ENVIRONMENTAL PROTECTION AGENCY

[FRL–6841–4]

Land Disposal Restrictions: Notice of Intent To Grant a Site-Specific Treatment Variance to Safety-Kleen (Deer Park), Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to grant petition.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is today announcing our intent to grant a site-specific treatment variance from the Land Disposal Restrictions (LDR) treatment standards for approximately 2850 cubic yards of hazardous waste that Safety-Kleen (Deer Park), Inc. is currently storing at its Deer Park, Texas facility. Safety-Kleen requests this one-time variance because the waste cannot be treated to the interim K088 total arsenic standard of 26.1 mg/kg. Furthermore, a portion of the waste cannot meet the 28 mg/kg total dithiocarbamates treatment standard for the waste codes K161, P196, and P205. If we grant this one-time petition, Safety-Kleen may dispose of this waste in its on-site RCRA Subtitle C landfill provided the waste complies with the specified alternative treatment standards described in this notice and all other applicable LDR treatment standards.

DATES: This one-time variance is effective on August 25, 2000, unless we receive relevant adverse comment by August 16, 2000. If we receive such comment(s), we will publish a timely notice in the **Federal Register** informing the public that this one-time variance will not be automatically granted and indicating the further steps that will be taken.

ADDRESSES: If you wish to comment on this notice, you must send an original and two copies of the comments referencing Docket Number F–2000–SKVP–FFFFF to: (1) if using regular U.S. Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. You may also submit comments electronically by sending electronic mail through the Internet to: rcra-docket@epa.gov. You should identify comments in electronic format with the docket number F–2000–SKVP–FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters or any type of encryption.

You should not submit electronically any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002.

You may view public comments and supporting materials in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 am to 4 pm Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling 703–603–9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost $ 0.15 per page. (The index and some supporting materials are available electronically. See the ''Supplementary Information'' section for information on accessing them).

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Hotline is open Monday–Friday, 9 am to 6 pm, Eastern Standard Time. For more detailed information on specific aspects of this notice of intent, contact Josh Lewis at 703–308–7877, lewis.josh@epa.gov, or write him at the Office of Solid Waste, 5302W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002.

SUPPLEMENTARY INFORMATION: The index and selected supporting materials are available on the Internet. You can find these materials at: http://www.epa.gov/epaoswer/osw/hazwaste.htm#ldr.

The official record for this action will be kept in the paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RIC listed in the **ADDRESSES** section at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this notice. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

A. Authority

Under section 3004(m) of the Resource Conservation and Recovery Act (RCRA), EPA is required to set ''levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.'' EPA has interpreted this language to authorize treatment standards based on the performance of best demonstrated available technology (BDAT). This interpretation was sustained by the court in Hazardous Waste Treatment Council vs. EPA, 886 F. 2d 355 (D.C. Cir. 1989). The Agency has recognized that there may be wastes that cannot be treated to levels specified in the regulations (see 40 CFR 268.40) because an individual waste matrix or concentration can be substantially more difficult to treat than those wastes the Agency evaluated in establishing the treatment standard (51 FR 40576, November 7, 1986). For such wastes, EPA established a treatment variance (40 CFR 268.44) that, if granted, becomes the treatment standard for the waste at issue.

II. Basis for Determination

Under 40 CFR 268.44 (h), EPA allows facilities to apply for a site-specific variance in cases where a waste that is generated under conditions specific to a site cannot be treated to the specified levels. In such cases, the generator or treatment facility may apply to the Administrator, or EPA's delegated representative, for a site-specific variance from a treatment standard. The applicant for a site-specific variance must demonstrate that, because the physical or chemical properties of the waste differ significantly from the waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method. Note that there are other grounds for obtaining treatment variances, but this is the only provision relevant to the present petition.

Safety-Kleen (Deer Park), Inc. (''Safety-Kleen'') formally submitted its request for a treatment variance from the interim K088 total arsenic treatment

standard in March 1999. The request was for approximately 2850 cubic yards of hazardous waste. In a subsequent submittal of information, Safety-Kleen requested a variance from the total dithiocarbamate treatment standard for a portion of this fixed quantity of waste. All of the information and data used in the development of this notice can be found in the RCRA docket.

