



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA-R06-RCRA-2025-13174; FRL-13174-01-R6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant an exclusion from the list of hazardous waste to WRB Refining LP (Petitioner) located in Borger, Texas. This action responds to a petition to exclude (or delist) up to 700 cubic yards per year of F037 (petroleum refinery sludge) solids to be removed from stormwater storage tanks for a continuous delisting. If EPA approves the petition for delisting, the waste will be disposed of in a Subtitle D landfill. EPA is proposing to grant the petition based on an evaluation of waste-specific information provided by the Petitioner.

DATES: Comments on this proposed exclusion 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: dixon.eshala@epa.gov.

Instructions: The EPA must receive your comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Direct your comments to Docket ID No. EPA-R06-RCRA-2025-13174. 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](https://www.regulations.gov) website is an “anonymous access” system, which means the 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 the EPA without going through <https://www.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, the EPA recommends that you include your name and other contact information in the body of your comment with any CBI you submit. If the 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 <https://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 through <https://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. 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: 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, telephone number: (214) 665-6592; email address: dixon.eshala@epa.gov.

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I. Overview Information

The EPA is proposing to grant a May 2020 petition submitted by WRB Refining LP to exclude (or delist) up to 700 cubic yards annually of F037 solids from stormwater tanks at their facility in Borger, Texas.

The Petitioner requested a one-time delisting of 7,000 cubic yards of stormwater tank solids on the basis that the solids would not meet the original criteria for F037, which would be classified as hazardous waste due to "carry over" of waste codes resulting from RCRA's "mixture and derived from rules." EPA granted that one-time delisting request in 2025. In the Petition, Petitioners also requested a continuous delisting for ongoing stormwater tank solids cleanout. This proposal responds to that portion of the Petition and proposes to grant a continuous delisting to clean out stormwater tanks annually.

II. Background

A. What is the history of the delisting program?

The EPA published an amended list 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. The EPA has amended this list several times and codifies the list in 40 CFR 261.31 and 40 CFR 261.32.

The EPA lists these wastes as hazardous because (1) the wastes typically and frequently exhibits one or more of the characteristics of hazardous wastes identified in subpart C of 40 CFR part 261 (that is, ignitability, corrosivity, reactivity, and toxicity), (2) the wastes met the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3), or (3) the wastes are mixed with or derived from the treatment, storage or disposal of such characteristic and listed waste and which therefore become hazardous under 40 CFR 261.3(a)(2)(iv) or (c)(2)(i), known as the mixture or derived-from rules, respectively.

Individual waste streams may vary, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in part 261 regulations or resulting from the operation of the mixture or derived-from rules generally is hazardous, a specific waste from an individual facility may not be hazardous.

For this reason, 40 CFR 260.20 and 40 CFR 260.22 provide an exclusion procedure, called delisting, which allows the petitioner to prove that the EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What is a delisting petition, and what does it require of a Petitioner?

A delisting petition is a request from a generator to the EPA or an authorized state to exclude wastes from the list of hazardous wastes. The generator petitions the EPA because it does not consider the waste as hazardous under RCRA regulations.

For a delisting petition, the petitioner must demonstrate that the wastes generated at a particular facility does not meet any of the criteria for which the waste was listed. The criteria for which the EPA lists a waste are in 40 CFR part 261.

In addition, under 40 CFR 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, corrosivity, reactivity, and toxicity) and must present sufficient information for EPA to decide whether factors other than those for which the wastes was listed warrant retaining it as a hazardous waste.

Generators remain obligated under RCRA to confirm whether their waste remains non-hazardous based on the hazardous waste characteristics even if EPA has “delisted” the waste.

