

exclusion. EPA may not enforce these requirements until it approves the State requirements as a revision to the authorized State program.

List of Subjects in 40 CFR Part 261

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

Dated: April 4, 2003.

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Administrator.

For the reasons set forth in the preamble, part 261 of chapter I of title 40 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 261.4 is amended by adding paragraph (a)(22) to read as follows:

§ 261.4 Exclusions.

* * * * *

(a) * * *

(22) Dewatered wastewater treatment sludges generated by the International Business Machines Corporation (IBM) East Fishkill facility in Hopewell Junction, New York, provided that:

(i) The sludge is recycled as an ingredient in the manufacture of cement meeting appropriate product specifications by a cement manufacturing facility.

(ii) The sludge is not stored on the land, and protective measures are taken to ensure against wind dispersal and precipitation run-off.

(iii) The sludge is not accumulated speculatively, as defined in § 261.1(c)(8).

(iv) A representative sample of the sludge undergoes constituent analysis by IBM (using the methods specified in 40 CFR part 264, appendix

IX) demonstrating that the sludge contains constituents at no greater concentrations than the thresholds presented below. Sludges generated by different wastewater treatment systems must be analyzed separately (commingling of the sludges is permissible after sampling). This sampling and analysis must be conducted every three months for an initial 12-month period, which can include the immediate period prior to the effective date of this exclusion. After the initial 12-month reporting period (*i.e.*, four sampling/analysis events), sampling and analysis must be conducted every six months for the duration of the project. Additionally, after any change in either the manufacturing process or the wastewater treatment process that could affect the chemical composition of the wastewater treatment sludge, sampling and analysis must be conducted. In addition to the constituents for which threshold levels are established, IBM must analyze and report the concentration levels of mercury and beryllium. The threshold concentrations are as follows:

Arsenic 3.0 mg/kg

Cadmium 2.0 mg/kg
Chromium (total) 22.9 mg/kg
Cyanide (amenable) 0.815 mg/kg
Cyanide (total) 0.815 mg/kg
Lead 18.8 mg/kg
Nickel 10.4 mg/kg
Silver 2.1 mg/kg

(v) An accounting is made of the volumes of sludge that are recycled, with an assessment of how much less analogous raw materials are used to produce the same volume of cement product, or how much more cement is produced attributable to the volume of sludge that is processed. IBM must acquire this information from the cement manufacturing facility.

(vi) IBM documents each shipment of the sludge, including where the sludge was sent, the date of the shipment, the date that the shipment was received and the volume of each shipment.

(vii) IBM provides EPA and NYSDEC with semi-annual reports detailing all of the information in paragraphs (a)(22)(i)–(vi) of this section for the duration of the project.

(viii) Should any of the conditions of paragraphs (a)(22)(i)–(vii) of this section not be met, the exclusion provided in this provision will not be applicable and the wastewater treatment sludge will be subject to the applicable RCRA Subtitle C regulations until the conditions are once again met.

(ix) The provisions of this section shall expire on [DATE FIVE YEARS FROM EFFECTIVE DATE OF FINAL RULE].

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