

**C. Executive Order 13084**

Under Executive Order 13084, entitled Consultation and Coordination with Indian Tribal Governments (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly 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 OMB, 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, Executive Order 13084 requires EPA to develop an effective process permitting elected and other 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 proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 10, 1999.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

2. Section 180.190 is revised to read as follows:

**§ 180.190 Diphenylamine; tolerances for residues.**

(a) *General.* Tolerances for the residues of the plant regulator

diphenylamine are established as follows:

Commodity	Parts per million
Apples from preharvest or postharvest use (including use of impregnated wraps).	10
Cattle, meat .....	0
Goat, meat .....	0
Horse, meat .....	0
Sheep, meat .....	0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* A time-limited tolerance is established for the indirect or inadvertent residues of diphenylamine in or on the following commodity:

Commodity	Parts per million	Expiration/Revocation Date
Pears .....	10	12/1/01

[FR Doc. 99-4159 Filed 2-18-99; 8:45 am]

BILLING CODE 6560-50-F

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR PART 261**

[SW-FRL-6304-4]

**Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule and request for comment.

**SUMMARY:** The EPA is proposing to grant a petition submitted by Occidental Chemical Corporation (Occidental Chemical), to exclude (or delist) a certain solid waste generated at its Deer Park, Texas, facility from the lists of hazardous wastes contained in 40 CFR 261.24, 261.31, and 261.32, (hereinafter all sectional references are to 40 CFR unless otherwise indicated). This petition was submitted under § 260.20, which allows any person to petition the Administrator to modify or revoke any provision of §§ 260 through 266, 268 and 273, and § 260.22(a), which specifically provides generators the opportunity to petition the

Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists. This proposed decision is based on an evaluation of waste-specific information provided by the petitioner. If this proposed decision is finalized, the petitioned waste will be conditionally excluded from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

The EPA is also proposing the use of a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment, based on the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents that may be released from the petitioned waste, once it is disposed.

**DATES:** The EPA is requesting public comments on this proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until April 5, 1999. Comments postmarked after the close of the comment period will be stamped "late," and will not be considered in formulating a final decision.

Any person may request a hearing on this proposed decision by filing a request with Acting Director, Robert E. Hanneschlager, Multimedia Planning and Permitting Division, whose address appears below, by March 8, 1999. The request must contain the information prescribed in § 260.20(d).

**ADDRESSES:** Send three copies of your comments to EPA. Two copies should be sent to the William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD-O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A third copy should be sent to the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753. Identify your comments at the top with this regulatory docket number: "F-97-TXDEL-OCCDEERPK."

Requests for a hearing should be addressed to the Acting Director, Robert E. Hanneschlager, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

The RCRA regulatory docket for this proposed rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202 and is available for viewing in the EPA Freedom of Information Act Review Room on the 7th Floor from 9:00 a.m. to 4:00 p.m., Monday through

Friday, excluding Federal holidays. Call (214) 665-6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

**FOR FURTHER INFORMATION CONTACT:** For technical information concerning this notice, contact Jon Rinehart, Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX 75202, (214) 665-6789.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

**A. Authority**

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in §§ 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in §§ 261.11(a)(2) or (a)(3).

Individual waste streams may vary however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the EPA 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, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other

toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. § 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains nonhazardous based on the hazardous waste characteristics.

In addition, mixtures containing listed hazardous wastes are also considered hazardous wastes and wastes derived from the treatment, storage, or disposal of listed hazardous waste. See §§ 261.3(a)(2)(iv) and (c)(2)(I), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to the EPA on procedural grounds. See *Shell Oil Co. v. EPA.*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278). These references should be consulted for more information regarding mixtures derived from wastes.

**B. Approach Used to Evaluate This Petition**

Occidental Chemical's petition requests a delisting for listed hazardous waste. In making the initial delisting determination, the EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the EPA agreed with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) The EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of

management of the petitioned waste, the quantity of waste generated, and waste variability.

For this delisting determination, the EPA used such information gathered to identify plausible exposure routes (i.e., ground water, surface water, air) for hazardous constituents present in the petitioned waste. The EPA determined that disposal in a Subtitle D (solid, nonhazardous waste) landfill is the most reasonable, worse-case disposal scenario for Occidental Chemical's petitioned waste, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, the EPA used a particular fate and transport model, the EPA Composite Model for Landfills (EPACML), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the disposal of Occidental Chemical's petitioned waste on human health and the environment. Specifically, the EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the health-based levels at an assumed risk of  $10^{-6}$  used in delisting decision-making for the hazardous constituents of concern.

The EPA believes that this fate and transport model represents a reasonable worse-case scenario for disposal of the petitioned waste in a landfill, and that a reasonable worse-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of a reasonable worse-case scenario results in conservative values for the compliance-point concentrations and gives a high degree of confidence that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. In most cases, because (unless conditionally delisted), a delisted waste is no longer subject to hazardous waste control, the EPA is generally unable to predict, and does not presently control, how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model.

