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ENVIRONMENTAL PROTECTION AGENCY

6560-50-P

40 CFR Part 261

[EPA-R01-RCRA-2012-0447; FRL-9930-54-Region-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendment.

SUMMARY: The Environmental Protection Agency (EPA) is amending the exclusion for International Business Machines Corporation (IBM) in Essex Junction, Vermont to reflect changes in ownership and name.

DATES: This amendment is effective on **[insert date of publication in the Federal Register]**.

FOR FURTHER INFORMATION CONTACT: Sharon Leitch, RCRA Waste Management and UST Section, Office of Site Remediation and Restoration, (Mail Code: OSRR07-01), EPA Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109-3912; telephone number: (617) 918-1647; fax number (617) 918-0647; e-mail address: leitch.sharon@epa.gov.

SUPPLEMENTARY INFORMATION: In this document EPA is amending appendix IX to part 261 to reflect a change in the ownership and name of a particular facility. Today's notice documents the transfer of ownership and name change by updating appendix IX to incorporate the change in owner's name for the IBM Corporation, Essex

Junction, Vermont facility. The exclusion or “delisting” was granted to IBM on September 13, 2012 (see 77 FR 56558). The EPA has been notified that the transfer of ownership of the Essex Junction facility to GLOBALFOUNDRIES U.S. 2 LLC will occur on July 1, 2015. GLOBALFOUNDRIES has certified that it plans to comply with all the terms and conditions set forth in the delisting and will not change the characteristics of the wastes subject to the exclusion at the Essex Junction facility. This notice documents the change by updating appendix IX to incorporate a change in name.

In accordance with the delisting approval, IBM has completed the quarterly verification testing requirements set forth in paragraph 3.(A) and has submitted the first set of annual testing results in accordance with paragraph 3.(B). As part of this notice, EPA is clarifying the requirements for annual reporting found in paragraph 3.(B)(iii) of the delisting approval. The paragraph currently requires that the annual test report include the annual testing data and the annual amount of waste in cubic yards disposed of during the calendar year. However, as a result of the timing of the delisting approval, annual testing occurs during August and September of each year and the reports are submitted to EPA soon thereafter. With this notice EPA is clarifying that the reporting of the annual sludge volumes shall occur separately from the annual testing reports. As a result, the delisting is being modified to include paragraph 3.(B)(iv) to reflect this change. We are also clarifying in paragraph 3.(B)(iii) that the annual testing results shall be submitted to EPA within thirty days after both annual samples have been taken.

The changes to appendix IX of part 261 are effective [**insert date of publication in the Federal Register**]. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of the Resource Conservation and Recovery Act (RCRA) to

allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. As described above, the facility has certified that it is prepared to comply with the requirements of the exclusion. Therefore, a six-month delay in the effective date is not necessary in this case. This provides the basis for making this amendment effective immediately upon publication under the Administrative Procedures Act pursuant to 5 United States Code (U.S.C.) 5531(d). The EPA has determined that having a proposed rule and public comment on this change is unnecessary, as it involves only a change in company ownership, and a clarification, with all of the same delisting requirements remaining in effect.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Section 3001(f) RCRA, 42 U.S.C. 6921(f)

Dated: June 29, 2015.

H. Curtis Spalding,

Regional Administrator, EPA Region 1.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261--IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Table 1 of Appendix IX to part 261 is amended by removing the “IBM Corporation” entry and adding a new entry “GLOBALFOUNDRIES U.S. 2 LLC” in alphabetical order by facility to read as follows:

Appendix IX to Part 261--Waste Excluded Under §§ 260.20 and 260.22

TABLE 1--WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * * * * GLOBALFOUNDRIES U.S. 2 LLC (formerly, “IBM Corporation”)	Essex Junction, VT	Wastewater Treatment Sludge (Hazardous Waste No. F006) generated at a maximum annual rate of 3,150 cubic yards per calendar year and disposed of in a Subtitle D Landfill which is licensed, permitted, or otherwise authorized by a state to accept the delisted wastewater treatment sludge. GLOBALFOUNDRIES U.S. 2 LLC must implement a testing program that meets the following conditions for the exclusion to be valid: 1. Delisting Levels: (A) All leachable concentrations for the following constituents must not exceed the following levels (mg/L for TCLP): Arsenic – 5.0; Barium – 100.0; Cadmium - 1.0; Chromium – 5.0; Lead – 5.0; Mercury 0.2; and, Nickel – 32.4. 2. Waste Handling and Holding: (A) GLOBALFOUNDRIES U.S. 2 LLC must manage as hazardous all WWTP sludge generated until it has

completed initial verification testing described in paragraph (3)(A) and valid analyses show that paragraph (1) is satisfied and written approval is received by EPA. (B) Levels of constituents measured in the samples of the WWTP sludge that do not exceed the levels set forth in paragraph (1) for two consecutive quarterly sampling events are non-hazardous. After approval is received from EPA, GLOBALFOUNDRIES U.S. 2 LLC can manage and dispose of the non-hazardous WWTP sludge according to all applicable solid waste regulations. (C) Notwithstanding having received the initial approval from EPA, if constituent levels in a later sample exceed any of the Delisting Levels set in paragraph (1), from that point forward, GLOBALFOUNDRIES U.S. 2 LLC must treat all the waste covered by this exclusion as hazardous until it is demonstrated that the waste again meets the levels in paragraph (1). GLOBALFOUNDRIES U.S. 2 LLC must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance.

3. Verification Testing Requirements:

GLOBALFOUNDRIES U.S. 2 LLC must perform sample collection and analyses in accordance with the approved Quality Assurance Project Plan dated January 27, 2011. All samples shall be representative composite samples according to appropriate methods.

As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the GLOBALFOUNDRIES U.S. 2 LLC sludge are representative for all constituents listed in paragraph (1). To verify that the waste does not exceed the specified delisting concentrations, for one year after the final exclusion is granted GLOBALFOUNDRIES U.S. 2 LLC must perform quarterly analytical testing by sampling and analyzing the WWTP sludge as follows: (A) Quarterly Testing: (i) Collect two representative composite samples of the WWTP sludge at quarterly intervals after EPA grants the final exclusion. The first composite samples must be taken within 30 days after EPA grants the final approval. The second set of samples must be taken at least 30 days after the first set. (ii) Analyze the samples for all constituents listed in paragraph (1). Any waste regarding which a

composite sample is taken that exceeds the delisting levels listed in paragraph (1) for the sludge must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements from the time that GLOBALFOUNDRIES U.S. 2 LLC becomes aware of any exceedance. (iii) Within thirty (30) days after taking each quarterly sample, GLOBALFOUNDRIES U.S. 2 LLC will report its analytical test data to EPA. If levels of constituents measured in the samples of the sludge do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, and EPA concurs with those findings, GLOBALFOUNDRIES U.S. 2 LLC can manage and dispose the non-hazardous sludge according to all applicable solid waste regulations.

(B) Annual Testing: (i) If GLOBALFOUNDRIES U.S. 2 LLC completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), GLOBALFOUNDRIES U.S. 2 LLC may begin annual testing as follows: GLOBALFOUNDRIES U.S. 2 LLC must test two representative composite samples of the wastewater treatment sludge (following the same protocols as specified for quarterly sampling, above) for all constituents listed in paragraph (1) at least once per calendar year. (ii) The samples for the annual testing taken for the second and subsequent annual testing

events shall be taken within the same calendar month as the first annual sample taken. (iii)

GLOBALFOUNDRIES U.S. 2 LLC shall submit an annual testing report to EPA with all of its annual test results, within thirty (30) days after taking the two annual samples. (iv) GLOBALFOUNDRIES U.S. 2 LLC shall submit to EPA in January of each year the total amount of waste in cubic yards disposed during the previous calendar year.

4. Changes in Operating Conditions: If

GLOBALFOUNDRIES U.S. 2 LLC significantly changes the manufacturing or treatment process described in the petition, or the chemicals used in the manufacturing or treatment process, it must notify the EPA in writing and may no longer handle the wastes generated from the new process as non-hazardous unless and until the wastes are shown to meet the delisting levels set in paragraph (1),

GLOBALFOUNDRIES U.S. 2 LLC demonstrates that no new hazardous constituents listed in appendix VIII of part 261 have been introduced, and

GLOBALFOUNDRIES U.S. 2 LLC has received written approval from EPA to manage the wastes from the new process under this exclusion. While the EPA may provide written approval of certain changes, if there are changes that the EPA determines are highly significant, the EPA may instead require

GLOBALFOUNDRIES U.S. 2 LLC to file a new delisting petition.

5. Data Submittals and Recordkeeping:

GLOBALFOUNDRIES U.S. 2 LLC must submit the information described below. If

GLOBALFOUNDRIES U.S. 2 LLC fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this

sufficient basis to reopen the exclusion as described in paragraph (6). GLOBALFOUNDRIES U.S. 2 LLC must: (A) Submit the data obtained through

paragraph (3) to the Chief, RCRA Waste Management & UST Section, U.S. EPA Region 1, (OSRR07-1), 5 Post Office Square, Suite 100, Boston, MA 02109-3912, within the time specified.

All supporting data can be submitted on CD-ROM or some comparable electronic media; (B) Compile, summarize, and maintain on site for a minimum of five years and make available for inspection records of operating conditions, including monthly and annual volumes of WWTP sludge generated, analytical data, including quality control information and, copies of the notification(s) required in paragraph (7); (C) Submit with all data a signed copy of the certification statement in

40 CFR 260.22(i)(12).

6. *Reopener Language* - (A) If, anytime, after disposal of the delisted waste, GLOBALFOUNDRIES U.S. 2 LLC possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other relevant data to the delisted waste indicating that any constituent is at a concentration in the leachate higher than the specified delisting concentration, then GLOBALFOUNDRIES U.S. 2 LLC must report such data, in writing, to the Regional Administrator and to the Vermont Agency of Natural Resources Secretary within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify GLOBALFOUNDRIES U.S. 2 LLC in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall

include a statement of the proposed action and a statement providing GLOBALFOUNDRIES U.S. 2 LLC with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action.

GLOBALFOUNDRIES U.S. 2 LLC shall have 30 days from the date of the Regional Administrator's notice to present the information. (D) If after 30 days GLOBALFOUNDRIES U.S. 2 LLC presents no further information or after a review of any submitted information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.

7. Notification Requirements:

GLOBALFOUNDRIES U.S. 2 LLC must do the following before transporting the delisted waste: A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities; B) Update the one-time written notification if it ships the delisted waste to a different disposal facility. Failure to provide this notification will result in a violation of

the delisting petition and a possible revocation of the
decision.

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