

deposits and fees shall be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. The payments should be specifically labeled "Tolerance Petition Fees" and should be accompanied only by a copy of the letter or petition requesting the tolerance. The actual letter or petition, along with supporting data, shall be forwarded within 30 days of payment to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division, (7504C) Washington, DC 20460. A petition will not be accepted for processing until the required fees have been submitted. A petition for which a waiver of fees has been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial. A request for waiver or refund will not be accepted after scientific review has begun on a petition.

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. In addition, processing costs and fees will periodically be reviewed and changes will be made to the schedule as necessary. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a Final Rule to become effective 30 days or more after publication, as specified in the rule. When changes are made based on periodic reviews, the changes will be subject to public comment.

[FR Doc. 99-13191 Filed 5-25-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL-6346-2]

Land Disposal Restrictions: Site-Specific Treatment Variance to Chemical Waste Management, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (EPA or Agency) is today granting a site-specific treatment variance from the Land Disposal Restrictions (LDR) treatment standards for two selenium-bearing hazardous wastes. EPA is granting this variance because the

chemical properties of these two wastes differ significantly from the waste used to establish the current LDR standard for selenium (5.7 mg/L TCLP) and Chemical Waste Management, Inc. (CWM) has adequately demonstrated that the two wastes cannot be treated to meet this treatment standard.

CWM intends to stabilize the wastes at their Kettleman City, California facility. Upon promulgation of this final rule, CWM may treat these two specific wastes to alternate treatment standards of 51 mg/L TCLP for the Owens-Brockway waste and 25 mg/L TCLP for the Ball-Foster waste. After treatment to these alternative selenium standards, CWM may dispose of the treated wastes in a RCRA Subtitle C landfill provided they meet the applicable LDR treatment standards for the other hazardous constituents in the wastes. We are granting this variance for three years.

DATES: This final rule is effective on May 11, 1999.

ADDRESSES: The official record for this rulemaking is identified by RCRA Docket Number F-1999-CWMF-FFFFF and is located at the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603-9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15/page. The index and some supporting materials are available electronically. Follow these instructions to access the information electronically:

WWW: <http://www.epa.gov/epaoswer/osw/hazwaste.htm#ldr>

FTP: [ftp.epa.gov](ftp://ftp.epa.gov)

Login: anonymous

Password: your Internet address

Files are located in /pub/epaoswer.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424-9346 or TDD 800 553-7672 (hearing impaired). In the Washington, D.C., metropolitan area, call 703 412-9810 or TDD 703 412-3323. For more detailed information on specific aspects of this rulemaking, contact Josh Lewis at (703) 308-7877 or lewis.josh@epa.gov, or Elaine Eby at (703) 308-8449 or eby.elaine@epa.gov, Office of Solid Waste (5302 W), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

I. Background

A. What Is the Basis for LDR Treatment Variances?

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

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

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

In the Third rule (55 FR 22521, June 1, 1990), the Agency used performance data from the stabilization of a selenium D010 mineral processing waste, which we determined to be the most difficult to treat selenium waste, to set the national treatment standard for selenium. This waste contained up to 700 ppm total selenium and 3.74 mg/L selenium in the TCLP leachate. The resulting post-treatment selenium TCLP levels were between 1.80 and 0.154 mg/L TCLP, which led to our establishment of a national treatment standard of 5.7 mg/L for D010 selenium nonwastewaters. At that time, EPA also had information indicating that wastes containing high concentrations of selenium are rarely generated and land disposed and, therefore, concluded that the standard of 5.7 mg/L was achievable.

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

nonwastewaters from 0.16 mg/L to 5.7 mg/L. In the preamble to the Phase IV final rule, we noted that we received comments from one company, CWM, indicating that it was attempting to stabilize selenium wastes with concentrations much higher than those EPA was examining to establish the national selenium standard. In response, we indicated that for these high-level selenium waste streams, we would propose a site-specific treatment variance, which we did on October 23, 1998 (63 FR 56886).

