenters supported a revision to the F019 listing, although some expressed concern regarding testing conditions for potential chemicals of concern in the waste and how the concentration-based exemption would be structured. Copies of these comments are included in the docket for today's proposed rulemaking.

Below in Section V. B., EPA presents a detailed discussion of the Agency's approach in assessing the potential risks to human health and the environment and how EPA chose the potential constituents of concern that could be used in the concentration-based approach. However, as the Agency conducted the risk analysis and developed the implementation schemes to go with this approach, several issues arose. First, a variety of issues arose related to establishing precise exemption concentrations for the waste, including: the amount of waste ultimately disposed in the modeled landfill (which is dependent on annual volume and years of disposal); which toxicity benchmarks to use (e.g., drinking water standards or other health-based values); and exposure assumptions built into the Delisting Risk Assessment Software (DRAS) model (e.g., groundwater consumption for different age groups). (See Section V. B. for a more detailed discussion on the documentation of the DRAS model.)

Second, in order to accommodate the wide range in the volumes of F019 wastewater treatment sludges generated at the different automotive assembly plants, the Agency would need to develop different exemption levels for each of the constituents of concern for the various annual waste volumes (e.g., 500 cubic yards to 5000 cubic yards per year at 500 cubic yard intervals). In order to ensure compliance with the concentration-based approach, the automotive assembly plants would need to maintain detailed records on the amount of waste generated and implement a representative sampling and analysis program to ensure that they met the exemption levels for the volume of waste each facility generated annually. Furthermore, two constituents were identified that presented potential risks to human health (arsenic and nickel) in an unlined landfill scenario as modeled by DRAS version 2. Rather than attempt to define precise exemption levels for constituents of concern, the Agency believes that it is simpler to require disposal in a landfill that is subject to certain liner design requirements. The Agency is proposing two options for the liner design requirements. Under option one, EPA is proposing that the landfill unit meet the liner requirements for municipal landfills in 40 CFR 258.40 or other liner designs containing a composite liner.[3] Under option two, the Agency is proposing to allow disposal in state-permitted municipal solid waste landfills (subject to regulations in 40 CFR 258) and state-permitted industrial solid waste landfills (subject to Federal regulations at 40 CFR 257), provided the landfill unit includes at least a single clay liner,[4] and also in permitted hazardous waste landfills. This second option could ease implementation,

[3] As noted in Section V.B. below, the Federal regulations for municipal solid waste landfills require that new units (and lateral expansions of existing units) meet design criteria for composite liners and leachate collection systems (or other approved performance standards). A composite liner as defined in § 258.40 consists of a combination of a synthetic liner and an underlying compacted soil/clay liner. Disposal in hazardous waste landfills would also be allowed, because the regulations in § 264.301 and § 265.301 include composite liners.

[4] For this option, EPA assumes that single clay liners, even in older landfills, would meet the typical construction standards, i.e., the clay liner would have a low hydraulic conductivity (i.e., 1×10^{-7} cm/sec) and be of sufficient thickness to ensure structural stability (i.e., 2 to 3 feet of compacted clay). EPA seeks comment on this assumption.

because the generator could rely on the state permitting agency to assure proper liner design. The Agency is seeking comment on this second approach, because the modeling results indicate that units with a less stringent liner design may also reduce the risk from the hazardous constituents of concern to acceptable levels.

As discussed further below, EPA found that disposal of the waste under evaluation in such lined landfills would ensure protection of human health and the environment, without the need for testing and tracking of waste volume. EPA believes that the proposed approaches outlined in today's notice would be easier and less costly to implement than the concentration-based approach, but provides at least the same level of protection for human health and the environment.

B. Overview of the Risk Assessment

1. EPA's Approach To Assessing Potential Risks to Human Health and the Environment

Today's action addresses a specific type of industrial sludge: sludge generated from the management of wastewaters generated at motor vehicle manufacturing (assembly) facilities. In general, industrial wastewater treatment sludges consist of suspended solids removed from wastewaters during treatment, which may involve various steps. As described in one delisting petition, for example, the treatment steps include: grit separation, pH adjustment to remove metals, addition of a coagulant, clarification to generate a dilute sludge, and dewatering of the sludge and grit solids via filter presses.[5]

F019 sludges generated by the motor vehicle manufacturing industries are currently managed by onsite dewatering, followed by truck or rail shipment to offsite RCRA-permitted hazardous waste landfills. Because today's action proposes to allow disposal of the wastewater treatment sludge in landfills subject to, or meeting, certain design criteria, the Agency's risk assessment involved evaluating risks to human health and the environment from this landfill disposal scenario. (See the ''Technical Support Document: Assessment of Potential Risks from Managing F019 Waste from the Motor Vehicle Manufacturing Industry'' in the docket for this proposed rulemaking for a detailed description of the analysis that the Agency performed, hereinafter, referred to as the Technical Support Document.) EPA initially evaluated the potential risks posed by a hypothetical annual quantity of F019 waste that is disposed of in an unlined nonhazardous waste landfill, and then evaluated potential risks from disposal in landfills that use different liner technologies. The human health and environmental risk evaluation uses several environmental fate, transport, and exposure/risk models: Delisting Risk Assessment Software (DRAS), version 2.0,[6] Tier 1 of the Industrial Waste Management Evaluation Model (IWEM),[7] and EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP).[8] These models have all been peer reviewed; see the Technical Support Document for a detailed description of the use of these models and their peer review.

EPA's Regional Offices, and certain states, use version 2.0 of the DRAS model, or earlier versions of it, to determine whether to grant requests for delistings under 40 CFR 260.22. The DRAS model is a screening tool that contains several assumptions that are designed to be protective of public health. In addition, EPA then adjusted the DRAS model results to take into account exposures to children. The DRAS model assesses human health considerations, by assuming that populations that live near the landfill (nearby residents) may be exposed to chemical constituents that are released from the waste that is placed in the landfill. EPA used the DRAS model to calculate the levels of chemical constituents in a waste (waste concentrations) that would not exceed the acceptable levels at the nearby receptor. The acceptable levels are based on the target risks the Agency used in its evaluation. For carcinogens, EPA used an increased probability of developing cancer that is less than or equal to one in one hundred thousand (1×10^{-5}). For non-carcinogens, EPA used a ''hazard quotient'' less than or equal to 1.0; the hazard quotient is the ratio of an individual's chronic daily exposure to a standard, such as the chronic reference dose. (The reference dose is ''an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily oral exposure for a chronic duration (up to a lifetime) to the human population (including sensitive subpopulations) that is likely to be without an appreciable risk of deleterious effects during a lifetime.'')[9] These target risk levels are consistent with those discussed in EPA's hazardous waste listing determination policy (see the discussion in a proposed listing for wastes from the dye and pigment industries, December 22, 1994 (59 FR 66072)).

