



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA-R10-RCRA-2018-0538; FRL-9987-68-Region 10]

Hazardous Waste Management System; Identifying and Listing Hazardous Waste

Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) (also, “the Agency” in this preamble) is granting a petition submitted by Sandvik Special Metals (Sandvik), in Kennewick, Washington to exclude (or “delist”) up to 1,500 cubic yards of F006 wastewater treatment sludge per year from the list of Federal hazardous wastes. The EPA has decided to grant the petition based on an evaluation of waste-specific information provided by Sandvik and a consideration of public comments received. This action conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a Subtitle D landfill permitted, licensed, or registered by a State. The rule also imposes testing conditions for waste generated in the future to ensure that this waste continues to qualify for delisting. Subject to state-only requirements within the State of Washington, or federally-authorized or state-only requirements in other states where the subject wastes may be disposed of, Sandvik’s petitioned waste may be disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal solid waste, or non-municipal non-hazardous waste.

DATES: This final rule is effective on **[Insert date of publication in the FEDERAL**

REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. **[EPA-R10-RCRA-2018-0538]**. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through www.regulations.gov or in hard copy at the RCRA Records Center, 16th floor, U.S. EPA, Region 10, 1200 6th Avenue, Suite 155, OAW-150, Seattle, Washington 98101. This facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The EPA recommends you telephone Dr. David Bartus at (206) 553-2804 before visiting the Region 10 office. The public may copy material from the regulatory docket at 15 cents per page.

FOR FURTHER INFORMATION CONTACT: Dr. David Bartus, EPA, Region 10, 1200 6th Avenue, Suite 155, OAW-150, Seattle, Washington 98070; telephone number: (206) 553-2804; e-mail address: bartus.dave@epa.gov.

As discussed in Section V below, the Washington State Department of Ecology is evaluating Sandvik's petition under state authority. Information on Ecology's action may be found at <https://fortress.wa.gov/ecy/publications/SummaryPages/1804023.html>.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

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I. Background

A. What is a Delisting Petition?

A delisting petition is a request from a generator to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in 40 CFR 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. See 40 CFR 260.22, Section 3001(f) of RCRA, 42 U.S.C. 6921(f) and the background documents for a listed waste.

A generator of a waste excluded from the hazardous waste lists of 40 CFR part 261 subpart D remains obligated under RCRA to confirm that its waste remains nonhazardous based on the hazardous waste characteristics in order to continue to manage the waste as non-hazardous. See 40 CFR 260.22(c)(4).

B. What Regulations Allow a Waste to be Delisted?

Under 40 CFR 260.20, 260.22, and 42 U.S.C. 6921(f), facilities may petition the EPA to remove their wastes from hazardous waste storage and treatment requirements by excluding them from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 266, 268, and 27340 CFR 260.22 provides a generator the opportunity to petition the Administrator to exclude a waste from the lists of hazardous wastes on a “generator specific” basis.

II. Sandvik’s Petition

A. What Waste did Sandvik Petition EPA to Delist?

On April 27, 2018, Sandvik petitioned the EPA to exclude an annual volume of up to 1,500 cubic yards of F006 wastewater treatment sludges generated at its facility located in Kennewick, Washington from the list of hazardous wastes contained in 40 CFR 261.31. F006 is defined in 40 CFR 261.31 as “Wastewater treatment sludges from electroplating operations . . .” Sandvik claims that the petitioned waste does not meet the criteria for which F006 was listed (i.e., cadmium, hexavalent chromium, nickel and complexed cyanide) and that there are no other factors which would cause the waste to be a hazardous waste.

B. What Information was Submitted in Support of this Petition?

Sandvik conducted a detailed chemical analysis of their WWTF sludge according to a written sampling and analysis plan (SAP), provided as Attachment 2 to the delisting petition. Sandvik also asserted in its analysis that its waste does not meet the criteria for which F006 waste was listed and there are no other factors that might cause the waste to

be a hazardous waste.

To support its assertion that the waste should be excluded, Sandvik collected numerous samples of the waste for analysis as documented in the preamble to the EPA's proposed delisting rulemaking. The EPA assessed Sandvik's data presented in the petition with respect to its intended use, and found the data were of sufficient quality and quantity to satisfy delisting decision criteria.

III. EPA's Evaluation and Public Comments

A. What Decision is EPA Finalizing and Why?

Today the EPA is finalizing an exclusion for up to 1,500 cubic yards of wastewater treatment sludge generated annually at the Sandvik facility in Kennewick, Washington. Sandvik petitioned EPA to exclude, or delist, the wastewater treatment sludge because Sandvik believed that the petitioned waste does not meet the criteria for which it was listed and that there are no additional constituents or factors which could cause the waste to be a hazardous waste. 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 of 1984 (HSWA). See 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2) through (4).

