1995, to exclude Hanford's waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (see 60 FR 6054).

This rulemaking addresses public comments received on the proposal and finalizes the Agency's proposed decision to grant DOE's petition.

## **II. Disposition of Delisting Petition**

U.S. Department of Energy's Hanford Facility, Richland, Washington

## A. Proposed Exclusion

On October 30, 1992, DOE petitioned the Agency to exclude from hazardous waste control its treated wastes to be generated from the proposed 200 Area Effluent Treatment Facility (ETF). The ETF is designed to treat process condensate (PC) from the 242–A Evaporator. The untreated PC is a lowlevel radioactive waste as defined in DOE Order 5820.2A and a RCRA listed hazardous waste (EPA Hazardous Waste Nos. F001 through F005 and F039 derived from F001 through F005) as defined in 40 CFR § 261.31(a).

While the constituents of concern in listed wastes F001 through F005 wastes include a variety of solvents (see Part 261, Appendix VII), the constituents (based on PC sampling data and process knowledge) that serve as the basis for characterizing DOE's petitioned wastes as hazardous were limited to 1,1,1trichloroethane (F001), methylene chloride (F002), acetone and methyl isobutyl ketone (F003), cresylic acid (F004), and methyl ethyl ketone (F005).

In support of its petition, DOE submitted:

(1) Detailed descriptions of the waste generation and waste management history at the Hanford site;

(2) Ån inventory of chemicals used in Hanford's production plants and supporting operations;

(3) Detailed descriptions of various waste streams to be fed into the 242–A Evaporator;

(4) Detailed descriptions and schematic drawings of the generation of untreated PC from the 242–A Evaporator;

(5) Information quantifying concentrations of hazardous constituents of untreated 242–A Evaporator PC, including metals and other inorganic constituents, organic constituents, and radioactive constituents;

(6) Detailed descriptions and schematic drawings of its proposed Effluent Treatment Facility and primary steps of its treatment processes;

(7) Results from the analysis of liquid wastes generated by pilot-scale treatability studies, showing concentrations of inorganic and organic compounds in samples of untreated and treated surrogate test solutions and percent removal; and

(8) Information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity.

The Agency evaluated the information and analytical data provided by DOE in support of the petition and determined that the disposal of the DOE effluents, after treatment, would not adversely affect human health or the environment. Specifically, the Agency used the modified EPA Composite Model for Landfills (EPACML) to predict the potential mobility of the hazardous constituents found in the petitioned waste. The Agency also evaluated additional modeling information, submitted by DOE, concerning transport of hazardous constituents in ground water. Based on these modeling evaluations, the Agency determined that the concentrations of constituents in groundwater from DOE's petitioned waste would not exceed delisting levels of concern. See 60 FR 6054, February 1, 1995, for a detailed explanation of why EPA proposed to grant DOE's petition for its treated effluents generated from the ETF located at the Hanford site.

## B. Response to Public Comments

The Agency received public comments on the February 1, 1995 proposal from three interested parties. These three commenters either expressed support or did not have any negative comments on the Agency's proposed decision to grant DOE's petition. One commenter, the U.S. Nuclear Regulatory Commission, believed that the Agency's consideration of the unique circumstances surrounding the management of the mixed waste generated at the Hanford facility was appropriate and the concepts the Agency used in formulating the proposed rule should be incorporated in developing management strategies for other commercial mixed wastes. The two remaining commenters wanted clarification and expansion of the language contained in the proposed rule. The following sections address their specific comments.

*Comment:* One commenter requested that zinc be removed as a "hazardous constituent" from the proposed rule. The commenter stated that zinc is not listed as a hazardous constituent of F001 through F005 wastes, nor is zinc listed as a hazardous constituent in 40 CFR Part 261, Appendix VIII. The commenter also stated that the Agency recently noted that zinc was not an "underlying hazardous constituent" under the new land disposal restrictions, 40 CFR 268.2(i) (see 59 FR 48106, September 19, 1994). Therefore, the commenter does not believe that zinc can be listed as a "hazardous constituent" in the proposed addition to Appendix IX of Part 261 as set forth in the proposal.

*Response:* The Agency agrees that zinc is not listed as a hazardous constituent of F001 through F005 wastes, nor is zinc listed as a hazardous constituent in 40 CFR 261, Appendix VIII. However, the statute (§ 3001(f)) requires the Agency, as part of its delisting evaluation, to consider any factors (including additional constituents) other than those for which the waste was listed if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

Accordingly, in addition to addressing the criteria for which the wastes were listed, a petitioner must demonstrate that the wastes do not exhibit any of the hazardous waste characteristics and must present sufficient information for the Agency to determine whether the wastes contain any other toxicants at hazardous levels. See 42 USC §6921(f) and 40 CFR 260.22(a). Because zinc was detected in DOE's petitioned waste and is a constituent with an established healthbased level (10 ppm), it is a constituent of regulatory concern for DOE's petitioned waste for delisting purposes (see Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR 260.20 and 260.22, December 1994). As such, zinc will remain on the list of constituents for verification testing. However, consistent with the commenter's request, EPA acknowledges that zinc remains on the list as an additional constituent of concern for delisting purposes and not as a designated "hazardous constituent". In the proposal, EPA did not intend to indicate otherwise. Also, the September 19, 1994 rulemaking cited by the commenter states that zinc is not an "underlying hazardous constituent" in characteristic wastes, according to the definition at 268.2(i). (See § 268.48 Table UTS, note 5, 59 FR 48107). As above, that issue is not determinative of the issue here concerning EPA's decision to retain zinc on the list of constituents for verification testing as an additional constituent of concern for delisting purposes.

*Comment:* One commenter felt that if the Agency believes the ETF can provide adequate treatment to delist F039 leachates derived from sources other than F001 through F005 wastes, then EPA should add language to the