ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7537–5]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA (also, ''the Agency'' or ''we'' in this preamble) is granting petitions to exclude (or ''delist'') wastewater treatment plant sludge from conversion coating on aluminum generated by six automobile assembly facilities in the State of Michigan from the list of hazardous wastes. The facilities include three plants owned and operated by General Motors Corporation (GM) (Pontiac East-Pontiac, Hamtramck-Detroit, Flint Truck-Flint), one plant owned and operated by GM with an onsite wastewater treatment plant owned by the City of Lansing and operated by Trigen/Cinergy-USFOS of Lansing LLC (Lansing Grand River-Lansing), and two plants owned and operated by Ford Motor Company (Wixom Assembly Plant-Wixom, Michigan Truck/Wayne Integrated Stamping and Assembly Plant-Wayne).

Today's action conditionally excludes the petitioned wastes from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a lined Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste. The exclusions were proposed on March 7, 2002 as part of an expedited process to evaluate these wastes under a pilot project developed with the Michigan Department of Environmental Quality (MDEQ). The rule also imposes testing conditions for wastes generated in the future to ensure that these wastes continue to qualify for delisting.

EFFECTIVE DATE: This rule is effective on July 30, 2003.

ADDRESSES: The RCRA regulatory docket for this final rule, number R5–MIECOS–03, is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call Todd Ramaly at (312) 353–9317 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Todd Ramaly at the address above or at (312) 353–9317.

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

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I. Background

A. What Is a Delisting Petition?

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

Generators remain obligated under RCRA to confirm that their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the wastes and to ensure that future generated wastes meet the conditions set.

B. What Regulations Allow a Waste To Be Delisted?

Under 40 CFR 260.20, 260.22, and 42 U.S.C. 6921(f), facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273 of 40 CFR. 40 CFR 260.22 provides a generator the opportunity to petition the Administrator to exclude a waste on a ''generator specific'' basis from the hazardous waste lists.

II. The Expedited Process for Delisting

A. Why Was the Expedited Process Developed for This Waste?

Automobile manufacturers are adding aluminum to automobiles, which may result in increased fuel economy. However, when aluminum is conversion coated in the automobile assembly process, the resulting wastewater treatment sludge must be managed as EPA hazardous waste F019. A number of automotive assembly plants use a similar manufacturing process which generates a similar F019 waste likely to be nonhazardous. This similarity of manufacturing processes and the resultant wastes provides an opportunity for the automobile industry to be more efficient in submitting delisting petitions and EPA in evaluating them. Efficiency may be gained and time saved by using a standardized approach for gathering, submitting and evaluating data. Therefore, EPA, in conjunction with MDEQ, developed a pilot project to expedite the delisting process. This approach to making delisting determinations for this group of facilities is efficient while still being consistent with current laws and regulations and protective of human health and the environment.

By removing regulatory controls under RCRA, EPA is facilitating the use of aluminum in cars. EPA believes that incorporating aluminum in cars will be advantageous to the environment since lighter cars are capable of achieving better fuel economy.

B. What Is the Expedited Process To Delist F019?

The expedited process to delist F019 is an approach developed through a Memorandum of Understanding (MOU) with MDEQ for gathering and evaluating data in support of multiple petitions from automobile assembly plants. The expedited delisting process is applicable to wastes generated by automobile and light truck assembly plants in the State of Michigan which use a similar manufacturing process and generate similar F019 waste.

Based on available historical data and other information, the expedited process identified 70 constituents which might be of concern in the waste and provides that the F019 sludge generated by automobile assembly plants may be delisted if the levels of the 70 constituents do not exceed the allowable levels established for each constituent in this rulemaking. The maximum annual quantity of waste generated by any single facility which may be covered by an expedited delisting is 3,000 cubic yards, however, delisting levels were also proposed for smaller quantities of waste (1,000 and 2,000 cubic yards).

This expedited delisting process provides an opportunity for the automobile industry to be more efficient in preparing petitions and for the EPA to be more efficient in evaluating them.

III. EPA's Evaluation of These Petitions

A. What Information Was Submitted in Support of These Petitions?

Each facility submitted certification that its process was the same as the process described in the MOU with MDEQ. See 67 FR 10341, March 7, 2002. Each facility also submitted an assertion that its waste does not meet the criteria for which F019 waste was listed and there are no other factors which might cause the waste to be hazardous.