The DRAS model assesses environmental risk by examining the aquatic organisms in a body of surface water downhill from the landfill (ecological receptors) that are exposed to small quantities of chemical constituents that are released from the waste in the landfill. As with the human health considerations, the Agency can assess an acceptable risk level for those aquatic organisms, such that the sustainability of the organisms' population in the surface water body is not compromised. The DRAS model then calculates the levels of chemical constituents in waste placed in the landfill (i.e., waste concentrations) that should not be exceeded in order to have acceptable levels of these constituents in the nearby body of surface water.

For a landfill disposal scenario, the DRAS model predicts how constituents of potential concern, or COPCs, will move through the environment and affect nearby people or aquatic organisms. The DRAS model predicts releases of COPCs from the waste into the groundwater beneath the landfill, then accounts for human exposure from drinking contaminated groundwater, inhaling volatile constituents when using contaminated groundwater for showering, and dermal contact from bathing with contaminated groundwater. The DRAS model also

[5] See General Motors Corporation Oklahoma City Assembly Plant Delisting Petition for F019 Wastewater Treatment Plant Sludge Filter Cake, Section 3, Facility Operations in the docket.

[6] ''RCRA Delisting Technical Support Document''. EPA906–D–98–001. Interim Final. U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, Office of Solid Waste. Prepared by U.S. Environmental Protection Agency, Region 6, Dallas, TX April 2002.

[7] ''Industrial Waste Management Evaluation Model (IWEM) User's Guide.'' EPA530–R–02–013. U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, Office of Solid Waste. Washington, D.C. August 2002, and ''Industrial Waste Management Evaluation Model (IWEM) Technical Background Document.'' EPA530–R–02–012. U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, Office of Solid Waste. Washington, DC August 2002.

[8] ''EPA's Composite Model for Leachate Migration with Transformation Products EPACMTP: User's Guide.'' U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, Office of Solid Waste. Washington, DC 1997, ''EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) Technical Background Document.'' EPA530–R–03–006. U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, Office of Solid Waste. Washington, DC April 2003, and ''EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) Parameters/Data Background Document''. EPA530–R–03–003. U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, Office of Solid Waste. Washington, DC April 2003.

[9] See EPA's Integrated Risk Information System (IRIS) at *http://www.epa.gov/iris/index.html.*

predicts releases of COPCs from the waste (both waste particles and volatile emissions) into the air above the landfill. DRAS then accounts for inhalation of volatile constituents and particles, and for windblown particles landing on soil and a child ingesting the contaminated soil. Finally, the DRAS model predicts releases of COPCs from the waste, due to storm water that erodes waste from an open landfill and runs off into a nearby body of surface water. Then the DRAS model takes into account human exposure from eating fish and drinking contaminated surface water, and for the exposures of the fish to contaminated surface water. In addition, EPA adjusted the DRAS model results to take into account exposures to children. See the Technical Support Document for a complete description of the scenario that is modeled in DRAS version 2.0, the human health and ecological exposure pathways, and the data sources the Agency used as model inputs. The DRAS version 2.0 technical documentation, ''User's Guide for the EPA Region 6 Delisting Risk Assessment Software'' (EPA906–D–98–001) and the ''Delisting Technical Support Document,'' which is distributed as part of the DRAS modeling software, provides further details about the specific assumptions and the mathematical equations that the model uses. These documents are in the docket.

2. How EPA Chose Constituents of Potential Concern for Evaluation

Section IV. F. describes briefly the constituents likely to be present in motor vehicle manufacturers' F019 waste. To identify constituents of potential concern, EPA reviewed information from 13 motor vehicle manufacturing facilities' delisting petitions.[10] This information included material safety data sheets (MSDS's) that identify the specific chemicals used in the conversion coating process; these chemicals are likely to be present in the wastewater that is treated and from which F019 sludge results.

EPA also compiled the analytical data received from the 13 facilities' delisting petitions (and from verification sampling at several facilities) into a spreadsheet that is available in the docket for this rulemaking. These 13 facilities analyzed F019 sludge samples for approximately 240 chemical constituents. Many chemicals were not found in the F019 sludge at the detection limits used. If these ''non-detect'' chemicals were not mentioned on the material safety data sheets, then EPA did not evaluate these constituents further. For example, petitioners analyzed sludge samples for pesticides, such as 2-sec-butyl-4,6-dinitrophenol (Dinoseb); however, these were not found in the MSDS's or in the sludge samples, nor would one expect to find them in a motor vehicle manufacturing facility's wastewater treatment sludge.

Of the constituents analyzed in the F019 wastes, 56 were detected in one or more samples. EPA evaluated the concentrations reported by the petitioners for these 56 chemicals (including concentrations that laboratories reported as estimates). The Agency used the DRAS model methodology to evaluate potential risks for 55 detected constituents for human health risks and 49 for environmental risks.[11]

3. Evaluation of Potential Human Health and Environmental Risks

For both human health and environmental risk evaluations, EPA's analysis assumed the disposal of a total waste volume of 90,000 cubic yards of F019 into a landfill. This waste volume corresponds to either a 4,500 cubic yards per year disposal rate for 20 years, or a 3,000 cubic yards per year disposal rate for 30 years. EPA believes it is quite unlikely that motor vehicle manufacturers would dispose of amounts greater than 90,000 cubic yards for an extended period of time in the same landfill based on a review of the delisting facilities' stated annual F019 sludge production quantities. EPA examined the information contained in the delisting petitions submitted and more recent data provided by facilities in the motor vehicle manufacturing industry. Combining the data from both sources for past generation of this waste, EPA found that the volumes of sludges disposed ranged from 426 to 3,892 cy/yr (median was 1,088 cy/yr, and the 90th percentile ranked value was approximately 2,900 cy/yr). Therefore, the use of 3,000 cubic yards per year or 4,500 cubic yards per year represents a protective upper-bound for the waste volumes reported by the generators and is likely to overestimate volumes currently produced by the automotive industry. A number of the constituents detected in the waste appear to be present at levels that may be of concern from a human health viewpoint. (None of the constituents that EPA evaluated for potential environmental harm appeared to be present at levels of concern.) When using the maximum detected concentrations and a total volume of 90,000 cubic yards disposed in a landfill, the DRAS modeling indicated that two of the 55 waste constituents evaluated for human health effects showed an estimated hazard quotient greater than 1, or showed an individual's estimated lifetime potential excess cancer risk to be greater than one in one hundred thousand.

