ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA-R06-RCRA-2020-0379; FRL-10017-28-Region 6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed amendment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to modify an exclusion from the lists of hazardous waste previously granted to American Chrome and Chemical (Petitioner), in Corpus Christi, Texas. This action responds to a petition for amendment to exclude (or "delist") up to 1,450 cubic yards per year of K006 chromic oxide solids from the list of federal hazardous wastes when disposed of in an on-site surface impoundment in lieu of disposal in a Subtitle D Landfill. The Agency is proposing to grant the petition based on an evaluation of waste-specific information provided by the petitioner.

DATES: Comments on this proposed amendment must be received by [**insert date 30 days after date of publication in the *Federal Register*].**

ADDRESSES: Submit your comments by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: shah.harry@epa.gov.*

Instructions: EPA must receive your comments by **[insert date 30 days after date of publication in the *Federal Register*]**. Direct your comments to **Docket ID Number EPA-R06-RCRA-2020-0379.** The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be

Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov*, or email. The Federal *regulations.gov* website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment with any CD you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy.

You can view and copy the delisting petition and associated publicly available docket materials either through *www.regulations.gov* at**:** EPA, Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270. The EPA facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Harry Shah, at (214) 665-6457, before visiting the Region 6 office. Interested persons wanting to examine these documents should make an appointment with the office.

FOR FURTHER INFORMATION CONTACT: Harry Shah, (214) 665-6457, *shah.harry @epa.gov*. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov*, as there will be a delay in processing

mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION:

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I. Overview Information

The EPA is proposing to grant an amendment to the petition submitted by American Chrome and Chemical (Petitioner), in Corpus Christi, Texas to exclude (or "delist") up to 1,450 cubic yards per year of K006 chromic oxide solids from the list of federal hazardous waste set forth in 40 Code of Federal Regulations CFR 261.32. The Petitioner claims that the petitioned waste do not meet the criteria for which the EPA listed it, and that there are no additional constituents or factors which could cause the waste to be hazardous. The original delisting petition was submitted to EPA in April 17, 2002 and made final on September 21, 2004. Full facility descriptions and information are provided in the proposed rulemaking (68 FR 64834, November 17, 2003). Based on our review described in Section III, we propose to approve the amendment, and allow the delisted waste to be disposed in the on-site surface impoundment in addition to an off-site Subtitle D landfill.

II. Background

A. What Laws and Regulations Give EPA the Authority to Delist Waste?

EPA published amended lists of hazardous wastes from non-specific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA. These lists have been amended several times and are found at 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of 40 CFR Part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity), or (2) they meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (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, 40 CFR 260.20 and 260.22 provide an exclusion procedure which allows a person to demonstrate that a specific listed waste from a particular generating facility should not be regulated as a hazardous waste, and should, therefore, be delisted.

According to 40 CFR 260.22(a)(1), in order to have these wastes excluded a petitioner must first show that wastes generated at its facility do not meet any of the criteria for which the wastes were listed. The criteria which we use to list wastes are found in 40 CFR 261.11. An explanation of how these criteria apply to a particular waste is contained in the background document for that listed waste.

In addition to the criteria that we considered when we originally listed the waste, we are also required by the provisions of 40 CFR 260.22(a)(2) to consider any other factors (including additional constituents), if there is a reasonable basis to believe that these factors could cause the waste to be hazardous.

In a delisting petition, the petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics defined in Subpart C of 40 CFR Part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity), and must present sufficient information for EPA to determine whether the waste contains any other constituents at hazardous levels

A generator remains obligated under RCRA to confirm that its waste remains non-hazardous based on the hazardous waste characteristics defined in Subpart C of 40 CFR Part 261 even if EPA has delisted its waste.

We also define residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes as hazardous wastes. (See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), referred to as the ``mixture'' and ``derived-from'' rules, respectively.) These wastes are also eligible for exclusion but remain hazardous wastes until delisted.

B. What is currently delisted at the Petitioner's Corpus Christi, TX Facility?

On April 17, 2002, American Chrome and Chemical petitioned the EPA to exclude from the list of hazardous waste contained in Sec. 261.32, the dewatered sludge generated from its facility located in Corpus Christi, Texas. The waste, the EPA Hazardous Waste No. K006, falls under the classification of listed waste because of the ``derived-from'' rule in Sec. 261.3.

Specifically, in its petition, the Petitioner requested that the EPA grant an exclusion for 1,450 cubic yards per year of dewatered sludge resulting from its process of manufacturing chromic oxide. The resulting waste is listed, in accordance with the ``derived-from'' rule.