The EPA also considers the applicability of ground water

monitoring data during the evaluation of delisting petitions. In this case, the EPA determined that it would be inappropriate to request ground water monitoring data. Specifically, Occidental Chemical currently disposes of the petitioned waste (Rockbox Residue) generated at its facility in an off-site RCRA hazardous waste landfill (which is not owned/operated by Occidental Chemical). This landfill did not begin accepting this petitioned waste generated by the Occidental Chemical facility until 1991. This petitioned waste comprises a small fraction of the total waste managed in the unit. Therefore, the EPA, believes that any ground water monitoring data from the landfill would not be meaningful for an evaluation of the specific effect of this petitioned waste on ground water. Finally, there are presently no data from ground water monitoring wells available, therefore there is no data to evaluate.

From the evaluation of Occidental Chemical's delisting petition, a list of constituents was developed for the verification testing conditions. Proposed maximum allowable leachable

concentrations for these constituents were derived by back-calculating from the delisting health-based levels through the proposed fate and transport model for a landfill management scenario. These concentrations (i.e., delisting levels) are part of the proposed verification testing conditions of the exclusion.

Similar to other facilities seeking exclusions, Occidental Chemical's exclusion (if granted) would be contingent upon the facility conducting analytical testing of representative samples of the petitioned waste at Deer Park. This testing would be necessary to verify that the treatment system is operating as demonstrated in the petition submitted on September 19, 1997. Specifically, the verification testing requirements would be implemented to demonstrate that the processing facility will generate nonhazardous waste (i.e., waste that meet the EPA's verification testing conditions). The EPA's proposed decision to delist waste from Occidental Chemical's facility is based on the information submitted in support of today's rule (i.e., description of the

wastewater treatment system and analytical data from the Deer Park facility).

Finally, the HSWA specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

## II. Disposition of Delisting Petition

Occidental Chemical Corporation, Deer Park, Texas 77536.

### A. Petition for Exclusion

Occidental Chemical Corporation, located in Deer Park, Texas, petitioned the EPA for exclusion for 238 cubic yards of Rockbox Residue, per calendar year resulting from its hazardous waste treatment process. The resulting waste is presently listed, in accordance with § 261.3(c)(2)(I) (i.e., the derived from rule), as EPA Hazardous Waste No. K017, K019, and K020. The listed constituents of concern for these waste codes are listed in Table 1.

TABLE 1—HAZARDOUS WASTE CODES ASSOCIATED WITH WASTEWATER STREAMS

Waste code	Basis for characteristics/listing
K019/K020 ....	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
K017 .....	Epichlorohydrin, chloroethers, trichloropropane, dichloropropanols.

Occidental Chemical petitioned to exclude the Rockbox Residue, treatment residues because it does not believe that the petitioned waste meet the criteria for which it was listed. Occidental Chemical further believes that the waste is not hazardous for any other reason (i.e., there are no additional constituents or factors that could cause the wastes to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the HSWA. See § 222 of HSWA, 42 USC § 6921(f), and 40 CFR § 260.22(d) (2)–(4). Today's proposal to grant this petition for delisting is the result of the EPA's evaluation of Occidental Chemical's petition.

### B. Background

On September 19, 1997, Occidental Chemical petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, an annual volume of Rockbox Residue, which are generated as a result of the treatment of offgases from onsite incinerators. Specifically, in its petition, Occidental Chemical requested that the

EPA grant a standard exclusion for 238 cubic yards of Rockbox Residue, generated per calendar year.

In support of its petition, Occidental Chemical submitted: (1) Descriptions of its wastewater treatment processes and the incineration activities associated with petitioned wastes; (2) results of the total constituent list for 40 CFR part 264 Appendix IX volatiles, semivolatiles, and metals except for pesticides, herbicides, and PCBs; (3) results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals; (4) results for reactive sulfide, (5) results for reactive cyanide; (6) results for pH; (7) results of ignitability; (8) results of the total basis for dioxin and furan; and (9) results of dioxin and furan TCLP extract.

Occidental Chemical is an active plant that produces ethylene dichloride (EDC), and vinyl chloride monomer (VCM). The plant utilizes chlorine, ethylene, and oxygen as feedstock and utilizes two permitted, onsite RCRA incinerators to burn process vent gases, intermediate wastes generated during

the production of EDC and VCM (K019, K020) and epichlorohydrin heavy ends (K017). These two incinerators have been in continuous operation since 1987. Occidental Chemical has previously classified one waste stream (Rockbox Residue) generated from the treatment of the offgases from the incinerators as hazardous based on the "derived from" rule in § 261.3(c)(2)(i).