Based on the assessment using DRAS, the Agency determined that only two constituents (arsenic and nickel) had maximum detected values that exceeded the levels that DRAS modeling indicated would result in an acceptable exposure level. (The other constituents had estimated hazard quotients less than 1 and estimated individual lifetime excess cancer risk of less than one in one hundred thousand.) For nickel in groundwater used as drinking water, the estimated hazard quotient was three. For arsenic in groundwater used as drinking water, the estimated individual excess lifetime cancer risk was three in one hundred thousand. Thus, using protective exposure assumptions, the Agency found that disposing of a total of 90,000 cubic yards of waste (equivalent to 3,000 cubic yards disposed per year for 30 years) containing these two constituents, at their maximum detected concentrations in an unlined landfill, exceeded the DRAS limit by up to a factor of 3. The Technical Support Document describes the DRAS modeling and results, with discussion and conclusions, in considerably greater detail.

As described above, two constituents (arsenic and nickel) were at levels that may be of concern using upper-bound assumptions for waste quantities disposed and constituent concentrations in unlined landfills. Furthermore, the constituents were reported to be prevalent in the waste samples. Therefore, EPA examined the robustness of one of the key assumptions of the DRAS version 2.0 modeling—modeling

[10] The 13 motor vehicle manufacturing facilities are BMWMC (BMW Manufacturing Corp.), located in Greer, South Carolina; Nissan, in Smyrna, Tennessee; General Motors (GM) in Lansing, Michigan; GM in Lake Orion, Michigan; GM in Oklahoma City, Oklahoma (draft petition submitted and available only in the EPA Headquarters docket for today's notice); GM in Lordstown, Ohio; GM in Pontiac, Michigan; GM in Hamtramck, Michigan; GM in Flint, Michigan; GM Grand River in Lansing, Michigan; Ford in Wixom, Michigan; Ford in Wayne, Michigan; and DaimlerChrysler Jefferson North in Detroit, Michigan.

[11] For human health, one constituent, sulfide, was not evaluated using the DRAS methodology because it lacks an appropriate toxicity value. For ecological risk, two constituents, sulfide and fluoride, were not evaluated using the DRAS methodology because they are not present in the DRAS version 2 data base for constituents, and lack appropriate toxicity values for environmental risks. For another five of the 56 constituents, EPA lacked appropriate aquatic toxicity benchmarks to complete an environmental risk assessment. See the Technical Support Document in the docket for this proposed rulemaking for details.

disposal in a landfill without a liner. Within the past 15 years, changes to landfill requirements in the United States (the promulgation of federal regulations that require municipal solid waste landfills to meet certain leakage prevention requirements, and requirements for collecting and managing landfill gases, *e.g.*, see 40 CFR 258.40) have caused substantial changes in landfill practices. The majority of municipal solid waste landfills, and probably many landfills that accept nonhazardous industrial solid waste but not municipal solid waste, now are designed, built, and operated with liner systems that typically include composite liners and leachate collection systems (or other approved performance standards). The potential risks found by the DRAS version 2.0 modeling were all from groundwater exposure pathways. As a result, current landfills with liner systems and leachate collection systems should dramatically lessen impacts on local groundwater conditions.

DRAS does not have an option to model the impact of liners on landfill releases. Therefore, to examine the potential impact of liners, the Agency compared the levels calculated by the Industrial Waste Management Evaluation Model (IWEM), for single-lined and composite-lined landfills.[12] IWEM is the ground-water modeling component of the Guide for Industrial Waste Management, used for recommending appropriate liner system designs for the management of RCRA Subtitle D industrial waste. The initial IWEM evaluation (Tier 1) provides a screening assessment with results that are protective over a range of conditions and situations. The results of the IWEM analysis indicate that the use of a composite-lined landfill would result in acceptable risk levels for the two key constituents of concern. The IWEM generally uses more protective assumptions than the DRAS model. For example, the IWEM model assumes that the drinking water well is at a fixed location along the center line of the potential plume of contamination at a distance of 150 meters from the unit; the DRAS model allows the well location to vary downgradient from the unit.

To further examine the effectiveness of composite liners, EPA also used the modeling performed for lined landfills in the recent listing rule for dye and pigment production wastes (February 24, 2005, 70 FR 9138). In this rule, the Agency established a conditional exemption for wastes disposed in landfills meeting specified liner design requirements, similar to the proposal in today's notice. The results from that effort show that composite-lined landfills provided significant protection (about two orders of magnitude) compared to an unlined unit.[13] Therefore, based on both the IWEM results and the modeling in the dye and pigment waste listing, EPA believes that disposal of F019 sludges from motor vehicle manufacturers in composite-lined landfills (or other approved performance standards) is protective of human health and the environment.

The Agency also considered whether the presence of just a single clay liner would be sufficient to reduce the risks below levels of concern. In addition to the IWEM results that showed disposal in a composite-lined landfill was protective, this analysis also yielded levels that would be allowed for a landfill with a single clay liner and for an unlined landfill. For nickel, the levels that would be allowed for a single clay liner were approximately 3-fold higher than the allowable levels for an unlined unit. For arsenic, the allowable level for a single clay liner was approximately 7-fold higher than the allowable level for an unlined unit. Thus, a single clay liner (as defined in the IWEM model assumptions) may be sufficiently protective to allow disposal in a unit with such a single liner, because a single clay liner may reduce the risks from these constituents to levels below the DRAS levels of concern. (EPA is somewhat uncertain about the appropriateness of extending the apparent margin of safety afforded by a single clay liner from one model (IWEM) to another model's results (DRAS), and we are seeking comment on this approach.) Therefore, EPA is requesting comment on a second regulatory option that would allow disposal of this waste in all state-permitted municipal solid waste landfills (regulated under 40 CFR Part 258) and state-permitted industrial solid waste landfills (regulated under 40 CFR Part 257), even those that do not meet the liner design requirements in § 258.40, provided the landfills are equipped with at least a single clay liner.[14] The second option, for example, would allow disposal in a state-permitted municipal landfill that was constructed prior to the effective date for the § 258.40 regulations (an ''existing'' unit), provided the unit had at least a single clay liner. EPA expects that this would provide additional regulatory flexibility for generators, and would not be likely to result in adverse health effects.

Therefore, EPA is taking comment on a second option, which would allow disposal in a landfill with a single clay liner, as well as allowing disposal in landfills with the more protective composite liner systems. Under this option, the regulatory language for the F019 could be revised to read as follows.

> Wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process will not be hazardous if the wastes are either: disposed in a Subtitle D municipal or industrial landfill unit that is equipped with a single clay liner and is permitted, licensed or otherwise authorized by the state; or disposed in a unit that is subject to, or otherwise meets, the liner requirements in § 258.40, § 264.301, § 265.301.