The EPA proposed on September 12, 2018 (83 FR 46126) to exclude or delist the wastewater treatment sludge generated at Sandvik's facility from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rulemaking. The EPA considered all comments received, and for reasons stated in both the proposal and this document, has determined that the wastewater treatment sludge from Sandvik's facility should be excluded from hazardous waste control.

B. Public Comments Received and EPA's Response

The EPA received six public comments on the proposed rulemaking. Three of these comments supported the EPA's proposed exclusion (comments 0020, 0021 and 0023). Comment 0020 did raise a concern regarding the effect of the proposed delisting on residents of Kennewick. The EPA appreciates this concern, noting that the analysis supporting the proposed exclusion clearly documents that management of Sandvik's waste under the exclusion will be fully protective of residents both Kennewick, Washington and any solid waste landfill that may receive Sandvik's delisted waste. Comment 21 suggested that annual verification sampling and analysis could be done more frequently. Based on documentation provided by Sandvik regarding the highly-regulated nature of Sandvik's production process that is expected to result in the petitioned waste to remain largely consistent over time, the EPA does not believe that a requirement to perform verification sampling and analysis more frequently than annually is warranted.

One commenter (comment 0022) raised questions concerning glass recycling not relevant to the proposed exclusion.

Two comments recommended that the EPA perform additional analysis before finalizing the proposed exclusion. Comment 0019 stated that more research is needed regarding the effects of arsenic groundwater contamination, and on the direction of groundwater from the receiving landfill. This commenter also requested that the sludge be tested for the characteristics of ignitability, reactivity and corrosivity. Sandvik used the Delisting Risk Assessment Software (DRAS) model to develop and document compliance with delisting criteria on a constituent-specific basis, including arsenic. The

DRAS model reflects established science and policy regarding multipath analysis including groundwater. The results of this modeling indicate to the EPA that no additional research is needed prior to finalization of the requested exclusion. Regarding the commenter's question regarding the direction of groundwater flow from the receiving landfill, EPA does not exercise direct control over a receiving landfill through the delisting process. Rather, the EPA specifies as a condition of this delisting that the receiving landfill be licensed, permitted, or otherwise authorized by a state as a municipal solid waste landfill subject to 40 CFR part 258, or non-municipal, non-hazardous industrial waste landfill subject to 40 CFR 257.5 through 257.30. The EPA has added clarifying language to this effect in Condition 2 of this exclusion. This ensures that questions such as the direction of groundwater flow and appropriate groundwater monitoring of the receiving landfill are appropriately considered through state approval of the receiving landfill. The EPA has determined that this approach is fully protective of human health and the environment with respect to the receiving landfill's acceptance of wastes excluded under today's action. Finally, Federal delisting regulations clearly state that candidate wastes cannot exhibit a hazardous characteristic. Sandvik's petition documents compliance with this requirement based on data characterizing the waste as of the date of Sandvik's petition, and conditions of the final exclusion ensure future compliance with this requirement.

Comment 24 stated that the proposed rule should not go into effect without an independent evaluation of the waste water sought to be excluded, and that it is inappropriate to rely on the evaluation of the petitioner alone. The EPA has performed an extensive and detailed review of Sandvik's petition, providing exactly the independent

analysis requested by the commenter. The EPA does not believe further independent analysis of Sandvik's petition is necessary or warranted.

The EPA also received comments from the Washington State Department of Ecology. In addition to editorial and clarification suggestions, Ecology requested more specific language regarding the scope of solid waste landfills eligible to receive wastes managed under this exclusion, and requested a condition be added requiring Sandvik to provide Ecology with a copy of verification data generated pursuant to this exclusion. The EPA has included revised language that better defines those solid waste landfills eligible to receive wastes managed under this exclusion, and that requires Sandvik to provide Ecology with a copy of verification data.

IV. Final Rule

A. What are the Terms of this Exclusion?

Sandvik must dispose of this waste in a subtitle D landfill licensed, permitted or otherwise authorized by a state, and will remain obligated to verify that the waste meets the allowable concentrations set forth here. Sandvik must also continue to determine that the waste does not exhibit any of the characteristics of hazardous waste in 40 CFR part 261 subpart C. This exclusion applies only to a maximum annual volume of 1,500 cubic yards per calendar year and is effective only if all conditions contained in this rule are satisfied. Should Sandvik generate candidate wastes in excess of this quantity, they must be managed as hazardous waste. Sandvik may not apply such excess amount to the 1500 cubic yard limit of the following year.

