hold a hearing. See the docket for proposed notice for the related correspondences. In its comments on the proposed rule, HRD claimed that EPA's denial of its hearing request violates the Administrative Procedure Act.

The Agency notes that the applicable regulations (40 CFR § 260.20(d) and § 25.5) specify only that EPA hold an informal hearing at its discretion. The Agency believes that given the highly technical nature of the proposal, written documentation is a more appropriate medium for the issues raised. In addition, even if a hearing were held, such process would not encompass the formal testimony of EPA staff and expert witnesses HRD was seeking; the Agency would merely use this procedure to gather oral comments for the record. The Agency believes a hearing was unnecessary, and that the Agency's procedures were consistent with the Administrative Procedure Act. In any event, the Agency has met with HRD, the primary commenter opposing this delisting, a number of times since the time of the proposal to hear its views in

## C. Summary of Responses to Public Comments

The Agency received public comments on the November 2, 1993 proposal from 18 interested parties. Eight of these commenters, consisting chiefly of steelmaking concerns, clearly supported the Agency's proposed decision to grant CSI's petition. One commenter had questions about the RCRA permit requirements for CSI's future facilities, and about the effective date of the proposed delisting in a State not authorized to administer the Federal delisting program. Of the nine remaining commenters, one commenter (HRD) strongly opposed the Agency's proposed decision, and presented discussions on a variety of issues. The remaining eight out of these nine commenters consisted of Congressmen and Senators reiterating concerns about the proposed delisting. Detailed Agency responses to all significant comments are provided in a "Response to Comments" document, which is in the public docket for today's rule. The following discussion is a summary of both the most significant issues raised by HRD and EPA's responses.

Impact of This Delisting Upon Recycling of K061

Comment: A number of commenters, including HRD, claimed that the proposed delisting would inappropriately and illegally allow for the landfilling of chemically stabilized

K061 that is currently being recycled by high-temperature metals recovery ("HTMR") facilities. The commenters assertions on this issue can be summarized as follows: (1) Both RCRA and the Pollution Prevention Act of 1990 express a general preference for resource recovery and reclamation over conventional waste treatment and disposal. Accordingly, EPA is required by law to promulgate regulations that encourage recycling over treatment and disposal whenever possible. The CSI delisting violates these statutory requirements because it encourages the landfilling of otherwise recoverable materials. (2) EPA's delisting regulations require compliance with these RCRA and PPA mandates. Specifically, the regulations require EPA to consider factors in addition to those for which the waste was originally listed as a hazardous waste if such factors could cause the waste to be listed as a hazardous waste (40 CFR 260.22(a)(2) and 261.11(a)(3)(xi)). EPA must consider, as one of these factors, the impact of the CSI delisting on the overarching mandates of RCRA and the PPA, and must conclude that the CSI delisting is inconsistent with these statutes. (3) The delisting would violate EPA's own regulatory strategy and prior policies and rulemaking precedents favoring resource conservation and recovery over stabilization. These policies and precedents appear in the Agency's RCRA implementation strategy, land disposal regulations and waste minimization guidance. (4) The CSI delisting would also violate the Administration's stated policy to encourage recycling technologies and a 'green'' economy.

On the other hand, one commenter supporting the proposed delisting stated that the delisting must be granted as a matter of law because EPA has determined that the chemically stabilized EAFD residues do not "pose a substantial hazard to human health or the environment" and therefore are not "hazardous wastes" subject to RCRA regulation, citing RCRA section 1004(5) and 40 CFR 260.22 (a), (b) and 261.11(a). This commenter claimed that the delisting is consistent with the waste management objectives of RCRA and the PPA, which encourage EPA to promote various alternatives to the untreated land disposal of hazardous waste.

Response: After careful evaluation of the characteristics and nature of the K061 residues produced by CSI's stabilization process, EPA is today finalizing a determination that these residues do not constitute RCRA hazardous waste. Specifically, EPA has found that these chemically stabilized

K061 wastes do not meet any of the criteria for which K061 wastes were listed as hazardous and that there is no reason to believe that any factors other than those for which K061 wastes were listed (including additional constituents) could cause these CSI wastes to be hazardous. See 40 CFR 260.22(a) and RCRA section 3001(f).

In light of EPA's determination that CSI's treated K061 waste is not hazardous, the Agency has no authority to retain this waste as a listed hazardous waste simply because doing so would effectively promote HTMR recycling and reclamation of K061 wastes over the treatment and disposal of CSI's chemically stabilized, non-hazardous waste. RCRA's general statements of Congressional findings, objectives and national policy addressing the subject of minimizing hazardous waste generation and disposal do not supersede the specific hazardous waste listing and delisting scheme established under RCRA. Here, under that scheme, EPA has determined that CSI's treated waste does not meet the criteria for being considered hazardous waste. Nothing in the general objectives and policy provisions of RCRA generally favoring resource recovery over conventional waste treatment and disposal requires, or indeed authorizes, EPA to forego or reverse this determination. See Hazardous Waste Treatment Council v. EPA, 861 F.2d 270, 276-77 (D.C. Cir. 1988).

Similarly, EPA cannot agree with the commenter's conclusion that this delisting conflicts with the mandates of the Pollution Prevention Act of 1990 ("PPA"). Section 6602(b) of the PPA (42 U.S.C. 13101(b)) declares it to be the national policy that pollution control should follow a hierarchy which prefers pollution prevention at the source over recycling and prefers recycling over treatment and disposal in an environmentally safe manner. EPA fully supports this hierarchy and believes it sets forth a desirable general order of preferences for pollution control. Again, however, this policy is not a statutory or regulatory mandate. Nothing in the PPA requires or even contemplates that EPA must retain on the list of hazardous wastes materials that the Agency finds to be non-hazardous simply because there exists an ability to perform resource recovery on these materials.

EPA also disagrees with the commenter's claim that the delisting regulations require this delisting to be denied. 40 CFR 260.22(a)(2) focuses on factors that "could cause the waste to be a hazardous waste". The factor cited by the commenter does not fit this description. In addition, EPA finds that