EPA is requesting comments on whether adequate clay liners are found in active older municipal landfill units and industrial solid waste landfills, and whether this requirement would provide any significant regulatory relief for generators by meaningfully expanding their disposal options. EPA is also seeking comment on the likelihood of generators of the F019 waste constructing landfill units at their facilities and what types of liner systems would be used for these onsite units. EPA also solicits comment on whether the option allowing disposal in a landfill unit with a clay liner (permitted or licensed by the state) will be straightforward to implement or whether it will raise implementation or compliance issues for the waste generator, such as the availability of state standards for clay liners in older landfills.

The Agency is seeking comments on the level of regulatory relief that would be provided by both of these proposed approaches. Municipal landfills, for example, have been required to have composite liners (or performance based equivalents) as set out in 40 CFR 258.40, except for ''existing'' units (*i.e.*, generally units or cells that existed prior to 1993). Therefore, EPA believes that most lined landfill units are likely to have composite liners. The Agency is seeking information on the extent to

[12] In IWEM, a single cay liner is a layer of compacted clay three feet thick (hydraulic conductivity of 1×10^{-7} cm/sec), and a composite liner consists of a geomembrane liner (high density polyethylene) overlying the clay layer.

[13] The results for zinc and several other metals (lead, copper, and barium) demonstrated that composite lined landfills reduced risks from landfill releases factors of 133 to 269 compared to unlined units. See ''Risk Assessment Technical Background Document for the Dye and Pigment Industry Hazardous Waste Listing Determination,'' November 10, 2003, Table 2–1b, page 2–4.

[14] This second proposed option would also allow disposal in a hazardous waste landfill regulated under § 264.301 or § 265.301, which require composite liner systems.

which generators would use the option of sending waste to units with only single clay liners (under proposed option two) and any information relevant to the existence and likely use of landfill units with single clay liners. In addition, EPA is seeking comments on the burden associated with the recordkeeping requirements that would result from documenting compliance with disposal of the exempt waste in a landfill unit with a single clay liner or a composite liner. Under the second proposed option, the generator would be required to document that the waste went to a permitted landfill unit that was equipped with a clay liner. In this case, however, the generator would be able to rely on the permitting agency to ensure that the clay liner was adequate. EPA solicits comments on any issues that might be raised by this approach to recordkeeping and documentation.

4. Uncertainty in the Risk Assessment Results

The Technical Background Document describes the risk results, and gives examples of the known uncertainties associated with the risk results. The risk results used for this proposal are based on the same kinds of data and health protective models that the Agency typically uses in national-scale waste policy decision making. The risk results show estimated risks for an individual at the ''high-end'' of the risk distribution, and are designed to be protective of human health and the environment. As such, the resulting risk estimates are likely to reflect protective outcomes in more than 90 percent of the situations modeled.[15] When using central tendency assumptions [16] for an unlined landfill, the hazard quotient for nickel was calculated to be 0.1 and the cancer risk factor for arsenic was two in a million, both values being well below the risk thresholds used by the Agency in hazardous waste listing determinations.

Our overall assessment is that the models we use could overestimate the potential adverse effects of disposing of the F019 waste in either unlined or lined landfills. Thus, actual exposures that would be experienced by future residents near the landfill will likely be lower than those estimated using the DRAS version 2 model. Examples of the protective assumptions used in the high-end DRAS results include: (1) The disposal volume (the 90th percentile value of 3,000 cubic yards per year in the same landfill for 30 years), (2) the constituent concentrations (the maximum values found in the sampling data from the 13 delisting submissions), and (3) exposure levels (90th percentile value for ingestion of groundwater by children for 350 days per year).

The risk results represent EPA's reasonable efforts in using existing knowledge of the national waste management system, the science of environmental fate and transport of chemicals, and the science of toxicology to assess the likely hazards of managing the F019 waste as nonhazardous. The Agency believes that, in spite of some of the specific uncertainties that exist, the risk estimates provide a useful basis for our decision about whether to continue to regulate this waste as a hazardous waste. EPA is requesting comments on our risk assessment approach and on the resulting risk estimates.

VI. Implementation of the F019 Proposed Rule

A. Land Disposal Conditions

The proposed amendment to the F019 listing exempts certain wastes disposed in landfill units that are subject to certain liner design requirements. This exemption is based on EPA's risk analysis demonstrating that wastes disposed in landfills with certain types of liners do not present significant risks for sludges generated by motor vehicle manufacturers. Today's first proposal would allow motor vehicle manufacturers (as defined in § 261.31(b)(i)) to manage wastes from chemical conversion coating of aluminum when using a zinc phosphating process as nonhazardous, if the wastes are disposed in a landfill subject to, or otherwise meeting, the landfill requirements in § 258.40, § 264.301 or § 265.301. The second proposal in today's notice would also exempt the waste if the generators dispose of the waste in a state-permitted non-hazardous landfill unit that has, at a minimum, a single clay liner.

The requirements under § 258.40, which apply to new municipal solid waste landfills or new units at existing municipal solid waste landfills, require use of a composite liner and leachate collection system (or a design meeting a protective performance standard and approved by the Director of an approved state program or by EPA). The infiltration rates used by IWEM (and also for the Dye and Pigment listing; 70 FR 9138, February 24, 2005) were based on data from landfills with composite liners similar to the design required under § 258.40. Consequently, EPA's proposed option number one allows disposal of wastes in a municipal solid waste landfill unit that is subject to the § 258.40 design requirements. EPA is specifying that the landfill unit must be subject to these requirements because some operating landfills may still use older units that are not required to meet the design requirements in § 258.40. The Agency's risk assessment shows that unlined landfills may not be sufficiently protective for some of the sludges from automobile manufacturing, i.e., higher volume sludges with high levels of key constituents of concern. Federal law requires that all municipal landfills comply with the Part 258 landfill regulations. Additionally, states have permitting programs to implement the Part 258 requirements for municipal landfills. Permit programs must ensure that municipal landfill units in the states comply with the § 258.40 design standards (see 40 CFR 239.6(e)). Consequently, landfill cells subject to the Part 258.40 design standards are required to comply with the federal standards or more stringent state standards.

Some generators of F019 wastes may still choose to send wastes to Subtitle C hazardous waste landfills. New landfill units and lateral expansions of existing hazardous waste landfills are required to have ''double'' composite liners including synthetic components. See 40 CFR 264.301 and 265.301. The Agency would expect that these liner systems have even lower infiltration rates than the composite liners required under § 258.40, because the Subtitle C requirements include another composite liner, in addition to the composite liner (or equivalent) required of municipal solid waste landfills (e.g., see § 261.301(c)). Therefore, EPA is proposing to give generators the option of sending wastes to landfill units subject to these stricter hazardous waste liner requirements.

