ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7216–8]

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, also the Agency or we in this preamble) today is granting a petition submitted by Weirton Steel Corporation (Weirton) to exclude (or delist), on a one-time basis, a wastewater treatment sludge from the lists of hazardous wastes.

After careful analysis, we have concluded the petitioned waste does not present an unacceptable risk when disposed of in a Subtitle D (nonhazardous waste) landfill. This exclusion applies to wastewater treatment sludge previously generated at the Weirton facility in Weirton, West Virginia, which is contained in an inactive surface impoundment (the East Lagoon) and two tanks (the Figure 8 tanks). Accordingly, this final rule conditionally excludes a specific volume of the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when the petitioned waste is removed from the units in which it currently resides for disposal in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

EFFECTIVE DATE: May 23, 2002.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the offices of U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029, and is available for you to view from 8:30 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. Please call David M. Friedman at (215) 814–3395 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For information concerning this document, please contact David M. Friedman at the address above or at (215) 814–3395.

SUPPLEMENTARY INFORMATION:

Official Record

The official record for this action is kept in a paper format. The official record is maintained at the address in the **ADDRESSES** section at the beginning of this document.

Preamble Outline

I. Overview Information

On February 26, 2002, we proposed to grant a petition submitted by Weirton to exclude (or delist) from the definition of hazardous waste on a one-time basis, a wastewater treatment sludge currently contained in several onsite units. Today we are finalizing the decision to grant a conditional exclusion as described in the February 26, 2002, proposed rule.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a formal request from a generator to exclude from the lists of hazardous waste regulated by RCRA, a waste that the generator believes should not be considered hazardous.

In order for a petition to succeed, a petitioner must first show that a waste generated at its facility does not meet any of the criteria for which the waste was listed. The criteria which we use to list wastes are found in 40 CFR 261.11. An explanation of how these criteria apply to a particular waste is contained in the background document for that listed waste.

In addition, the petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics defined in subpart C of 40 CFR part 261 (*i.e.,* ignitability, corrosivity, reactivity, and toxicity), and must present sufficient information for us to determine whether any other factors (including additional constituents) warrant retaining the waste as a hazardous waste.

A generator remains obligated under RCRA to confirm that its waste remains non-hazardous based on the hazardous waste characteristics defined in subpart C of 40 CFR part 261, even if EPA has delisted its waste.

B. What Regulations Allow Hazardous Waste Generators To Delist Waste?

Under 40 CFR 260.20 and 260.22, a generator may petition EPA to remove its waste from hazardous waste control by excluding it from the lists of hazardous wastes contained in 40 CFR 261.31, 261.32 and 261.33. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273 of Title 40 of the Code of Federal Regulations. 40 CFR 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?

A petitioner must provide sufficient information to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine that the waste is not hazardous for any other reason.

III. Weirton's Delisting Petition

A. What Waste Is the Subject of Weirton's Petition?

Weirton owns and operates an integrated steel mill, including the C&E wastewater treatment plant, occupying approximately 1300 acres on the banks of the Ohio River in Weirton, WV. On March 3, 1999, Weirton petitioned EPA to exclude, on a one-time basis, 18,000 cubic yards of wastewater treatment sludge contained in an inactive surface impoundment (the East Lagoon) and two tanks (the Figure 8 tanks) from the list of hazardous wastes contained in 40 CFR 261.31. The wastewater treatment sludge (known as the C&E sludge) is described in Weirton's petition as a mixture of small quantities of EPA Hazardous Waste Numbers F007 (spent cyanide plating bath solutions from electroplating operations) and F008 (plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process) with nonhazardous solids that settled during treatment of process wastewater, cooling water, quench water, and stormwater entering Weirton's C&E outfall area.

B. What Information Did Weirton Submit To Support This Petition?

To support its petition, Weirton submitted (1) detailed descriptions of its manufacturing and wastewater

treatment processes, including Material Safety Data Sheets (MSDS) for commercial products used in its processes; (2) detailed analytical results from representative samples of its wastewater treatment sludge collected both by the United States Army Corps of Engineers and by Weirton; and (3) environmental monitoring data from a groundwater investigation being conducted as part of an ongoing RCRA Facility Investigation at its site.

IV. EPA's Evaluation and Final Decision

A. Why Is EPA Approving This Petition?

Weirton petitioned EPA to exclude or delist on a one-time basis, the wastewater treatment sludge contained in an inactive surface impoundment (the East Lagoon) and two tanks (the Figure 8 tanks) because Weirton believes that the petitioned waste does not meet the criteria for which it was listed as a hazardous waste. Weirton also believes that the waste does not contain other constituents in concentrations that would render it hazardous.