The combustion products from the incinerators contain hydrochloric acid (HCl). Incinerator offgases are treated in the Incinerator Offgas Treatment System. In this system, the emissions are passed through absorption columns, dehumidifier columns, and caustic scrubbers to remove the HCl. Blowdown water from the dehumidifier columns and caustic scrubber columns are routed to the Rockbox Tank (the Rockbox) as the first step in neutralizing the HCl. Excess HCl from the aqueous HCl storage tanks is commingled with the blowdown water and routed to the Rockbox. The influent to Rockbox normally contains 2 to 3 percent HCl. At times when excess HCl is not produced, the influent to the Rockbox is

predominantly blowdown from the dehumidifier and caustic scrubber columns.

The Rockbox contains crushed limestone with small amounts of inert materials (silica oxide). These inert materials accumulate in the bottom of the Rockbox as the crushed limestone is utilized in the neutralization process. The accumulation of inert materials is the Rockbox Residue. The Rockbox Residue is a "third generation" waste since it is the residue of treating wastewater used to quench gaseous emissions from the incineration of listed wastes.

The pH of the effluent leaving the Rockbox is between 1 and 4. The effluent is passed through a primary pH adjustment tank where air is released into the water to remove carbon dioxide. Additionally, sodium hydroxide may be added to this tank. Mixing with air minimizes the formation of calcium carbonate precipitate upon introduction of caustic soda. The effluent is then passed through the secondary pH adjustment tank where caustic soda (sodium hydroxide) is added to raise the pH of the water to a pH between 7 and 9. The stream, consisting of water and calcium carbonate precipitant in suspension, flows through a clarifier where the sludge is settled out. The aqueous effluent from the clarifier tank is the Caustic Neutralized Wastewater.

Rockbox Residue is generated on a batch basis every one to two years. For the past two years (1995 and 1996), the Rockbox Residue was generated annually. This is probably due to a higher than average concentration of inerts in the limestone purchased for the Rockbox. The Rockbox Residue is disposed of in an offsite permitted hazardous waste landfill.

Occidental Chemical developed a list of constituents of concern from comparing a list of all raw materials used in the plant that could potentially appear in the petitioned waste with those found in 40 CFR Appendix IX Part 264, as well as dioxins and furans. The EPA has included the dioxins and furans to the list, due to the incineration of chlorinated compounds. Using the list of constituents of concern, Occidental analyzed the four composite samples for the total concentrations (i.e., mass of a particular constituent per mass of waste) of the volatiles and semivolatiles, and metals from Appendix IX. These four samples were also analyzed to determine whether the waste exhibited ignitable, corrosive, or reactive properties as defined under 40 CFR §§ 261.21, 261.22, and 261.23, including analysis for total constituent concentrations of cyanide, sulfide, reactive cyanide, and reactive sulfide. These four samples were also analyzed for Toxicity Characteristic Leaching Procedure (TCLP) concentrations (i.e.,

mass of a particular constituent per unit volume of extract) of all the volatiles, semivolatiles, and metals on the Appendix IX list. This list was developed based on the availability of test methods and process knowledge. Two sampling events were conducted, one in 1995 and one in 1996.

C. EPA Analysis

Occidental Chemical used SW-846 Methods 8260A, 8270B, 6010, 8290 to quantify the total constituent concentrations of 40 CFR, Part § 264 Appendix IX Volatiles (including 2-ethoxyethanol, chloroethylene, vinylidene chloride and trichloromethane), Appendix IX Semivolatiles (excluding PCBs, Pesticides, Herbicides) Appendix IX Metals, and Appendix IX Dioxins/Furans. Occidental Chemical used SW-846 Methods 9045, 9030, 9010, 1311, 9045 to quantify pH, 9030 Reactive Sulfide, and 9010 Reactive Cyanide. Occidental Chemical used SW-846 Methods 8260A, 8270B, 6010, 8290 to quantify the constituents from the TCLP extract. These analyses were performed on the petitioned waste: the Rockbox Residue. The Rockbox Residue, does not meet the definitions for reactivity and corrosivity as defined by §§ 261.22 and 261.23. Table 2 presents the maximum total constituent and leachate concentrations for the Rockbox Residue.

TABLE 2—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS ROCKBOX RESIDUE <sup>1</sup>

Constituents	Total constituent analyses (mg/kg)	Leachate analyses (mg/l)
Acetone .....	0.1	<0.1
Dichloromethane .....	0.007	0.11
Xylene .....	0.011	0.04
Dimethylphthalate .....	0.8	0
2,3,7,8-TCDD Equivalent .....	0.0000781	0.0000000531
Arsenic .....	2.0	<0.1
Barium .....	4.5	0.13
Chromium .....	1.0	0.13
Copper .....	1.6	<0.25
Lead .....	1.0	<0.07
Tin .....	15	<0.10
Vanadium .....	8.1	<0.50
Zinc .....	ND	<0.4
Reactive Sulfide .....	<50	
Reactive Cyanide .....	<10	
pH .....	8.3	

<Denotes that the constituent was not detected at the detection limit specified in the table.