The Agency is also proposing to include a third class of landfills in the exemption, namely, Subtitle D industrial solid waste landfills that meet the liner design requirements in § 258.40 or Subtitle C landfills. These ''industrial landfills'' are subject to Federal regulations in Part 257, which apply to non-municipal, nonhazardous waste landfills. While the Part 257

[15] Conceptually, ''high-end'' means above the 90th percentile of the risk distribution; see Guidance on Risk Characterization for Risk Managers and Risk Assessors, February 26, 1992 memorandum from F. Henry Habicht, II, Deputy Administrator, to Assistant Administrators and Regional Administrators. We use the term ''high-end'' here to refer to modeling inputs that are at or above the 90th percentile of a data set.

[16] Note that the results described as ''central tendency'' here reflect changes in annual waste volume, disposal time, and constituent concentration (and for non-cancer effects, drinking water intake). Other variables, such as the dilution/attenuation factor and exposure frequency (and for cancer effects, drinking water intake) remain at high-end values.

regulations do not have liner requirements, states have regulations governing the design of such landfills that often include requirements for liner systems.[17] EPA believes that generators should have the option of using lined industrial landfills that are as protective as lined municipal solid waste landfills.

Therefore, under the first option, EPA is proposing that the amended listing include an exemption for wastes disposed in any landfill that is subject to, or meets, the landfill requirements in § 258.40, § 264.301, or § 265.301. Under the second option, EPA is proposing an alternative approach that would also allow disposal of the subject waste in a landfill unit with a single clay liner as described previously.

Note, however, that this exemption would not apply if wastewaters from aluminum conversion coating processes using the zinc phosphating process are commingled with wastewaters arising from aluminum conversion coating using other non-exempt processes (e.g., chromating processes); the sludge resulting from such commingled wastewaters would still carry the F019 waste code, because it would be derived, in part, from an aluminum conversion coating process that is not zinc phosphating. Furthermore, aluminum conversion coating sludges derived from zinc phosphating at motor vehicle manufacturers are still subject to the ''mixture rule,'' and would become hazardous waste if mixed with any other listed hazardous waste.[18] In addition, the motor vehicle manufacturers would also be subject to the requirements of § 268.3 (dilution prohibited as a substitute for treatment). Finally, if the zinc phosphating sludges were generated such that they exhibit one of the hazardous waste characteristics (see § 261.20 through § 261.24), the waste would continue to be regulated as a hazardous waste.

1. How Generators Document Compliance With the Landfill Condition

Under the proposed option number one, generators of wastewater treatment sludges claimed to be nonhazardous are responsible for ensuring that shipments of such waste are placed in landfill units that meet the design criteria specified in § 258.40, § 264.301, or § 265.301. Under option two, generators would also need to document compliance if they send their waste shipments to a state-permitted landfill unit that has an adequate single clay liner. Under either option, generators wishing to qualify for the exemption from the F019 listing would be required to maintain records to show that their wastes are placed in an appropriate landfill unit, whether the unit is at a municipal solid waste landfill, hazardous waste landfill, or an industrial solid waste landfill (in the case of option two, this would include disposal in a unit with a single clay liner). EPA is proposing a flexible performance standard that would allow the generator to demonstrate that shipments of waste were received by a landfill unit that is subject to or meets the landfill design standards set out in the listing description through various means. A generator may be able to demonstrate fulfillment of the landfill disposal condition by means of a signed contract with the owner/operator of a municipal solid waste landfill, a hazardous waste landfill, or an industrial solid waste landfill receiving the waste; the generator should also retain specific shipping documents to demonstrate that the contract was implemented. The contract must show that the landfill owner/operator would use only units subject to the applicable Part 258 or Part 264 or Part 265 design requirements (under option two, the contract, state permit, or documentation from the state may also be used to document that units meeting the single liner specifications would be used). A generator may also be able to support a claim of fulfilling the landfill design requirements by means of signed nonhazardous waste bills of lading, manifests, or invoices documenting delivery, provided they show that wastes were placed in municipal solid waste landfill units subject to the applicable Part 258 design requirements or Subtitle C landfill units subject to the Part 264 or Part 265 design requirements. Similarly, the generator would be responsible for documenting that non-municipal, nonhazardous waste landfill units (industrial landfill units) meet the specified liner standards. States have regulations governing the design of such industrial solid waste landfills, and landfill operators must have certifications or permit conditions available to provide to generators who wish to use such landfills instead of municipal solid waste or hazardous waste landfill units. Therefore, state regulations could help support a claim that the nonhazardous waste bills of lading, manifests, or invoices documenting delivery satisfy the applicable liner requirements.

2. Consequences of Failing To Meet the Disposal Conditions or Recordkeeping Requirements

Disposal in a landfill subject to or meeting the landfill design requirements is a condition of the exemption to the listing under the two approaches being proposed. If a generator does not fulfill this condition, the sludges would be F019 listed wastes, subject to the applicable Subtitle C requirements. Therefore, the Agency advises generators to properly store the wastewater treatment sludges that are claimed to be nonhazardous wastes to ensure that improper releases do not occur. EPA encourages all generators to store all wastes in containers, tanks, or buildings, so as to reduce potential releases to the environment through spills, wind dispersal, and precipitation. The exemption for these wastes is conditioned upon disposal in the landfill units that are subject to, or otherwise meet, the specified design criteria.

In addition, a generator claiming that the wastewater treatment sludges are not F019 listed waste must maintain sufficient documentation to demonstrate that shipments of such waste were disposed in a landfill subject to or meeting the liner design standards specified under the conditional exemption. The proposed regulatory text (§ 261.31(b)(4)(iii)) specifies necessary records that a generator claiming the exemption must keep.

Generators taking advantage of the exemption that fail to meet the condition of disposing the wastewater treatment sludges in a landfill unit that meets certain liner design criteria would be subject to enforcement action, and the wastewater treatment sludges may be considered to be hazardous waste from the point of their generation. EPA could choose to bring an enforcement action under RCRA § 3008(a) for all violations of hazardous waste regulatory requirements occurring from the time the wastewater treatment sludges are generated up to the time they are finally disposed. Releases of hazardous waste could also potentially be addressed through enforcement orders, such as orders under RCRA §§ 3013 and 7003. States could choose to take an enforcement action for violations of state hazardous waste requirements under state authorities.

Generators claiming the exemption from the F019 listing must be able to demonstrate to the appropriate

[17] Commercial offsite landfills are subject to regulations by states, including liner requirements. See the report by Association of State and Territorial Solid Waste Management Officials (ASTSWMO), ''Non-Municipal, Subtitle D Waste Survey,'' March 1996, and the EPA report, ''State Requirements for Industrial Non-Hazardous Waste Management Facilities,'' October 1995.

[18] The ''mixture'' rule at § 261.3(a)(2)(iv) provides that, with limited exceptions, any mixture of a listed hazardous waste and a solid waste is itself a hazardous waste.

regulatory agency that the condition of the exemption is being met. In accordance with existing requirements, the facility claiming the exemption bears the burden of proof to demonstrate conformance with the requirements specified in the regulation. See 40 CFR 261.2(f).

