



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA-R06-RCRA-2022-0653; FRL-10104-02-R6]

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

Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting a petition submitted by WRB Refining in Borger, Texas to exclude (or “delist”) 7,000 cubic yards of F037 (petroleum refinery sludge) solids to be removed from their stormwater storage tanks for a one-time delisting. This determination is based on information the petitioner provided to the Agency, completion of sampling, and risk assessment using the Delisting Risk Assessment Software (DRAS) to determine whether the waste poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed. This final rule responds to a petition submitted by WRB Refinery to exclude stormwater solids from the definition of a hazardous waste. If not delisted, the stormwater solids are listed as F037 (primary oil/water/solids separation sludge). After careful analysis of the petition and evaluation of comments submitted by the public, the EPA has concluded that the petitioned waste is not hazardous waste when disposed of in Subtitle D landfills. This exclusion applies to the stormwater solids generated at WRB Refinery Borger, Texas facility. Accordingly, this final rule 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 but imposes testing conditions to ensure that the future-generated waste remain qualified for delisting.

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, Chemical 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.

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I. Overview Information

- A. *What action is the EPA finalizing?*

The EPA is finalizing:

1. The decision to grant WRB Refinery petition to have its stormwater solids from the stormwater tanks excluded, or delisted, from the definition of a hazardous waste, subject to certain continued verification and monitoring conditions

After evaluating the petition, the EPA proposed a rule on September 28, 2023 (88 FR 66742), to exclude the WRB Refinery waste from the lists of hazardous wastes under 40 CFR 261.31 and 261.32. The comments received on this rulemaking will be addressed as part of this decision.

B. Why is the EPA approving this delisting?

WRB Refinery petition requests an exclusion for F037 waste listing pursuant to 40 CFR 260.20 and 260.22 and asserts that the petitioned waste does not meet the criteria for which the EPA listed F037. WRB Refinery also believes no additional constituents or factors could cause the waste to be hazardous. 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 waste is non-hazardous 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 WRB Refinery is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Borger, Texas facility.

C. What are the limits of this exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in table 1 of part 261, appendix IX, and the conditions contained herein are satisfied. The one-time exclusion applies to 7,000 cubic yards of stormwater solids from the stormwater tanks.

D. How will WRB Refinery manage the waste if it is delisted?

Stormwater solids from the stormwater tanks will be dewatered onsite and transported to an authorized solid waste landfill (e.g. RCRA Subtitle D landfill, commercial/industrial solid waste landfill, etc.) for disposal.

E. When is the final delisting exclusion 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 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 is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How does this final rule affect States?

Because the EPA is issuing the exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA

requirements and their own requirements, and States who have received our authorization to make their own delisting decisions.

Here are the details: We allow States to impose their own non-RCRA regulatory requirements that are more stringent than the 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. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example: Louisiana, Oklahoma and Illinois) to administer a delisting program in place of a Federal program to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If WRB Refinery transports the petitioned waste to or manages the waste in any State with delisting authorization, WRB Refinery must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What is a delisting?

A delisting petition is a request from a generator to the EPA or another agency with jurisdiction to exclude from the list of hazardous wastes, wastes the generator does not consider hazardous under RCRA.

B. What regulations allow facilities to delist a waste?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in 261.31 and 261.32. Specifically, 260.20 allows any person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 266, 268 and

273. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a “generator-specific” basis from the hazardous waste lists.

C. What information must the generator supply?

Petitioners must provide sufficient information to the EPA to allow the EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

III. EPA’s Evaluation of the Waste Data

A. What waste and how much did WRB Refinery petition the EPA to delist?

In May 2020, WRB Refinery petitioned the EPA to exclude from the lists of hazardous wastes contained in 261.31 and 261.32 solids from stormwater tanks (F037) generated from its facility located in Borger, Texas. The waste falls under the classification of listed waste pursuant to 261.31 and 261.32. Specifically, in its petition, WRB Refinery requested that the EPA grant a one-time exclusion for 7,000 cubic yards of solids.

The 40 CFR part 261, appendix VII hazardous constituents which are the basis for listing can be found in table 1.

Table 1-EPA Waste Codes for Solids from Stormwater Tanks for Listing

Waste Code	Basis for Listing
F037	Benzene, Benzo(a)pyrene, chrysene, lead chromium

B. How did WRB Refinery sample and analyze the waste data in this petition?

To support its petition, WRB Refinery submitted:

1. Historical information on waste generation and management practice; and
2. Analytical results from nine samples with one duplicate for TCLP and Totals concentrations of compounds of concerns (COC)s.