<sup>1</sup> These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

Occidental Chemical used SW-846 Methods 8260A and 8270B to quantify the total constituent concentrations of 54 volatile and 117 semivolatile organic compounds, in the Rockbox Residue. This suite of constituents included all of the nonpesticide organic constituents

listed in § 261.24. Also, Occidental Chemical used SW-846 Methods 8260A and 8270B to quantify the leachable concentrations of 54 volatile and 117 semivolatile organic compounds, respectively, in the Rockbox Residue, following extraction by SW-846 Method

1311 (TCLP). This suite of constituents included all of the organic constituents listed in § 261.24 (except the pesticides). In addition, the Rockbox Residue, was analyzed for TCLP metals.

Occidental Chemical submitted a signed certification stating that, based

on projected annual waste generation, the maximum annual generation rate will be 238 cubic yards of Rockbox Residue. The EPA reviews a petitioner's estimates and, on occasion, has requested a petitioner to reevaluate the estimated waste volume. The EPA accepted Occidental Chemical's certified estimate of 238 cubic yards of Rockbox Residue. The EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The EPA, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting an exclusion.

*D. EPA Evaluation*

The EPA considered the appropriateness of alternative waste management scenarios for Occidental Chemical's Rockbox Residue. The EPA decided, based on the information provided in the petition, that disposal of

the Rockbox Residue in a municipal solid waste landfill is the most reasonable, worse-case scenario for this waste, for the Rockbox Residue. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The EPA, therefore, evaluated Occidental Chemical's petitioned wastes using the modified EPA Composite Model for Landfills/Surface Impoundments (EPACML) which predicts the potential for ground water contamination from wastes that are landfilled/placed in a landfill. See 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991) and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worse-case contaminant levels in ground water at a compliance point (i.e., a receptor well serving as a drinking-water supply). Specifically, the model estimated the dilution/attenuation factor (DAF) resulting from

subsurface processes such as three-dimensional dispersion and dilution from ground water recharge for a specific volume of waste. The EPA requests comments on the use of the EPACML as applied to the evaluation of Occidental Chemical's petitioned waste (Rockbox Residue.).

For the evaluation of Occidental Chemical's petitioned waste, the EPA used the EPACML to evaluate the mobility of the hazardous constituents detected in the extract of samples of Occidental Chemical's Rockbox Residue. Typically, the EPA uses the maximum annual waste volume to derive a petition-specific DAF. The DAFs are currently calculated assuming an ongoing process generates wastes for 20 years.

The DAF for the waste volume of Rockbox Residue is 238 cubic yards/year assuming 20 years is 100.

The EPA's evaluation of the Rockbox Residue using a DAF of 100, a maximum waste volume estimate of 238 cubic yards, and the maximum reported TCLP concentrations (see Table 2), yielded compliance point concentrations (see Table 5) that are below the current health based levels.

TABLE 5—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS ROCKBOX RESIDUE

Constituents	Compliance point concentrations (mg/l) <sup>1</sup>	Levels of concern (mg/l) <sup>2</sup>
Acetone .....	0.002	4.0
2,3,7,8-TCDD Equivalent .....	0.000000000000252	0.0000000006
Dichloromethane .....	0.0048	0.01
Barium .....	0.00119	2.0
Tin .....	0.001	2.1

<sup>1</sup> Using the maximum TCLP leachate concentration, based on a DAF of 100 for a maximum annual volume of 238 Cubic yards.

<sup>2</sup> See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," May 1996, located in the RCRA Public Docket for today's notice.

The maximum reported or calculated leachate concentrations of bromoform, chlorodibromomethane, dichloromethane, ethylbenzene, 2,3,7,8-TCDD Equivalent, barium, chromium, and selenium in the Rockbox Residue yielded compliance point concentrations well below the health based levels used in the delisting decisionmaking. The EPA did not evaluate the mobility of the remaining constituents (e.g., acetone, bromodichloromethane, copper, lead) from Occidental Chemical's waste because they were not detected in the leachate using the appropriate analytical test methods (see Table 2). As explained above, the EPA does not evaluate nondetectable concentrations of a constituent of concern in its modeling efforts if the nondetectable value was

obtained using the appropriate analytical method. The EPA believes the TCLP is the appropriate analytical method for use in evaluating this petition because of the waste streams due to its neutral pH of 8, and its knowledge of the disposal scenarios used. The EPA believes that the TCLP will adequately predict the leachability of constituents in the waste.

