

included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

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

You may find the following suggestions helpful for preparing your comments:

- I. Explain your views as clearly as possible.
- II. Describe any assumptions that you used.
- III. Provide any technical information and/or data you used that support your views.
- IV. If you estimate potential burden or costs, explain how you arrived at your estimate.
- V. Provide specific examples to illustrate your concerns.
- VI. Offer alternatives.
- VII. Make sure to submit your comments by the comment period deadline identified.
- VIII. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Authority

EPA is publishing this proposed regulation under the authority of sections 2002, 3001, 3002, 3003, 3006, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6912, 6921, 6922, 6923, 6926, 6930, 6937, 6938, and 6974).

III. Background

A. How Does This Supplemental Proposal Relate to the Original Proposal Published on June 6, 2001 (66 FR 30349)?

This pilot project assesses the appropriateness of excluding from the RCRA regulatory definition of solid waste the wastewater treatment sludge (designated as F006 Hazardous Waste) generated by one of the two fluoride/heavy metal wastewater treatment plants (the plant designated as B/690 West Complex by IBM) on the IBM East Fishkill facility when the sludge is being used as an ingredient in the manufacture of cement. Information will be obtained and used to evaluate this recycling process and determine

whether similar sludges should also be excluded from RCRA regulatory controls when recycled in the same manner. However, additional data will likely be necessary before EPA would be in a position to evaluate this practice at the national level.

Today's supplemental proposal amends the original proposal published on June 6, 2001 (66 FR 30349). As with the original proposed rule, this supplemental proposal is not intended to apply to any other hazardous wastes generated and/or managed at the IBM facility, unless the wastewater treatment sludge (also designated as F006 Hazardous Waste) generated by the other wastewater treatment plant (the B/386 East Complex) at the facility becomes eligible once a Final Project Agreement (or addendum to the current Final Project Agreement) is signed allowing for the additional sludge to be included in this project. The proposed rule does not apply to any wastewater treatment sludges generated at other facilities.

The duration of this pilot project is five years—that is, the site-specific conditional exclusion includes a “sunset provision” which will automatically terminate the exclusion five years from the effective date of the final rulemaking. Towards the end of the term of this XL project, EPA, the New York State Department of Environmental Conservation (NYSDEC), and IBM will evaluate the success of the pilot project. If the project is determined to be successful, EPA may consider expanding the scope of the exclusion to the national level (by rulemaking). However, EPA does not expect that this XL project alone can generate all the data that would be necessary on the wide variety of other F006 wastestreams that could potentially be used to make cement to proceed with a national rulemaking.

Today's supplemental proposal, and the original proposed rulemaking will not in any way affect the provisions or applicability of any other existing or future regulations.

EPA is soliciting comments on today's supplemental proposal. EPA will publish responses to comments, and comments to the original proposal in a subsequent **Federal Register** document. Subject to comments received on the proposal, EPA will either promulgate the proposed rule (as supplemented with today's proposal) as a final rule, modify the proposal as necessary to address comments and promulgate the modified proposal as a final rule, or decide to not go final with the rule. If significant changes to the rule are necessary based on comments received,

EPA will re-propose the rule to allow for further public notice and comment. The XL project will enter the implementation phase only after a final rule is promulgated by EPA, and NYSDEC has undertaken appropriate action to allow the project to be implemented.

The terms of the overall XL project are contained in a Final Project Agreement (FPA) which was the subject of a Notice of Availability published in the **Federal Register** on September 1, 2000 (65 FR 53298) and which was signed by EPA, NYSDEC and IBM on September 29, 2000. The Final Project Agreement (FPA) is available to the public at the EPA Docket in Washington, DC, in the U.S. EPA Region 2 library, at the IBM East Fishkill facility, and on the world wide web at <http://www.epa.gov/projectxl/>.

For a more complete and detailed discussion of Project XL, the development of the Final Project Agreement (FPA), and the pilot project for which this supplemental proposal is intended, the reader is referred to the original proposal (June 6, 2001, 66 FR 30349). The summary of the proposed rule provided below is not intended to be comprehensive, but only includes those aspects of the proposed rule most relevant to this supplemental proposal.

B. Brief Summary of the June 6, 2001 Proposed Rule

On June 6, 2001, EPA published a proposed rule (66 FR 30349) to amend the RCRA regulatory definition of solid waste to provide a site-specific conditional exclusion for the F006 electroplating sludge generated by the IBM East Fishkill facility located in Hopewell Junction, New York. This rulemaking effort was undertaken to allow for the implementation of a pilot project under Project XL to determine whether the electroplating sludge could be recycled in an environmentally sound manner as an ingredient in the production of cement without RCRA regulatory oversight. (Note that the legitimate recycling of this sludge as an ingredient in cement is currently regulated under Subtitle C of RCRA because the cement is likely to be used on the land—that is, “used in a manner constituting disposal,” a form of recycling that is analogous to land disposal. Because the current regulatory framework would subject this sludge to RCRA regulatory requirements, this recycling scenario would likely not be undertaken and implemented without the site-specific exclusion.)

EPA's (and NYSDEC's) decision to proceed with this pilot project was based in large part on the determination