II. Basis for Today's Determination

A. What Does the CWM Petition Assert?

In their petition, CWM states that two companies, Owens Brockway and Ball-Foster, generate hazardous wastes with relatively high leachable selenium concentrations. CWM presents data showing that selenium TCLP concentrations in the untreated wastes are one to three orders of magnitude higher than the untreated mineral processing wastes that EPA used to develop the current D010 selenium treatment standard. The data also show that neither treated waste stream can reliably meet the numerical standard of 5.7 mg/L TCLP, even though CWM shows that it is using the treatment technology on which EPA based the selenium treatment standard.

Specifically, CWM's testing data consisted of bench-scale stabilization treatment testing for selenium-bearing wastes generated by Owens Brockway and Ball-Foster. Three samples of the Owens Brockway waste and one sample of the Ball Foster waste were tested to determine appropriate stabilization recipes. Selenium concentrations in the untreated Owens Brockway wastes were between 465 and 1024 mg/L TCLP, while the selenium concentration in the Ball-Foster waste was 59.8 mg/L TCLP. CWM submitted stabilization data from each facility using combinations of the following stabilization reagents: ferrous sulfate, calcium polysulfide, ferric chloride, sodium bisulfate, portland cement, and cement kiln dust. For more detailed information about this petition, see the proposed rule (63 FR 56886, October 23, 1998) and the docket supporting this proposal (docket number F-98-CWMP-FFFFF).

B. What Criteria Govern a Treatment Variance?

Under 40 CFR 268.44(h), EPA allows facilities to apply for a site-specific variance when a waste generated under conditions specific to only one site cannot be treated to the specified level(s). In such cases, the generator or

treatment facility may apply to the Administrator, or EPA's delegated representative, for a site-specific variance from a treatment standard.

In 40 CFR 268.44(h)(1) and (2), EPA describes the two main cases in which we will grant a treatment variance. The case described in 40 CFR 268.44(h)(1) is applicable to this treatment variance, which addresses process wastes that are generated on a routine basis by two glass manufacturing companies. Basically, EPA must determine if the petitioner has adequately shown that, "It is not physically possible to treat the waste to the level specified in the treatment standard . . . because the physical or the chemical properties of the waste differ significantly from the waste analyzed in developing the treatment standard. . . ."

C. What Is the Basis for EPA's Approval of CWM's Request for an Alternative D010 Treatment Standard?

After careful review of the data and petition submitted by CWM, we conclude that CWM has adequately demonstrated that the wastes satisfy the requirements for a treatment variance under 40 CFR 268.44(h)(1).

CWM has demonstrated that the two glass manufacturing waste streams differ significantly in chemical composition from the waste used to generate the original treatment standard. Selenium TCLP concentrations in the untreated wastes are one to three orders of magnitude higher than the waste used in developing the treatment standard for D010 hazardous wastes. Furthermore, CWM is using stabilization as the treatment technology, which is consistent with EPA's determination of BDAT, and the process is well-designed and operated.

Treatment of these two wastes is especially difficult because of the presence of other metals (i.e., arsenic, cadmium, chromium, and lead) above their respective characteristic levels. It is difficult, if not impossible, to optimize treatment for selenium when other metals are being treated because the selenium solubility curve differs from that of most other metals. Selenium's minimum solubility is at a neutral to mildly acidic pH (6.5–7.5) while other characteristic metals have a minimum solubility in the alkaline pH range (8–12) (see 62 FR 26045).

Therefore, EPA is today granting a site-specific variance from the D010 treatment standards for the two waste streams in question since the wastes cannot be physically treated to the level specified in the regulations. Today's alternative treatment standards will provide sufficient latitude for CWM to treat the other metals present in the

wastes to LDR treatment standards and, by raising the selenium treatment standard, will avoid the difficulty posed by the different metal solubility curves.

D. What Are the Terms and Conditions of the Variance?

This variance applies to two specific waste streams: electrostatic precipitator dust generated during glass manufacturing operations at Owens Brockway Glass Container Company, and dry scrubber solid from glass manufacturing wastes at Ball-Foster Glass Container Corporation.