The EPA concluded, after reviewing Occidental Chemical's processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by products in Occidental Chemical's waste. In addition, on the basis of explanations and analytical data provided by Occidental Chemical, pursuant to § 260.22, the EPA concludes that the petitioned waste does not exhibit any of

the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

During the evaluation of Occidental Chemical's petition, the EPA also considered the potential impact of the petitioned waste via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, the EPA believes that exposure to airborne contaminants from Occidental Chemical's petitioned wastes is unlikely. The open tank evaluation was not done because the Rockbox is essentially a closed container. Therefore, no appreciable air releases are likely from Occidental's waste under any likely disposal conditions. There is an air study that was performed and the results have been mentioned in the comments that have been received in

other petitions. No linear comparison between risk levels and the concentrations of the waste have been made. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Occidental Chemical's waste in an open landfill. The results of this worst case analysis indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from Occidental Chemical's Rockbox Residue. A description of the EPA's assessment of the potential impact of Occidental Chemical's waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for today's proposed rule.

The EPA also considered the potential impact of the petitioned wastes via a surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (See 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the run-off will tend to be lower than the levels in the TCLP leachate analyses reported in today's notice due to the aggressive acidic medium used for extraction in the TCLP. The EPA believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as ground water.

Based on the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, the EPA evaluated the potential impacts on surface water if Occidental Chemical's waste were released from a municipal solid waste landfill through runoff and erosion. See the RCRA public docket for today's proposed rule. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below the EPA chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that Occidental Chemical's Rockbox Residue waste is not a substantial present or potential

hazard to human health and the environment via the surface water exposure pathway.

#### E. Conclusion

The EPA believes that the descriptions of the Occidental Chemical hazardous waste process and analytical characterization, in conjunction with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized. Thus, EPA believes that Occidental Chemical's petition for a conditional exclusion of the Rockbox Residue should be granted. The EPA believes the data submitted in support of the petition show Occidental Chemical's process can render the Rockbox Residue, nonhazardous. The EPA has reviewed the sampling procedures used by Occidental Chemical and has determined they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations in the Rockbox Residue. The data submitted in support of the petition show that constituents in Occidental Chemical's waste are presently below health-based levels (HBLs) used in the delisting decision-making and would not pose a substantial hazard to the environment. The EPA believes that Occidental Chemical has successfully demonstrated that the Rockbox Residue, is nonhazardous.

The EPA therefore, proposes to grant an exclusion to the Occidental Chemical Corporation, located in Deer Park, Texas, for the Rockbox Residue, described in its petition. The EPA's decision to exclude this waste is based on descriptions of the incineration and the wastewater treatment activities associated with the petitioned waste and characterization of the Rockbox Residue. If the proposed rule is finalized, the petitioned waste will no longer be subject to regulation under Parts 262 through 268 and the permitting standards of Part 270. The EPA therefore, proposes to grant an exclusion to the Occidental Chemical Corporation, located in Deer Park, Texas for the Rockbox Residue described in the petition.

#### F. Verification Testing Conditions

(1) *Delisting Levels:* All leachable concentrations for those constituents must not exceed the following levels (ppm). Constituents must be measured in the waste

leachate by the method specified in 40 CFR § 261.24.

#### (A) Rockbox Residue

- (i) Inorganic Constituents—Barium-100; Chromium-5.0; Copper-130; Lead-1.5; Selenium-1.0; Tin-210; Vanadium-30; Zinc-1,000
- (ii) Organic Constituents—Acetone-400; Bromodichloromethane-0.14; Bromoform-1.0; Chlorodibromomethane-0.1; Chloroform-1.0; Dichloromethane-1.0; Ethylbenzene-70; 2,3,7,8-TCDD Equivalent-0.0000006

This paragraph provides the levels of constituents which Occidental Chemical must test the leachate from the Rockbox Residue, below which these waste would be considered non-hazardous. The exclusion is effective when it is signed, but the disposal can not be implemented until the verification sampling is completed. If these constituent levels are exceeded then that waste is considered to be hazardous and must be managed as hazardous waste. If the annual testing of the waste does not meet the delisting requirements described in Paragraph 1, the facility must notify the Agency according to Paragraph 6. The exclusion will be suspended until a decision is reached by the Agency. The facility shall provide sampling results which support the rationale that the delisting exclusion should not be withdrawn. The EPA selected the set of inorganic and organic constituents specified after reviewing information about the composition of the waste, descriptions of Occidental Chemical's treatment process, previous test data provided for the waste and the respective health-based levels used in delisting decision-making. The EPA established the proposed delisting levels for this paragraph by back-calculating the Maximum Allowable Leachate (MALs) concentrations from the health-based levels for the constituents of concern using the EPACML chemical-specific DAF of 100. (See, previous discussions in Section D—*Agency Evaluation* i.e., MAL = HBL × DAF). These delisting levels correspond to the allowable levels measured in the TCLP extract of the waste.

(2) *Waste Holding and Handling:* Occidental Chemical must store in accordance with its RCRA permit, or continue to dispose of as hazardous all Rockbox Residue generated, until the verification testing described in Condition (3)(A) and (B), as appropriate, is completed and valid analyses demonstrate that condition (3) is satisfied. If the levels of constituents measured in the samples of the Rockbox Residue, do not exceed the levels set forth in Condition (1), then the waste is

nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed any of the delisting levels set in Condition (3), the waste generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA.