B. When is the Delisting Effective?

This rule is effective **[Insert date of publication in the FEDERAL**

REGISTER] The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA, 42 U.S.C. 6930(b)(1), 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. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

C. How does this Action Affect the States?

Today's exclusion is being issued under the Federal RCRA delisting program. Therefore, only states subject to Federal RCRA delisting provisions would be affected. This exclusion is not effective in states that have received authorization to make their own delisting decisions. Also, the exclusion may not be effective in states having a dual system that includes Federal RCRA requirements and their own requirements. The EPA allows states to impose their own regulatory requirements that are more stringent than EPA's, under Section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. As noted in the proposed rule preamble, the Washington State Department of Ecology is expected to make a parallel decision under their separate state authority. The EPA also notes that if Sandvik transports the petitioned waste to or manages the waste in any state with delisting authorization or their own state-only delisting requirements, it must obtain a delisting from that state before it can manage the waste as nonhazardous in that state. The EPA urges the petitioner to contact the state regulatory authority in each state to or through which it may wish to ship its waste to establish the status of its wastes under the state's laws.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is exempt from review by the Office of Management and Budget because it is a rule of particular applicability, not general applicability. The action approves a delisting petition under RCRA for the petitioned waste at a particular facility.

B. *Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is considered an Executive Order 13771 deregulatory action. This final rule provides meaningful burden reduction by allowing the petitioner to manage an estimated annual quantity of 1,500 cubic yards of residual solids a year under RCRA Subtitle D management standards rather than the more stringent RCRA Subtitle C standards. This action will significantly reduce the costs associated with the on-site management, transportation and disposal of this waste stream by shifting its management from RCRA Subtitle C hazardous waste management to RCRA Subtitle D nonhazardous waste management.

C. *Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) because it only applies to a particular facility.

D. *Regulatory Flexibility Act*

Because this rule is of particular applicability relating to a particular facility, it is

not subject to the regulatory flexibility provision of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

F. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538) and does not significantly or uniquely affect small governments. The action imposes no new enforceable duty on any state, local, or tribal governments or the private sector.

G. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

H. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action applies only to a particular facility on non-tribal land. Thus, Executive Order 13175 does not apply to this action.

I. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The health and safety risks of the petitioned waste were

evaluated using the EPA's Delisting Risk Assessment Software (DRAS), which considers health and safety risks to children. Use of the DRAS is described in section III.E of the proposed delisting. The technical support document and the user's guide for DRAS are available at <https://www.epa.gov/hw/hazardous-waste-delisting-risk-assessment-software-dras>.

J. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

K. National Technology Transfer and Advancement Act

This action does not involve technical standards as described by the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note).

L. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The EPA's risk assessment, as described in section III.E in the proposed delisting, did not identify unacceptable risks from management of this material in an authorized or permitted RCRA Subtitle D solid waste landfill (e.g.

municipal solid waste landfill or commercial/industrial solid waste landfill). Therefore, the EPA believes that any populations in proximity of the landfills used by this facility should not be adversely affected by common waste management practices for this delisted waste.

M. Congressional Review Act

This action is exempt from the Congressional Review Act (5 U.S.C. 801 et seq.) because it is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

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

Dated: December 6, 2018.

Lisa McArthur
Acting Director,
Office of Air and Waste.

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. Amend Table 1 of appendix IX to part 261 by adding the waste stream entry “Sandvik Special Metals” in alphabetical order by facility to read as follows:

APPENDIX IX TO PART 261—WASTES EXCLUDED UNDER §§ 260.20 AND 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * *	* *	* *
Sandvik Special Metals	Kennewick, Washington	Wastewater treatment sludges, F006, generated at Sandvik Special Metals (Sandvik) facility in Kennewick, Washington at a maximum annual rate of 1,500 cubic yards per calendar year. The sludge must be disposed of in a landfill which is licensed, permitted, or otherwise authorized by a state to manage municipal solid waste subject to 40 CFR Part 258, or non-municipal, non-hazardous industrial waste subject to 40 CFR 257.5 through 257.30. The exclusion becomes effective as of [Insert date of publication in the FEDERAL REGISTER] 1. <i>Delisting Levels:</i> (A) The constituent concentrations in a representative sample of the waste must not exceed the following levels: Total concentrations (mg/kg): Arsenic – 9,840; Cadmium – 37,100; Chromium – 77,500; Cobalt – 103,000. TCLP Concentrations (mg/l

