



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2024; FRL-12389-02-R6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendment.

SUMMARY: The Environmental Protection Agency (EPA) is amending an exclusion for Bayer Material Science LLC, Baytown, Texas facility to reflect changes in ownership and name.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: E’shala Dixon, RCRA Permits & Solid Waste Section (LCR-RP), Land, Chemicals and Redevelopment Division, EPA Region 6, 1201 Elm Street, Suite 500, Dallas, TX 75270, phone number: 214-665-6592; email address: dixon.eshala@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. This action documents the transfer of ownership and name change by updating Appendix IX to incorporate the change in owner’s name for the Bayer Material Science LLC, Baytown, TX facility for the (1) Toluene diisocyanate (TDI) residue (K027) generated from the facility distillation units in Table 1, and the exclusion from hazardous waste regulations for the spent carbon generated from the wastewater treatment plant (K027), (K104), (K111) and (K112). in Table 2. The exclusion or “delisting” for the spent carbons was granted to Bayer Material Science LLC on May 16, 2006 (see 71 FR 28275), and for the TDI residue on March 12 2009 (see 74 FR 10680). The EPA has been notified that the transfer of ownership of the Bayer Material Science, Baytown, TX facility to Covestro LLC occurred on September 1, 2015. Covestro LLC 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 Baytown, TX facility. This action documents the change by updating appendix IX to incorporate a change in name.

The changes to appendix IX to 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) allows 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.) 553(d). The EPA has determined that having a proposed rulemaking and public comment on this change is unnecessary, as it involves only a change in company ownership, with all the same delisting requirements remaining in effect.

List of Subjects in 40 CFR Part 261

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

Dated: January 29, 2025.

Helena Healy

Director,

Land, Chemicals and Redevelopment Division, Region 6.

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, 6924(y) and 6938.

2. Amend tables 1 and 2 of Appendix IX to part 261 by removing the entries for “Bayer Material Science LLC” “Baytown, TX” and adding entries for “Covestro 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
* *	* *	* * *
Covestro, LLC	Baytown, TX	<p>Toluene Diisocyanate (TDI) Residue (EPA Hazardous Waste No. K027) generated at a maximum rate of 9,780 cubic yards per calendar year after March 12, 2009.</p> <p>For the exclusion to be valid, Covestro must implement a verification testing program that meets the following Paragraphs:</p> <p>(1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph.</p> <p>TDI Residue Leachable Concentrations (mg/l): Arsenic—0.10, Barium—36.0; Chloromethane—6.06; Chromium—2.27; Cobalt—13.6; Copper—25.9; Cyanide—3.08; Dichlorophenoxyacetic acid—1.08; Diethyl phthalate—1000.0; Endrin—0.02; Lead—0.702; Nickel—13.5; ortho-dichlorobenzene—9.72; Selenium—0.89; Tin—22.5; Vanadium—0.976; Zinc—197.0; 2,4-Toluenediamine—0.0459; Toluene Diisocyanate—0.039.</p> <p>(2) Waste Holding and Handling: (A) Covestro must manage the TDI residue in a manner to ensure that the residues are offloaded safely and opportunities for chemical self-reaction and expansion are minimized. The TDI residue must be handled to ensure that contact with water is minimized. (B) Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) for the TDI residue has occurred for two consecutive</p>

quarterly sampling events and the reports have been approved by EPA.

(C) If constituent levels in any sample taken by Covestro exceed any of the delisting levels set in paragraph (1) for the TDI residue, Covestro must do the following:

- (i) Notify EPA in accordance with paragraph (6) and
- (ii) manage and dispose the TDI residue as hazardous waste generated under Subtitle C of RCRA

(3) Testing Requirements:

Upon this exclusion becoming final, Covestro must perform quarterly analytical testing by sampling and analyzing the TDI residue as follows:

(A) Quarterly Testing:

(i) Collect two representative composite samples of the TDI residue at quarterly intervals after EPA grants the final exclusion. The first composite samples may be taken at any time after EPA grants the final approval. Sampling should be performed in accordance with the sampling plan approved by EPA in support of the exclusion.

(ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) for the TDI residue must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements.

(iii) Within thirty (30) days after taking its first quarterly sample, Covestro will report its first quarterly analytical test data to EPA. If levels of constituent's measures in the samples of the TDI residue do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, Covestro can manage and dispose the non-hazardous TDI residue according to all applicable solid waste regulations.

(B) Annual testing:

(i) If Covestro competes the quarterly testing specified in paragraph (3) above and no samples contains a constituent at a level which exceeds the limits set forth in paragraph (1), Covestro can begin annual testing as follows: Covestro must test two representative composite samples of the TDI residue for all constituents listed in paragraph (1) at least once a calendar year.

(ii) The samples for the annual testing shall be a representative composite sample 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, 1010B, 1020C, 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 Covestro spent carbon are representative for all constituents listed in paragraph (1).

(iii) 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.

(iv) the annual testing report must include the total amount of waste in cubic yards disposed during the calendar year

(4) Changes in Operating Conditions:

If Covestro significantly changes the process described in its petition or starts any process that generates the waste that may or could affect the composition or type of waste generated (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process). It must notify EPA in writing and it may no longer handle the waste generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA.

Covestro must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream.

(5) Data Submittals;

Covestro must submit the information described below.

If Covestro 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) Covestro must:

(A) Submit the data obtained through paragraph 3 to the Section Supervisor, Solid Waste and Permit Section, EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270, Mail Code, (6LCR-RP) within the time specified.

(B) Compile records of analytical data from paragraph (3) summarized and maintained on-site for a minimum of five years.

(C) Furnish these records and data when either EPA or the State of Texas requests 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 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 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 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, any time after disposal of the delisted waste Covestro 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 a level higher than the delisting level allowed by EPA in granting the petition, then the facility must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data.

(B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph 1, Covestro must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data.

(C) If Covestro fails to submit the information described in paragraph (5), (6)(A) or (6)(B) or if any other information is received from any source, EPA will make a preliminary determination as to whether the reported information requires action to protect human health and/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 EPA determines that the reported information requires action, EPA will notify the facility 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 the facility with an opportunity to

		<p>present information explaining why the proposed EPA action is not necessary. The facility shall have 10 days from the date of EPA’s notice to present such information.</p> <p>(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), EPA will issue a final written determination describing the actions that are necessary to protect human health and/or the environment. Any required action described in EPA’s determination shall become effective immediately, unless EPA provides otherwise.</p> <p>(7) Notification Requirements Covestro 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.</p> <p>(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.</p> <p>(B) Update the one-time written notification if it ships the delisted waste into a different disposal facility.</p> <p>(C) Failure to provide the notification will result in a violation of the delisting variance and a possible revocation of the decision.</p>
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TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES

* *	* *	* * *
Facility	Address	Waste Description
* *	* *	* * *
Covestro, LLC	Baytown, TX	<p>Spent Carbon (EPA Hazardous Waste Nos. K027, K104, K111, and K112) generated at a maximum rate of 7,728 cubic yards per calendar year after May 16, 2006.</p> <p>For the exclusion to be valid, Covestro must implement a verification testing program that meets the following Paragraphs:</p> <p>(1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph.</p> <p>Spent Carbon Leachable Concentrations (mg/l): Antimony–0.251; Arsenic–0.385, Barium–8.93; Beryllium–0.953; Cadmium–0.687; Chromium–5.0; Cobalt–2.75; Copper–128.0; Cyanide–1.65; Lead–5.0;</p>

Mercury–0.0294; Nickel–3.45; Selenium–0.266; Tin–2.75; Vanadium–2.58; Zinc–34.2; Aldrin–0.0000482; Acetophenone–87.1; Aniline–2.82; Benzene–0.554; Bis(2-ethylhexyl)phthalate–0.342; Benzyl alcohol–261; Butylbenzylphthalate–3.54; Chloroform–0.297; Di-n-octyl phthalate–0.00427; 2,4-Dinitrotoluene–0.0249; 2,6-Dinitrotoluene–0.0249 Diphenylamine–1.43; 1,4-Dioxane–14.6; Di-n-butylphthalate–2.02; Kepone–0.000373; 2-Nitrophenol–87.9; N-Nitrodiphenylamine–3.28; Phenol–52.2; 2,4-Toluenediamine–0.00502; Toluene diisocyanate–0.001.

(2) Waste Holding and Handling:

(A) Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) for spent carbon has occurred for two consecutive quarterly sampling events and the reports have been approved by EPA.

(B) If constituent levels in any sample taken by Covestro exceed any of the delisting levels set in paragraph (1) for the spent carbon, Covestro must do the following:

- (i) notify EPA in accordance with paragraph (6) and
- (ii) manage and dispose the spent carbon as hazardous waste generated under Subtitle C of RCRA.

(3) Testing Requirements:

Upon this exclusion becoming final, Covestro must perform quarterly analytical testing by sampling and analyzing the spent carbon as follows:

(A) Quarterly Testing:

(i) Collect two representative composite samples of the spent carbon at quarterly intervals after EPA grants the final exclusion. The first composite samples may be taken at any time after EPA grants the final approval. Sampling should be performed in accordance with the sampling plan approved by EPA in support of the exclusion.

(ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) for the spent carbon must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements.

(iii) Within thirty (30) days after taking its first quarterly sample, Covestro will report its first quarterly analytical test data to EPA. If levels of constituents measured in the samples of the spent carbon do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, Covestro can manage and dispose the non-hazardous spent carbon according to all applicable solid waste regulations.

(B) Annual Testing:

(i) If Covestro 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), Covestro can begin annual testing as follows: Covestro must test two representative composite samples of the spent carbon for all constituents listed in paragraph (1) at least once per calendar year.

(ii) The samples for the annual testing shall be a representative composite sample 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, 1010B, 1020C, 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 Covestro spent carbon are representative for all constituents listed in paragraph (1).

(iii) 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.

(iv) The annual testing report must include the total amount of waste in cubic yards disposed during the calendar year.

(4) Changes in Operating Conditions:

If Covestro significantly changes the process described in its petition or starts any process that generates the waste that may or could affect the composition or type of waste generated (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing and it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA.

Covestro must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream.

(5) Data Submittals:

Covestro must submit the information described below. If Covestro 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

		<p>consider this sufficient basis to reopen the exclusion as described in paragraph (6). Covestro must:</p> <ul style="list-style-type: none">(A) Submit the data obtained through paragraph 3 to the Section Supervisor, Solid Waste and Permit Section, EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270, Mail Code, (6LCR–RP) within the time specified.(B) Compile records of analytical data from paragraph (3), summarized, and maintained onsite for a minimum of five years.(C) Furnish these records and data when either EPA or the State of Texas requests 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: <p>“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.</p> <p>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.</p> <p>If any of this information is determined by 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 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.”</p> <p>(6) Reopener:</p> <ul style="list-style-type: none">(A) If, anytime after disposal of the delisted waste Covestro 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 a level higher than the delisting level allowed by EPA in granting the petition, then the facility must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data.
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		<p>(B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph 1, Covestro must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data.</p> <p>(C) If Covestro fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, EPA will make a preliminary determination as to whether the reported information requires action to protect human health and/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>(D) If EPA determines that the reported information requires action, EPA will notify the facility 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 the facility with an opportunity to present information explaining why the proposed EPA action is not necessary. The facility shall have 10 days from the date of EPA's notice to present such information.</p> <p>(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), EPA will issue a final written determination describing the actions that are necessary to protect human health and/or the environment. Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise.</p>
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