(D) EPA-APPROVED MISSOURI SOURCE SPECIFIC PERMITS AND ORDERS

Name of source	Order/permit number	State effective date	EPA approval date	Explanation
* * *	*	*	*	*
Eagle-Picher Technologies Joplin, MO	Consent Agreement.	08/26/99	4/24/00 65 FR 21651	

[FR Doc. 00–10031 Filed 4–21–00; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6583–6]

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) is granting a petition submitted by DuraTherm, Inc., (DuraTherm) to exclude from hazardous waste control (or delist) a certain solid waste. This action responds to the petition submitted by DuraTherm to delist the desorber solids on a ''generator specific'' basis from the lists of hazardous waste.

After careful analysis, the EPA has concluded that the petitioned waste is not hazardous waste when disposed of in subtitle D landfills. This exclusion applies to desorber solids generated at DuraTherm's San Leon, Texas, facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in subtitle D landfills but imposes testing conditions to ensure that the future-generated wastes remain qualified for delisting.

EFFECTIVE DATE: April 24, 2000.

ADDRESSES: The public docket for this final rule is located at the U.S. 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 reference number for this docket is ''F–99–TXDEL–DURATHERM.'' The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact Bill Gallagher, at (214) 665–6775. For technical information concerning this document, contact Michelle Peace, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, (214) 665–7430.

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

I. Overview Information

A. What Action Is EPA Finalizing?

The EPA is finalizing:

(1) the decision to grant DuraTherm's petition to have their desorber solids excluded, or delisted, from the definition of a hazardous waste; and

(2) the use of the EPA Composite Model for Landfills as the fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency used this model to predict the concentration of hazardous constituents released from the petitioned waste once it is disposed.

After evaluating the petition, EPA proposed, on August 18, 1999 to exclude the DuraTherm waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (see 64 *FR* 44866).

B. Why Is EPA Approving This Delisting?

DuraTherm petitioned to exclude the desorber solids because it does not believe that the petitioned waste meets the criteria for which it was listed.

DuraTherm also believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. *See* section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4).

For reasons stated in both the proposal and this document, EPA believes that DuraTherm's desorber solids should be excluded from hazardous waste control. The EPA therefore is granting a final exclusion to DuraTherm, located in San Leon, Texas, for its Desorber Solids.

C. What Are the Limits of This Exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in Table 1 of part 261 and the conditions contained herein are satisfied. The maximum annual volume of the Desorber Solids is 20,000 cubic yards.

D. How Will DuraTherm Manage the Waste if It Is Delisted?

The Desorber Solids is currently disposed of in an off-site hazardous

waste landfill. When delisted, the waste will be disposed of in an off-site subtitle D industrial landfill.

E. When Is the Final Delisting Exclusion Effective?

This rule is effective April 24, 2000. The HSWA of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How Does This Action Affect States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received our authorization to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If DuraTherm transports the petitioned waste to or manages the waste in any State with delisting authorization, DuraTherm must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude from the list of hazardous wastes, wastes the generator does not consider hazardous under RCRA.

B. What Regulations Allow Facilities To Delist a Waste?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, section 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator-specific'' basis from the hazardous waste lists.

C. What Information Must the Generator Supply?

Petitioners must provide sufficient information to EPA to allow the 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, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

III. EPA's Evaluation of the Waste Data

A. What Waste Did DuraTherm Petition EPA To Delist?

On November 6, 1998, DuraTherm in San Leon, Texas, petitioned the EPA for a standard exclusion of 20,000 cubic yards of desorber solids, per calendar year, resulting from its thermal desorption treatment process. The Agency has presently listed the resulting waste under § 261.3(c)(2)(I) (the ''derived from'' rule), as EPA Hazardous Waste No. F037, F038, K048, K049, K050 and K051. Table 1 lists the constituents of concern for these waste codes.

TABLE 1.—HAZARDOUS WASTE CODES ASSOCIATED WITH WASTE STREAMS

Waste code	Basis for characteristics/listing
F037	Benzene, benzo (a) pyrene, Chrysene, lead, chromium.
F038	Benzene, benzo (a) pyrene, Chrysene, lead, chromium.
K048	Hexavalent Chromium, Lead.
K049	Hexavalent Chromium, Lead.
K050	Hexavalent Chromium.
K051	Hexavalent Chromium, Lead.

B. How Much Waste Did DuraTherm Propose To Delist?

Specifically, in its petition, DuraTherm requested that EPA grant a standard exclusion for 20,000 cubic yards of desorber solids generated per calender year.

