

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
*	*	<p>(5) <i>Data Submittals:</i> At least one month prior to operation of a new Super Detox™ treatment facility, CSI must notify, in writing, the Chief of the Waste Identification Branch (see address below) when the Super Detox™ treatment facility is scheduled to be on-line. The data obtained through Condition (1)(A) must be submitted to the Branch Chief of the Waste Identification Branch, OSW (Mail Code 5304), U.S. EPA, 401 M Street, SW, Washington, DC 20460 within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State in which the CSI facility is located, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:</p> <p>Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.</p> <p>As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.</p> <p>In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.</p>
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[FR Doc. 95-14338 Filed 6-12-95; 8:45 am]
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40 CFR Part 261

[SW-FRL-5220-5]

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

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a petition submitted by the U.S. Department of Energy (DOE), Richland, Washington, to exclude certain wastes to be generated by a treatment process at its Hanford facility from being listed as hazardous wastes. This action responds to DOE's petition to exclude these treated wastes on a "generator-specific" basis from the hazardous waste lists.

Based on careful analyses, the Agency has concluded that the disposal of these wastes, after treatment, will not adversely affect human health and the environment. This final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA), but imposes testing conditions to ensure

that the future-generated waste remains qualified for delisting.

This final rule will also allow DOE to proceed with critical cleanup at the Hanford site. The primary goal of cleanup is to protect human health and the environment by reducing risks from unintended releases of hazardous wastes that are currently stored at the site.

EFFECTIVE DATE: June 13, 1995.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for viewing (room M2616) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260-9327 for appointments. The reference number for this docket is "F-95-HNEF-FFFFF". The public may copy material from any regulatory docket at no cost for the first 100 pages, and at \$0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (703) 412-9810. For technical information concerning this notice, contact Shen-yi Yang, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 260-1436.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under §§ 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the administrator must determine, where he 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.

B. History of This Rulemaking

DOE's Hanford site, located in Richland, Washington, petitioned the Agency to exclude from hazardous waste control the effluents to be generated from its proposed 200 Area Effluent Treatment Facility (ETF). The effluents are presently listed as EPA Hazardous Waste Nos. F001 through F005, and F039 derived from F001 through F005. After evaluating the petition, EPA proposed, on February 1,

1995, to exclude Hanford's waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (see 60 FR 6054).

This rulemaking addresses public comments received on the proposal and finalizes the Agency's proposed decision to grant DOE's petition.

II. Disposition of Delisting Petition

U.S. Department of Energy's Hanford Facility, Richland, Washington

A. Proposed Exclusion

On October 30, 1992, DOE petitioned the Agency to exclude from hazardous waste control its treated wastes to be generated from the proposed 200 Area Effluent Treatment Facility (ETF). The ETF is designed to treat process condensate (PC) from the 242-A Evaporator. The untreated PC is a low-level radioactive waste as defined in DOE Order 5820.2A and a RCRA listed hazardous waste (EPA Hazardous Waste Nos. F001 through F005 and F039 derived from F001 through F005) as defined in 40 CFR § 261.31(a).

While the constituents of concern in listed wastes F001 through F005 wastes include a variety of solvents (see Part 261, Appendix VII), the constituents (based on PC sampling data and process knowledge) that serve as the basis for characterizing DOE's petitioned wastes as hazardous were limited to 1,1,1-trichloroethane (F001), methylene chloride (F002), acetone and methyl isobutyl ketone (F003), cresylic acid (F004), and methyl ethyl ketone (F005).

In support of its petition, DOE submitted:

- (1) Detailed descriptions of the waste generation and waste management history at the Hanford site;
- (2) An inventory of chemicals used in Hanford's production plants and supporting operations;
- (3) Detailed descriptions of various waste streams to be fed into the 242-A Evaporator;
- (4) Detailed descriptions and schematic drawings of the generation of untreated PC from the 242-A Evaporator;
- (5) Information quantifying concentrations of hazardous constituents of untreated 242-A Evaporator PC, including metals and other inorganic constituents, organic constituents, and radioactive constituents;
- (6) Detailed descriptions and schematic drawings of its proposed Effluent Treatment Facility and primary steps of its treatment processes;
- (7) Results from the analysis of liquid wastes generated by pilot-scale treatability studies, showing concentrations of inorganic and organic

compounds in samples of untreated and treated surrogate test solutions and percent removal; and

(8) Information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity.

The Agency evaluated the information and analytical data provided by DOE in support of the petition and determined that the disposal of the DOE effluents, after treatment, would not adversely affect human health or the environment. Specifically, the Agency used the modified EPA Composite Model for Landfills (EPACML) to predict the potential mobility of the hazardous constituents found in the petitioned waste. The Agency also evaluated additional modeling information, submitted by DOE, concerning transport of hazardous constituents in ground water. Based on these modeling evaluations, the Agency determined that the concentrations of constituents in groundwater from DOE's petitioned waste would not exceed delisting levels of concern. See 60 FR 6054, February 1, 1995, for a detailed explanation of why EPA proposed to grant DOE's petition for its treated effluents generated from the ETF located at the Hanford site.

B. Response to Public Comments

The Agency received public comments on the February 1, 1995 proposal from three interested parties. These three commenters either expressed support or did not have any negative comments on the Agency's proposed decision to grant DOE's petition. One commenter, the U.S. Nuclear Regulatory Commission, believed that the Agency's consideration of the unique circumstances surrounding the management of the mixed waste generated at the Hanford facility was appropriate and the concepts the Agency used in formulating the proposed rule should be incorporated in developing management strategies for other commercial mixed wastes. The two remaining commenters wanted clarification and expansion of the language contained in the proposed rule. The following sections address their specific comments.

Comment: One commenter requested that zinc be removed as a "hazardous constituent" from the proposed rule. The commenter stated that zinc is not listed as a hazardous constituent of F001 through F005 wastes, nor is zinc listed as a hazardous constituent in 40 CFR Part 261, Appendix VIII. The commenter also stated that the Agency recently noted that zinc was not an "underlying hazardous constituent" under the new land disposal restrictions, 40 CFR 268.2(i) (see 59 FR

48106, September 19, 1994). Therefore, the commenter does not believe that zinc can be listed as a "hazardous constituent" in the proposed addition to Appendix IX of Part 261 as set forth in the proposal.

Response: The Agency agrees that zinc is not listed as a hazardous constituent of F001 through F005 wastes, nor is zinc listed as a hazardous constituent in 40 CFR 261, Appendix VIII. However, the statute (§ 3001(f)) requires the Agency, as part of its delisting evaluation, to consider any factors (including additional constituents) other than those for which the waste was listed if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

Accordingly, in addition to addressing the criteria for which the wastes were listed, a petitioner must demonstrate that the wastes do not exhibit any of the hazardous waste characteristics and must present sufficient information for the Agency to determine whether the wastes contain any other toxicants at hazardous levels. See 42 USC § 6921(f) and 40 CFR 260.22(a). Because zinc was detected in DOE's petitioned waste and is a constituent with an established health-based level (10 ppm), it is a constituent of regulatory concern for DOE's petitioned waste for delisting purposes (see Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR 260.20 and 260.22, December 1994). As such, zinc will remain on the list of constituents for verification testing. However, consistent with the commenter's request, EPA acknowledges that zinc remains on the list as an additional constituent of concern for delisting purposes and not as a designated "hazardous constituent". In the proposal, EPA did not intend to indicate otherwise. Also, the September 19, 1994 rulemaking cited by the commenter states that zinc is not an "underlying hazardous constituent" in characteristic wastes, according to the definition at 268.2(i). (See § 268.48 Table UTS, note 5, 59 FR 48107). As above, that issue is not determinative of the issue here concerning EPA's decision to retain zinc on the list of constituents for verification testing as an additional constituent of concern for delisting purposes.

Comment: One commenter felt that if the Agency believes the ETF can provide adequate treatment to delist F039 leachates derived from sources other than F001 through F005 wastes, then EPA should add language to the

first sentence of Hanford's waste description found in Table 2 of 40 CFR 261 Appendix IX to reflect that. The commenter believed that the additional language would provide the maximum operational flexibility to DOE in their mixed waste disposal planning and would not require regulatory changes to 40 CFR 261 if and when DOE disposes of non-F001-F005 wastes in Hanford's landfills. The commenter also wanted this comment withdrawn if it would result in the delay of the final delisting.

Response: The Agency proposed to exclude the liquid wastes covered by DOE's petition, which consist of F001 through F005 wastes and F039 wastes derived from F001 through F005. The commenter believes it would be useful to expand the scope of this delisting because the ETF is capable of treating a wider variety of wastes. The Agency acknowledges, as noted in the proposal, that the treatment data show the ETF to be extremely effective for all classes of inorganic species, and the data also demonstrate that organic constituents can be effectively treated by the UV/OX process (see 60 FR 6060). However, obtaining a request to expand this delisting decision to cover other waste codes and evaluating specific data and information accompanying that request, which would be likely to require an opportunity for public notice and comment, would result in delays in the promulgation of this delisting. Therefore, consistent with the commenter's request not to delay this delisting, today's final exclusion has not been expanded to include non-F001 through F005 wastes.

C. Final Agency Decision

For the reasons stated in the proposal and in this final rule, the Agency is granting a final exclusion to DOE-RL, located in Richland, Washington for the liquid wastes, described in its petition as EPA Hazardous Waste No. F001, F002, F003, F004, F005, and F039 derived from F001 through F005.

This exclusion only applies to the treatment processes and waste volume (a maximum of 19 million gallons generated annually) covered by the original demonstration. The facility would need to petition for a new or amended exclusion if there is a change in composition of the treated waste such that the levels of hazardous constituents increase significantly (e.g., from changes to the waste streams or treatment processes). (Note, however, that changes in operating conditions are allowed as described in Condition (4).) Until a new or amended exclusion is granted, the facility must treat as hazardous all such wastes as well as effluents generated in

excess of 19 million gallons per year. As to the wastes covered by today's exclusion, continued evaluation for levels of hazardous constituents will be achieved by the verification testing specified in Condition (1).

Although management of the wastes covered by this petition is relieved from Subtitle C jurisdiction by this final exclusion, the generator of a delisted waste must either treat, store or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under both Federal and State programs, petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

IV. Effective Date

This rule is effective June 13, 1995. 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. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date of six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon publication. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. This

rule to grant an exclusion is not significant, since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional economic impact due to today's rule. Therefore, this rule is not a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This amendment will not have any adverse economic impact on any small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and it is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 USC § 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

VIII. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a written statement to accompany any rules that have "Federal mandates" that may result in the expenditure by the private sector of \$100 million or more in any one year.

Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of such a rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly and uniquely affected by the rule.

Unfunded Mandates Act defines a "Federal private sector mandate" for regulatory purposes as one that "would impose an enforceable duty upon the private sector." EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duties upon the private sector. Therefore, today's rulemaking is

not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Act. As to Section 203 of this Act, EPA finds that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling, and Reporting and recordkeeping requirements.

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

Dated: June 2, 1995.

Michael Shapiro,
Director, Office of Solid Waste.

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 Part 261, table 2 of Appendix IX add the following wastestream in alphabetical order by facility to read as follows: Appendix IX—Wastes Excluded Under § 260.20 and § 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* DOE—RL	* Richland, Washington	* Effluents (EPA Hazardous Waste Nos. F001, F002, F003, F004, F005, and F039 derived from F001 through F005) generated from the 200 Area Effluent Treatment Facility (ETF) located at the Hanford site (at a maximum generation rate of 19 million gallons per year) after June 13, 1995. To ensure that hazardous constituents are not present in the wastes at levels of regulatory concern while the treatment facility is in operation, DOE must implement a testing program. This testing program must meet the following conditions for the exclusion to be valid: (1) <i>Testing:</i> Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW-846 (or other EPA-approved) methodologies. If EPA judges the treatment process to be effective under the operating conditions used during the initial verification testing, DOE may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). DOE must continue to test as specified in Condition (1)(A) until notified by EPA in writing that testing in Condition (1) (A) may be replaced by Condition (1)(B). (A) <i>Initial Verification Testing:</i> During the period required to fill the first three verification tanks (each designed to hold approximately 650,000 gallons) with effluents generated from an on-line, full-scale Effluent Treatment Facility (ETF), DOE must monitor the range of typical operating conditions for the ETF. DOE must collect a representative sample from each of the first three verification tanks filled with ETF effluents. The samples must be analyzed, prior to disposal of ETF effluents, for all constituents listed in Condition (3). DOE must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 90 days after the first verification tank is filled with ETF effluents. (B) <i>Subsequent Verification Testing:</i> Following notification by EPA, DOE may substitute the testing conditions in this condition for (1)(A). DOE must continue to monitor operating conditions, and collect and analyze representative samples from every tenth verification tank filled with ETF effluents. These representative samples must be analyzed, prior to disposal of ETF effluents, for all constituents listed in Condition (3). If all constituent levels in a sample do not meet the delisting levels specified in Condition (3), DOE must analyze representative samples from the following two verification tanks generated prior to disposal. DOE may also collect and analyze representative samples more frequently. (2) <i>Waste Holding and Handling:</i> DOE must store as hazardous all ETF effluents generated during verification testing (as specified in Conditions (1)(A) and (1)(B)), that is until valid analyses demonstrate that Condition (3) is satisfied. If the levels of hazardous constituents in the samples of ETF effluents are equal to or below all of the levels set forth in Condition (3), then the ETF effluents are not hazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any representative sample collected from a verification tank exceed any of the delisting levels set in Condition (3), the ETF effluents in that verification tank must be re-treated until the ETF effluents meet these levels. Following re-treatment, DOE must repeat analyses in Condition (3) prior to disposal. (3) <i>Delisting Levels:</i> All total constituent concentrations in the waste samples must be measured using the appropriate methods specified in "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Publication SW-846 (or other EPA-approved methods). All total constituent concentrations must be equal to or less than the following levels (ppm): <i>Inorganic Constituents</i> Ammonium—10.0 Antimony—0.06 Arsenic—0.5

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Barium—20.0
		Beryllium—0.04
		Cadmium—0.05
		Chromium—1.0
		Cyanide—2.0
		Fluoride—40.0
		Lead—0.15
		Mercury—0.02
		Nickel—1.0
		Selenium—0.5
		Silver—2.0
		Vanadium—2.0
		Zinc—100.0
		<i>Organic Constituents</i>
		Acetone—40.0
		Benzene—0.05
		Benzyl alcohol—100.0
		1-Butyl alcohol—40.0
		Carbon tetrachloride—0.05
		Chlorobenzene—1.0
		Chloroform—0.1
		Cresol—20.0
		1,4-Dichlorobenzene—0.75
		1,2-Dichloroethane—0.05
		1,1-Dichloroethylene—0.07
		Di-n-octyl phthalate—7.0
		Hexachloroethane—0.06
		Methyl ethyl ketone—200.0
		Methyl isobutyl ketone—30.0
		Naphthalene—10.0
		Tetrachloroethylene—0.05
		Toluene—10.0
		Tributyl phosphate—0.2
		1,1,1-Trichloroethane—2.0
		1,1,2-Trichloroethane—0.05
		Trichloroethylene—0.05
		Vinyl Chloride—0.02
		(4) <i>Changes in Operating Conditions:</i> After completing the initial verification testing in Condition (1)(A), if DOE significantly changes the operating conditions established in Condition (1), DOE must notify the Agency in writing. After written approval by EPA, DOE must re-institute the testing required in Condition (1)(A). DOE must report the operations and test data, required by Condition (1)(A), including quality control data, obtained during this period no later than 60 days after the changes take place. Following written notification by EPA, DOE may replace testing Condition (1)(A) with (1)(B). DOE must fulfill all other requirements in Condition (1), as appropriate.
		(5) <i>Data Submittals:</i> At least two weeks prior to system start-up, DOE must notify, in writing, the Chief of the Waste Identification Branch (see address below) when the Effluent Treatment Process will be on-line and waste treatment will begin. The data obtained through Condition (1)(A) must be submitted to the Branch Chief, Waste Identification Branch, OSW (Mail Code 5304), U.S. EPA, 401 M Street, S.W., Washington, DC 20460 within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of three years. These records and data must be furnished upon request by EPA or the State of Washington and made available for inspection. Failure to submit the required data within the specified time period or to maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by 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 USC 1001 and 42 USC 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 official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to DOE, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the DOE will be liable for any actions taken in contravention of its RCRA and CERCLA obligations premised upon DOE's reliance on the void exclusion.		
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