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FOR FURTHER INFORMATION CONTACT: For general and technical information concerning this final rule, please contact David Langston, RCRA Enforcement and Compliance Branch, (Mail Code 4WD-RCRA), U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562-8588, or call, toll free, (800) 241-1754, and leave a message, with your name and phone number, for David Langston to return your call. Questions may also be e-mailed to David Langston at langston.david@epa.gov. You may also contact Nina Vo, Tennessee Department of Environment and Conservation, Division of Solid Waste Management, 5th Floor L&C Tower 401 Church Street, Nashville, Tennessee 37243-1535. If you wish to copy documents at TDEC, please contact Ms. Vo for copying procedures and costs.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background

A. What Laws and Regulations Give EPA the Authority to Delist Wastes?

B. How did EPA Evaluate this Petition?

1. What is the EPACML model that EPA used in the past for determining delisting levels?
2. What is the DRAS that uses the new EPACMTP model to calculate not only delisting levels, but also to evaluate the effects of the waste on human health and the environment?
3. Why is the EPACMTP an improvement over the EPACML?
4. Where can technical details on the EPACMTP be found?
5. What method is EPA proposing to use to determine delisting levels for this petitioned waste?

II. Disposition of Delisting Petition

A. Summary of Delisting Petition Submitted by Bekaert Steel Corporation, Dyersburg, Tennessee (Bekaert)

B. What Delisting Levels Did EPA Obtain with DRAS and EPACMTP?

C. Conclusion

III. Limited Effect of Federal Exclusion

Will this Rule Apply in All States?

IV. Effective Date

V. Paperwork Reduction Act

VI. National Technology Transfer and Advancement Act

VII. Unfunded Mandates Reform Act

VIII. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement and Fairness Act

IX. Executive Order 12866

X. Executive Order 13045

XI. Executive Order 13084 Affecting Indian Tribal Governments

XII. Submission to Congress and General Accounting Office

XIII. Executive Order 13132

I. Background

A. What Laws and Regulations Give EPA the Authority to Delist Wastes?

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility¹ should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. *See* § 260.22(a) and the background documents for the listed wastes. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a

¹ Although no one produces hazardous waste intentionally, many industrial processes result in the production of hazardous waste, as well as useful products and services. A "generating facility" is a facility in which hazardous waste is produced, and a "generator" is a person who produces hazardous waste or causes hazardous waste to be produced at a particular place. Please see 40 CFR 260.10 for regulatory definitions of "generator," "facility," "person," and other terms related to hazardous waste, and 40 CFR part 262 for regulatory requirements for generators.

hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. *See* § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on the hazardous waste characteristics (*i.e.*, characteristics which may be promulgated subsequent to a delisting decision.)

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. *See* § 261.3(a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived-from" rules and remanded them to the EPA on procedural grounds. *Shell Oil Co. v. EPA*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278), and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. On May 16, 2001, EPA amended the mixture and derived-from rules for certain types of wastes (66 FR 27218 and 66 FR 27266). The mixture and derived-from rules are codified in 40 CFR 261.3, paragraphs (a)(2)(iv) and (c)(2)(i). EPA plans to address all waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with §§ 260.20 and 260.22, by generators within their Regions (National Delegation of Authority 8-19), in States not yet authorized to administer a delisting