M Street SW., Washington, DC 20460. A third copy should be sent to James Kent, Waste Identification Branch, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–95– B5EP–FFFFF".

Requests for a hearing should be addressed to the Director, Hazardous Waste Identification Division, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (703) 603–9230 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of \$0.15 per page for additional copies.

FOR FURTHER INFORMATION, CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Chichang Chen, Waste Identification Branch, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7392.

## SUPPLEMENTARY INFORMATION:

## I. Background

## A. Authority

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 § 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 facility 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 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 Agency 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 waste remains nonhazardous based on the hazardous waste characteristics.

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 Agency 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). The Agency plans to address issues related to waste mixtures and residues in a future rulemaking.

## *B.* Approach Used To Evaluate This Petition

This petition requests a delisting for a hazardous waste listed as K060. In making the initial delisting determination, the Agency evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11 (a)(2) and (a)(3). Based on this review,

the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. (If the Agency had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. See §§ 260.22 (a) and (d). The Agency considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

For this delisting determination, the Agency used such information to identify plausible exposure routes (i.e., groundwater, surface water, air) for hazardous constituents present in the petitioned waste. The Agency determined that disposal in a Subtitle D landfill is the most reasonable, worstcase disposal scenario for BSC's petitioned waste, and that the major exposure route of concern would be ingestion of contaminated groundwater. Therefore, the Agency is proposing to use a particular fate and transport model (the "EPACML" model) to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the disposal of BSC's petitioned waste on human health and the environment.

Specifically, the Agency used the maximum estimated waste volume and the maximum reported leachate concentrations as inputs to estimate the constituent concentrations in the groundwater at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the healthbased levels used in delisting decisionmaking for the hazardous constituents of concern.

EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of