In analyzing the Owens Brockway data, the most effective stabilization recipe for this waste consists of 0.7 parts iron sulfate combined with 2.0 parts cement, resulting in a reagent to waste ratio of 2.7 to 1. For each of the three analytical trials submitted for the waste stream, this specific recipe achieved 36.8, 34.08, and 43.7 mg/L selenium TCLP in the treated waste. The treatment extract had a pH ranging from 10.5–11.9, which encompasses the maximum solubility (and, therefore, leaching potential) of selenium. This, in turn, suggests that use of the TCLP in this particular case adequately reflects a worst-case disposal scenario. (This is unlike the situation in *Columbia Falls Aluminum Co. v. EPA*, 139 F.3d 914, in which the TCLP testing did not reflect the post-treatment conditions). Using the BDAT methodology,¹ we calculated an alternative D010 standard of 51 mg/L TCLP.

For Ball-Foster's waste, the most effective treatment recipes have reagent to waste ratios of 1.8, 2.2, 2.3, 2.4, and 2.7. Selenium concentrations in the treated wastes were 11.6, 7.47, 8.22, 15.6, and 4.82 mg/L TCLP. The treatment extract pH ranged from 11.9–12.0, which again suggests that use of the TCLP adequately reflects the worst case disposal scenario. These treatment recipes are all consistent with the reagent to waste ratios used to establish the existing standard of 5.7 mg/L TCLP. Using these five data points, we calculated an alternative treatment D010 standard of 25 mg/L TCLP.

After treatment to these alternative selenium standards, CWM may dispose of the treated wastes in a RCRA Subtitle C landfill—since the waste still exhibits the toxicity characteristic—provided they meet all other applicable LDR treatment standards. We are granting this variance for three years for reasons discussed in Section IV below.

¹ BDAT Background Document for Quality Assurance/Quality Control Procedures and Methodology, October 23, 1991.

Although the alternative selenium standards for these two wastes are relatively high, this is a technically necessary compromise. As noted above and in the May 12, 1997 **Federal Register** (62 FR 26045), treatment cannot be optimized for both acid and base-soluble metals due to their different solubility curves. Because all of the other toxic metals (i.e., arsenic, cadmium, chromium, and lead) are being immobilized to meet their respective universal treatment standards, we consider, under the circumstances, that threats are being minimized if the alternative selenium treatment standards are met, as required by 3004(m).

Not only are all of the other toxic metals meeting their respective UTS standards, but the alternative selenium treatment standards essentially require CWM to use a well-designed and well-operated treatment system that is consistent, particularly in terms of the selection of reagents and reagent to waste ratios, with the technical basis for the current selenium treatment standard.

III. Response to Comments

The Agency received one comment on the proposed rule from a waste treatment company that treats metal-bearing hazardous wastes, including wastes contaminated with selenium. The commenter claims to have a reagent capable of stabilizing the wastes in question so that less selenium will leach out of the treated waste. The commenter submitted data showing that its reagent is successful in stabilizing wastes containing a variety of heavy metals, including selenium.

The commenter asked to perform a treatability study on the two wastes to verify whether a variance is necessary, and to determine whether a numerical treatment standard closer to the current regulatory level of 5.7 mg/L TCLP would be achievable.

We agreed that the commenter should conduct a treatability study. From December 1998 to February 1999, the commenter treated both of the glass manufacturing waste streams using its reagent. The commenter achieved selenium TCLP results ranging from 25.0–57.7 mg/L. These results are comparable to the alternative treatment standards in the proposed variance. However, we observe two significant points in the treatability study data:

(1) The commenter treated wastes that had significantly higher selenium concentrations than the wastes described in the proposed variance. The untreated Ball-Foster and Owens Brockway samples used in the

treatability study had selenium concentrations of 2900 mg/L TCLP and 15,200 mg/L TCLP, respectively. The untreated wastes analyzed at the time of the proposed variance had concentrations of 60–1000 mg/L TCLP.

(2) The commenter's reagent achieved treatment levels similar to those we proposed, but with reagent to waste ratios of only 0.15–0.2 to 1. By comparison, the reagent to waste ratios used in the proposed rule were as high as 2.7 to 1.