EPA requests comment on whether the proposed record-keeping requirements should also be made conditions of the exemption, rather than established as separate recordkeeping requirements. In addition, the Agency seeks comments on whether additional requirements or conditions are necessary to ensure that the waste is not improperly disposed or released prior to disposal in landfills meeting the landfill requirements in § 258.40, § 264.301 or § 265.310 (or under the second proposed option, a municipal or industrial solid waste landfill with a single clay liner). EPA is considering the need to include a condition for the exemption that the waste be stored so as to minimize releases to the environment. The regulatory condition being considered by the Agency could include the following possible regulatory language.

Generators of wastewater treatment sludges that are claimed to be nonhazardous must manage such wastes in a manner that prevents their loss to the environment. Such wastes must be stored in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of these materials into the environment. At a minimum, any building used for this purpose must be an engineered structure that has a floor, walls and a roof to prevent wind dispersal and contact with precipitation. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and precipitation. Containers, such as super sacks, drums, or roll-on/roll-off containers, used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Generators may store the waste on site for no longer than 90 days.

EPA may make all or some of these requirements conditions in the final rule.[19]

EPA obtained information from delisting petitions that indicates generators of the F019 sludge store the dewatered sludges in containers or bins prior to shipment offsite for disposal. During visits to three vehicle manufacturing plants generating sludges, EPA found that sludge dewatering equipment and sludge containers were kept inside buildings, reducing any potential for releases. While these management practices may reflect the fact that the delisted sludges were previously hazardous waste, we expect that these practices would continue after an exemption.[20] We seek any further information from commenters as to the current sludge management practices at facilities that currently generate F019 wastes (or delisted F019), and any information on practices at vehicle manufacturers that do not currently generate F019 (i.e., plants that do not use aluminum). If such information indicates that generators are already handling the waste to minimize releases, the Agency will take this into consideration when deciding whether storage conditions are necessary.

3. Land Disposal Restrictions

The Agency today is proposing to amend the F019 listing to exclude wastewater treatment sludges from zinc phosphating, when such phosphating is used at motor vehicle manufacturers. These wastewater treatment sludges will not be hazardous if the wastes are disposed in a landfill unit subject to, or otherwise meeting, the landfill requirements for the liner systems specified in the F019 listing under both of the proposed options.

40 CFR Part 268 prohibits the land disposal of RCRA hazardous waste unless they have been treated to meet a certain level or by a technology specified by EPA. See Table 1.Treatment Standards for Hazardous Wastes in § 268.40. The land disposal restrictions only apply to solid wastes that are RCRA hazardous wastes. Therefore, if the wastewater treatment sludges are disposed in landfill units that are subject to or meet the landfill design criteria outlined in today's proposal, they would not be hazardous waste from the point of generation and, thus, not subject to the land disposal restriction requirements.

B. Interrelationship Between Proposed Rule and Current F019 Delistings

The question arises as to the status of waste generated by facilities that currently have an exemption for their wastes through a delisting under § 260.22. Today's proposed revision to the F019 listing would exempt wastes from motor vehicle manufacturing facilities that meet the landfill disposal conditions. Thus, wastes that are to be disposed in a subtitle D or subtitle C unit that meets the liner design standards specified in the listings are exempted from the listing from their point of generation. As such, the exempt waste would not be subject to any RCRA subtitle C management requirements for generation, storage, transport, treatment, or disposal (including land disposal restrictions). These exempt wastes would never become F019 listed wastes (when the specified disposal conditions are met), and, thus, the existing delistings (including any conditions associated with the delisting) would be rendered moot by today's proposal, presuming the authorized state adopts the rule, where applicable. However, EPA realizes that facilities with delistings may wish to avoid any confusion that might arise in the implementation of the exemption proposed in today's notice. Therefore, the facility may wish to seek to have its delisting withdrawn by the regulatory authority (the EPA Region or state), unless the facility wishes to continue to manage its waste pursuant to its existing delisting. However, EPA encourages facilities with delistings to be sure that the state in which they operate has adopted the exemption prior to moving to drop an existing delisting. See the discussion below in Section VII. State Authorization for additional information on the authorization process.

VII. State Authorization

Under section 3006 of RCRA, EPA may authorize a qualified state to administer and enforce a hazardous waste program within the state in lieu of the federal program, and to issue and enforce permits in the state. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally-enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law.

A state may receive authorization by following the approval process described in 40 CFR part 271. Part 271 of 40 CFR also describes the overall standards and requirements for authorization. After a state receives initial authorization, new Federal regulatory requirements promulgated under the authority in the RCRA statute do not apply in that state until the state adopts and receives authorization for equivalent state requirements. The state

[19] For a facility that generates a volume of 3,000 cy/yr, an average weekly volume would be about 60 cy. This would probably require 2 to 3 dumpsters (20 to 40 cy in size). Given that generators are unlikely to want to store many dumpsters, we believe that a 90 day limit is reasonable and would not be burdensome.

[20] Two facilities were generating delisted F019 sludges, and one had just added conversion coating of aluminum to its process and eventually obtained a delisting. See note to docket on site visits by Mr. James Michael.

must adopt such requirements to maintain authorization. In contrast, under RCRA section 3006(g), (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to the 1984 Hazardous and Solid Waste Amendments (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Although authorized states still are required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so. Authorized states are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements.

RCRA section 3009 allows the states to impose standards more stringent than those in the Federal program. See also 40 CFR 271.1(i). Therefore, authorized states are not required to adopt Federal regulations, either HSWA or non-HSWA, that are considered less stringent.

Today's rule is proposed pursuant to non-HSWA authority. The proposed changes in this rule are less stringent than the current Federal requirements. Therefore, states will not be required to adopt and seek authorization for the proposed changes. EPA will implement the changes to the exemptions only in those states which are not authorized for the RCRA program. Nevertheless, EPA believes that this proposed rulemaking has considerable merit, and the Agency thus strongly encourages states to amend their programs and become Federally-authorized to implement these rules once they become final.

VIII. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Designation and List of Hazardous Substances and Reportable Quantities

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) defines the term ''hazardous substance'' to include RCRA listed and characteristic hazardous wastes. When EPA adds a hazardous waste under RCRA, the Agency also will add the waste to its list of CERCLA hazardous substances. EPA also establishes a reportable quantity, or RQ, for each CERCLA hazardous substance. EPA provides a list of the CERCLA hazardous substances along with their RQs in Table 302.4 at 40 CFR 302.4. If a person in charge of a vessel or facility that releases a CERCLA hazardous substance in an amount that equals or exceeds its RQ, then that person must report that release to the National Response Center (NRC) pursuant to CERCLA section 103. That person also may have to notify state and local authorities.

