RCRA Subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, the generator may well choose to either send the delisted waste off site immediately, or eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that, because BSC is seeking a delisting for waste managed on-site, ground-water monitoring data collected from the area where the petitioned waste is contained are necessary to determine whether hazardous constituents have migrated to the underlying groundwater. Ground-water monitoring data collected from BSC's monitoring wells will help characterize the potential impact (if any) of the disposal of BSC's waste on human health and the environment.

The Agency provides notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed. Late comments will be considered to the extent possible.

II. Disposition of Delisting Petition Bethlehem Steel Corporation, Lackawanna, New York

A. Petition for Exclusion

Bethlehem Steel Corporation (BSC), located in Lackawanna, New York, was engaged in primary metal-making and coke-making operations prior to 1983. BSC petitioned the Agency to exclude, on a one-time basis, the waste contained in an on-site landfill, presently listed as EPA Hazardous Waste No. K060—''Ammonia still lime sludge from coking operations''. The listed constituents of concern for EPA Hazardous Waste No. K060 are cyanide, naphthalene, phenolic compounds, and arsenic. BSC refers to this landfill as Hazardous Waste Management Unit No. 2 (HWM–2). Although only a portion of the waste in the landfill is the ammonia still lime sludge, the entire volume of waste is considered to be a listed waste in accordance with § 261.3(a)(2)(iv) (*i.e.*, the mixture rule). The mixture of listed ammonia still lime sludge and solid waste contained in HWM–2 is the subject of this petition.

BSC petitioned the Agency to exclude its waste because it does not believe that the waste meets the criteria of the listing. BSC claims that the mixture of ammonia still lime sludge and solid waste is not hazardous because the constituents of concern, although present in the waste, are present in either insignificant concentrations or, if present at significant levels, are essentially in immobile forms. BSC also believes that this waste is not hazardous for any other reason (i.e., there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See Section 222 of HSWA, 42 USC 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of BSC's petition.

B. Background

On July 18, 1984, BSC petitioned the Agency to exclude the waste contained in its on-site landfill identified as HWM–2, and subsequently provided additional information. After evaluating the petition, the Agency proposed to deny BSC's petition to exclude the waste contained in HWM–2 on April 7, 1989 (see 54 FR 14101). The Agency's evaluation of the petition, which used the ''VHS'' fate and transport model and the analytical data provided by BSC, indicated that the petitioned waste exhibited significant concentrations of leachable lead and benzo(a)pyrene. Furthermore, the Agency considered the sampling and analysis program conducted in support of the petition to be incomplete. Moreover, groundwater monitoring data collected from wells monitoring this on-site landfill indicated that the landfill may have been adversely impacting groundwater quality at the site. The Agency received public comments on the April 7, 1989 proposed decision between April and June 1989. On January 29, 1990, the Agency re-opened the comment period to enable public review of information supporting the proposed delisting health-based level for benzo(a)pyrene (see 55 *FR* 2847). The Agency published a final denial, including responses to public comments, in the Federal Register on August 26, 1991 (see 56 *FR* 41944). On October 30, 1991, BSC petitioned the U.S. Court of Appeals for the District of Columbia Circuit to overturn EPA's denial decision. Subsequently, BSC agreed to stay this litigation for a re-evaluation by EPA using a new fate and transport model (EPACML) and updated health-based levels, and on November 17, 1992 submitted extensive supplemental waste characterization and groundwater monitoring data. After reviewing the new data in conjunction with the existing petition information, the Agency now believes that the petitioned waste is eligible for an exclusion based on the current evaluation criteria. Therefore, the Agency hereby proposes to withdraw its final denial decision and to grant BSC's petition. The Agency's decision to re-evaluate BSC's petition was based on additional waste characterization and groundwater data that was collected subsequent to the publication of the final denial decision. The Agency's re-evaluation of BSC's petitioned waste contained in the HWM–2 landfill is the subject of today's proposal.

In support of its petition, BSC submitted: (1) detailed descriptions and schematics of its manufacturing process; (2) a list of all raw materials and Material Safety Data Sheets (MSDS) for all trade name materials that might be expected to have contributed to the waste; (3) results from total constituent analyses for the eight Toxicity Characteristic (TC) metals listed in § 261.24, antimony, nickel, thallium, and cyanide; (4) results from the Toxicity Characteristic Leaching Procedure (TCLP; SW–846, Method 1311) for the eight TC metals, antimony, nickel, and thallium; (5) results from the EP leachate procedure for the eight TC