The Petitioner's wastewater sludge contains approximately 11% solids. The petitioned waste is only the dewatered portion of the sludge, not the entire sludge (solids and wastewater) that is generated from the current wastewater treatment process. Currently, the Petitioner discharges the wastewater through Outfall 201, into an on-site storage tank. The discharge is permitted by Texas Commission on Environmental Quality (TCEQ) through a Texas Pollution Discharges Elimination System (TPDES) Permit No. 003490 (EPA NPDES Permit No. TX0004685).

In support of its petition, the Petitioner submitted sufficient information to EPA to allow us to determine that the waste was not hazardous based upon the criteria for which it was listed and that no other hazardous constituents were present in the waste at levels of regulatory concern.

A full description of these wastes and the Agency's evaluation of the 2002 petition are contained in the Proposed Rule and Request for Comments published in the Federal Register on November 17, 2003 (68 FR 64834).

After evaluating public comment on the Proposed Rule, we published a final decision in the Federal Register on September 21, 2004, (69 FR 56357) to exclude the Petitioner's dewatered

chromic oxide sludge derived from the treatment of EPA Hazardous Waste No. K006 from the list of hazardous wastes found in 40 CFR 261.31.

EPA's final decision in 2004 was conditioned on the disposal of the material in an off-site Subtitle C landfill at an annual waste volume generation of 1,450 cubic yards of K006 dewatered sludge. Any additional waste volume in excess of this limit generated by Petitioner in a calendar year was to have been managed as hazardous waste. The waste could not be managed in any other waste unit.

C. What Does Petitioner Request in Its Petition for Amendment?

In an effort to reduce disposal costs and the administrative burdens of waste tracking, notification, and recording requirements, Petitioner petitioned EPA on December 3, 2019 for an amendment to its September 21, 2004 final exclusion. In its petition, Petitioner requested to add the disposal scenario of surface impoundment as a management option for the chromic oxide wastes. The volume of waste is set at a maximum annual generation of 1,450 cubic yards.

III. Disposition of Petition Amendment

A. What Information Did the Petitioner Submit to Support its Petition for Amendment?

The exclusion which we granted to the Petitioner on September 21, 2004, is a conditional exclusion. No more than 1,450 cubic yards of waste per year can be disposed of in an off-site Subtitle D Landfill. Disposal in the on-site Surface Impoundment #3 (Texas Notice of Registration Waste Unit 22) was not approved.

In order to support its Petition for Amendment, the Petitioner submitted four new samples of the waste material and the disposal scenario of the surface impoundment was modeled using the

Delisting Risk Assessment Software. The worst-case scenario of the constituents' concentrations for the K006 sludge were used as input in the model to determine if it would meet the hazardous waste criteria for which it was listed. The maximum total and leachate concentrations for the inorganic constituents which were found in the analytical data provided by Petitioner are presented in Table 1.

Table 1. – Maximum Total and TCLP Concentrations

Chemical Name	Maximum Total Concentration (mg/kg)	Maximum TCLP Concentration (mg/l)
Arsenic	9.54	<0.005
Barium	20.8	0.034
Chromium	350,836	0.563
Thallium	<6.72	<0.05
Zinc	136	0.020

B. What Factors did EPA Consider in Deciding Whether to Grant a Delisting Petition?

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2) through (4). We evaluated the petitioned wastes against the listing criteria and factors cited in § 261.11(a)(2) and (3).

In addition to the criteria in 40 CFR 260.22(a), 261.11(a)(2) and (3), 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA also considered any factors (including additional constituents) other than those for which we listed the waste if these additional factors could cause the waste to be hazardous.

Our proposed decision to grant the amendment to the 2004 petition to delist the waste from Petitioner's facility in Corpus Christi, Texas is based on our evaluation of the wastes for factors or criteria which could cause the waste to be hazardous. These factors included: (1) Whether the waste

is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the constituents to migrate and to bioaccumulate; (5) the persistence in the environment of any constituents once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

The EPA must also consider as hazardous wastes mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. Mixture and derived-from wastes are also eligible for exclusion but remain hazardous until excluded.

C. How Did the EPA Evaluate the Risk of Delisting this Waste?

For this delisting determination, we evaluated the risk that the waste would be disposed of as a non-hazardous waste in a surface impoundment. We considered transport of waste constituents through groundwater, surface water and air. We evaluated Petitioner's analysis of petitioned waste using the DRAS software to predict the concentration of hazardous constituents that might be released from the petitioned waste and to determine if the waste would pose a threat to human health and the environment. The DRAS software and associated documentation can be found at *www.epa.gov/hw/hazardous-waste-delisting-risk-assessment-software-dras*.