Based on our review of the treatability study, we conclude that the wastes used in the treatability study represent the most difficult to treat Ball-Foster and Owens Brockway wastes, and that the proposed alternative treatment standards are still appropriate for these two waste streams. CWM also has indicated that the high concentration selenium wastes from the treatability study are not strictly one-time generated wastes, but rather are representative of the wastes that the two facilities generate from time to time. Therefore, we are finalizing the alternative treatment standards for the two waste streams as proposed. Both CWM and the commenter support our decision to finalize this variance at this time.

We note that, since this rule is approving a variance from a numerical treatment standard, CWM may use any reagent it chooses in meeting the alternative numerical standard. Finalization of this rule does not preclude CWM from using the commenter's reagent in stabilizing the two waste streams, which may be needed for any batches of higher selenium concentrations. The Agency notes that, to avoid questions of impermissible dilution, CWM will need to keep the reagent to waste ratios within acceptable bounds. No specific ratios are being established in today's rule because the Agency does not typically circumscribe a treater's flexibility in this manner. However, the Agency recommends that CWM use a reagent to waste ratio of 2.7 to 1 as a benchmark. This is the ratio used by the Agency in establishing today's alternative treatment standard.

IV. Reasons for the 3-Year Limitation

Because selenium is a non-renewable resource, and because the wastes in question contain high selenium concentrations, one potential avenue is that the selenium component could be recycled in an environmentally sound manner instead of being stabilized and landfilled. No secondary selenium recovery capacity currently exists in the

U.S.² Further, the market for selenium appears to be declining, selenium prices are low, and a surplus foreign secondary capacity of selenium exists.³ All of these factors suggest that development of an environmentally protective secondary selenium recovery system in the U.S. is not reasonably to be expected in the near future. That leaves stabilization as the best available treatment technology.

Over the next three years, EPA will determine whether this is still the case, and also whether new technologies (e.g., more effective stabilization reagents) have become available to treat these wastes to the national treatment level of 5.7 mg/L TCLP. CWM should expect to update us annually on the alternative treatment technologies it is investigating, and to submit any analytical data from studies using these alternative technologies. We will ask that CWM's submission also include information showing which stabilization recipe it is using to meet the alternative treatment standards, the selenium concentrations in untreated wastes, and the analytical results from these treated wastes. The Agency intends to use this information to determine if today's alternative treatment standards (or some other levels) are appropriate as a more permanent standard. Timely submittal of this information will allow us to begin any necessary rulemaking process as early as possible.

At the end of the three-year period, today's alternative treatment standards expire. Thus, if CWM has not found a new treatment technology to treat the two wastes to the national treatment level for D010 selenium wastes or if the Agency has not adopted more permanent alternative treatment standards for these two wastes, then CWM will have to submit a new petition to the Agency for a continuation of the current treatment variance, or a new treatment variance if a different alternative treatment standard is warranted.

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of \$100

² "Recycling-Metals." U.S. Geological Survey—Minerals Information—1997.

³ *Id.*

million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because this rule does not create any new regulatory requirements, it is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. Also, because this variance only changes the treatment standards applicable to two D010 waste streams at the Chemical Waste Management, Inc. facility in Kettleman City, California, and does not change in any way the paperwork requirements already applicable to these wastes, it does not affect requirements under the Paperwork Reduction Act.

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates. Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

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

Today's final rule is not subject to E.O. 13045 because it does not meet either of these criteria. The wastes described in this treatment variance will be treated by Chemical Waste Management, Inc., and then disposed of in a RCRA Subtitle C landfill, ensuring that there will be no risks that may disproportionately affect children.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule issues a variance from the LDR treatment standards for two specific characteristic selenium wastes. Accordingly, the requirements

of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Executive Order 12898

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3-17). Today's variance applies to two D010 waste streams that will be treated by Chemical Waste Management, Inc. at their Kettleman City, California facility and disposed of in a RCRA Subtitle C landfill, ensuring protection to human health and the environment. Therefore, the Agency does not believe that today's rule will result in any disproportionately negative impacts on minority or low-income communities relative to affluent or non-minority communities.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with

applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

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

G. Regulatory Flexibility Act

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

1996) whenever an agency is required to publish a 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 effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

This treatment variance does not create any new regulatory requirements. Rather, it establishes alternative treatment standards for two specific wastes that replace standards already in effect, and it only applies to the CWM facility in Kettleman City, California. Therefore, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

H. National Technology Transfer and Advancement Act of 1995

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

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability, applying only to a particular waste at one facility under particular (and, as noted, exceptional) circumstances.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: May 11, 1999.