Table 2—Analytical Results/Maximum Allowable Delisting Concentration

Solids from Stormwater Tanks WRB Refinery Borger, Texas

Chemical Name	Maximum Total Concentration (mg/kg)	Maximum TCLP Concentration (mg/l)	Maximum TCLP delisting level (mg/L)
Antimony	3.24	<0.05	0.109
Arsenic	2.4	<0.05	0.00849
Barium	84.9	1.34	36
Beryllium	<0.478	<0.02	0.078
Cadmium	<0.478	<0.05	0.0911
Chromium	14.2	<0.05	2.27
Cobalt	74.2	<0.05	
Lead	74.2	1.42	0.702
Nickel	5	<0.05	13.5
Selenium	<0.478	<0.05	3.41
Silver	<0.478	<0.05	8.61
Vanadium	6.86	<0.05	3.77
Zinc	76	0.565	197
Mercury	0.258	<0.0002	0.068
1,2-Dichlorobenzene	<0.065	<0.005	9.3
1,3-Dichlorobenzene	<0.065	0.005	
1,4-Dichlorobenzene	<0.065	<0.005	0.475
2,4-Dimethylphenol	<0.065	<0.005	11.3
2,4-Dinitrophenol	<0.13	<0.005	1.16

2-Methylphenol	<0.065	<0.005	28.9
3-Methylphenol	<0.065	<0.005	28.9
4-Methylphenol	<0.065	<0.005	28.9
4-Nitrophenol	<0.032	<0.005	
Acenaphthene	0.17	<0.0005	10.6
Anthracene	<0.032	<0.005	25.9
Benz(a)anthracene	<0.032	<0.005	0.07
Benzo(a)pyrene	<0.032	<0.005	26.3
Benzo(b)fluoranthene	<0.032	<0.005	224
Benzo(k)fluoranthene	<0.032	<0.005	
Bis(2-ethylhexyl)phthalate	<0.065	<0.005	>10E+6
Chrysene	0.032	<0.005	24.6
Di-n-butyl-phthalate	<0.065	<0.005	24.6
Dibenz(a,h)anthracene	<0.032	<0.005	>10E+6
Diethyl Phthalate	<0.065	<0.005	1,000
Dimethyl Phthalate	<0.065	<0.005	
Fluoranthene	<0.032	<0.005	2.46
Fluorene	<0.032	<0.005	4.91
Indeno(1,2,3, -cd)pyrene	<0.032	<0.005	129
Napthalene	<0.032	<0.005	0.0327
Phenanthrene	<0.032	<0.005	
Phenol	<0.065	<0.005	173

Pyrene	<0.032	<0.005	4.45
Pyridine	<0.065	<0.005	0.578
Quinoline	<0.065	<0.005	
1,1,1,-Trichloroethane	<0.0038	<0.1	11,600
1,1,-Dichloroethane	<0.0038	<0.1	
1,1-Dichloroethene	<0.0038	<0.1	0.108
1,2-Dibromoethane	<0.0038	<0.1	0.105
1,2-Dichloroethane	<0.0038	<0.1	0.0905
1,4-Dioxane	<0.076	<1	1.02
2-Butanone	0.0079	<0.2	347
4-Methyl-2-pentanone	<0.076	<0.2	46.3
Acetone	0.039	<0.2	520
Benzene	0.0083	<0.1	0.077
Carbon disulfide	<0.00076	<0.2	56.4
Chlorobenzene	<0.0038	<0.1	1.51
Chloroform	<0.0038	<0.1	0.0801
Ethylbenzene	<0.0038	<0.1	10.8
Methyl tert-butyl ether	<0.0038	<0.1	
Styrene	<0.0038	<0.1	1.51
Tetrachloroethene	<0.0038	<0.1	0.0204
Toluene	<0.0038	<0.1	15.1
Trichloroethene	<0.0038	<0.1	0.0775

Xylenes, Total	<0.0038	>10E+6	9.56
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Notes: These levels represent the highest constituent concentration found in any one sample and does not necessarily represent the specific level found in one sample.

IV. Public Comments Received on the Proposed Exclusion

A. Who submitted comments on the proposed rule?

The EPA received three public comments on February 16, 2023, proposed rule via regulations.gov. The comments and responses are addressed below.