To predict the potential for release to groundwater from landfilled wastes and subsequent routes of exposure to a receptor, the DRAS uses dilution attenuation factors derived from the EPA's Composite Model for leachate migration with Transformation Products. From a release to ground water, the DRAS considers routes of exposure to a human receptor through ingestion of contaminated groundwater, inhalation from groundwater while showering and dermal contact from groundwater while bathing.

From a release to surface water by erosion of waste from an open landfill into storm water run-off, DRAS evaluates the exposure to a human receptor by fish ingestion and ingestion of drinking water. From a release of waste particles and volatile emissions to air from the surface of an open landfill, DRAS considers routes of exposure of inhalation of volatile constituents, inhalation of particles, and air deposition of particles on residential soil and subsequent ingestion of the contaminated soil by a child. The technical support document and the user's guide to DRAS are available at *https://www.epa.gov/hw/hazardous-waste-delisting-risk-assessment-software-dras.*

D. What Did EPA Conclude?

The Petitioner does not believe that the petitioned waste meets the criteria of K006 for which the EPA listed it. The Petitioner also believes no additional constituents or factors could cause the waste to be hazardous. The Petitioner also believes that disposal in the on-site surface impoundment will not adversely impact human health and the environment. The EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1) through (4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, the EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (3). Based on this review, the EPA agrees with the Petitioner that the petitioned waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, the EPA would have proposed to deny the petition.) The EPA 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. The EPA considered whether the waste is acutely toxic, 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. The EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. The EPA's proposed decision to delist waste from Petitioner's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Corpus Christi, Texas facility.

IV. Conditions for Exclusion

A. How Will the Petitioner Manage the Waste if it is Delisted?

If the petitioned wastes are delisted as proposed, the Petitioner must dispose of them in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste or in the on-site surface impoundment.

B. What are the Maximum Allowable Concentrations of Hazardous Constituents in the Waste?

EPA notes that in multiple instances the maximum allowable total constituent concentrations provided by the DRAS model exceed 100% of the waste—these DRAS results are an artifact of the risk calculations that do not have physical meaning. In instances where DRAS predicts a maximum constituent greater than 100 percent of the waste (that is, greater than 1,000,000 mg/kg or mg/L, respectively, for total and TCLP concentrations), the EPA is not proposing to require the Petitioners to perform sampling and analysis for that constituent and sampling type (total or TCLP).

C. How Frequently Must the Petitioner Test the Waste?

The testing approach for introduction of this waste stream will be conducted in a graduated approach. During the first thirty days of sending the delisted waste to the surface impoundment, The Petitioner will collect slurry samples from the influent to the surface impoundment to determine

compliance with the delisting parameters. The Petitioner will prepare a monthly report to determine if the delisted waste in compliance with the delisting parameters. If compliance with the delisting parameters is demonstrated with analytical testing for thirty days, the Petitioner may decrease its sampling frequency for this exclusion to quarterly sampling reporting on the delisting exclusion. This does not supercede the discharge permit requirements, it gives only requirements for the submission of delisted waste related data. If two consecutive quarterly delisting reports show compliance with the delisting parameters, the Petitioner may request to move to annual sampling for the purposes of the delisting. The annual sampling report shall include the volume of chromic oxide solids disposed of in the surface impoundment as well as an annual testing event data. The petitioner should monitor and report increasing trends of constituents which will affect the overall compliance with the discharge permit.

Thirty days after disposal in the on-site surface impoundment begins, wastewater samples should be taken at Outfall 101 as prescribed by the discharge permit issued by the Texas Commission on Environmental Quality (TCEQ) through a Texas Pollution Discharge Elimination System (TPDES) Permit No. 003490 (EPA NPDES Permit No. TX0004685). Discharge from Outfall 101 is intermittent to control freeboard. At a minimum, an annual sampling event should be conducted at Outfall 101. A summary of the Outfall 101 discharge data shall be included in the annual report.

D. What Data Must the Petitioner Submit?

The Petitioner must submit the data obtained through verification testing to U.S. EPA Region 6, Office of Land, Chemicals and Redevelopment, 1201 Elm Street, Suite 500, M/C 6LCR-RP, Dallas, Texas 75270-2102. within 10 days after receiving the final results from the laboratory. These results may be submitted electronically to Harry Shah, shah.harry@epa.gov. The Petitioner must make those records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

E. What Happens if the Petitioner Fails to Meet the Conditions of the Exclusion?

If this Petitioner violates the terms and conditions established in the exclusion, the Agency may start procedures to withdraw the exclusion. Additionally, the terms of the exclusion provide that "[a]ny waste volume for which representative composite sampling does not reflect full compliance with the exclusion criteria must continue to be managed as hazardous."