To support its petition, each facility collected 6 samples representing waste generated over 6 weeks. Each sample: (1) Was analyzed for total analyses of the 70 constituents of concern; (2) was analyzed for Toxicity Characteristic Leaching Procedure (TCLP), SW–846 Method 1311, analyses of the 70 constituents of concern; (3) was analyzed for oil and grease; (4) with more than 1% oil and grease was analyzed for leachable metals using the Extraction Procedure for Oily Wastes (OWEP), SW–846 Method 1330A, in lieu of Method 1311; (5) was analyzed for total constituent analyses for sulfide and cyanide; (6) was measured of pH and determination that waste is not corrosive (see 40 CFR 261.22); and (7) had a determination made that the waste was not reactive or ignitable. (See 40 CFR 261.21 and 40 CFR 261.23.) All sampling and analysis was done in accordance with the sampling and analysis plan which is an appendix to the MOU and is available in the docket for this rule. The data submitted included the appropriate QA/QC information as required in the sampling and analysis plan and was validated by a third party.

A few minor changes in the sampling approach were made prior to the sampling. Instead of sampling from six different roll-off boxes, which would have required multiple sampling events or long-term storage of full roll-off boxes, the facilities were allowed to fill 55-gallon drums with aliquots from each discharge from the filter press so that each drum represented a week's worth of sludge. All drums were then sampled on the same day shortly after the end of the six-week period. The maximum values of constituents detected in any sample of the waste water treatment plant sludge are summarized in the following table along with the maximum allowable concentrations in the waste. The table also includes the maximum allowable levels in groundwater, as evaluated by the Delisting Risk Assessment Software (DRAS). The groundwater levels used by DRAS are the more conservative of either the Safe Drinking Water Act Maximum Contaminant Level (MCL) or the value calculated by DRAS based on target risk levels.

Constituent	Maximum concentration detected and maximum allowable delisting level (DL)								Maximum allowable ground-water concentration (μg/L)
	Ford Wayne	Ford Wixom	GM LGR	DL (2,000 yd^3)	GM Hamtramck	GM Flint Truck	GM Pontiac	DL (3,000 yd^3)	
Constituents in Leachate (mg/L):									
acetone	0.39J	<0.1	<0.1	228	0.98	0.82	0.42	171	3,750
n-butyl alcohol	<0.2	<0.2	0.52	228	2.8	<1.0	<0.2	171	3,750
ethylbenzene	0.009	0.033	0.007	42.6	0.028	<0.01	0.003	31.9	700
formaldehyde	0.55	0.27	1.2	84.2	3	0.32	0.62	63	1,380
methyl ethyl ketone	<0.05	<0.05	<0.05	200	<0.13	0.6	<0.05	200	22,600
toluene	0.004	0.13	<0.1	60.8	<0.1	<0.1	<0.1	45.6	1,000
trichloroethene	<0.002	0.003	<0.002	0.304	<0.005	<0.01	<0.002	0.228	5.00
xylene	0.096	0.4	<0.05	608	0.23	<0.25	<0.05	456	10,000
bis (2ethylhexyl) phthalate	<0.1	<0.1	<0.1	0.0896	<0.1	<0.1	<0.1	0.0671	1.47
butyl benzyl phthalate	<0.1	<0.1	<0.1	92.9	0.013	<0.1	<0.1	69.6	1,450
naphthalene	<0.02	<0.02	<0.02	15	0.021	0.001	0.002	11.2	246
p-cresol	1.25	0.079	0.006	11.4	0.56	0.29	0.1	8.55	188
antimony	0.0088J	<0.5	<0.5	0.659	0.24	0.22	0.29	0.494	6.00
arsenic	0.0135J	0.23	0.008	0.3	0.0107	0.0071	0.0045	0.224	4.87
barium	0.59J	0.72	0.76	100	0.57	1.68	0.5	100	2,000
beryllium	<0.041	<0.005	<0.005	1.33	0.001	<0.029	<0.062	0.998	4.00
cadmium	0.016J	0.003J	0.015	0.48	0.007	0.014	0.16	0.36	5.00
chromium	0.031J	<0.05	0.043	4.95	0.056	0.53	0.28	3.71	100
cobalt	0.027J	0.009J	0.13	72.1	0.032	0.035	0.027	54	2,250
lead	0.14J	0.019J	<0.1	5	0.069	1.33	0.24	5	15.0
mercury	0.0002J	<0.0002	<0.0002	0.2	<0.0003	<0.0006	0.0004	0.2	2.00
nickel	33.4J	2.86	58.3	90.5	19	28.3	23.7	67.8	750
selenium	0.51J	<0.4	0.15	1.0	0.29	0.27	0.56	1.0	50.0
silver	0.022J	0.008J	0.019	5.0	<0.06	0.021	<0.088	5.0	187
thallium	0.0029J	<0.2	0.062	0.282	0.0014	<0.0178	0.0021	0.211	2.00
tin	6.31	<0.5	<0.5	721	19.7	9.3	16.6	540	22,500
vanadium	0.01J	<0.02	<0.02	67.6	0.008	0.017	0.03	50.6	263
zinc	6.495	0.87	23.9	898	74.1	17	5.43	673	11,300
Total Constituent Concentration in Waste (mg/kg):									
butanol	<2.5	<2.5	6.3	NS	20	22	9.8	NS	