C. How Did DuraTherm Sample and Analyze the Waste Data in This Petition?

To support its petition, DuraTherm submitted:

(1) Descriptions of its thermal desorption processes associated with petitioned wastes;

(2) Results of the total constituent list for 40 CFR part 264 appendix IX volatiles, semivolatiles, and metals except 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 the metals concentrations in the Multiple Extraction Procedure extract; and

(8) Results of ignitability.

DuraTherm tested and analyzed the waste stream under five conditions to properly account for variables in the waste stream: During start-up operations, shut-down operations, slow feed rates, fast feed rates, and normal operations. For wastes that failed to meet the estimated delisting levels, DuraTherm stabilized the wastes to prevent leaching metal constituents from the wastes. The facility submitted results from the Multiple Extraction Procedure run on the stabilized materials.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

The EPA received public comments on August 18, 1999, proposal from one interested party, Environmental Issues Management.

B. How Will DuraTherm Segregate the Petitioned Waste From the Other Wastes Accepted and Processed in the Thermal Desorption Unit?

Environmental Issues Management comments that the Agency failed to identify the rationale and method to isolate listed waste streams under consideration for delisting from other listed waste streams processed by DuraTherm which were not included within DuraTherm's delisting demonstration. DuraTherm may accept several other waste streams in addition to the waste streams being delisted. DuraTherm's acceptable waste streams include chlorinated organics, vinyl chloride and ethylene dichloride. The facility runs different batches of waste for different facilities. Initially, DuraTherm generates a waste profile for the material. They return the waste profile to the generator. When the wastes are accepted by DuraTherm, they must meet the profile identified by DuraTherm. To ensure that no cross contamination of these batches occur, the first batch of the petitioned wastes processed after a batch of chlorinated organics for instance, will be designated as ''Hazardous Wastes.'' To ensure that subsequent batches are free of any remaining waste codes, DuraTherm must analyze the first batch for constituents for which the waste codes are listed. Subsequent batches of the F037,F038, K049, K050, K051 wastes are eligible for delisting if they meet the criteria described in Table 1 of appendix IX, part 261 and no constituents of the previously processed residues are detected. The EPA has amended the conditions in Table 1, Paragraph 2(B) to reflect the change.

C. Why Is EPA Applying the Land Disposal Restrictions to the Petitioned Wastes?

Environmental Issues Management believes that the Agency's use of the Land Disposal Restrictions (LDR) to establish Maximum Allowable Concentrations is overly conservative and results in redundant regulation. The Agency used to the LDR treatment concentrations as delisting limits for three of the 12 metals constituents and all 25 of the organic constituents. The maximum concentration of the three metals detected in petitioned waste was less than the calculated delisting levels and the LDR treatment standards for the metals. For example, for chromium the calculated delisting level was 2.70 mg/l and the LDR treatment standard was 0.6 mg/l; However, the maximum concentration of chromium detected in the samples was 0.18 mg/l. This concentration is less than the calculated delisting level and the LDR treatment standard for chromium. The maximum concentrations of the semi-volatile and volatile organic constituents in the petitioned wastes were also less than the LDR treatment standards. For example, the maximum concentration of phenol detected in the waste was 0.2437 mg/l and the LDR treatment standard was 6.2 mg/l. The maximum concentration of xylene in the waste streams was 0.0017 mg/l and the LDR treatment standard was 0.032 mg/l. DuraTherm's treatment process did not have any problems achieving the more protective levels, in fact no additional treatment was needed to meet the LDR treatment standards. The proposed delisting levels for this petition allow for further protection of human health and the environment with very little impact on DuraTherm's operation of their treatment process.

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions. The final 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 this facility to manage its waste as nonhazardous. There is no additional impact therefore, due to today's final 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. 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 a 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. Accordingly, I hereby certify that this 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. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (Public Law 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), Public Law 104–4, which was signed into law on March 22, 1995, EPA 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 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, the delisting does not establish any regulatory requirements for small governments and so does not

require a small government agency plan under UMRA section 203.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. The 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 12875

Under Executive Order 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 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, Executive Order 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 Executive Order 12875 do not apply to this rule.

XI. Executive Order 13045

The Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines: (1) Is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has 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 Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XII. Executive Order 13084

Under Executive Order 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 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. Today's rule does not significantly or uniquely affect the communities of indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XIII. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices, *etc.*) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the NTTAA requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

XIV. Executive Order 13132 Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

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: April 11, 2000.

Carl E. Edlund,

Director, Multimedia Planning and Permitting 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, 6924(y) and 6938.

2. In Tables 1 and 2 in appendix IX 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
*	*	* * * * *
DuraTherm, Incorporated.	San Leon, Texas	Desorber solids, (at a maximum generation of 20,000 cubic yards per calendar year) generated by DuraTherm using the thermal desorption treatment process, (EPA Hazardous Waste No. F037 and F038) and that is disposed of in subtitle D landfills after April 24, 2000. For the exclusion to be valid, DuraTherm must implement a testing program that meets the following Paragraphs: (1) *Delisting Levels:* All leachable concentrations for those constituents must not exceed the following levels (ppm). The petitioner must use an acceptable leaching method, for example SW–846, Method 1311 to measure constituents in the waste leachate. Desorber solids (i) Inorganic Constituents Arsenic—1.35; Antimony—0.162; Barium—54.0; Beryllium—0.108; Cadmium—0.135; Chromium—0.6; Lead—0.405; Nickel—2.7; Selenium—1.0; Silver—5.0; Vanadium—5.4; Zinc—270. (ii) Organic Constituents Anthracene—0.28; Benzene—0.135; Benzo(a) anthracene—0.059; Benzo(b)fluoranthene—0.11; Benzo(a)pyrene—0.061; Bis-ethylhexylphthalate—0.28; Carbon Disulfide—3.8; Chlorobenzene—0.057; Chrysene—0.059; o,m,p Cresols—54; Dibenzo (a,h) anthracene—0.055; 2,4 Dimethyl phenol—18.9; Dioctyl phthalate—0.017; Ethylbenzene—0.057; Fluoranthene—0.068; Fluorene—0.059; Naphthalene—0.059; Phenanthrene—0.059; Phenol—6.2; Pyrene—0.067; Styrene—2.7; Trichloroethylene—0.054; Toluene—0.08; Xylene—0.032 (2) *Waste Holding and Handling:* (A) DuraTherm must store the desorber solids as described in its RCRA permit, or continue to dispose of as hazardous all desorber solids generated, until they have completed verification testing described in Paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied. (B) In order to isolate wastes that have been processed in the unit prior to one of the waste codes to be delisted, DuraTherm must designate the first batch of F037, F038, K048, K049, K050, or K051 wastes as hazardous. Subsequent batches of these wastes which satisfy paragraph (1) are eligible for delisting if they meet the criteria in paragraph (1) and no additional constituents (other than those of the delisted waste streams) from the previously processed wastes are detected. (C) Levels of constituents measured in the samples of the desorber solids that do not exceed the levels set forth in Paragraph (1) are nonhazardous. DuraTherm can manage and dispose the nonhazardous desorber solids according to all applicable solid waste regulations. (D) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), DuraTherm must retreat or stabilize the batches of waste used to generate the representative sample until it meets the levels in paragraph(1). DuraTherm must repeat the analyses of the treated waste. (E) If the facility has not treated the waste, DuraTherm must manage and dispose the waste generated under subtitle C of RCRA. (3) *Verification Testing Requirements:* DuraTherm must perform sample collection and analyses, including quality control procedures, according to SW–846 methodologies. If EPA judges the process to be effective under the operating conditions used during the initial verification testing, DuraTherm may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). DuraTherm must continue to test as specified in Paragraph (3)(A) until and unless notified by EPA in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B). (A) *Initial Verification Testing:* After EPA grants the final exclusion, DuraTherm must do the following: (i) Collect and analyze composites of the desorber solids. (ii) Make two composites of representative grab samples collected. (iii) Analyze the waste, before disposal, for all of the constituents listed in Paragraph 1. (iv) Sixty (60) days after this exclusion becomes final, report the operational and analytical test data, including quality control information. (v) Submit the test plan for conducting the multiple pH leaching procedure to EPA for approval at least 10 days before conducting the analysis. (vi) Conduct a multiple pH leaching procedure on 10 samples collected during the sixty-day test period. (vii) The ten samples should include both non-stabilized and stabilized residual solids. If none of the samples collected during the sixty-day test period need to be stabilized, DuraTherm should provide multiple pH data on the first sample of stabilized wastes generated. (vii) Perform the toxicity characteristic leaching procedure using three different pH extraction fluids to simulate disposal under three conditions and submit the results within 60 days of completion. Simulate an acidic landfill environment, basic landfill environment, and a landfill environment similar to the pH of the waste. (B) *Subsequent Verification Testing:* Following written notification by EPA, DuraTherm may substitute the testing conditions in (3)(B) for (3)(A)(i). DuraTherm must continue to monitor operating conditions, and analyze representative samples each quarter of operation during the first year of waste generation. The samples must represent the waste generated in one quarter. DuraTherm must run the multiple pH procedure on these waste samples.

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

Facility	Address	Waste description
		(C) *Termination of Organic Testing:* (i) DuraTherm must continue testing as required under Paragraph (3)(B) for organic constituents in Paragraph (1)(A)(ii), until the analytical results submitted under Paragraph (3)(B) show a minimum of two consecutive samples below the delisting levels in Paragraph (1)(A)(i), DuraTherm may then request that EPA stop quarterly organic testing. After EPA notifies DuraTherm in writing, the company may end quarterly organic testing. (ii) Following cancellation of the quarterly testing, DuraTherm must continue to test a representative composite sample for all constituents listed in Paragraph (1) annually (by twelve months after final exclusion). (4) *Changes in Operating Conditions:* If DuraTherm significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), they must notify EPA in writing; they may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in Paragraph (1) and they have received written approval to do so from EPA. (5) *Data Submittals:* DuraTherm must submit the information described below. If DuraTherm fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. DuraTherm must: (A) Submit the data obtained through Paragraph 3 to Mr. William Gallagher, Chief, Region 6 Delisting Program, EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD-O) within the time specified. (B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the State of Texas request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by 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. (6) *Reopener Language:* (A) If, anytime after disposal of the delisted waste, DuraTherm 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 for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, DuraTherm must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (C) If DuraTherm fails to submit the information described in paragraphs (5),(6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Regional Administrator or his delegate 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 or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (7) *Notification Requirements:* DuraTherm must do following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision.

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

Facility	Address	Waste description
		(A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if they ship the delisted waste into a different disposal facility.
*	*	* * * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * * *
DuraTherm, Incorporated.	San Leon, Texas	Desorber Solids, (at a maximum generation of 20,000 cubic yards per calendar year) generated by DuraTherm using the treatment process to treat the Desorber solids, (EPA Hazardous Waste No. K048, K049, K050, and K051 and disposed of in a subtitle D landfill. DuraTherm must implement the testing program found in Table 1. Wastes Excluded From Non-Specific Sources, for the petition to be valid.
*	*	* * * * * *

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 11

[DA 00–755]

Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises part 11 of the Commission's rules governing the Emergency Alert System (EAS) to remove certain rule provisions which are obsolete and to make minor editorial revisions.

DATES: Effective April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Berthot, Enforcement Bureau, Technical and Public Safety Division, (202) 418–1454.

SUPPLEMENTARY INFORMATION: This is a summary of the Order of the Commission's Managing Director, DA 00–755, adopted on March 31, 2000, and released on April 4, 2000. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW, Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., at 202–857–3800, CY–B400, 445 12th Street, SW, Washington, D.C.

The Order amends part 11 to remove references to the EAS authenticator lists, which have been discontinued by the Commission. The EAS authenticator lists were lists of words distributed annually by the Commission to the White House Communications Agency (WHCA), the Federal Emergency Management Agency (FEMA), and all EAS participants. The lists were used by EAS participants to authenticate national-level EAS messages prior to activation of the EAS. The Commission discontinued the EAS authenticator lists in 1998, after consultation with FEMA and WHCA, because the new EAS equipment which must be used by broadcast stations and cable operators can process EAS messages automatically without the need for human intervention and authentication.

Additionally, the Order removes references to the required weekly tests of the old Emergency Broadcast System Attention Signal from the part 11 rules because, effective January 1, 1997, broadcast stations are no longer required to conduct those tests. Furthermore, the Order makes minor editorial revisions to the part 11 rules to reflect the shift of responsibility for the EAS from the Commission's Compliance and Information Bureau, which has been eliminated, to the recently established Enforcement Bureau.

As the Order merely removes obsolete rule provisions and makes minor editorial revisions to the rules, the Commission finds good cause to conclude that notice and comment procedures are unnecessary. 5 U.S.C. 553(b)(3)(B). Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply.

The actions taken in the Order have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

List of Subjects in 47 CFR Part 11

Radio, Television.

Federal Communications Commission.

Andrew S. Fishel,

Managing Director.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 11 as follows:

PART 11—EMERGENCY ALERT SYSTEM (EAS)

1. The authority citation for Part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

§ 11.11 [Amended]

2. Section 11.11 is amended by removing footnotes 4 and 5 in the Timetable for Broadcast Stations.

§ 11.17 [Removed]

3. Section 11.17 is removed.

4. Section 11.21 is amended by revising the introductory text to read as follows: