

that the use of the sludge as an ingredient in cement is legitimate recycling. In other words, the electroplating sludge in question was determined, based on a comparative analysis of the constituents in both the sludge and the raw materials that the sludge would be replacing, to be a legitimate substitute for the analogous raw materials that would otherwise be used in the production of cement. *See* the June 6, 2001 proposal (66 FR at 30352–30354) for a more detailed discussion of the Agency's basis for defining this activity as legitimate recycling. Having determined the legitimacy of this activity, the proposed site-specific exclusion was conditioned on the sludge remaining consistent with the analogous raw materials, which was accomplished by setting a set of threshold levels for the hazardous constituents contained in the sludge. (Note that the site-specific conditional exclusion also imposes certain other conditions on IBM to be eligible for the exclusion.)

#### **IV. Discussion of Certain Comments Received on the June 6, 2001 Proposed Rule**

On June 6, 2001, EPA requested comments on the proposed rule for the IBM East Fishkill Project XL (*see* 66 FR 30349). While the Agency will appropriately address the comments received in the final rule (assuming the rule is finalized), EPA is taking this opportunity to address certain fundamental misconceptions concerning this XL pilot project that are common to many of the comments received on the original proposal. In addition, the Agency would like to address certain comments that question the overall "legitimacy" of using this F006 sludge as an ingredient in cement.

##### **A. Shenandoah Road Superfund Site Stakeholders**

Comments were submitted by concerned citizens living in a community near the IBM East Fishkill facility who are also involved as stakeholders in the cleanup of the Shenandoah Road Groundwater Contamination Superfund Site, a remediation activity for which the IBM East Fishkill facility was identified as a Potentially Responsible Party (PRP). The Agency is taking this opportunity to address some of the concerns expressed by these citizens. The sludge involved in this XL project was not disposed of at the Superfund site, and the production lines and wastewater treatment systems involved in generating the sludge are not associated with operations which resulted in the

groundwater contamination that is the focus of the Superfund remedial activities. Further, the sludge does not contain tetrachloroethene (PCE) or other volatile organic constituents (VOCs), but rather is primarily composed of calcium and fluoride, and includes certain inorganic constituents of concern (*i.e.*, heavy metals) at low levels.

Also, it is worth noting that while the facility may have been involved in past operations that resulted in environmental damages, this in and of itself does not preclude the facility (or any facility) from developing and proposing a pilot project that meets the Project XL criteria.

In addition, several of the commenters requested a public meeting on this XL project and the proposed rule and an extension to the comment period. This request was declined by EPA because the substantive concerns expressed in the comments were primarily based upon a perceived connection between this XL pilot project and the contamination/remediation activities at the Shenandoah Road Superfund Site. Since public meetings concerning the Superfund site were being held, EPA concluded that they provided a more appropriate forum to raise such concerns.

To address any concerns that may have been somewhat related to IBM's XL project, EPA held an Availability Session (an informal forum in which the pilot project could be discussed with interested individuals) in conjunction with one of the Superfund public meetings as an effective first step in addressing those concerns. A fact sheet for the project was updated to respond to comments received before the Superfund public meeting that was scheduled for June 13, 2001, a week following publication of the proposed rule. (Most of the comments received from the residents of the Shenandoah Road area had been received before this meeting.) EPA's project manager for this XL project attended the June 13, 2001 Superfund public meeting, hosted the Availability Session, discussed this XL project with interested persons, and distributed copies of the fact sheet. Comments that were received during and immediately after the Availability Session were subsequently addressed by letter or e-mail. Therefore, although neither a public meeting nor an extension of the comment period was granted specific to this XL project or proposed rule, the Agency took steps to address the concerns raised.

##### **B. Environmental Technology Council**

The Environmental Technology Council (ETC) is a national trade

association representing the commercial hazardous waste management industry and has historically been an active stakeholder in rulemakings involving RCRA jurisdiction. While ETC commented on several aspects of the proposal which will be addressed in the final rule (assuming the rule is finalized), several comments related to "legitimate recycling" and "dilution" exhibited a significant misunderstanding that the Agency wishes to address in today's notice.

To begin, ETC asserts that the recycling of IBM's sludge as an ingredient in cement is a sham, rather than legitimate recycling. In other words, ETC claims that the use of the calcium-rich sludge as an ingredient in cement is nothing more than treatment and/or disposal of the sludge in the guise of recycling. While ETC provides support for this assertion by addressing the various "legitimacy criteria" as the Agency did in the proposal (*see* 66 FR at 30353), one aspect of ETC's discussion requires clarification from EPA in this supplemental proposal. ETC contends that the sludge contains significantly higher levels of hazardous constituents than the analogous raw materials the sludge would replace. The Agency disagrees with ETC and notes that ETC cites historical analytical data on the sludge rather than the more recent analyses of the sludge to support this claim. Further, ETC fails to acknowledge the threshold levels proposed as a mechanism to ensure that the sludge excluded from RCRA regulation would remain comparable to the analogous raw materials. ETC's claim to the contrary notwithstanding, the sludge that will be recycled pursuant to the proposed conditional exclusion will, in effect, legitimately substitute for the analogous raw materials that would otherwise be used. This is one of the indicators the Agency considered in determining that the use of the sludge as an ingredient in the production of cement is legitimate recycling.

As for ETC's position that this recycling scenario is simply dilution, the Agency acknowledges that the 1:200 ratio of sludge to normal raw materials might, in and of itself, lead one to assume that impermissible dilution is occurring. Indeed, the Agency stated as much in the preamble to the proposed rule (*see* 66 FR at 30354); however, as EPA also discussed, upon further evaluation, one can see that the ratio is merely a function of the relatively small volume of electroplating sludge generated by the IBM facility and the relatively large volume of raw materials typically processed by a cement