		<p>in the waste extract): Arsenic – 0.042; Barium – 100; Cadmium – 0.451; Chromium – 5.00; Cobalt – 1.06; Copper – 120; Fluoride – 194; Lead – 2.95; Nickel – 66.4; Silver – 5.00; Vanadium – 16.9; Zinc – 992. (B) Sandvik must also demonstrate that the waste does not exhibit any hazardous waste characteristic in 40 CFR 261, Subpart C based on a representative sample of the waste.</p> <p><i>2. Annual Verification Testing and Disposal:</i> To verify that the waste does not exceed the delisting concentrations specified in Sections 1.A and I.B, Sandvik must collect and analyze one representative waste sample with coolant on an annual basis no later than each anniversary of the effective date of this delisting using methods with appropriate detection concentrations and elements of quality control. If both titanium and zirconium products have been in production and contributed to candidate wastes within the three-month period prior to each anniversary of the effective date of this delisting, samples of waste from both manufacturing processes must be collected for that verification period. Otherwise, sampling only of that material in production within the specified three-month period is required. Sampling and analytical data must be provided to the EPA, with a copy to the Washington State Department of Ecology, no later 60 days following each anniversary of the effective date of this delisting, or such later date as the EPA may agree to in writing. Sandvik must conduct all verification sampling and analysis according to a written sampling and analysis plan and associated quality</p>
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		<p>assurance project plan that ensures analytical data are suitable for their intended use, which must be made available to the EPA upon request. Sandvik's annual submission must also include a certification that all wastes satisfying the delisting concentrations in Conditions 1.A and 1.B have been disposed of in a landfill which is licensed, permitted, or otherwise authorized by a state to manage municipal solid waste subject to 40 CFR Part 258, or non-municipal, non-hazardous industrial waste subject to 40 CFR 257.5 through 257.30.</p> <p><i>3. Changes in Operating Conditions:</i> Sandvik must notify the EPA in writing if it significantly changes the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process. Sandvik must handle wastes generated after the process change as hazardous waste until it has demonstrated that the wastes continue to meet the delisting concentrations in sections 1.A and B, demonstrated that no new hazardous constituents listed in 40 CFR Part 261 Appendix VIII have been introduced into the manufacturing process or waste treatment process, and it has received written approval from the EPA that it may continue to manage the waste as non-hazardous waste.</p> <p><i>4. Data Submittals:</i> Sandvik must submit the data obtained through verification testing or as required by other conditions of this rule to the Director, Office of Air and Waste, U.S. EPA Region 10, 1200 6th Avenue Suite 155, OAW-150, Seattle, Washington, 98070 or his or her equivalent. The annual verification data and certification of proper</p>
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		<p>disposal must be submitted within 60 days after each anniversary of the effective date of this delisting exclusion, or such later date as the EPA may agree to in writing. Sandvik must compile, summarize, and maintain on-site for a minimum of five years, records of analytical data required by this rule, and operating conditions relevant to those data. Sandvik must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). If Sandvik fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA may, at its discretion, consider such failure a sufficient basis to reopen the exclusion as described in paragraph 5.</p> <p><i>5. Reopener Language - (A)</i> If, any time after disposal of the delisted waste, Sandvik possesses or is otherwise made aware of any data relevant to the delisted waste indicating that any constituent is at a higher concentration than the specified delisting concentration or exhibits any of the characteristics of hazardous waste in 40 CFR Part 261 Subpart C, then Sandvik must report such data, in writing, to the Director, Office of Air and Waste, EPA, Region 10, or his or her equivalent, within 10 days of first possessing or being made aware of that data, whichever is earlier.</p> <p><i>(B)</i> Based on the information described in paragraph (A) and any other information received from any source, the EPA will make a preliminary determination as to whether the reported information requires Agency action to protect</p>
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		<p>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.</p> <p>(C) If the EPA determines that the reported information requires it to act, the EPA will notify Sandvik in writing of the actions it believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Sandvik with an opportunity to present information as to why the proposed EPA action is not necessary or to suggest an alternative action. Sandvik shall have 30 days from the date of the EPA's notice to present the information.</p> <p>(D) If after 30 days Sandvik presents no further information or after a review of any submitted information, the EPA will issue a final written determination describing the EPA actions that are necessary to protect human health or the environment. Any required action described in the EPA's determination shall become effective immediately unless the EPA provides otherwise.</p>
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[FR Doc. 2018-27156 Filed: 12/13/2018 8:45 am; Publication Date: 12/14/2018]