James R. Berlow,

Acting Director, Office of Solid Waste.

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

PART 268—LAND DISPOSAL RESTRICTIONS

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

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

2. Section 268.44 is amended by adding two entries in alphabetical order and three footnotes to "TABLE—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40" in paragraph (o) to read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *

(o) * * *

WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40

Facility name ¹ and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/L TCLP)	Notes	Concentration (mg/L TCLP)	Notes
Ball-Foster Glass Container Corporation, El Monte, CA (6),(7).	D010	Table CCWE in 268.40.	Selenium	NA	NA	25	NA

WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40—Continued

Facility name ¹ and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/L TCLP)	Notes	Concentration (mg/L TCLP)	Notes
Owens Brockway Glass Container Company, Vernon, CA ^{(5),(7)} .	D010	Table CCWE in 268.40.	Selenium	NA	NA	51	NA

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

⁽⁵⁾ Alternative D010 selenium standard only applies to dry scrubber solid from glass manufacturing wastes.

⁽⁶⁾ Alternative D010 selenium standard only applies to electrostatic precipitator dust generated during glass manufacturing operations.

⁽⁷⁾ D010 wastes generated by these two facilities are subject to the following conditions: (a) the wastes must be treated by Chemical Waste Management, Inc. at their Kettleman Hills facility in Kettleman City, California; and (b) this treatment variance will be valid until May 11, 2002.

NOTE: NA means Not Applicable.

[FR Doc. 99-12945 Filed 5-25-99; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AF62

Endangered and Threatened Wildlife and Plants; Threatened Status for Johnson's Seagrass

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is adding Johnson's seagrass (*Halophila johnsonii*) to the List of Endangered and Threatened Plants (List) as a threatened species in accordance with the Endangered Species Act of 1973, as amended (Act). This amendment to the List is based on a determination by the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Department of Commerce, which has jurisdiction for this species, published on September 14, 1998, in the **Federal Register** (63 FR 49035).

DATES: The effective date of this action is May 26, 1999.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 N.

Fairfax Drive, Mail Stop 452, Arlington, Virginia 22203 (703/358-2171).

SUPPLEMENTARY INFORMATION: The Act is administered jointly by the Service and NMFS. In accordance with a Memorandum of Understanding between the Service and NMFS regarding jurisdictional responsibilities and listing procedures under the Act signed on August 28, 1974, the agencies agreed that NMFS would assume jurisdiction for the Johnson's seagrass. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. The Service is responsible for the actual amendment of the List in 50 CFR 17.12(h).

NMFS published a proposed rule to list Johnson's seagrass as a threatened species on September 15, 1993 (58 FR 48326). In the proposed rule, NMFS solicited comments from peer reviewers, the public, and all other interested parties. NMFS held a public hearing on the proposed listing in Vero Beach, Florida, on September 20, 1994. NMFS reopened the comment period for the proposed listing on April 20, 1998 (63 FR 19468).

On September 14, 1998, NMFS published a final rule to list Johnson's seagrass as threatened (63 FR 49035). In the final rule, NMFS addressed the comments received in response to the proposed rule. Because NMFS provided public comment periods on the proposed rule, and because this action of the Service to amend the List in accordance with the determination by NMFS is nondiscretionary and

administrative in nature, the Service has omitted the notice and public comment procedures of 5 U.S.C. 553(b) for this action.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. The Service amends section 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
<i>Halophila johnsonii</i> ..	Johnson's seagrass	U.S.A. (FL)	Hydrocharitaceae ...	T	663	NA	NA