C. What factors must the EPA consider in deciding whether to grant a delisting petition?

Besides considering the criteria in 40 CFR 260.22(a) and 3001(f) of RCRA 42 U.S.C. 6921(f), EPA must consider any factors (including additional constituents) aside from those for which EPA listed the waste, if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

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

III. EPA's Evaluation of the Waste Information and Data

A. What waste did the Petitioner petition the EPA to delist?

In May 2020, WRB Refining LP petitioned the EPA to exclude from the list of hazardous wastes contained in 40 CFR 261.31, 7,000 cubic yards of stormwater tank solids (F037) generated from its facility in Borger, Texas. EPA granted the Facility a one-time delisting approval in June 2025 to remove 7,000 cubic yards of waste for disposal in a subtitle D landfill. In anticipation of more frequent cleanout of the stormwater tanks, Petitioner also requested a continuous delisting of up to 700 cubic yards of stormwater tank solids annually.

B. How did the Petitioner generate the waste?

The Facility has been in operation for approximately 25 years. Gasoline, diesel, aviation fuel, natural gas liquids, petroleum coke and solvents are the principal products produced. The subject of this delisting petition is solids to be removed from four wastewater tanks (North Stormwater Tank, West Stormwater Tank, North Drop Out Basin, and West Grit Trap) at the Facility.

The stormwater tank solids originate from operation of the wastewater treatment system at the Facility. Petitioners explain that to the extent possible, hydrocarbons present in refinery wastewaters from various sources (e.g., crude oil, API separator sludge, DAF float, etc.) are recovered through a "slop system," which has the purpose of oil recovery.

Oily waste streams are routed to the storage tanks from collection system piping and/or smaller tanks for recovery. The recovered oil is further processed within the refinery, and the separated wastewaters are routed to downstream treatment units and ultimately discharged through an NPDES/TPDES permitted outfall. In addition, refinery stormwater flows to those same four stormwater tanks that are the subject of this proposal. In general, stormwater from the northern portion of the Natural Gas Liquids Plant flows to the North Drop Out Basin for primary solids removal and then to the North Stormwater Tank for secondary removal. Stormwater from the southern portion of the Refinery flows to the West Grit Trap for primary solids removal and

then to the West Stormwater Tank for secondary removal. The Petition explains that because these four tanks receive dry weather flows that could be considered “oily,” the Petitioner has elected to classify them as F037.

The solids within the four tanks are believed to be classified as F037 when generated, WRB Refining LP assumes that solids removed from the stormwater tanks bear the F037 (primary oil/water/solids separation sludge) listing when generated.

In an effort to restore capacity of four stormwater tanks, Petitioner will remove accumulated solids from the stormwater tanks annually. This process will typically occur within a calendar year. Stormwater solids will be removed using a variety of mechanical means, which generally consists of dredging, excavating, and/or dewatering. Mechanical equipment will be utilized to extract solids from the tanks.

C. How did the Petitioner sample and analyze the petitioned waste?

A total of eight acceptable sample results were provided by the Petitioner. The EPA considered all eight samples of the stormwater tank solids, and the landfill disposal scenario was modeled using the Delisting Risk Assessment Software (DRAS). The worst-case scenario of the constituents’ concentrations for the F037 solids 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 and organic constituents which were found in the analytical data provided by the petitioner are presented in table 2.

Table 2—Analytical Results/Maximum Allowable Delisting Concentration Solids from Stormwater Tanks WRB Refining LP Borger, Texas

Chemical name	Maximum total concentration (mg/kg)	Maximum TCLP concentration (mg/L)	Maximum TCLP delisting level (mg/L)
Antimony	3.46	0.0146	1.28E+6

Arsenic	5.25	0.0138	1.870E+4
Barium	366	1.55	3.380E+7
Beryllium	0.0455	0.001	5.500E+5
Cadmium	0.0515	0.00345	7.070E+4
Chromium	40.40	0.002480	1.620E+4
Cobalt	6.650	0.0177	1.470E+5
Lead	150.0	0.0487	1.300E+7
Nickel	220.0	0.071	9.460E+5
Selenium	1.000E-10	1.000E-10	4.970E+6
Silver	0.04	0.001	7.310E+6
Vanadium	25.20	0.003	6.760E+6
Zinc	465.0	1.380	1.870E+7
Mercury	0.079	0.000015	1.080E+7
1,2-Dichlorobenzene	0.0495	0.0002	4.850E+7
1,3-Dichlorobenzene	0.0495	0.00025	
1,4-Dichlorobenzene	0.085	0.0002	2.450E+6
2,4-Dimethylphenol	0.027	0.0002	7.780E+7
2,4-Dinitrophenol	0.037	0.0002	2.34E+7
4-Nitrophenol	155.0	0.003	
Acenaphthene	0.09	0.00015	1.380E+7
Anthracene	0.16	0.00015	1.560E+7
Benz(a)anthracene	0.13	0.00015	7.510E+3
Benzo(a)pyrene	0.095	0.0002	557

Benzo(b)fluoranthene	0.085	0.0002	4390
Benzo(k)fluoranthene	0.08	0.00035	52000
Bis(2-ethylhexyl)phthalate	0.6	0.0004	1.840E+8
Chrysene	0.17	0.0004	737000
Di-n-butyl-phthalate	0.002850	0.0004	468000
Dibenz(a,h)anthracene	0.03050	0.0003	587
Diethyl Phthalate	0.0085	0.00035	2.52E+9
Dimethyl Phthalate	0.017	0.00025	
Fluoranthene	0.42	0.0002	4230000
Fluorene	0.085	0.0002	4230000
Indeno(1,2,3, -cd)pyrene	0.06	0.0003	9540
Naphthalene	0.09	0.00235	141000
Phenanthrene	0.6	0.0002	
Phenol	0.009	0.0002	5.070E+9
Pyrene	0.46	0.00015	463000
Pyridine	0.0075	0.00015	3.600E+7
1,1,1,-Trichloroethane	0.00041	0.005	7.700E+8
1,1,-Dichloroethane	0.00041	0.004	5.910E+7
1,2-Dichloroethane	0.00049	0.005	257000
1,4-Dioxane	0.0165	0.41	2510000
Acetone	0.00165	0.02	4.490E+9
Benzene	0.095	0.006	759000

Carbon disulfide	0.013	0.009	5.150E+7
Chlorobenzene	0.00049	0.004	3.020E+7
Chloroform	0.00041	0.05	134000
Ethylbenzene	0.00315	0.005	2000000
Styrene	0.00055	0.005	2.490E+8
Toluene	0.018	0.005	1.470E+8
Trichloroethene	1.000E+10	0.005	262000
Xylenes, Total	0.0049	0.05	3.140E+8

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.

D. What factors did the EPA consider in deciding whether to grant the 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 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2) through (4). We evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.22(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, the EPA also considered factors (including additional constituents) other than those for which EPA listed the waste of these additional factors could cause the waste to be hazardous.

Our proposed decision to grant the Facility's petition 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 concentrations 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 hazardous wastes mixture 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.

E. How did the EPA evaluate the risk of delisting this waste?

For this proposed delisting determination, we 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 the Petitioner’s 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 <https://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 stormwater runoff, DRAS evaluates the exposure to a human receptor by fish ingestion and ingestion of drinking water. From the 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.

F. What did EPA conclude?

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). In making the initial delisting determination, the EPA evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(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 propose 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 the waste from the Petitioner's facility is based on the information submitted in support of this rule, including description of the wastes and analytical data from the Facility, and that is contained in the Petition and attachments, all of which are included in the docket of this action.

IV. Conditions of Exclusion

A. How will the Petitioner manage the waste if it is delisted?

If the petitioned waste is delisted as proposed, the Petitioner must dispose of the waste in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste. The Petitioners stated that, if the delisting is approved, the landfill will likely be an onsite

landfill (Notice of Registration Unit No. 045) authorized under Title 30 of the Texas Administrative Code (TAC), Chapter 335.

B. What is the maximum allowable concentrations of hazardous constituents in the waste?

The EPA notes that in some instances the maximum allowable total constituents' 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% 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 Petitioner 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 this waste stream will be conducted as generated. Prior to disposal of any future tank cleanouts, the Petitioner must conduct sampling and analysis as described in the delisting sampling and analysis plan and ensure that the waste does not exceed the delisting parameters. If compliance with the delisting parameters is demonstrated with analytical testing (TCLP analysis), the Petitioner may dispose of the stormwater tank cleanouts in a Subtitle D landfill. The annual volume of solids generated from the tank clean outs may not exceed 700 cubic yards. The annual sampling report shall include the volume of solids disposed of in the landfill, as well as annual testing event data. The Petitioner should monitor and report increasing trends of constituents which will affect the overall compliance with the stormwater discharge permit.

D. What data must the Petitioner submit?

The Petitioner must submit the data obtained through verification testing to the U.S. EPA Region 6, Office of Land, Chemicals and Redevelopment Division, 1201 Elm Street, Suite 500, LCRRP, Dallas, Texas 75270-2102, within 30 days after receiving the 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 “any 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 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 the waste above the specified delisting verification concentrations in table 1, the Petitioner must notify the Agency within 10 days, or a 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 volume of waste 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.

The EPA has the authority under RCRA and the Administrative Procedure Act, 5 U.S.C. 551 to reopen a delisting decision if we receive new information indicating that the condition 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 addition implemented at the Petitioner’s facility which would significantly impact the constituent concentration of the waste must be reported to the EPA in accordance with Condition VI. of the exclusion language.

V. When would the EPA finalize the proposed delisting exclusion?

HSWA specifically requires the EPA to provide notice and an opportunity for public comments before granting or denying a final exclusion. Thus, the EPA will not make a final decision or grant an exclusion until it has addressed all timely public comments, including any at public hearings. Upon receipt and consideration of all comments, the 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 the six-month period to come into compliance in accordance with 3010 of RCRA, as amended by HSWA.

VI. How would this action affect 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 from RCRA's under 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 its wastes under the state law.

The 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 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 wastes as nonhazardous in that state.

VII. 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 Tribe 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).

Lists of Subjects in 40 CFR Part 261

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

Eunice Varughese,
Director,
Land, Chemicals and Redevelopment Division.

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 table 1 of appendix IX to part 261 by revising the entry “WRB Refining 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	<p>Stormwater Solids (F037) generated at a maximum generation of 700 cubic yards annually.</p> <p>(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: Antimony-1280000; Arsenic-.18700; Barium-33800000; Benz(a)anthracene-7510; Benzo(a)pyrene-557 Benzene-759000; Cadmium –70700; Carbon disulfide-51500000; Chromium-.162000; Chrysene-737000; Cobalt –147000; Di-n-butyl-phthalate-4680000; Ethylbenzene-2000000; Fluoranthrene-258000; Fluorene-4230000; Indeno (1,2,3-cd)pyrene-9540 Lead-13000000; Mercury-.13000000; Naphthalene-141000; Nickel-946000; Pyrene-463000; Selenium- 4970000; Silver-7310000; Toluene-147000000; Vanadium- 6760000; Xylenes, Total- 314000000; Zinc-18700000.</p> <p>(2) Waste Holding and Handling: (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 LP can manage and dispose the non-hazardous stormwater solids according to all applicable solid waste regulations.</p> <p>(C) WRB Refining LP 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 LP 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.</p> <p>(4) Data Submittals: WRB Refining LP must submit the information described below. If WRB Refining LP 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 LP must:</p> <p>(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.</p> <p>(B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years.</p>
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(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:

(A) If, any time after disposal of the delisted waste, WRB Refining LP 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 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, WRB Refining LP 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 WRB Refining LP 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, 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 (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.

(6) Notification Requirements: WRB Refining LP 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>(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 LP transports the excluded waste to or manages the waste in any state with delisting authorization, WRB Refining LP must obtain delisting authorization from that state before it can manage the waste as nonhazardous in that 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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