B. Comments and Responses

Comment 1: “I appose this rule/exception being passed through. When you take the table and look at some chemical that make up this storm drain runoff products there are some very hazardous chemicals that make up these products. One chemical that make up this product is Beryllium. Beryllium can be lethal in humans and cause a variety of health concerns.

According to the EPA website “beryllium is toxic at 0.002 milligrams per kilogram body weight per day (mg/kg/d)” (Beryllium compounds- US EPA). Using this equation the average size man weighing 200 lbs can only be exposed to .4mg a day. That is roughly 146mg a year. The refinery is requesting that they be allowed to dump .91mg per kg a year”.

Response: The Delisting Risk Assessment Software (DRAS) is a worst-case scenario tool that was created by the EPA. This tool is utilized for the petitioner to input their analysis from their sample into the tool to verify there are no exceedances within the waste that would prove the waste to be hazardous. Upon sample results and date inputted into the DRAS, Beryllium is not a constituent of concern and did not show an exceedance within the samples. For a chemical-specific inputs for Beryllium, see Table A-1-30 in Appendix A of the DRAS Technical Support Document. As noted in the proposal, the EPA evaluated the risk that the waste would be disposed of as a non-hazardous waste in a landfill. We considered transport of waste constituents through groundwater, surface water and air. We evaluated Petitioners analysis of the petitioned waste using the Delisting Risk Assessment Software (DRAS) 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 groundwater, 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 users guide to DRAS are available at <https://www.epa.gov/hazardous-waste-delisting-risk-assessment-software-dras>.

Comment 2: "Although I am not sure where I stand overall on delisting the waste in question, I do believe that the process in which this decision was made were appropriate. I trust the EPA in its decision to approve delisting the waste and removal of solids at WRB Refining LP in Borger, Texas. The how this decision was made could have been a lot more careless. However, the EPA took a lot into consideration and tested multiple samples from the petitioner's facility and agreed with the petitioner that the wastes are nonhazardous. It also did an environmental justice evaluation. Environmental justice is often overlooked when it

comes to making decisions concerning discarding waste. This proposed rule is a great example of how to go about making such decisions while taking caution.”

Response: Thank you for your comment. As part of the delisting program, we require the petitioners to submit multiple spatial samples to the EPA to see the characteristics of the waste during different seasons of the year, the results with the highest detection limits are then inputted into the DRAS to make sure the waste does not have exceedances. The delisting program requires multiple steps and an intense overview of the petition to ensure the protection of human health and the environment.

Comment 3: “I believe that not to consider stormwater as a hazardous waste is a bold statement, but since a lot of measure are taken to ensure this is not a health hazard for animals and for humans. I think if it keeps being measured how many toxic chemicals this stormwater has before being disposed somewhere else. Since the groundwater waste is going to be disposed in a landfill that is permitted to manage industrial waste, this can give sense of safety, but it is not truly known how this landfill will manage and treat this waste, and if it will do it correctly to ensure that no animals have contact or do not get poisoned by the stormwater. Stormwater usually has many toxic chemicals that can pollute water sources such as oil, pesticides, antifreeze, grease and other types of chemicals that can be dangerous and poisonous to the environment and the wildlife that inhabit these water sources. Also, one of the consequences is that they can cause toxic algae blooms that sink and decompose in the waste removing oxygen from it. Animals and other organisms can’t live in water with low dissolved oxygen levels. It can also contaminate drinking water supplies if not treated properly. These consequences should be kept in mind before agreeing, as the public, to these types of petitions. If stormwater is treated properly in a treatment plant this can reduce how hazardous this might be. Since the stormwater that the petitioner wants to delist as a possible hazard has such small amounts of these toxic chemicals, it makes sense why the EPA thinks to delist this waste. One of the examples of this small amount is Arsenic, which is a solid that

occurs naturally in water and soil but that is also produced industrially in big quantities. The amount of Arsenic that is considered as a hazard is 6.1 while the amount of arsenic that the stormwater in this facility has been 0.1. However, all these amounts need to be tested each time the facility wants to dispose of them, to ensure that it is still not considered a hazard, which is one of the rules of the EPA to consider the petition of the facility. I think if it is proved the stormwater waste from this facility is treated properly in this landfill, it is safe to say this would not be a hazard for humans or wildlife.”

Response 3: Thank you for your comment. As mentioned in your comment, if the EPA approves the petition, the petitioner will have to submit semi-annual analysis of the waste the first year to prove to the EPA that the waste is still within the requirements instilled into the petition, and during the life span of the petition the petitioner is required to submit analysis to prove the waste is still meeting the requirements within the petition. The goal at the EPA is to protect human health and the environment. Please, also note that nonhazardous landfills in Texas are subject to State laws and regulations governing operation and closure. Non-hazardous solid waste is regulated under Subtitle D of RCRA. Regulations established under Subtitle D ban open dumping of waste and set minimum Federal criteria for the operation of municipal waste and industrial waste landfills, including design criteria, location restrictions, financial assurance, corrective action (cleanup), and closure requirement. Texas is authorized to implement the Subtitle D program in lieu of the EPA. Please see the response to Comment 1, of this preamble, for additional information regarding the EPA’s risk assessment using DRAS.

V. Statutory and Executive Order Reviews

Additional Information about these statutes and Executive Orders can be found at <https://www.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 modification of an existing delisting petition under RCRA for the petitioned waste at a particular facility.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is not subject to Executive Order 14192 because it is a rule of particular applicability and exempt from review under Executive Order 12866.

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) 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)

E. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act (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 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 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.

H. 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.

I. 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

J. 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)

K. Congressional Review Act (CRA)

This action is exempt from the CRA because it is a rule of particular applicability.

Lists of Subjects in 40 CFR Part 261

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

Helena Healy,
Director,
Land, Chemicals and Redevelopment Division.

For the reasons set out in the preamble, the EPA amends 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 table 1 of appendix IX, by adding an entry for “WRB Refinery LP” in alphabetical order 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
* * * * *		
WRB Refining LP	Borger, TX	Stormwater Solids (F037) generated at a maximum generation of 7,000 cubic yards. (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). Stormwater Solids Leachate: Acenaphthene- 219; Anthracene- 534; Antimony-2.52; Arsenic-0.266; Barium-7.13; Benz(a)anthracene-10.5; Benzo(a)pyrene- 3,960; Benzene- 1.59; 2- Cadmium – 2.23; Carbon disulfide-1,150; Chromium-1; Chrysene-1,050; Cobalt – 5.56; Di-n-butyl-phthalate-507; Ethylbenzene-16.2; Fluoranthrene-50.7; Fluorene-101; Indeno(1,2,3-cd)pyrene-371000000000; Lead-14.7; Mercury-1.34; Naphthalene- 1.95; Nickel-279; Pyrene-91.7; Selenium- 18.10; Silver-179; Toluene-311; Vanadium- 85.6; Xylenes, Total- 177; Zinc-4,060.

		<p>(2) Waste Holding and Handling:</p> <p>(A) All stormwater solids from tank clean outs must be tested to assure they have met the concentrations described in paragraph (1). Solids that do not meet the concentrations must be disposed of as hazardous waste.</p> <p>(B) Levels of constituents measured in the samples of the solids that do not exceed the levels set forth in paragraph (1) are non-hazardous. WRB Refining can manage and dispose the non-hazardous stormwater solids according to all applicable solid waste regulations.</p> <p>(C) WRB Refining must maintain a record of the actual volume of the stormwater solids to be disposed in the Subtitle D or on-site landfill according to the requirements in paragraph (4).</p> <p>(3) Changes in Operating Conditions: If WRB Refining 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</p>
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levels set in paragraph (1) and they have received written approval to do so from the EPA.

(4) Data Submittals: WRB Refining must submit the information described below. If WRB Refining 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

(5). WRB Refining 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.”

(5) Reopener:

		<p>(A) If, any time after disposal of the delisted waste, WRB Refining 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.</p> <p>(B) If the verification testing of the waste does not meet the delisting requirements in paragraph 1, WRB Refining must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.</p> <p>(C) If WRB Refining fails to submit the information described in paragraphs (4), (5)(A) or (5)(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,</p>
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		<p>or other appropriate response necessary to protect human health and the environment.</p> <p>(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.</p> <p>(E) Following the receipt of information from the facility described in paragraph (5)(D) or (if no information is presented under paragraph (5)(D)) the initial receipt of information described in paragraphs (4), (5)(A) or (5)(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.</p>
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		<p>(6) Notification Requirements: WRB Refining 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 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 WRB Refining transports the excluded waste to or manages the waste in any State with delisting authorization, WRB Refining must obtain delisting authorization from that State before it can manage the waste as nonhazardous in the State.</p> <p>(B) Update the one-time written notification if they ship the delisted waste to 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 exclusion.</p>
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