Constituent	Maximum concentration detected and maximum allowable delisting level (DL)								Maximum allowable ground-water concentration (μg/L)
	Ford Wayne	Ford Wixom	GM LGR	DL (2,000 yd^3)	GM Hamtramck	GM Flint Truck	GM Pontiac	DL (3,000 yd^3)	
ethylbenzene	<0.5	1.5	0.62	NS	2.8	<0.5	<0.5	NS	
formaldehyde	11	5.3	24	689	60	6.4	12	535	
methyl chloride	<2.5	<2.5	0.84	3,720	<0.25	<0.25	<0.25	2,890	
methyl ethyl ketone	<2.5	<2.5	<2.5	NS	<2.5	25	<2.5	NS	
toluene	<0.5	<0.5	<0.5	NS	5.8	<0.5	1.5	NS	
xylene	2.1	11	3.3	NS	18	<1.5	<1.5	NS	
bis (2ethylhexyl) phthalate	32J	<15	18	NS	30	<15	<15	NS	
butyl benzyl phthalate	<75	<75	<38	NS	290	<75	<75	NS	
di-n-octyl phthalate	27J	<15	18	NS	31	<15	<15	NS	
p-cresol	23	<15	18	NS	<15	<15	<15	NS	
naphthalene	<15	<15	<7.5	NS	34	<15	<15	NS	
antimony	<100	<100	<30	NS	174	<20	<50	NS	
arsenic	12J	25	18	8,140	15	10	22	7,740	
barium	306	496	57	NS	253	694	139	NS	
beryllium	<1	1.3	<1	NS	<1	<1	<1	NS	
cadmium	<1	4.7	<1	NS	1.1	<1	1.1	NS	
chromium	48.5	92	758	NS	88	223	582	NS	
cobalt	2.6	4.1	5.1	NS	2.3	<1	5.1	NS	
lead	39.5	46	<10	NS	498	485	266	NS	
mercury	0.052	0.34	0.088	8.92	0.13	<0.1	0.04	6.34	
nickel	1,170	1,270	2,460	NS	551	520	901	NS	
selenium	<10	17	<20	NS	<20	<20	21	NS	
silver	<10	<10	<2	NS	1.9	<1	<8	NS	
thallium	<50	<50	<20	NS	<20	<20	<20	NS	
tin	156.5	154	2,120	NS	1,040	242	500	NS	
vanadium	<5	13	9	NS	25	6.7	19	NS	
zinc	9,810	2,660	6,230	NS	9,180	3,130	8,690	NS	
cyanide	<0.5	<0.5	0.68	NS	<0.5	11	0.76	NS	
sulfide	231	<10	<10	NS	529	69	296	NS	

NS—not specified.
J—the numerical value is an estimated quantity.
DL—delisting level.
<—not detected at the specified concentration.
Note.—These levels represent the highest constituent concentration found in any one sample and do not necessarily represent the specific levels found in one sample.

B. How Did EPA Evaluate the Information Submitted?

EPA compared the analytical results submitted by each facility to the maximum allowable levels calculated by the DRAS and set forth in the proposed rule (March 7, 2002, 67 FR 10341). All constituents compared favorably to the allowable levels, although acrylamide, arsenic, antimony and thallium required supplemental analyses to determine that they were not present at levels which would pose a threat.

Acrylamide: Samples were initially analyzed for acrylamide using SW–846 Method 8316. The levels reported using method 8316 were in excess of the delisting levels, although the data validation report stated that this analytical method was not sufficiently selective for acrylamide in the sludge. Acrylamide is a trace contaminant in the flocculant-aide used at waste water treatment plants. The facilities submitted a detailed mass balance which concluded that the maximum possible acrylamide that could be in the sludge would be much lower than the reported detections. Rather than accept a mass balance in lieu of the reported analytical results, EPA required further supplemental analyses by a more sensitive method using SW–846 Method 8032A in Selected Ion Monitoring (SIM) mode. Four additional samples representing two days of waste were collected at each facility. No acrylamide was detected above the level of concern.

Arsenic, Thallium, and Antimony: Estimated levels of leachable arsenic reported in some samples exceeded the delisting level, while estimated levels of leachable thallium and antimony in some samples, resulted in an aggregate hazard index (HI) in excess of 1.0. Samples which were reanalyzed for these constituents using the more sensitive Method 6020 were well below the allowable levels both individually and in the aggregate. The sample from GM-Lansing Grand River was not reanalyzed for thallium and when combined with the nickel in these samples, the hazard index remained in excess of one at an annual volume of 3,000 cubic yards. To assure that the total HI remains below one, GM has requested that the annual volume of delisted waste at the Lansing Grand River plant be changed to 2,000 cubic yards, since the estimated risk from this waste decreases as the volume decreases.

Hexachlorobenzene, hexachlorobutadiene, pentachlorophenol, and 2,4 dinitrotoluene: The initial detection levels for these constituents were significantly higher than the allowable levels. To achieve lower detection levels for these constituents, samples from each facility were reanalyzed by Method 8270 using selective ion monitoring (SIM) mode. These constituents were not detected using this more sensitive method, although some detection levels were still above the allowable delisting level. We believe the analysis indicates these constituents are not present in the waste.

Methyl methacrylate: Ford did not analyze the samples for methyl methacrylate. For the annual volume

which Ford will be disposing, the allowable concentration for methyl methacrylate is too high to be a practical concern.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

The EPA received public comments on the proposed notice published on March 7, 2002 from Alliance of Automobile Manufacturers, Honda of America Mfg., Inc., Alcoa Inc., and The Aluminum Association. All commenters were supportive of the proposal and suggested expanding the project and revising the listing.

B. Comments Received and Responses from EPA

(1) EPA should revise the F019 listing to specify that wastewater treatment sludge from zinc phosphating operations is not within the scope of the listing. Data gathered as a result of the Expedited Delisting Project together with the available historical data, should provide enough data to fully characterize this waste and to justify a revision of the listing.

The Agency is now considering revising the F019 listing. EPA is examining the data collected as a result of this project, as well as past data, as a basis for a possible revision to the F019 listing.

(2) EPA should issue an interpretive rule clarifying that zinc phosphating operations are outside the scope of the F019 listing.

An interpretive rule presents administrative and technical difficulties. A revision to the listing will require a rulemaking process. See response to comment (1) above.

(3) Automobile assembly facilities outside of Michigan would like to take advantage of the precedent set by this expedited delisting project to delist F019 generated by similar operations in other states and regions.

The Agency believes that the expedited delisting procedures and requirements set forth in this proposal are appropriate for similar automotive assembly facilities outside the State of Michigan, subject to the discretion of the regulatory agency (state or region).

(4) Alternatives to landfilling like recycling should be allowed within the petition process.

The Agency does not delist wastes which are recycled because the model used to estimate risk is based only on disposal of waste in a Subtitle D landfill. The risk which might result from any other scenario is not evaluated by the delisting program. However, the Agency encourages safe recycling, and variances and exclusions from the definition of solid and hazardous wastes are available for wastes which are recycled.

(5) Analytical methods should be specified in the pre-approved common sampling plan instead of requiring each participant to submit a site-specific list of methods.

Allowing the petitioner to choose an analytical method which meets the data quality objectives specific to the delisting petition provides flexibility. Data quality objectives will vary depending on the allowable levels which are a function of the volume of petitioned waste. The Agency believes that the flexibility of performance based methods results in better data.

(6) Detection limits should not be required prior to sampling since they cannot be adequately predicted without a way to estimate matrix effects.

Although matrix effects cannot be assessed in advance of laboratory analysis, a laboratory should be able to provide estimated detection levels and reporting levels which are lower than, or at least equal to, the allowable delisting level for each constituent.

(7) Since the process generating the sludge is extremely stable, verification sampling should be conducted on an annual, instead of quarterly, basis. The requirement that any process change be promptly reported and the exclusion suspended until EPA gives written approval that the delisting can continue is an adequate safeguard justifying the decrease in sample event frequency.

Verification data submitted in conjunction with past delistings of this waste have shown significant variation on a quarterly basis over longer periods of time. Annual sampling would not detect such variations. Once enough verification data are collected to support a statistical analysis, a change in the frequency of verification sampling and/or sampling parameters may be considered.

(8) The final **Federal Register** should make it clear that assembly plants that manufacture light trucks are also eligible for the project.

Today's notice specifically defines eligible facilities as inclusive of manufacturers of light trucks.

(9) The table of maximum allowable levels in the March 7, 2002 proposed rule contains errors in the columns for vinyl chloride.

The error was caused by a missing space or tab in the table. Although vinyl chloride was not detected in the waste at any of the six facilities, the maximum allowable concentrations proposed for 1,000 cubic yards of waste should have been a total of 178 milligrams per kilogram (mg/kg) and 0.00384 milligrams per liter (mg/L) in the TCLP. For 2,000 cubic yards of waste, 115 mg/kg total and 0.00234 mg/L TCLP were proposed. For 3,000 cubic yards of waste, 89.4 mg/kg total and 0.00175 mg/L TCLP were proposed.

V. Final Rule Granting these Petitions

A. What Decision Is EPA Finalizing?

Today the EPA is finalizing exclusions to conditionally delist wastewater treatment plant sludge from conversion coating on aluminum generated at the following facilities: (1) General Motors Corporation, Pontiac East Plant, in Pontiac, Michigan (3,000 cubic yards annually); (2) General Motors Corporation, Hamtramck Plant, in Detroit, Michigan (3,000 cubic yards annually); (3) General Motors Corporation, Flint Truck, in Flint, Michigan (3,000 cubic yards annually); (4) General Motors Corporation, City of Lansing, and Trigen/Cinergy-USFOS of Lansing LLC, Lansing Grand River Plant, in Lansing, Michigan (2,000 cubic yards annually); (5) Ford Motor Company, Wixom Assembly Plant, in Wixom, Michigan (2,000 cubic yards annually); and (6) Ford Motor Company, Michigan Truck/Wayne Integrated Stamping and Assembly Plant, in Wayne, Michigan (2,000 cubic yards annually).

On March 7,2002, EPA proposed to exclude or delist these wastewater treatment sludges from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (67 FR 10341). EPA considered all comments received, and for reasons stated in both the proposal and this document, we believe that these wastes should be excluded from hazardous waste control.

B. What Are the Terms of This Exclusion?

The facilities must dispose of the waste in a lined Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste. The facilities must verify on a quarterly basis that the concentrations of the constituents of concern do not exceed the allowable levels set forth in this exclusion by obtaining and analyzing a representative sample of the waste according to the current waste analysis plan modified to include the improved methodologies discussed in section III. B.

The list of constituents for verification is a subset of those initially tested for and is based on the occurrence of

constituents at the majority of facilities and the concentrations relative to the allowable levels. Since all the facilities include significant amounts of nickel in the leachate and nickel combines with thallium targeting the liver and cadmium targeting the kidney, the total hazard index from nickel and thallium combined and/or nickel and cadmium combined shall not exceed 1.0.

This exclusion applies only to the maximum annual volumes cited in section V.A. of this preamble and is effective only if all conditions contained in this rule are satisfied.

C. When Is the Delisting Effective?

This rule is effective July 30, 2003. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the States?

Today's exclusion is being issued under the federal RCRA delisting program. Therefore, only states subject to federal RCRA delisting provisions would be affected. This exclusion is not effective in states which have received authorization to make their own delisting decisions. Also, the exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements. EPA allows states to impose their own regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. 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.

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 authorized states. If a participating facility transports the petitioned waste to or manages the waste in any state with delisting authorization, it must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

VI. Regulatory Impact

Under Executive Order 12866 (58 FR 51735, October 4, 1993), these rules are not of general applicability and therefore are not regulatory actions subject to review by the Office of Management and Budget. Because these rules are each of particular applicability relating to a particular facility, they are not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because each of the rules will affect only a particular facility, each rule will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, each rule 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). These rules also are not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because they are not economically significant.

These rules do not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing these rules, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. These rules do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives, the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. Each of these rules is not a ''major rule'' as defined by 5 U.S.C. 804(2). These rules will become effective on the date of publication in the **Federal Register**.

List of Subjects in 40 CFR Part 261

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

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 21, 2003.

Margaret M. Guerriero,

Acting Director, Waste, Pesticides and Toxics Division.

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Table 1 of Appendix IX of part 261 the following wastestreams are added in alphabetical order by facility to read as follows:

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

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility and address	Waste description
* * * * * * *	
Ford Motor Company, Michigan Truck Plant and Wayne Integrated Stamping and Assembly Plant. —Wayne, Michigan	Waste water treatment plant sludge, F019, that is generated by Ford Motor Company at the Wayne Integrated Stamping and Assembly Plant from wastewaters from both the Wayne Integrated Stamping and Assembly Plant and the Michigan Truck Plant, Wayne, Michigan at a maximum annual rate of 2,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of July 30, 2003. 1. Delisting Levels: (A) The TCLP concentrations measured in any sample may not exceed the following levels (mg/L): Antimony—0.659; Arsenic—0.3; Cadmium—0.48; Chromium—4.95; Lead—5; Nickel—90.5; Selenium—1; Thallium—0.282; Tin—721; Zinc—898; p-Cresol—11.4; and Formaldehyde—84.2. (B) The total concentrations measured in any sample may not exceed the following levels (mg/kg): Mercury—8.92; and Formaldehyde—689. (C) The sum of the ratios of the TCLP concentrations to the delisting levels for nickel and thallium and for nickel and cadmium shall not exceed 1.0. 2. Quarterly Verification Testing: To verify that the waste does not exceed the specified delisting levels, the facility must collect and analyze one waste sample on a quarterly basis. 3. Changes in Operating Conditions: The facility must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process significantly change. The facility must handle wastes generated after the process change as hazardous until it has demonstrated that the wastes continue to meet the delisting levels and that no new hazardous constituents listed in appendix VIII of part 261 have been introduced and it has received written approval from EPA. 4. Data Submittals: The facility must submit the data obtained through verification testing or as required by other conditions of this rule to both U.S. EPA Region 5, Waste Management Branch (DW–8J), 77 W. Jackson Blvd., Chicago, IL 60604 and MDEQ, Waste Management Division, Hazardous Waste Program Section, at P.O. Box 30241, Lansing, Michigan 48909. The quarterly verification data and certification of proper disposal must be submitted annually upon the anniversary of the effective date of this exclusion. The facility must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. The facility must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). 5. Reopener Language—(a) If, anytime after disposal of the delisted waste, the facility possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent is at a level in the leachate higher than the specified delisting level, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration in paragraph (e), then the facility must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator 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. (c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify the facility in writing of the actions the Regional Administrator 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 or to suggest an alternative action. The facility shall have 30 days from the date of the Regional Administrator's notice to present the information. (d) If after 30 days the facility presents no further information, the Regional Administrator 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 Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. (e) Maximum Allowable Groundwater Concentrations (ug/L): Antimony—6; Arsenic—4.87; Cadmium—5; Chromium—100; Lead—15; Nickel—750; Selenium—50; Thallium—2; Tin—22,500; Zinc—11,300; p-Cresol—188; and Formaldehyde—1,380.
Ford Motor Company, Wixom Assembly Plant: —Wixom, Michigan	Waste water treatment plant sludge, F019, that is generated by Ford Motor Company at the Wixom Assembly Plant, Wixom, Michigan at a maximum annual rate of 2,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR Part 258. The exclusion becomes effective as of July 30, 2003. The conditions in paragraphs (2) through (5) for Ford Motor Company—Michigan Truck Plant and Wayne Integrated Stamping Plant—Wayne, Michigan also apply. Delisting Levels: (A) The TCLP concentrations measured in any sample may not exceed the following levels (mg/L): Antimony—0.659; Arsenic—0.3; Cadmium—0.48; Chromium—4.95; Lead—5; Nickel—90.5; Selenium—1; Thallium—0.282; Tin—721; Zinc—898; p-Cresol—11.4; and Formaldehyde—84.2. (B) The total concentrations measured in any sample may not exceed the following levels (mg/kg): Mercury—8.92; and Formaldehyde—689. (C) The sum of the ratios of the TCLP concentrations to the delisting levels for nickel and thallium and for nickel and cadmium shall not exceed 1.0.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility and address	Waste description
General Motors Corporation, Flint Truck:	
—Flint, Michigan	Waste water treatment plant sludge, F019, that is generated by General Motors Corporation at Flint Truck, Flint, Michigan at a maximum annual rate of 3,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of July 30, 2003. The conditions in paragraphs (2) through (5) for Ford Motor Company—Michigan Truck Plant and Wayne Integrated Stamping Plant—Wayne, Michigan also apply. Delisting Levels: (A) The TCLP concentrations measured in any sample may not exceed the following levels (mg/L): Antimony—0.494; Arsenic—0.224; Cadmium—0.36; Chromium—3.71; Lead—5; Nickel—67.8; Selenium—1; Thallium—0.211; Tin—540; Zinc—673; p-Cresol—8.55; and Formaldehyde—63. (B) The total concentrations measured in any sample may not exceed the following levels (mg/kg): Mercury—6.34; and Formaldehyde—535. (C) The sum of the ratios of the TCLP concentration to the delisting level for nickel and thallium and for nickel and cadmium shall not exceed 1.0.
General Motors Corporation, Hamtramck:	
—Detroit, Michigan	Waste water treatment plant sludge, F019, that is generated by General Motors Corporation at Hamtramck, Detroit, Michigan at a maximum annual rate of 3,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of July 30, 2003. The conditions in paragraphs (2) through (5) for Ford Motor Company—Michigan Truck Plant and Wayne Integrated Stamping Plant—Wayne, Michigan also apply. A maximum allowable groundwater concentration of 3,750 μg/L for n-butyl alcohol is added to paragraph (5)(e). Delisting Levels: (A) The TCLP concentrations measured in any sample may not exceed the following levels (mg/L): Antimony—0.494; Arsenic—0.224; Cadmium—0.36; Chromium—3.71; Lead—5; Nickel—67.8; Selenium—1; Thallium—0.211; Tin—540; Zinc—673; p-Cresol—8.55; Formaldehyde—63; and n-Butyl alcohol—171. (B) The total concentrations measured in any sample may not exceed the following levels (mg/kg): Mercury—6.34; and Formaldehyde—535. (C) The sum of the ratios of the TCLP concentration to the delisting level for nickel and thallium and for nickel and cadmium shall not exceed 1.0.
General Motors Corporation, Pontiac East:	
—Pontiac, Michigan	Waste water treatment plant sludge, F019, that is generated by General Motors Corporation at Pontiac East, Pontiac, Michigan at a maximum annual rate of 3,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of July 30, 2003. The conditions in paragraphs (2) through (5) for Ford Motor Company—Michigan Truck Plant and Wayne Integrated Stamping Plant—Wayne, Michigan also apply. Delisting Levels: (A) The TCLP concentrations measured in any sample may not exceed the following levels (mg/L): Antimony—0.494; Arsenic—0.224; Cadmium—0.36; Chromium—3.71; Lead—5; Nickel—67.8; Selenium—1; Thallium—0.211; Tin—540; Zinc—673; p-Cresol—8.55; and Formaldehyde—63. (B) The total concentrations measured in any sample may not exceed the following levels (mg/kg): Mercury—6.34; and Formaldehyde—535. (C) The sum of the ratios of the TCLP concentrations to the delisting levels for nickel and thallium and for nickel and cadmium shall not exceed 1.0.
Trigen/Cinergy-USFOS of Lansing LLC at General Motors Corporation, Lansing Grand River:	
—Lansing, Michigan	Waste water treatment plant sludge, F019, that is generated at General Motors Corporation's Lansing Grand River (GM-Grand River) facility by Trigen/Cinergy-USFOS of Lansing LLC exclusively from wastewaters from GM-Grand River, Lansing, Michigan at a maximum annual rate of 2,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR Part 258. The exclusion becomes effective as of July 30, 2003. The conditions in paragraphs (2) through (5) for Ford Motor Company—Michigan Truck Plant and Wayne Integrated Stamping Plant—Wayne, Michigan also apply. Delisting Levels: (A) The TCLP concentrations measured in any sample may not exceed the following levels (mg/L): Antimony—0.659; Arsenic—0.3; Cadmium—0.48; Chromium—4.95; Lead—5; Nickel—90.5; Selenium—1; Thallium—0.282; Tin—721; Zinc—898; p-Cresol—11.4; and Formaldehyde—84.2. (B) The total concentrations measured in any sample may not exceed the following levels (mg/kg): Mercury—8.92; and Formaldehyde—689. (C) The sum of the ratios of the TCLP concentrations to the delisting levels for nickel and thallium and for nickel and cadmium shall not exceed 1.0.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 279

[RCRA–1998–0015; FRL–7537–4]

RIN 2050–AF07

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's final rule eliminates drafting errors and ambiguities in the used oil management standards. Specifically, this rule clarifies when used oil contaminated with polychlorinated biphenyls (PCBs) is regulated under the RCRA used oil management standards and when it is not; that mixtures of conditionally exempt small quantity generator (CESQG) waste and used oil are subject to the RCRA used oil management standards irrespective of how that mixture is to be recycled; and that the initial marketer of used oil that meets the used oil fuel specification need only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil.

DATES: This final rule will become effective on September 29, 2003.

ADDRESSES: Public comments and supporting materials are available for viewing in the EPA Docket Center, located at 1301 Constitution Avenue, NW, Washington, DC. The Docket ID Number is RCRA–1998–0015. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Call Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For more detailed information on specific aspects of this rulemaking, contact Mike Svizzero by mail at Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, by phone at (703) 308–0046, or by Internet e-mail at *svizzero.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

EPA has established an official public docket for this action under Docket ID No. RCRA–1998–0015. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Ave NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270.

You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select ''search'' and then key in the appropriate docket identification number.

Outline of Today's Document

I. Authority
II. Background and Regulatory Amendments
  A. Applicability of the Used Oil Management Standards to PCB Contaminated Used Oil
  B. Mixtures of CESQG Waste and Used Oil
  C. Clarification of the Recordkeeping Requirements for Marketers of On-Specification Used Oil
III. State Authority
IV. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  G. Executive Order 13045: Children's Health
  H. Executive Order 13211: Energy Effects
  I. National Technology Transfer and Advancement Act of 1995
  J. Congressional Review Act
V. Effective Date

I. Authority

These regulations are issued under the authority of sections 1004, 1006, 2002(a), 3001 through 3007, 3010, 3013, 3014, 3016 through 3018, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and as amended by the Used Oil Recycling Act, as amended, 42 U.S.C. 6901, 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937 through 6939 and 6974.

II. Background and Regulatory Amendments

Today's final rule reinstates, with some modifications, three amendments to the RCRA used oil management standards of 40 CFR Part 279. These amendments were issued on May 6, 1998 as a direct final rule, but were retracted on July 14, 1998 because of adverse public comment to the amendments (see 63 FR 24963 and 63 FR 25006). One of the withdrawn amendments, applicability of the used oil management standards to PCB contaminated used oil, was a clarification of the applicability of the RCRA used oil management standards to PCB contaminated used oil. This clarification was undertaken as part of a settlement agreement to resolve a lawsuit challenging a final rule promulgated on May 3, 1993, (58 FR 26420) regarding EPA's used oil regulations. *Edison Electric Institute* v. *U.S. EPA* (D.C. Circuit No. 93–1474). Specifically, the May 1993 rule corrected technical errors and provided clarifying amendments to the used oil management standards promulgated on September 10, 1992 (57 FR 41566). The other amendments reinstated today clarify (1) that mixtures of conditionally exempt small quantity generator (CESQG) waste and used oil are subject to the used oil management standards irrespective of how that mixture is to be recycled and (2) that the initial marketer of used oil that meets the used oil fuel specification need only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil.

A. Applicability of the Used Oil Management Standards to PCB Contaminated Used Oil

Today's rule amends 40 CFR 279.10(i) to clarify the applicability of the RCRA used oil management standards to used oil containing PCBs. The amendment clarifies that used oil that contains less than 50 ppm of PCBs is generally subject to regulation under the RCRA used oil management standards. However, the amendment notes that the