The purpose of this paragraph is to ensure that any Rockbox Residue which might contain hazardous levels of inorganic and organic constituents are managed and disposed of in accordance with Subtitle C of RCRA. Holding the Rockbox Residue until characterization is complete will protect against improper handling of hazardous material. If the EPA determines that the data collected under this condition do not support the data provided for in the petition, the exclusion will not cover the petitioned waste.

(3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW-846 methodologies. If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing, Occidental Chemical may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Occidental Chemical must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B).

(A) *Initial Verification Testing:* (i) When the Rockbox unit is decommissioned for cleanout after the final exclusion is granted, Occidental Chemical must collect and analyze composites of the Rockbox Residue. The waste must be sampled after each decommissioning. Two composites must be composed of representative grab samples collected from the Rockbox unit. The waste must be analyzed, prior to disposal, for all of the constituents listed in Paragraph 1. No later than 90 days after this exclusion becomes final, Occidental Chemical must report the operational and analytical test data, including quality control information.

If the EPA determines that the data from the initial verification period demonstrates the treatment process is effective, Occidental Chemical may request that EPA allow it to perform verification testing on a quarterly basis. If approved in writing by EPA, then Occidental Chemical may begin verification testing quarterly.

The EPA believes that an initial period of 40 days is adequate for a facility to collect sufficient data to verify that the data provided for the Rockbox Residue, in the 1997 petition, is representative of the waste to be delisted. If the EPA determines that the data collected under this condition do not support the data provided for the petition, the exclusion will not cover

the generated wastes. If the EPA determines that the data from the initial verification period demonstrates that the treatment process is effective, EPA will notify Occidental Chemical in writing that the testing conditions in (3)(A)(i) may be replaced with the testing conditions in (3)(B).

(B) *Subsequent Verification Testing:* Following written notification by EPA, Occidental Chemical may substitute the testing conditions in (3)(B) for (3)(A)(i). Occidental Chemical must continue to monitor operating conditions, and analyze samples representative of each quarter of operation during the first year of waste generation. The samples must represent the waste generated over one quarter.

The EPA believes that the concentrations of the constituents of concern in the Rockbox Residue, may vary somewhat over time. As a result, in order to ensure that Occidental Chemical's treatment process can effectively handle any variation in constituent concentrations in the waste, the EPA is proposing a subsequent verification testing condition. The proposed subsequent testing would verify that the incinerator offgas system is operated in a manner similar to its operation during the initial verification testing and that the Rockbox Residue, does not exhibit unacceptable levels of toxic constituents. Therefore, the EPA is proposing to require Occidental Chemical to analyze representative samples of the Rockbox Residue, on a quarterly basis during the first year of waste generation (commencing on the anniversary date of the final exclusion) as described in Condition (3)(B).

(C) *Termination of Organic Testing:* Occidental Chemical must continue testing as required under Condition (3)(B) for organic constituents specified in Condition (1)(A)(i), until the analyses submitted under Condition (3)(B) show a minimum of two consecutive quarterly samples below the delisting levels in Condition (1)(A)(i). Occidental Chemical may then request that quarterly organic testing be terminated. After EPA notifies Occidental Chemical in writing, the company may terminate quarterly organic testing. Following termination of the quarterly testing, Occidental Chemical must continue to test a representative composite sample for all constituents listed in Condition (1) on an annual basis (no later than twelve months after final exclusion).

The EPA is proposing to terminate the subsequent testing conditions for organics during the first year as allowed in Condition (1)(C) after Occidental Chemical has demonstrated the delisting levels for the waste are consistently met. Annual testing requires the full list of components in Paragraph 1. If the annual testing of the waste does not meet the delisting

requirements in Paragraph 1, the facility must notify the Agency according to the requirements in Paragraph 6. The exclusion will be suspended until a decision is reached by the Agency. The facility shall provide sampling results which support the rationale that the delisting exclusion should not be withdrawn. In order to confirm that the characteristics of the waste do not change significantly over time, Occidental Chemical must continue to analyze a representative sample of the waste for organic constituents on an annual basis (no later than twelve months after the final exclusion). If Occidental Chemical changes operating conditions as described in Condition (4), then Occidental Chemical must reinstate all testing in Condition (1)(A), pending a new demonstration under this condition for termination. Occidental Chemical must continue organic testing of the Rockbox Residue for that waste to be excluded.

(4) *Changes in Operating Conditions:* If Occidental Chemical significantly changes the process described in its petition or implements any processes which generate(s) the waste and which may or could affect the composition or type waste generated as established under Condition (1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process), must notify the EPA in writing and may no longer handle the wastes generated from the new process, as nonhazardous until the wastes meet the delisting levels set in Condition (1) and it has received written approval to do so from EPA.

Condition (4) would allow Occidental Chemical the flexibility of modifying its processes (e.g., changes in equipment or change in operating conditions) to improve its treatment process. However, Occidental Chemical must demonstrate the effectiveness of the modified process and request approval from the EPA. Wastes generated during the new process demonstration must be managed as a hazardous waste until written approval has been obtained and Condition (3) is satisfied.

(5) *Data Submittals:* The data obtained through Paragraph 3 must be submitted to Mr. William Gallagher, Chief, Region 6 Delisting Program, EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733, Mail Code (6PD-O), within the time period specified. Records of operating conditions and analytical data from Condition (3) 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 of Texas, 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:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. § 1001 and 42 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

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.

To provide appropriate documentation that Occidental Chemical's facility is properly treating the waste, all analytical data obtained through Condition (3), including quality control information, must be compiled, summarized, and maintained on site for a minimum of five years. Condition (5) requires that these data be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Texas.

If made final, the proposed exclusion will apply only to 238 cubic yards of Rockbox Residue, generated annually at the wastewater system at the Occidental Chemical facility after successful verification testing. Except as described in Condition (4), the facility would be required to submit a new exclusion if the treatment process specified for the Incinerator Offgas Treatment System is significantly altered. Occidental Chemical would be required to file a new delisting petition for any new manufacturing or production process(es), or significant changes from the current process(es) described in its petition which generates the waste or which may or could affect the composition or type of waste generated. The facility must manage any of the waste in excess of 238 cubic yards of Rockbox Residue, generated from a changed process as hazardous until a new exclusion is granted.

Although management of the wastes covered by this petition would be

relieved from Subtitle C jurisdiction upon final promulgation of an 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.

(6) *Reopener Language*

(a) If Occidental Chemical discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then Occidental Chemical must report any information relevant to that condition, in writing, to the Regional Administrator or his delegate within 10 days of discovering that condition.

(b) Upon receiving information including that described in paragraph (a), regardless of its source, the Regional Administrator or his delegate will determine whether the reported condition requires further action. Further action may include revoking the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment.

The purpose of Paragraph 6 is to require Occidental Chemical to disclose new or different information related to a condition at the facility or disposal of the waste if it had or has bearing on the delisting. This will allow EPA to reevaluate the exclusion if new or additional information is provided to the Agency from any source which indicates that information in which EPA's decision was based was incorrect or circumstances have changed such that information is no longer correct or would cause EPA to deny the petition if then presented. Further, although this provision expressly requires Occidental Chemical to report differing site conditions or assumptions used in the petition within 10 days of discovery, if EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions located at § 268.6.

The EPA believes that it has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. § 551 (1978) *et seq.* (APA), to reopen a delisting decision if new information is received that calls into question the assumptions underlying the delisting and believes that a clear statement of its authority in the context of delistings is merited in light of Agency experience. (See, e.g. Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste did not leach in the

actual disposal site as it had been modeled thus leading the Agency to repeal the delisting.) In the meantime, in the event that an immediate threat to human health and the environment presents itself, EPA will continue to address such situations on a case-by-case basis and where necessary, will make a good cause finding to justify emergency rulemaking. See APA § 553 (b).

(7) *Notification Requirements:* Occidental Chemical must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. The one-time written notification must be updated if the delisted waste is shipped into a different disposal facility. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

#### IV. Effective Date

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended § 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, if finalized, would reduce 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 six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of § 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the APA, 5 U.S.C. § 553(d).

#### V. Regulatory Impact

Under Executive Order (EO) 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling a facility to manage its waste as nonhazardous. There is no additional impact therefore, due to today's proposed rule. Therefore, this proposal



would not be 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. Executive Order 13045**

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 E.O. 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 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.

#### **VII. 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 small entities.

This rule if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, 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. 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 that 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 OMB, 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, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

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

#### **IX. Unfunded Mandates Reform Act**

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), P.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. The 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. The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed 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.

#### **X. Paperwork Reduction Act**

Information collection and record-keeping requirements associated with this proposed 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.

#### **XI. Intergovernmental Partnership**

Under E.O. 12875, EPA may not issue regulation that is not required by statute and that creates mandate upon state, local or tribal governments, 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 OMB 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.

**List of Subjects In 40 CFR Part 261**

Hazardous Waste, Recycling, and Reporting and recordkeeping requirements.

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

Dated: February 10, 1999.

**Robert E. Hanneschlager,**  
*Acting Director, Multimedia Planning and Permitting Division.*

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be 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 Tables 1 and 2, of Appendix IX of part 261 it is proposed 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
Occidental Chemical.	Deer Park, Texas ..	<p>Rockbox Residue, (at a maximum generation of 238 cubic yards per calendar year) generated by Occidental Chemical using the wastewater treatment process to treat the Rockbox Residue, (EPA Hazardous Waste No. F025, F001, F003, and F005) generated at Occidental Chemical. Occidental Chemical must implement a testing program that meets the following conditions for the exclusion to be valid:</p> <p>(1) <i>Delisting Levels:</i> All leachable concentrations for those constituents must not exceed the levels (ppm).</p> <p>Constituents must be measured in the waste leachate by the method specified in 40 CFR Part 261.24.</p> <p>(A) Rockbox Residue—(i) Inorganic Constituents Barium-100; Chromium-5; Copper-130; Lead-1.5; Selenium-1; Tin-2,100; Vanadium-30; Zinc-1,000</p> <p>(ii) Organic Constituents Acetone-400; Bromodichloromethane-0.14; Bromoform-1.0; Chlorodibromomethane-0.1; Chloroform-1.0; Dichloromethane-1.0; Ethylbenzene-7,000; 2,3,7,8-TCDD Equivalent-0.0000006</p> <p>(2) <i>Waste Holding and Handling:</i> Occidental Chemical must store in accordance with its RCRA permit, or continue to dispose of as hazardous waste all Rockbox Residue, generated, until the verification testing described in Condition (3)(A) and (3)(B), as appropriate, is completed and valid analyses demonstrate that condition (3) is satisfied. If the levels of constituents measured in the samples of the Rockbox Residue, do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed any of the delisting levels set in Condition (3), the waste generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA.</p> <p>(3) <i>Verification Testing Requirements:</i> Sample collection and analyses, including quality control procedures, must be performed according to SW-846 methodologies. If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing, Occidental Chemical may replace the testing required in condition (3)(A) with the testing required in Condition (3)(B). Occidental Chemical must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B).</p> <p>(A) <i>Initial Verification Testing:</i> (i) During the first 40 operating days when the Rockbox unit is decommissioned for cleanout, after the final exclusion is granted, Occidental Chemical must collect and analyze composites of the Rockbox Residue. The waste must be sampled after each decommissioning. Two composites must be composed of representative grab samples collected from the Rockbox unit. The waste must be analyzed, prior to disposal, for all of the constituents listed in Paragraph 1. No later than 90 days after this exclusion becomes final, Occidental Chemical must report the operational and analytical test data, including quality control information.</p> <p>(B) <i>Subsequent Verification Testing:</i> Following written notification by EPA, Occidental Chemical may substitute the testing conditions in (3)(B) for (3)(A)(i). Occidental Chemical must continue to monitor operating conditions, and analyze samples representative of each quarter of operation during the first year of waste generation. The samples must represent the waste generated over one quarter.</p> <p>(C) <i>Termination of Organic Testing:</i> Occidental Chemical must continue testing as required under Condition (3)(B) for organic constituents specified in Condition (1)(A)(i), until the analyses submitted under Condition (3)(B) show a minimum of two consecutive quarterly samples below the delisting levels in Condition (1)(A)(i), Occidental Chemical may then request that quarterly organic testing be terminated. After EPA notifies Occidental Chemical in writing that quarterly testing may be terminated. Following termination of the quarterly testing, Occidental Chemical must continue to test a representative composite sample for all constituents listed in Condition (1) on an annual basis (no later than twelve months after the final exclusion).</p>

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

Facility	Address	Waste description
		<p>(4) <i>Changes in Operating Conditions:</i> If Occidental Chemical significantly changes the process described in its petition or implements any processes which generate(s) the waste and which may or could affect the composition or type waste generated as established under Condition (1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process), must notify the EPA in writing and may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in Condition (1) and it has received written approval to do so from EPA.</p> <p>(5) <i>Data Submittals:</i> The data obtained through Paragraph 3 must be submitted to Mr. William Gallagher, Chief, Region 6 Delisting Program, U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–O) within the time period specified. Records of operating conditions and analytical data from Condition (3) 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 of Texas, 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 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 USC § 1001 and 42 USC § 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> <p>(6) <i>Reopener Language—</i>(a) If Occidental Chemical discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then Occidental Chemical must report any information relevant to that condition, in writing, to the Regional Administrator or his delegate within 10 days of discovering that condition.</p> <p>(b) Upon receiving information described in paragraph (a), from any source the Regional Administrator or his delegate will determine whether the reported condition requires further action. Further action may include revoking the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment.</p> <p>(7) <i>Notification Requirements:</i> Occidental Chemical must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.</p>

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Occidental Chemical	Deer Park, Texas ..	Rockbox Residue, (at a maximum generation of 238 cubic yards per calendar year) generated by Occidental Chemical using the wastewater treatment process to treat the Rockbox Residue, (EPA Hazardous Waste No. K019, K020. Occidental Chemical must implement a testing program that meets conditions found in Table 1. Wastes Excluded From Non-Specific Sources for the petition to be valid.