

TABLE I.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS OF THE DEWATERED WASTEWATER SLUDGE ¹—Continued

Constituent	Total constituent analyses (mg/kg)	TCLP concentration (mg/L)	Maximum allowable TCLP concentration from DRAS (mg/L)
Zinc	38.8	*0.1	1130

¹ These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

*Denotes that the constituent was not detected at the noted detection limit

F. What Did the EPA Conclude About ACC's Analysis?

The EPA concluded, after reviewing ACC's processes that no other hazardous constituents of concern, other than those for which ACC tested, are likely to be present or formed as reaction products or by products in ACC's waste. In addition, on the basis of explanations and analytical data provided by ACC, pursuant to § 260.22, the EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

G. What Other Factors Did the EPA Consider in Its Evaluation?

During the evaluation of ACC's petition, the EPA also considered the potential impact of ACC's petitioned waste via non-ground water routes (*i.e.*, air emission and surface runoff). With regard to airborne dispersion in particular, the EPA believes that exposure to airborne contaminants from ACC's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from the petitioned waste under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from ACC's petitioned waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from ACC's petitioned waste. A description of the EPA's assessment of the potential impact of ACC's petitioned waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for this proposed rule, F-03-TXDEL-ACC.

The EPA also considered the potential impact of the petitioned waste via a surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (See 56 FR 50978, October 9, 1991) prohibit

pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in this action due to the acidic medium used for extraction in the TCLP. The EPA believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as ground water.

Based on the reasons discussed above, the EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, the EPA evaluated the potential impacts on surface water if ACC's petitioned waste were released from a municipal solid waste landfill through runoff and erosion. See the RCRA public docket for this proposed rule for further information on the potential surface water impacts from runoff and erosion. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below the EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that the petitioned waste would not present potential hazard to human health and the environment via the surface water exposure pathway.

H. What Is the EPA's Final Evaluation of This Delisting Petition?

The descriptions of ACC's hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for the EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the

maximum allowable leachable concentrations (*see* Table I). We believe ACC's process will substantially reduce the likelihood of migration of hazardous constituents from the petitioned waste. ACC's process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

The EPA has reviewed the sampling procedures used by ACC and has determined they satisfy the EPA criteria for collecting representative samples of variable constituent concentrations in the petitioned sludge. The data submitted in support of the petition show that constituents in ACC's petitioned waste are presently below the compliance point concentrations used in the delisting decision-making and would not pose a substantial hazard to the environment.

The EPA believes that ACC has successfully demonstrated that the petitioned waste is non-hazardous, and therefore, proposes to grant an exclusion to ACC, in Corpus Christi, Texas, for the dewatered sludge described in its petition. The EPA's decision to exclude this waste is based on descriptions of the treatment activities and characterization of the petitioned waste.

If we finalize the proposed rule, the Agency will no longer regulate the petitioned waste under parts 262 through 268 and the permitting standards of part 270.

IV. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, ACC, must comply with the requirements in 40 CFR part 261, appendix IX, Table 2 as amended by this notice. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituents for which ACC must test the leachate from the dewatered sludge, below which the waste would be considered nonhazardous.

The EPA selected the set of constituents specified in Paragraph (1)