If the verification testing of the waste does not demonstrate compliance with the delisting concentrations described in section IV.C above, or other data (including but not limited to leachate data or groundwater monitoring data from the final land disposal facility) relevant to the delisted waste indicates that any constituent is at a concentration in waste above specified delisting verification concentrations in Table 5, the Petitioner must notify the Agency within 10 days, or such later date as the EPA may agree to in writing, after receiving the final verification testing results from the laboratory or of first possessing or being made aware of other relevant data. The EPA may require the Petitioner to conduct additional verification sampling to better define the particular volume of wastes within the affected unit that does not fully satisfy delisting criteria. For any volume of wastes for which the corresponding representative sample(s) do not reflect full compliance with delisting exclusion levels, the exclusion by its terms does not apply, and the waste must be managed as hazardous.

EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978*) et seq.* to reopen a delisting decision if we receive new information indicating that the conditions of this exclusion have been violated or are otherwise not being met.

F. What Must the Petitioner Do if the Process Changes?

Any process changes or additions implemented at Petitioner's facility which would significantly impact the constituent concentrations of the waste must be reported to EPA in accordance with Condition VI. of the exclusion language.

V. When Would the EPA Finalize the Proposed Delisting Exclusion?

HSWA specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not make a final decision or grant an exclusion until it has addressed all timely public comments on today's proposal, including any at public hearings. Upon receipt and consideration of all comments, EPA will publish its final determination as a final rule. Since this rule would reduce the existing requirements for persons generating hazardous wastes, the regulated community does not need a six-month period to come into compliance in accordance with section 3010 of RCRA as amended by HSWA.

VI. How Would this Action Affect the States?

Because EPA is proposing to issue this exclusion under the federal RCRA delisting regulations, only states subject to federal RCRA delisting provisions will be affected. This exclusion may not be effective in states which have received authorization from the EPA to make their own delisting decisions.

RCRA allows states to impose more stringent regulatory requirements 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. We urge petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those states. If the Petitioner manages the wastes in any state with delisting authorization, the Petitioner must obtain delisting authorization or other determination from the receiving state before it can manage the waste as nonhazardous in that state.

VII. 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 proposed action is exempt from review by the Office of Management and Budget because it is a rule of particular applicability, not general applicability. The proposed 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 proposed action is not an Executive Order 13771 regulatory action because actions such as approval of delisting petitions under RCRA are exempted under Executive Order 12866.

C. Paperwork Reduction Act

This proposed 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.*).

E. Unfunded Mandates Reform Act

This proposed 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.

F. Executive Order 13132: Federalism

This proposed 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.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This proposed 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. This proposed action's health and risk assessments using the Agency's Delisting Risk Assessment Software (DRAS), which considers health and safety risks to children, are described in section III.E above. The technical support document and the user's guide for DRAS are included in the docket.

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

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

J. National Technology Transfer and Advancement Act

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

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

The EPA believes that this proposed action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples. The EPA has determined that this proposed 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 Agency's risk assessment, as described in section III.E above, did not identify risks from management of this material in an authorized, solid waste landfill (*e.g.,* RCRA Subtitle D landfill, commercial/industrial solid waste landfill, etc.) or the on-site surface impoundment. Therefore, the EPA believes that any populations in proximity of the landfills used by this facility or the Corpus Christi facility should not be adversely affected by common waste management practices for this delisted waste.

L. Congressional Review Act

This proposed 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: January 13, 2021.

Ronald D. Crossland,

Director, Land, Chemicals and Redevelopment Division, Region 6.

For the reasons set out in the preamble, the EPA proposes to amend 40 CFR part 261 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, 6924(y) and 6938.

2. Amend Appendix IX to Part 261 by revising the entry for "American Chrome and Chemical – Corpus Christi, TX" to Table 2--Wastes Excluded From Specific Sources to read as follows:

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

* * * * *

Table 2--Wastes Excluded From Specific Sources

Facility	Address	Waste Description
American Chrome and Chemical (ACC)	Corpus Christi, Texas	Slurry (the EPA Hazardous Waste No. K006) generated at a maximum generation of 1,450 cubic yards on a dry weight basis per calendar year after **(effective date of final rule)** and disposed in an on-site surface impoundment. ACC must implement a verification program that meets the following Paragraphs: 1) Delisting Levels: All leachable constituent concentrations must not exceed the following levels. The petitioner must use the method specified in 40 CFR 261.24 to measure constituents in the waste leachate (mg/L). Slurry leachate: Arsenic-0.0377; Barium-100.0; Chromium-5.0; Thallium-0.355; Zinc-1130.0. Chromium may not exceed 400,000 mg/kg. 2) Waste Holding and Handling:

		(A) If the delisted material causes violations of the Discharge permit, ACC must discontinue disposing of the chromic oxide solids in the impoundment and dispose of it in accordance with the delisting exclusion issued September 21, 2004, until they have completed verification testing described in Paragraph (3), as appropriate, and valid analyses show that paragraph (1) is satisfied. (B) Levels of constituents measured in the samples of the slurry that do not exceed the levels set forth in Paragraph (1) are non-hazardous. ACC can manage and dispose the non-hazardous slurry according to all applicable solid waste regulations. (C) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), ACC must retreat the batches of waste used to generate the representative sample until it meets the levels. ACC must repeat the analyses of the treated waste. (D) If the facility does not treat the waste or retreat it until it meets the delisting levels in Paragraph (1), ACC must manage and dispose the waste generated under Subtitle C of RCRA. (E) ACC must maintain a record of the actual volume of the slurry to be disposed in the on-site impoundment according to the requirements in Paragraph (5). 3) Verification Testing Requirements: ACC must perform sample collection and analyses, including quality control procedures, according to appropriate methods such as those found in SW-846 or other reliable sources (with the exception of analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). (A) During the first thirty days of sending the slurry to the surface impoundment, ACC will collect slurry samples from the influent to the surface impoundment to determine compliance with the delisting levels in Paragraph (1).

		B) Thirty days after disposal in the on-site surface impoundment begins, ACC will take samples of the wastewater from Outfall 101 as prescribed by the discharge permit issued by the Texas Commission on Environmental Quality (TCEQ) through a Texas Pollution Discharge Elimination System (TPDES) Permit No. 003490 (EPA NPDES Permit No. TX0004685). Wastewater samples will be analyzed for the constituents in the TPDES Permit 003490 and in Paragraph (1). Discharge from Outfall 101 is intermittent. At a minimum, an annual sampling event for the constituents listed in Paragraph (1),will be conducted at Outfall 101. (C) ACC may decrease its sampling frequency for this exclusion to quarterly sampling reporting on the delisting exclusion after compliance with the delisting levels in Paragraph (1) is demonstrated with analytical testing for thirty days. This does not supercede the discharge permit requirements, it gives only requirements for the submission of delisted waste related data. (D) If two consecutive quarterly delisting reports show no exceedances of the delisting levels in Paragraph (1), ACC may request to move to annual sampling for the purposes of the delisting. The annual sampling report shall include the volume of chromic oxide solids disposed of in the surface impoundment as well as an annual testing data for Outfall 101. (E) ACC should monitor and report increasing trends of constituents which will affect the overall compliance with the discharge permit. ACC shall analyze the verification samples according to the constituent list specified in Paragraph (1) and submit the analytical results to EPA within 10 days of receiving the analytical results. If the EPA determines that the data collected under this Paragraph do not support the data provided for the petition, the exclusion will not cover the generated wastes. The EPA will notify ACC the

		decision in writing within two weeks of receiving this information. (4) Changes in Operating Conditions: If ACC significantly changes the process described in its petition or starts any processes that may or could affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), they must notify the EPA in writing; they may no longer handle the wastes generated from the new process as nonhazardous until the test results of the wastes meet the delisting levels set in Paragraph (1) and they have received written approval to do so from the EPA. (5) Data Submittals: ACC must submit the information described below. If ACC fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. ACC must: A. Submit the data obtained through Paragraph 3 to the Chief, RCRA Permits & Solid Waste Section, Mail Code, (6LCR-RP) US EPA Region 6,1201 Elm Street, Suite 500, Dallas, TX 75270 within the time specified. Data may be submitted via email to the technical contact for the delisting program. B. Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. C. Furnish these records and data when the EPA or the State of Texas request them for inspection. D. Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: “Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may

		not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by the EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion." 6) Reopener: (A) If, anytime after disposal of the delisted waste, ACC possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If the verification testing of the waste does not meet the delisting requirements in Paragraph 1, ACC must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If ACC fails to submit the information described in paragraphs (5),(6)(A) or (6)(B)

		or if any other information is received from any source, the Division Director 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. (D) If the Division Director determines that the reported information does require Agency action, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director 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 Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (7) Notification Requirements: ACC must do the following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. If ACC transports the excluded waste to or

		manages the waste in any state with delisting authorization, ACC must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the state. (B) Update the one-time written notification if they ship the delisted waste to a different disposal facility. (C) Failure to provide the notification will result in a violation of the delisting variance and a possible revocation of the exclusion. * * * * * * *

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