

those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, the EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to have "meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

## XII. National Technology Transfer and Advancement Act

Under section 12(d) if the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus

standard bodies. Where available and potentially applicable voluntary consensus standards are not used by the EPA, the Act requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

## XIII. Executive Order 13132 Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires the EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or the EPA consults with state and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts state

law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

## Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

**Authority:** Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: November 6, 2003.

**Bill Luthans,**

*Acting Director, Multimedia Planning and Permitting Division.*

For the reasons set out in the preamble, 40 CFR part 261 is 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, and 6938.

2. In Table 2 of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

**Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22**

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
American Chrome & Chemicals.	Corpus Christi, Texas.	Dewatered sludge (the EPA Hazardous Waste No. K006) generated at a maximum generation of 1450 cubic yards per calendar year after [publication date of the final rule] and <i>disposed</i> in a Subtitle D landfill. ACC must implement a verification program that meets the following Paragraphs: (1) Delisting Levels: All leachable constituent concentrations must not exceed the following levels (mg/l). The petitioner must use the method specified in 40 CFR 261.24 to measure constituents in the waste leachate. Dewatered wastewater sludge: Arsenic-0.0377; Barium-100.0; Chromium-5.0; Thallium-0.355; Zinc-1130.0. (2) Waste Holding and Handling: (A) ACC is a 90 day facility and does not have a RCRA permit, therefore, ACC must store the dewatered sludge following the requirements specified in 40 CFR 262.34, or continue to dispose of as hazardous all dewatered sludge generated, until they have completed verification testing described in Paragraph (3), as appropriate, and valid analyses show that paragraph (1) is satisfied. (B) Levels of constituents measured in the samples of the dewatered sludge that do not exceed the levels set forth in Paragraph (1) are non-hazardous. ACC can manage and dispose the non-hazardous dewatered sludge according to all applicable solid waste regulations.