

(See the docket to today's rule for a description of this analysis).

E. Conclusion

The Agency believes that BSC has demonstrated that the waste contained in its on-site landfill is not hazardous for Subtitle C purposes. The Agency believes that the sampling procedures used by BSC were adequate, and that the samples collected from the landfill are representative of the waste contained in the landfill.

The Agency, therefore, is proposing to withdraw its original denial of BSC's petition, and is proposing that BSC's petitioned waste be delisted as non-hazardous and thus not subject to regulation under RCRA Subtitle C. The Agency proposes to grant an exclusion to Bethlehem Steel Corporation's Lackawanna, New York, facility for its mixture of ammonia still lime sludge and solid waste described in its petition as EPA Hazardous Waste No. K060 and contained in its on-site HWM-2 landfill. The Agency's decision to exclude this waste is based on process descriptions, results from the analysis of samples of the petitioned waste, and results from the analysis of groundwater monitoring data available for BSC's landfill. If the proposed rule becomes effective, the waste contained in the HWM-2 landfill would no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270. Although management of the wastes covered by this petition would, upon final promulgation, be relieved from Subtitle C jurisdiction, the waste would remain a solid waste under RCRA. As such, the waste must be handled in accordance with all applicable Federal and State solid waste management regulations.

III. Limited Effect of Federal Exclusion

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

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program,

i.e., to make their own delisting decisions. Therefore, this proposed exclusion, if promulgated, would not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, BSC must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Effective Date

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 USC 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. The effect of this proposed rule would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. Therefore, this proposed rule would not be a significant regulatory action under the Executive Order, and no assessment of costs and benefits is necessary. The Office of Management and Budget (OMB) has also exempted this proposed rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small

entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule, if promulgated, will not have an adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub.L. 96-511, 44 U.S.C 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

VIII. Unfunded Mandates Reform Act

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