Because today's rule is proposing to modify the scope of the EPA Hazardous Waste No. F019 under 40 CFR 261.31 listing to exclude wastewater treatment sludges from zinc phosphating, when such phosphating is used in the motor vehicle manufacturing process, and if the wastes are disposed in a landfill is subject to, or meets certain liner design requirements, the Table 302.4 at 40 CFR 302.4 would be modified to adopt the same definition and scope.

IX. Relationship to Other Rules—Clean Water Act

We believe that today's proposed regulatory changes will not: (1) Increase the amount of discharged wastewater pollutants at the industry or facility levels; or (2) interfere with the ability of industrial generators and recyclers of electroplating residuals to comply with the Clean Water Act requirements (e.g., Metal Finishing Effluent Guidelines, 40 CFR Part 433).

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. 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.

Pursuant to the terms of Executive Order 12866, although the annual effect of this proposed rule is expected to be less than $100 million, the Agency has determined that today's proposed rule is a significant regulatory action because this proposed rule contains novel policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the docket to today's proposal.

The following is a summary of EPA's economic analysis as contained in the Economics Background Document in support of this proposal, which is available for public review and comment in the EPA Docket (*www.regulations.gov*). Although 73 industries in 42 states generate 0.7 million tons per year of RCRA F019 hazardous waste sludge as of 1999, the scope of this F019 proposed rule is limited to the (1) automobile manufacturing industry (NAICS 336111) and (2) the light truck/utility vehicle manufacturing industry (NAICS 336112). The Agency defined this scope in relation to 15 recent (1997–2005) delisting final determinations for these two motor vehicle manufacturing industries in EPA Regions 4 and 5.[21] Under the current F019 listing description, motor vehicle manufacturers become F019 sludge generators if they use aluminum parts on vehicle bodies which undergo the chemical conversion (zinc phosphating) process. Motor vehicle manufacturers began in the early 1970's, to substitute lighter-weight aluminum parts for heavier steel parts to achieve national vehicle fleet fuel efficiency and vehicle pollutant emission reduction objectives. If promulgated, the proposed elimination of RCRA Subtitle C hazardous waste regulatory requirements for waste transport, waste treatment/disposal, and waste reporting/recordkeeping in this proposed rule, is expected to provide $1.6 to $4.6 million per year in regulatory cost savings to 14 facilities in these two industries which

[21] The **Federal Register** (FR) citations for the 15 delisting determinations for F019 are: GM in Lake Orion, Michigan (62 FR 55344, October 24, 1997); GM in Lansing, Michigan (65 FR 31096, May 16, 2000); BMWMC in Greer, South Carolina (66 FR 21877, May 2, 2001); Nissan in Smyrna, Tennessee (67 FR 42187, June 21, 2002); GM in Pontiac, Michigan, GM in Hamtramck, Michigan, GM in Flint, Michigan, GM Grand River in Lansing, Michigan, Ford in Wixom, Michigan, Ford in Wayne, Michigan (68 FR 44652, July 30, 2003); DaimlerChrylser Jefferson North in Detroit, Michigan (69 FR 8828, February 26, 2004); GM in Lordstown, Ohio (69 FR 60557, October 12, 2004); Ford in Dearborn, Michigan (70 FR 21153, April 25, 2005); GM in Janesville, Wisconsin (70 FR 71002, November 25, 2005); and, GM Saturn in Spring Hill, Tennessee (70 FR 76168, December 23, 2005).

are known as of 2005 to generate about 8,700 tons per year of F019 sludge, but are not yet delisted (as of year-end 2005). Although today's proposed action presents alternative RCRA Subtitle D non-hazardous waste landfill liner specifications (i.e., liner design criteria) as possible conditions for exemption of F019 sludge from RCRA Subtitle C regulation, the economic impact analysis does not distinguish landfill liner types in this cost savings estimate. Secondary impacts of the proposed rule may also include potential future RCRA regulatory cost avoidance for up to 39 other facilities in these two industries not currently generating F019 sludge, but which may begin applying aluminum parts in vehicle assembly. Furthermore, by reducing regulatory costs, EPA anticipates that this rule may also induce other motor vehicle manufacturing facilities to begin using aluminum in vehicles sooner than they otherwise would, thereby possibly accelerating future achievement of national air quality and fuel efficiency objectives. The Economics Background Document provides estimates for these secondary and induced benefits for this proposed rule.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1189.18 and a copy may be obtained from Susan Auby by mail at U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. A copy may also be downloaded from the Internet at *http://www.epa.gov/icr.*

EPA under 40 CFR 261.31(b)(4)(iii), proposes to add a recordkeeping requirement for generators. The proposed rule will require generators wanting to demonstrate compliance with the provisions of this proposal to maintain onsite for a minimum of three years documentation demonstrating that each shipment of waste was received by a landfill unit that is subject to or meets the landfill design criteria set out in the listing description. An enforcement action by the Agency can extend the record retention period (§ 268.7(a)(8)) beyond the three years.

EPA estimates that the total annual respondent burden for the new paperwork requirements in the rule is approximately 35 hours per year and the annual respondent cost for the new paperwork requirements in the rule is approximately $2,600. However, in addition to the new paperwork requirements in the rule, the Agency also estimated the burden and cost that generators could expect as a result of complying with the existing RCRA hazardous waste information collection requirements for the exempted materials (e.g., preparation of hazardous waste manifests, biennial reporting). Taking both the new proposed and existing RCRA requirements into account, EPA expects the rule would result in a net reduction in national annual paperwork burden to the 14 initially affected NAICS 336111 and 336112 facilities of approximately 920 hours and $67,300. As summarized in the Economics Background Document and in the prior sub-section of this notice, EPA expects this net cost savings to be further supplemented by annual cost savings to these same facilities from reduced waste management costs, by the expected shift of sludge management from RCRA Subtitle C hazardous waste management, to RCRA Subtitle D nonhazardous waste management. The net cost to EPA of administering the rule is expected to be negligible, since facilities are not required under this proposed rule to submit any information to the Agency for review and approval. 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 existing systems 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 are listed in 40 CFR Part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID No. EPA–HQ–RCRA–2006–0984. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq., 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 potentially subject to this action, ''small entity'' is defined according to the for-profit small business size standards set by the Small Business Administration (SBA), in reference to the two six-digit NAICS code industries affected by this action: (1) NAICS 336111 automobile manufacturing SBA standard of less than 1,000 employees, and (2) NAICS 336112 light truck and utility vehicle manufacturing SBA standard of less than 1,000 employees. Today's action does not directly affect small governmental jurisdictions (i.e., a government of a city, county, town, school district or special district with a population of less than 50,000), or small organizations (i.e., any not-for-profit enterprise which is independently owned and operated and is not dominant in its field).

According to the most recent U.S. Census Bureau ''Economics Census'' data for these two NAICS codes—for data year 2002 published in December 2004 and May 2005, respectively—there were 176 NAICS 336111 establishments operated in 2002 by 161 companies, of which 154 establishments (88%) had less than 1,000 employees (*http://www.census.gov/prod/ec02/ec0231i336111t.pdf*), and there were 97 NAICS 336112 establishments operated in 2002 by 69 companies, of which 62 establishments (64%) had less than

1,000 employees (*http://www.census.gov/prod/ec02/ec0231i336112t.pdf*). These census statistics reveal that both industries consist of large fractions of small establishments according to the SBA definitions, but the census data do not reveal the fraction of companies which are small (which is the more relevant measure). However, it may be inferred that there are large fractions of small companies in both industries, because of the high degree of parity between establishment counts and companies counts of 0.96 for NAICS 336111 (i.e., 154:to:161), and of 0.71 for NAICS 336112 (i.e., 69:to:97).

Because this action is designed to lower the cost of waste management for these industries, this proposal will not result in an adverse economic impact effect on affected entities. Consequently, I hereby certify that this proposal will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities'' (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on small entities subject to the rule. For more information regarding the economic impact of this proposed rule, please refer to the ''Economics Background Document'' available from the EPA Docket (*www.regulations.gov*).

EPA therefore concludes that today's proposed rule will relieve regulatory burden for all size entities, including small entities. The Agency continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

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 must prepare a written analysis, 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 requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials to have meaningful and timely input in the development of regulatory proposals, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in expenditures of $100 million or more for state, local, or tribal governments, in the aggregate, or the private sector in any one year. This is because this proposed rule imposes no enforceable duty on any state, local, or tribal governments. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. Therefore, today's proposed rule is not subject to the requirements of sections 202 and 205 of UMRA.

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 proposal does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule directly affects primarily generators of hazardous waste sludges in the NAICS 3361 motor vehicle manufacturing industry group. There are no state and local government bodies that incur direct compliance costs by this rulemaking. State and local government implementation expenditures are expected to be less than $500,000 in any one year. Thus, the requirements of Section 6 of the Executive Order do not apply to this proposal.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials.

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 proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments, nor would it impose substantial direct compliance costs on them. Thus, Executive Order 13175 does not apply to this rule.

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

The Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) 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 proposal is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

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

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule reduces regulatory burden and as explained in our ''Economics Background Document,'' and may possibly induce fuel efficiency and energy savings in the national motor vehicle fleet. It thus should not adversely affect energy supply, distribution or use.

I. 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 does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population'' (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. Our goal is to ensure that all citizens 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 (OSWER) 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).

The Agency's risk assessment did not identify risks from the management of the zinc phosphating sludge generated by the motor vehicle manufacturing industry provided that the waste is disposed in a landfill that is subject to or meets the landfill design criteria set out in today's proposal. Therefore, EPA believes that any populations in proximity to the landfills used by these facilities should not be adversely affected by common waste management practices for the wastewater treatment sludge.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous materials, Recycling, Waste treatment and disposal.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: January 11, 2007.

Stephen l. Johnson,

Administrator.

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

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, 6924(y), and 6938.

2. Section 261.31 is amended by:

a. In the table in paragraph (a) by revising the alphanumeric entry F019.

b. Amending paragraph (b) by adding paragraph (b)(4).

The revisions and additions read as follows:

§ 261.31 Hazardous wastes from specific sources.

(a) * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
* * * * * * *		
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. Wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process will not be hazardous if the wastes are disposed in a landfill unit subject to, or otherwise meeting, the landfill requirements in § 258.40, § 264.301 or § 265.301. For the purposes of this listing, motor vehicle manufacturing is defined in paragraph § 261.31(b)(4)(i) of this section; paragraphs § 261.31(b)(4)(ii) and (iii) of this section describe the responsibilities and recordkeeping requirements for motor vehicle manufacturing facilities.	
* * * * * * *		

* * * * *

(b) * * *

(4) For the purposes of the F019 listing, the following apply to wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process.

(i) Motor vehicle manufacturing is defined to include the manufacture of automobiles and light trucks/utility vehicles (including light duty vans, pick-up trucks, minivans, and sport utility vehicles). Facilities must be engaged in manufacturing complete vehicles (body and chassis or unibody) or chassis only.

(ii) Generators of wastewater treatment sludges that are claimed to be nonhazardous must ensure that shipments of such waste are placed in landfill units that are subject to or meet the landfill design criteria specified in the F019 listing description.

(iii) Generators must maintain in their on-site records documentation and information sufficient to prove that the wastewater treatment sludges to be exempted from the F019 listing meet the condition of the listing. These records must include the volume of waste generated and disposed of off-site. Generators must maintain these documents on site for no less than three years. The retention period for the documentation is automatically extended during the course of any enforcement action or as requested by the Regional Administrator or the state regulatory authority.

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

3. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

4. In § 302.4, Table 302.4 is amended by revising the entry for F019 in the table to read as follows:

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[NOTE: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Statutory code †	RCRA Waste No.	Final RQ pounds (Kg)
* * * *	*		*	*
F019 ..... Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. Wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process will not be hazardous if the wastes are disposed in a landfill unit subject to, or otherwise meeting, the landfill requirements in § 258.40, § 264.301 or § 265.301. For the purposes of this listing, motor vehicle manufacturing is defined in paragraph § 261.31(b)(4)(i) of this section; paragraphs § 261.31(b)(4)(ii) and (iii) of this section describe the responsibilities and recordkeeping requirements for motor vehicle manufacturing facilities.	.....	.....	4 F019	10 (4.54)

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[FR Doc. E7–640 Filed 1–17–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1989–0008; FRL–8268–5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the Berkley Products Company Dump Priorities List Site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces its intent to delete Berkley Products Company Dump Superfund Site (Site), located in West Cocalico Township, Lancaster County, Pennsylvania from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR Part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EPA bases its proposal to delete the Site on the determination by EPA and the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), that all appropriate actions under CERCLA, other than operation and maintenance and five-year reviews, have been implemented to protect human health, welfare and the environment. However, this deletion does not preclude future actions under Superfund.

In the ''Rules and Regulations'' Section of today's **Federal Register**, EPA is publishing a direct final notice of deletion of Berkley Products Company Dump Superfund Site without prior notice of intent to delete because EPA views this as a noncontroversial revision and anticipates no adverse comment. EPA has explained its reasons for this deletion in the preamble to the direct final deletion. If EPA receives no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, EPA will not take further action. If EPA receives adverse comment(s), EPA will withdraw the direct final notice of deletion and it will not take effect. EPA will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments must be received on or before February 20, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1989–0008, by one of the following methods: