

## REFRIGERATION AND AIR-CONDITIONING SECTOR UNACCEPTABLE SUBSTITUTES

End-use	Substitute	Decision	Comments
All refrigeration and air-conditioning end uses	Hexafluoropropylene (HFP) and all HFP-containing blends.	Unacceptable .....	Presents unacceptable toxicity risk.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

[SW-FRL-6223-5]

#### 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) today is granting a petition submitted by American Steel Cord, formerly Kokoku Steel Cord Corporation, to exclude (or "delist") certain solid wastes from the lists of hazardous wastes contained in Title 40 of the Code of Federal Regulations, Subpart D of Part 261. EPA has concluded that the petitioned waste is not a hazardous waste when disposed of in a Subtitle D landfill. This exclusion applies only to the wastewater treatment plant (WWTP) sludge generated by American Steel Cord in Scottsburg, Indiana. Today's action conditionally excludes the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a Subtitle D landfill.

**EFFECTIVE DATE:** January 26, 1999.

**ADDRESSES:** The regulatory docket for this final rule which contains the complete petition and supporting documents is located at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590, and is available for viewing from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Call Judy Kleiman at (312) 886-1482 for appointments. The public may copy material from the regulatory docket at cost of \$0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For technical information concerning this notice, contact Judy Kleiman at the address above or at (312) 886-1842.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### A. Authority

Under §§ 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in Subpart D of Part 261. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 266, 268 and 273; and § 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "facility-specific" basis from the hazardous waste lists. Petitioners must provide sufficient information to allow EPA 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, where there is 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, the Administrator must determine that such factors do not warrant retaining the waste as a hazardous waste.

### B. History of this Rulemaking

American Steel Cord petitioned EPA to exclude its WWTP sludge from hazardous waste control. After evaluating the petition, on April 15, 1998, EPA proposed to exclude American Steel Cord's waste from the lists of hazardous wastes in subpart D of part 261 (see 63 FR 18354). This rulemaking addresses the public comments received on the proposal and finalizes the proposed decision to grant American Steel Cord's petition.

## II. Disposition of Delisting Petition

American Steel Cord, Route 1 Box 357K, Scottsburg, Indiana 47170

### A. Proposed Exclusion

American Steel Cord petitioned EPA to exclude an annual volume of 3,000 cubic yards of WWTP filtercake sludge from the list of hazardous wastes contained in § 261.31, and subsequently provided additional information to complete its petition. The WWTP sludge is listed as EPA Hazardous Waste No. F006. The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel

and cyanide (complexed) (see Appendix VII of part 261).

In support of its petition, American Steel Cord submitted detailed descriptions and schematic diagrams of its manufacturing and wastewater treatment processes, and analytical testing results for representative samples of the petitioned waste, including (1) the hazardous characteristics of corrosivity, reactivity, and toxicity; (2) total constituent analysis and Toxicity Characteristic Leaching Procedure (SW-846 Method 1311) analyses for the eight toxicity characteristic metals listed in § 261.24, plus copper, nickel, thallium, vanadium, and zinc; (3) total constituent and Toxicity Characteristic Leaching Procedure (TCLP, SW-846 Method 1311) analyses for 121 volatile and semi-volatile organic compounds; (4) analyses for total sulfide, total cyanide, and TCLP analysis for cyanide; and (5) analysis for oil and grease.

EPA evaluated the information and analytical data provided by American Steel Cord and tentatively determined that American Steel Cord had successfully demonstrated that the petitioned waste is not hazardous. See the proposed exclusion (63 FR 18354; April 15, 1998) for a detailed explanation of EPA's evaluation.

### B. Response to Comments

EPA received public comment on the April 15, 1998 proposal from American Steel Cord and from the Environmental Defense Fund.

*Comment:* American Steel Cord commented that its waste is measured by weight, not by volume, and that the Agency was incorrect in assuming a density of one when converting from tons to cubic yards. The density of the waste is considerably less than one, so that the petitioned waste was more than 950 yd<sup>3</sup>. Furthermore, American Steel Cord anticipates that the total annual volume of waste generated could increase to 3,000 cubic yards and requested that the exclusion be applied to this larger volume.

*Response:* The volume specified in today's final rule has been increased to 3,000 cubic yards from the 950 cubic yards proposed on April 15, 1998. In so doing, the final allowable levels for each constituent have been decreased from

the proposed levels in accordance with the CML model.

*Comment:* Commenter stated that the waste was only evaluated for risk under the scenario of mismanagement in a landfill, but the proposed delisting does not contain language limiting management of the delisted waste to disposal in a Subtitle D landfill.

*Response:* The Agency has recently adopted the policy that new delistings apply only to wastes managed in the type of unit modeled in the delisting risk assessment. In accordance with this policy, enforceable language has been incorporated into the final rule stating that this exclusion applies only if the waste is disposed in a Subtitle D landfill permitted by the State.

*Comment:* Commenter stated that there is no discussion of the possibility that the leachability might be underestimated by the TCLP or that this procedure may be affected by the iron content or other attributes of the waste such as pH.

*Response:* Although no laboratory test can exactly replicate environmental conditions for all landfills, the Agency has developed the TCLP to be used as a reasonable means of predicting leachability in a solid waste landfill. For wastes with close to neutral pH, such as the filtercake from American Steel Cord which has a pH between 8.5 and 8.9, the Agency believes that the TCLP is a reliable test in the absence of extreme environmental conditions. While some forms of iron may affect the leachability of lead bearing wastes, lead is not used in American Steel Cord's process and there is no significant amount of lead in the waste. Furthermore, there is no reason to believe that excess iron was introduced at any time into the process or the wastestream for the purpose of reducing the leachability of lead.

*Comment:* Commenter stated that the Agency should consider sampling and other requirements that will ensure that these factors will not change in the future.

*Response:* The exclusion requires periodic testing to verify that the waste will remain in compliance with the conditions of the exclusion. The final rule also includes language requiring American Steel Cord to notify the Agency of any change in process.

*Comment:* Commenter stated that the Agency should consider risks posed by total concentrations via the air pathway. No support has been offered for the conclusion that appreciable air releases are unlikely.

*Response:* Air modeling was done for the pathways of inhalation, ingestion of air borne particulates and air deposition on soil followed by ingestion by a child.

The concentrations of all constituents in American Steel Cord's waste were orders of magnitude below the health based levels of concern for each of these pathways. A full discussion of the air modeling is contained in the docket.

*Comment:* Commenter stated that since total concentration is used in evaluating risk by the air pathway, EPA should promulgate limits on total concentrations, as well as limits on the TCLP concentrations.

*Response:* Screening levels for this waste were back calculated and were determined to be a thousand to a million times the levels detected in American Steel Cord's waste. Thus the waste is not expected to pose a threat by the air pathway and the Agency believes that it is not meaningful to set limits on totals which would be three to six orders of magnitude above the concentrations detected in the waste.

*Comment:* Commenter stated that the proposed TCLP limit for xylene in this waste exceeds the allowable level for xylene in storage tanks in the air characteristics study.

*Response:* The scenario upon which the air characteristic study was based is not applicable to American Steel Cord's waste. This delisting applies to a limited quantity of non-liquid waste which will be disposed in a Subtitle D landfill. Furthermore, the highest total concentration of xylene in any sample of this waste was 22 ppb which is well below air characteristics number of 200 ppm for xylene in waste stored in tanks.

*Comment:* Commenter stated that the proposed rule only requires the facility to meet the applicable delisting levels but does not require notification of a change in process which should trigger Agency verification activities. The EPA should require notification of changes in operating conditions.

*Response:* In the event of a process change, the facility is required to meet the established delisting limits and must perform testing to verify that the levels established in this rule are being met. The facility must also verify that no additional constituents have been introduced. Data obtained from verification testing must be submitted to EPA.

*Comment:* Commenter stated that the EPA should add provisions to the final rule stating that the delisting is only valid when the waste is disposed of in a Subtitle D landfill permitted by the State, since the Agency has not evaluated all potential mismanagement scenarios.

*Response:* Specific language has been added to paragraph 1 of the final rule which requires that the waste must be disposed of in a Subtitle D landfill.

*Comment:* Commenter stated that the EPA should add provisions to the final rule stating that if the facility plans to dispose of the waste in a landfill on site, it must notify the Agency at least 60 days prior to first utilizing an onsite landfill.

*Response:* The Agency is requiring that the waste be disposed of properly in a Subtitle D landfill regulated by the State. To dispose of the waste on site, American Steel Cord would have to construct a Subtitle D landfill on its property and obtain all necessary permits from the State of Indiana. The US EPA does not regulate which Subtitle D landfill the waste may be sent to, nor does the Agency routinely require notification of wastes disposed in units regulated by the State.

*Comment:* Commenter stated that EPA should add provisions to the final rule stating that American Steel Cord must report to EPA receipt of any environmental data that departs from the data that were modeled or predicted in the initial delisting evaluation.

*Response:* Language has been included in paragraph 4 of the final rule which requires the facility to report in writing any data which might indicate that the levels in paragraph 1 of this rule have been exceeded or that the initial delisting decision was inappropriate or wrong.

*Comment:* Commenter stated that the proposed delisting has failed to include procedures for suspension or termination of the exclusion in the event of mismanagement of delisted waste.

*Response:* The Agency has recently adopted a policy of incorporating language into all new exclusions which will allow the Agency to reopen, revoke, or otherwise suspend the delisting in a timely manner in the event of mismanagement. This language will establish a mechanism to review and act expeditiously on the delisting when additional data become available indicating the initial delisting decision was inappropriate or wrong.

### C. Changes to Proposed Verification Testing Conditions

In the proposed rulemaking, EPA included delisting levels for 23 constituents which would be protective of human health and the environment and which could not be exceeded in a TCLP extract of the petitioned waste. These levels have been lowered in today's rule to allow for an increased volume. In addition, the proposed levels of 200 mg/l for barium, 10 mg/l for chromium, 5 mg/l for selenium and 20 mg/l for silver have been lowered to the levels set in the hazardous waste

toxicity characteristic in § 261.24 to ensure that the petitioned waste, even though protective of human health and the environment, remains below the TC levels.

Levels in the proposed rule were based on "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," December 1994. This document was revised in May, 1996, and the health based level for benzo butyl phthlate was changed from .01 mg/l to 7.0 mg/l, the health based level for 1,4-dichlorobenzene was changed from .075 mg/l to .004 mg/l, and the health based level for cis 1,2-dichloroethene was changed from .07 mg/l to .4 mg/l. The delisting levels in today's final rule are based on the more recent health based numbers.

The proposed rule incorrectly allowed for a level of 10 mg/l chloroform. Under the proposed rule, the correct level should have been 1 mg/l. Under today's rule, the increased volume lowers the level for chloroform to .68 mg/l.

Paragraph 1 in Table 1 of Appendix IX to Part 261 now reads 1. Verification Testing: American Steel Cord must implement an annual testing program to demonstrate, based on the analysis of a minimum of four representative samples, that the constituent concentrations measured in the TCLP extract of the waste are within specific levels. The constituent concentrations must not exceed the following levels (mg/l) which are back-calculated from the delisting health-based levels and a DAF of 68. Arsenic—3.4 Barium—100; Cadmium—.34; Chromium—5; Copper—88.4; Lead—1.02; Mercury—.136; Nickel—6.8; Selenium—1; Silver—5; Zinc—680; Cyanide—13.6; Acetone—272; Benzo butyl phthlate—476; Chloroform—.68; 1,4-Dichlorobenzene—.272; cis 1,2-Dichloroethene—27.2; Methylene chloride—.34; Naphthalene—68; Styrene—6.8; Tetrachloroethene—.34; Toluene—68; and Xylene—680. American Steel Cord must measure and record the pH of the waste using SW 846 method 9045 and must record all pH measurements performed in accordance with the TCLP.

#### D. Final Agency Decision

For the reasons stated in both the proposal and this notice, EPA has concluded that American Steel Cord's petitioned waste may be excluded from hazardous waste control. EPA, therefore, is granting a final exclusion for the WWTP sludge generated by American Steel Cord at its facility in Scottsburg, Indiana. This exclusion applies to the waste described in the petition only if

the requirements described in Table 1 of part 261 Appendix IX are satisfied.

Although management of the waste covered by this exclusion is removed from Subtitle C jurisdiction, this exclusion applies only where this waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage municipal and/or industrial solid waste.

#### III. Limited Effect of Federal Exclusion

The final exclusion being granted today is issued under the Federal (RCRA) delisting program. States, however, are allowed to impose (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 a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact the State regulatory authority to determine the current status of their waste under State law.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (i.e., to make their own delisting decisions). Therefore, this exclusion does not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, American Steel Cord must obtain delisting authorization from that State before the waste may be managed as nonhazardous in the State.

#### IV. Effective Date

This rule is effective January 26, 1999. 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 the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, 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. The effect of this rule 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. Therefore, this rule does not represent a significant regulatory action under the Executive Order, and no assessment of costs and benefits is necessary. 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 that 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 rule will not have an adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations. 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 record-keeping requirements associated with this final rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2050-0053.

#### VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless

the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local or tribal governments or the private sector. EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon State, local or tribal governments or the private sector. In addition, today's delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

#### **IX. Submission to Congress and General Accounting Office**

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 this rule 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

#### **X. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks**

Protection of Children from Environmental Health Risks and Safety

Risks' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by E.O. 12866 and the environmental health or safety risks addressed by this action do not have a disproportionate effect on children.

#### **XI. Executive Order 12875**

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

#### **XII. Executive Order 13084**

Under E.O. 13084, EPA may not issue a regulation that is not required by

statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

#### **List of Subjects in 40 CFR Part 261**

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

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

Dated: December 21, 1998.

**Margaret McCue,**

*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. Table 1 of Appendix IX of Part 261 is amended to add the following waste stream 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	Address	Waste description
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TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
American Steel Cord ...	Scottsburg, IN .....	<p>Wastewater treatment plant (WWTP) sludge from electroplating operations (EPA Hazardous Waste No. F006) generated at a maximum annual rate of 3,000 cubic yards per year, after January 26, 1999, and disposed of in a Subtitle D landfill.</p> <ol style="list-style-type: none"> <li>1. Verification Testing: American Steel Cord must implement an annual testing program to demonstrate, based on the analysis of a minimum of four representative samples, that the constituent concentrations measured in the TCLP extract of the waste are within specific levels. The constituent concentrations must not exceed the following levels (mg/l) which are back-calculated from the delisting health-based levels and a DAF of 68. Arsenic—3.4; Barium—100; Cadmium—.34; Chromium—5; Copper—88.4.; Lead—1.02; Mercury—.136; Nickel—6.8.; Selenium—1; Silver—5; Zinc—680; Cyanide—13.6; Acetone—272; Benzo butyl phthlate—476; Chloroform—.68; 1,4-Dichlorobenzene—.272; cis-1,2-Dichloroethene—27.2; Methylene chloride—.34; Naphthalene—68; Styrene—6.8; Tetrachloroethene—.34; Toluene—68; and Xylene—680. American Steel Cord must measure and record the pH of the waste using SW 846 method 9045 and must record all pH measurements performed in accordance with the TCLP.</li> <li>2. Changes in Operating Conditions: If American Steel Cord significantly changes the manufacturing or treatment process or the chemicals used in the manufacturing or treatment process, American Steel Cord may handle the WWTP filter press sludge generated from the new process under this exclusion only after the facility has demonstrated that the waste meets the levels set forth in paragraph 1 and that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced.</li> <li>3. Data Submittals: The data obtained through annual verification testing or compliance with paragraph 2 must be submitted to U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604–3590, within 60 days of sampling. Records of operating conditions and analytical data must be compiled, summarized, and maintained on site for a minimum of five years and must be made available for inspection. All data must be accompanied by a signed copy of the certification statement in 260.22(l)(12).</li> <li>4. (a) If, anytime after disposal of the delisted waste, American Steel Cord possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in Condition (1) is at a level in the leachate higher than the delisting level established in Condition (1), or is at a level in the ground water or soil higher than the health based level, then American Steel Cord must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. <ol style="list-style-type: none"> <li>(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.</li> <li>(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 10 days from the date of the Regional Administrator's notice to present such information.</li> <li>(d) Following the receipt of information from the facility described in paragraph (c) or (if no information is presented under paragraph (c) the initial receipt of information described in paragraph (a), 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.</li> </ol> </li> </ol>

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**FEDERAL COMMUNICATIONS  
COMMISSION**

**47 CFR Part 73**

[MM Docket No. 97–129; RM–9076]

**Radio Broadcasting Services; New  
Martinsville, WV**

**AGENCY:** Federal Communications  
Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Seven Ranges Radio Company, Inc., allots Channel 222A at New Martinsville, West Virginia, as the community's third local FM transmission service. We will also allow petitioner to amend its pending application (File No. BPH–960223MA) to reflect operation on Channel 222A in lieu of Channel 258A at New Martinsville, West Virginia. See 62 FR 26466, May 14, 1997. Channel 222A can be allotted to New Martinsville in