Review of this petition included consideration of the original listing criteria, as well as factors (including additional constituents) other than those for which the waste was listed, as 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(a)(1) and (2).

On February 26, 2002, we proposed to conditionally exclude Weirton's C&E sludge from the list of hazardous wastes in 40 CFR 261.31, and requested public comment on the proposed rule. (See, 67 FR 8762). For reasons stated in both the proposed rule and this document, we believe that Weirton's C&E sludge should be excluded from hazardous waste control.

B. What Limitations Are Associated With This Exclusion?

This exclusion applies only to a maximum volume of 18,000 cubic yards of C&E sludge, the estimated amount currently contained in the East Lagoon and the Figure 8 tanks as described in Weirton's petition. Any volume of sludge exceeding this amount cannot be managed as nonhazardous waste under this exclusion.

This exclusion will be effective only when the sludge is removed from the units in which it currently resides. That is, the C&E sludge remains a hazardous waste until it is removed from the East Lagoon and the Figure 8 tanks for transportation and subsequent disposal in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage municipal or industrial solid waste.

Furthermore, Weirton must provide a one-time notification to any State regulatory agency to which or through which the delisted waste will be transported for disposal at least 60 calendar days prior to commencing these activities.

C. When Is the Final Rule Effective?

This rule is effective May 23, 2002. HSWA 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. For these same reasons, this rule can become effective immediately (that is, upon publication in the **Federal Register**) under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. 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 directly 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 EPA's authorization to make their own delisting decisions. We describe these two situations below.

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, or that prohibits a Federally issued exclusion from taking effect in the State until the State approves the exclusion through a separate State administrative action. Because a dual system (that is, both Federal and State programs) may regulate a petitioner's waste, we urge petitioners to contact the applicable State regulatory authorities or agencies to establish the status of their waste under that State's program.

We have also authorized some States to administer a delisting program in place of the Federal program; that is, to make State delisting decisions. Therefore, this exclusion does not necessarily apply within those authorized States. If Weirton transports the petitioned waste to, or manages the waste in, any State with delisting authorization, Weirton must obtain delisting approval from that State before it can manage the waste as nonhazardous in that State.

V. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

We received public comments on the February 26, 2002, proposed exclusion from one interested party which was Weirton, the petitioner.

B. What Were the Comments?

Weirton expressed its support for the proposed exclusion.

VI. Administrative Assessments

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a ''regulatory action'' subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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 the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

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

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

Dated: May 13, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

Appendix IX of Part 261—[Amended]

2. Table 1 of appendix IX of part 261 is amended to add the following waste stream in alphabetical order by facility to read as follows:

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

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * * * *
Weirton Steel Corporation ..	Weirton, West Virginia	Wastewater treatment sludge (known as C&E sludge) containing EPA Hazardous Waste Numbers F007 and F008, subsequent to its excavation from the East Lagoon and the Figure 8 tanks for the purpose of transportation and disposal in a Subtitle D landfill after May 23, 2002. This is a one-time exclusion for a maximum volume of 18,000 cubic yards of C&E sludge. (1) Reopener language. (a) If Weirton discovers that any condition or assumption related to the characterization of the excluded waste which was used in the evaluation of the petition or that was predicted through modeling is not as reported in the petition, then Weirton must report any information relevant to that condition or assumption, in writing, to the Regional Administrator and the West Virginia Department of Environmental Protection within 10 calendar days of discovering that information. (b) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Regional Administrator and the West Virginia Department of Environmental Protection will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health or the environment. (2) Notification Requirements. Weirton 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 calendar days prior to the commencement of such activities. Failure to provide such notification will be deemed to be a violation of this exclusion and may result in revocation of the decision and other enforcement action.
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; FCC 02–120]

Enhanced 911 Emergency Calling; Use of Non-Initialized Wireless Phones

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses issues associated with the inability of a public safety answering point to call back an emergency caller for further critical information when that caller is dialing 911 using a non-service-initialized wireless telephone. The document requires that non-service-initialized handsets donated through carrier-sponsored programs and newly manufactured ''911-only'' phones be programmed with an identifying code, and that wireless carriers complete any network programming necessary to deliver this code. The document also requires that such phones be labeled to alert the user to the lack of call-back capability. Finally, the document requires that public education programs be instituted to inform users of the limitations of non-initialized phones. The Commission takes these steps to alert all parties involved in a wireless 911 call originating from an non-initialized phone of the need for quick information as to the caller's exact location, thus increasing the likelihood that emergency services can be dispatched quickly to save lives.

DATES: Effective October 1, 2002. Public comment on the information collection is due July 22, 2002. Written comment by the Office of Management and Budget (OMB) must be submitted on or before September 20, 2002.