A. Establishment of Treatment Standards for K088

K088, the EPA waste code for spent potliners from primary aluminum reduction (see 40 CFR 261.32), is generated by the aluminum manufacturing industry. Aluminum production occurs in four distinct steps: (1) Mining of bauxite ores; (2) refining of bauxite to produce alumina; (3) reduction of alumina to aluminum metal; and (4) casting of the molten aluminum. Bauxite is refined by dissolving alumina (aluminum oxide) in a molten cryolite bath. Next, alumina is reduced to aluminum metal. This reduction process requires high purity aluminum oxide, carbon, electrical power, and an electrolytic cell. An electric current reduces the alumina to aluminum metal in electrolytic cells, called pots. These pots consist of a steel shell lined with brick with an inner lining of carbon. During the pot's service, the liner is physically and chemically degraded. Upon failure of a liner in a pot, the cell is emptied, cooled, and the lining is removed.

The Phase III LDR rule (61 FR 15566, April 8, 1996) established treatment standards, expressed as numerical concentration limits, for various hazardous constituents in spent potliner waste. There were 25 in all, with standards for both wastewaters and nonwastewaters. These constituents include arsenic, cyanide, fluoride, toxic metals, and a group of organic compounds called polycyclic aromatic hydrocarbons (PAHs). The standards were based on treatment performance data from Reynolds Metal Company, which uses a high-temperature thermal process to treat the degraded potliners that are broken up into various size pieces prior to treatment.

After EPA published its final treatment standards, Columbia Falls Aluminum Company and other aluminum producers from the Pacific Northwest brought a judicial challenge to the standards. The petitioners argued, among other things, that the use of the toxicity characteristic leaching procedure (TCLP) did not accurately predict the leaching of K088 waste constituents, particularly arsenic and fluoride, to the environment and that it was therefore arbitrary to measure compliance with the treatment standard using this test.

On April 3, 1998, the United States Court of Appeals for the District of Columbia Circuit decided that EPA's use of the TCLP as a basis for setting treatment standards for K088 was arbitrary and capricious for those constituents for which the TCLP demonstratively and significantly underpredicted the amount of the constituent that would leach. See 139 F.3d 914; see also 63 FR 28571, May 26, 1998 (EPA's interpretation of court's opinion). The court vacated all of the treatment standards and the prohibition on land disposal. *Id.* at 923–24. After an interim stay, on September 24, 1998, EPA promulgated an interim final rule that revised the K088 treatment standard for arsenic from a TCLP standard of 5.0 mg/l to a total arsenic standard of 26.1 mg/kg. See 63 FR 51253. It is this interim adjustment of the arsenic K088 treatment standard from which Safety-Kleen seeks relief by way of this treatment variance.

B. Chemical Properties and Treatability Information on Safety-Kleen's Waste

The waste at issue consists of about 2850 cubic yards of incineration residues (ash or wastewater treatment plant scrubber sludge filter cake) that are in storage at the Safety-Kleen Deer Park facility. The waste carries many EPA hazardous waste codes, one of which is K088. Safety-Kleen's K088 waste, however, is significantly different, both physically and chemically, from the waste used to set the K088 treatment standard. The waste that is initially incinerated by Safety-Kleen consists of various non-potliner materials (*e.g.*, tank wash water, bin liners, laboratory waste) that have been in contact with K088 waste prior to incineration but carry the K088 waste code solely because of the ''mixture'' and ''derived-from'' rules. Neither the incoming wastes nor the treatment residues bear any resemblance to the degraded potliners that are the original K088 waste form. Of course, as described below, we have examined the constituents of concern that could have been transferred from the K088 waste itself to these wash waters, bin liners, and lab wastes and to the residues from the treatment of these wastes.

Safety-Kleen sampled and analyzed ten grab samples of 25 cubic yard bins containing the waste treatment residues. The TCLP values for all of the K088 regulated hazardous constituents (save one) in the analyzed samples are below the detection limit. However, because of arsenic contamination from wastes other than K088 (*e.g.*, the characteristic arsenic waste code D004), nine of the ten Safety-Kleen samples do not meet the interim K088 total arsenic standard of 26.1 mg/kg. The total arsenic concentrations (in mg/kg) of the ten samples are: non-detect, 7.7 (duplicate), 88, 210, 41, 47, 57, 92 (duplicate), 100, 130, 110, and 88.

A second issue concerning dithiocarbamates arises with respect to 500 of the 2850 cubic yards of the Safety-Kleen waste treatment residues. This portion of the waste residuals carries the waste codes K161, P196, and P205. [1] These three waste codes all have total dithiocarbamates as one of the constituents that requires treatment.

The 500 cubic yards cannot meet the current total dithiocarbamates treatment standard of 28 mg/kg because Safety-Kleen uses Betz 5636, a liquid anionic polymer that contains about 18–20% total dithiocarbamates, to precipitate metals out of the scrubber water that is generated from Safety-Kleen's incineration process. Because the Betz 5636 is added in the post-combustion scrubber water, the scrubber sludge filter cake has a base load of total dithiocarbamates as high as 132 mg/kg, which is above the total dithiocarbamates treatment standard of 28 mg/kg. Because LDR compliance testing is performed on treatment residuals after all the treatment steps are performed, there is no practical way to discriminate between the regulated dithiocarbamate coming from any K161, P196, and P205 waste versus the unregulated dithiocarbamate coming from the use of the Betz 5636 product. [2]

III. Alternative Treatment Standards for Safety-Kleen's Waste

A. Alternative Standard for Arsenic

As discussed in the previous section, Safety-Kleen's waste is not K088 itself and is also significantly different, both physically and chemically, from the K088 waste used in developing the K088 treatment standards. Specifically,

[1] K161 is the waste code for purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust and floor sweepings from the production of dithiocarbamate acids and their salts, P196 for manganese dimethyldithiocarbamate, and P205 for ziram.

[2] In the Emergency Revision of the LDR Treatment Standards for Listed Hazardous Wastes from Carbamate Production; Final Rule (63 FR 47409, September 4, 1998), we note that the EPA analytical method for total dithiocarbamates, Method 630, determines total dithiocarbamates after conversion of the dithiocarbamates to carbon disulfide and measurement of the carbon disulfide. We further state that the method does not distinguish individual dithiocarbamate compounds. Therefore, use of the method on Safety-Kleen's scrubber water filter cake measures both regulated and unregulated dithiocarbamates.

Safety-Kleen's waste contains other waste codes (*e.g.*, D004) that contribute to the total arsenic concentration of the waste. Therefore, it is not physically possible for Safety-Kleen to treat the waste to the K088 treatment standard of 26.1 mg/kg total arsenic. Instead, we are proposing that the 2850 cubic yards of waste comply with an alternative treatment standard for arsenic of 5.0 mg/L. This is, of course, the current universal treatment standard (UTS) for arsenic that would otherwise apply to this waste were it not for the K088 waste code carry through. After treatment, the waste is to be disposed in Safety-Kleen's North landfill, which is a RCRA permitted hazardous waste landfill.

B. Alternative Standard for Total Dithiocarbamates

For the 500 cubic yards of the waste that cannot meet the total dithiocarbamate treatment standard of 28 mg/kg developed for K161, P196, and P205, we are proposing to allow Safety-Kleen to dispose of the 500 cubic yards without further treatment for several reasons. First, any K161, P196, and P205 waste being handled by Safety-Kleen at Deer Park has already been incinerated. This satisfies the applicable regulatory requirements regarding this waste, and incineration is the best, demonstrated, and available treatment technology for these wastes and the types of regulated dithiocarbamates in them.

Second, the only reason why dithiocarbamates is an issue for these wastes is that the testing for compliance with the K161, P196, and P205 treatment standards occurs on treatment residuals sampled downstream of the scrubber water precipitation process. Non-regulated dithiocarbamate product added at that point presumably is the vast majority of any detectable dithiocarbamate, since at least 99.99% of any dithiocarbamate residing in the K161, P196, and P205 waste would be expected to have been destroyed in the combustion chamber.

Third, the dithiocarbamate issue only arises for this 500 cubic yards of waste because of an independent change in EPA regulations. Prior to March 4, 1999, the treatment standard for total dithiocarbamates in nonwastewaters was a specified method of treatment: CMBST, or combustion. [3] On March 4, 1999, we revised the treatment standards for seven carbamate waste constituents so that they are now expressed as both numerical limits as well as specified technologies; removed all treatment standards for one additional waste constituent; and reinstated numerical treatment standards for 32 other carbamate waste constituents. (See 63 FR 47409).

Safety-Kleen was aware of the potential treatment problems that this reinstatement of the numerical treatment standards for total dithiocarbamates would cause, namely that the downstream residual testing of its incinerator treatment residuals would pick up non-regulated dithiocarbamates in addition to any trace amounts of regulated dithiocarbamates. On its part, Safety-Kleen instituted timely measures to avoid these problems. Starting on August 12, 1998, Safety-Kleen stopped accepting waste carrying EPA codes K161, P196, and P205. The facility's plan was to incinerate all of the dithiocarbamates waste in its inventory and landfill the residues prior to the effective date of our institution of numerical, concentration standards for total dithiocarbamates, *i.e.,* March 4, 1999. However, this solution was compromised when EPA changed the TCLP-based arsenic K088 treatment standard to 26.1 mg/kg total arsenic on September 21, 1998. The 500 cubic yards of waste with the dithiocarbamate problem also carry the K088 waste code, fail the total arsenic standard for reasons addressed earlier, and therefore could not be landfilled prior to the March 4, 1999 target date for Safety-Kleen. EPA was not fully aware, at that time, about this linkage and the unforeseen consequence of changing the arsenic treatment standard for K088 on August 12, 1998, some seven months earlier than the revised dithiocarbamate standards went into effect—a date on which Safety-Kleen's disposal plans hinged.

We are therefore proposing to better harmonize the impacts of the two independent treatment standard changes that impact the 500 yards of Safety-Kleen's waste now being stored. Our avenue for relief is to propose to allow the 500 cubic yards of dithiocarbamate contaminated waste to be disposed without further treatment for the reasons discussed above. Our treatment objectives have already been achieved for K161, P196, and P205. Safety-Kleen has treated these wastes by the specified method of combustion and the regulated dithiocarbamates have been addressed in a manner that protects human health and the environment. Also, in light of Safety-Kleen's good faith effort to effectively treat and legally dispose of these wastes prior to March 4, 1999, we deem it appropriate to grant relief from the unintended consequences of our independent action to revise the K088 arsenic standard.

C. Conditions of the Proposed Variance

In summary, if we grant this one-time treatment variance, the approximately 2850 cubic yards of incinerator residues currently stored at Safety-Kleen's Deer Park facility would be subject to an alternative arsenic treatment standard of 5.0 mg/L. Furthermore, the 500 cubic yards of the waste that do not currently meet the total dithiocarbamates treatment standard of 28 mg/kg can be disposed at their current concentrations (which can be as high as 132 mg/kg) without further treatment. Finally, the waste would have to be disposed in Safety-Kleen's on-site Subtitle C landfill assuming it meets all other applicable federal, state, and local requirements.

Dated: July 20, 2000.

Timothy Fields, Jr.,

Assistant Adminstrator, Office of Solid Waste and Emergency Response.

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[3] After promulgation of the Phase III rule on April 8, 1996 (but before the effective date of July 8, 1996) several companies reported that laboratory standards were not available for some of the carbamate waste constituents. After confirming this assertion, we promulgated an emergency final rule on August 26, 1996 (61 FR 43924) in which we established temporary alternative treatment standards for 40 carbamate waste constituents for a one-year period. These alternative standards provided waste handlers a choice of meeting the original Phase III numerical concentration limits or of using a specified treatment technology (combustion for nonwastewaters; combustion, biodegradation, chemical oxidation, or carbon adsorption for wastewaters). The laboratory standards were still unavailable at the end of the one year, so we extended the alternative treatment standards for one additional year until August 26, 1998 (62 FR 45568, August 28, 1998). A September 4, 1998 final rule resolved the issue by revising the treatment standards for seven carbamate waste constituents so that they are now expressed as both numerical limits as well as specified technologies; removing all treatment standards for one additional waste constituent; and reinstating numerical treatment standards for 32 other carbamate waste constituents (*see* 63 FR 47409; effective on March 4, 1999).

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30497; FRL–6595–8]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide,