

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

[SW-FRL-7779-1]

### Hazardous Waste Management System; Proposed Exclusion for Identifying and Listing Hazardous Waste

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

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

**SUMMARY:** The EPA (also, "the Agency" or "we" in this preamble) is proposing to grant a petition submitted by General Motors Corporation, Lordstown Assembly Plant (GM) in Lordstown, Ohio to exclude (or "delist") up to 2,000 cubic yards of sludge per year generated by its wastewater treatment plant (WWTP) from the list of hazardous wastes.

The Agency has tentatively decided to grant the petition based on an evaluation of waste-specific information provided by GM. This proposed decision, if finalized, conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

We conclude that GM's petitioned waste is nonhazardous with respect to the original listing criteria and that there are no other factors which would cause the waste to be hazardous.

**DATES:** We will accept public comments on this proposed decision until August 9, 2004. We will stamp comments postmarked after the close of the comment period as "late." These "late" comments may not be considered in formulating a final decision.

**ADDRESSES:** Please send two copies of your comments to Judy Kleiman, Waste Management Branch (DW-8J), Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, Illinois 60604.

Any person may request a hearing on this proposed decision by filing a request with Margaret Guerriero, Director, Waste, Pesticides and Toxics Division, Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, Illinois 60604.

Your request for a hearing must reach EPA by July 12, 2004. The request must contain the information prescribed in § 260.20(d).

**FOR FURTHER INFORMATION CONTACT:** For technical information concerning this document, contact Judy Kleiman at the address above or at 312-886-1482. The

RCRA regulatory docket for this proposed rule is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. Call Judy Kleiman for appointments. The public may copy material from the regulatory docket at \$0.15 per page.

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#### I. Overview Information

The EPA is proposing to grant a petition submitted by GM's Lordstown Assembly Plant located in Lordstown, Ohio to exclude or delist an annual volume of 2,000 cubic yards of F019 wastewater treatment sludge from the lists of hazardous waste set forth in 40 CFR 261.32 and 261.33. GM claims that the petitioned waste does not meet the criteria for which EPA listed it, and that there are no additional constituents or

factors which could cause the waste to be hazardous.

Based on our review described in section III, we agree with the petitioner that the waste is nonhazardous. We reviewed the description of the process which generates the waste and the analytical data submitted by GM. We believe that the petitioned waste does not meet the criteria for which the waste was listed, and that there are no other factors which might cause the waste to be hazardous.

#### II. Background

##### A. What Is a Listed Waste?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in §§ 261.11(a)(2) or (3).

##### B. What Is a Delisting Petition?

Individual waste streams may vary depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be.

A procedure to exclude or delist a waste is provided in 40 CFR 260.20 and 260.22 which allows a person, or a facility to submit a petition to the EPA or to an authorized state, demonstrating that a specific waste from a particular generating facility is not hazardous.

In a delisting petition, the petitioner must show that a waste does not meet any of the criteria for listed wastes in 40 CFR 261.11 and that the waste does not exhibit any of the hazardous waste characteristics of ignitability, reactivity, corrosivity, or toxicity. The petitioner must present sufficient information for us to decide whether any factors in addition to those for which the waste was listed warrant retaining it as a hazardous waste. (See § 260.22, 42 U.S.C. 6921(f) and the background documents for the listed wastes.)

If a delisting petition is granted, the generator remains obligated under RCRA to confirm that the waste remains nonhazardous.

### *C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?*

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). We evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (3).

Besides considering the criteria in 40 CFR 260.22(a), §§ 261.11(a)(2) and (3), 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if these additional factors could cause the waste to be hazardous.

Our tentative decision to delist waste from GM's Lordstown facility is based on our evaluation of the waste for factors or criteria which could cause the waste to be hazardous. These factors included: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the constituents to migrate and to bioaccumulate; (5) the persistence in the environment of any constituents once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

EPA must also consider as hazardous wastes mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. Mixture and derived-from wastes are also eligible for exclusion but remain hazardous until excluded.

### **III. EPA's Evaluation of the Waste Information and Data**

#### *A. What Wastes Did GM Petition EPA To Delist?*

In February 1999, GM petitioned EPA to exclude an annual volume of 1,000 cubic yards (yd<sup>3</sup>) of F019 WWTP filter press sludge generated at its Lordstown Assembly Plant located in Lordstown, Ohio from the list of hazardous wastes contained in 40 CFR 261.31. On April 22, 2004, GM requested that the annual volume of F019 waste under consideration for a delisting be increased to 2,000 yd<sup>3</sup>. F019 is defined in § 261.32 "Wastewater treatment sludges from the chemical conversion coating of aluminum except from

zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process." GM claims that the petitioned waste does not meet the criteria for which F019 was listed (*i.e.*, hexavalent chromium and complexed cyanide) and that there are no other factors which would cause the waste to be hazardous.

#### *B. How Does GM Generate the Petitioned Waste?*

Automobile bodies are cleaned with city water and a surfactant to loosen and remove soils and metal working fluids in preparation for a uniform dense phosphate coating. After rinsing, a phosphate conditioner is applied to the automobile bodies in a 27,000 gallon immersion tank. The bodies are then immersed in a 72,000 gallon tank where the zinc-nickel phosphate coating is applied. The phosphating bath includes zinc phosphate, nickel phosphate, and phosphoric acid. Following the phosphating, the automobile bodies are rinsed, sprayed with a non-chromium sealer and rinsed again. There are no active overflows from the phosphating tank. A paint film is then cathodically electrodeposited on the automobile bodies in a 93,000 gallon immersion tank followed by a multi-stage rinse before baking at 350 degrees for 45 minutes.

Color-specific primers, base coats and clear coats are applied in spray booths with manual and automated spray zones. Spray booth ambient air is forced through a downdraft wash water recirculation system to remove airborne paint mists. Within the recirculation system, water is chemically treated and filtered. When dissolved solids reach 40,000 milligrams per liter (mg/l) in the wash water, a portion of the wash water is discharged to the wastewater treatment plant (WWTP). The filtered solids from the recirculation system are disposed of as solid wastes.

The WWTP receives (1) process waste water which includes car washing waste water, plant clean up and maintenance waste water, and spray booth wash water, (2) phosphate waste water from the phosphating line, (3) the waste stream from the electrodeposition of the primer paint operations (ELPO) and (4) the oily waste stream from the fabrication plant.

The general process waste water enters a solids separator and is then discharged to one of five process waste holding tanks. The phosphating wastewater and the ELPO wastewater blend with the general process waste water within the process waste holding tanks. Prior to entering the process waste holding tanks, the ELPO waste

water is segregated in one of two 150,000 gallon ELPO holding tanks to allow for controlled metering of the ELPO waste water into the process waste holding tanks. The phosphate waste water may also be segregated before being discharged into the process waste holding tanks. The process wastewater in the holding tanks is pumped to the blend tank where it is treated with sodium hydroxide and flocculants and then enters a 6,000 gallon flash mix tank. From the flash mix tank, the wastewater enters a clarifier. The settled sludge from the clarifier is pumped to a sludge thickening tank and then to a conditioner tank where it is mixed and pumped into a plate and frame filter press. The dewatered sludge drops into a roll-off box and is disposed of as F019. The dewatered sludge from the filter press is the subject of this petition.

The supernatant from the clarifier passes through a sand filter, is pH adjusted and is mixed with the oily waste water before it is discharged to the city sewer system. Infrequently, the sand filter is backwashed and the solids from the sand filter are routed to the waste water treatment plant to be incorporated into the final sludge. Before mixing with the process waste water, the oily waste water is mixed with emulsifiers and is pumped to a dissolved air floatation unit (DAF). The oily sludge from the DAF may be pumped to the sludge thickener tank where it commingles with the sludge from the process waste or the oily sludge may be hauled off site for disposal as a solid waste. The sludge filter cake sampled for this petition was generated when the oily sludge from the DAF was being pumped to the sludge thickener tank.

#### *C. How Did GM Sample and Analyze the Petitioned Waste?*

On December 16, 1997 GM sampled the WWTP sludge from four separate roll-off boxes representing sludge collected over a period of approximately 4 weeks. On June 9, 1998 GM sampled the sludge in another roll-off box representing the sludge collected over a period of one week. GM collected one composite and one grab sample of sludge from each roll-off box during each sampling event. Composite samples consisted of four individual full-depth core grab samples mixed together to form one sample.

GM analyzed composite samples for the following parameters using the methods specified: (1) Total constituent analysis and Oily Waste Extraction Procedure for metals in Appendix IX of 40 CFR part 264, including antimony,

arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury,<sup>1</sup> nickel, selenium, silver, thallium, tin, vanadium, and zinc (SW-846 Methods 6010B, 6020A and 1330A);<sup>2</sup> (2) total constituent and Toxicity Characteristic Leaching Procedure (TCLP) analysis for 120 semi-volatile organic compounds (SW-846 Methods 8270B, and 1311); (3) total constituent and TCLP analysis for formaldehyde (Association of Official Analytical Chemists Method 931.08 and SW-846 Method 1311); (4) total constituent and TCLP analysis for

sulfide (SW-846 Methods 9030A and 1311); (5) total constituent and TCLP analysis for cyanide (SW-846 Methods 9012, 9013, and 1311);<sup>3</sup> (6) total constituent and TCLP analysis for fluoride (EPA Method 340.2 and SW-846 Method 1311); (7) total constituent and TCLP analysis for organochlorine pesticides and chlorinated herbicides (SW-846 Methods 8081, 8151 and 1311); and (8) total oil and grease (SW-846 Method 9071A). GM also tested the waste for the characteristics of ignitability, corrosivity (SW 846 Method 1010), and pH (SW 846 Method 9045C).

GM analyzed full-depth core grab samples for total constituent and TCLP analysis for 55 volatile organic compounds (VOCs) (SW-846 Method 8260A and SW-846 Method 1311)

*D. What Were the Results of GM's Analysis of Its Waste?*

The table below presents the maximum observed total and leachate concentrations for all detected constituents and maximum allowable total and TCLP concentrations for those constituents.

Constituents	Allowable levels for 2,000 cubic yards				
	Maximum concentration observed		Maximum allowable concentrations		Maximum allowable groundwater concentration (µg/l)
	Total (mg/kg)	TCLP (mg/kg)	Total (mg/kg)	TCLP (mg/kg)	
acetone	J0.488	<0.05	NA	2,100	33,800
antimony	12.6	X 0.017	700,000	0.66	6
arsenic	4.5	X 0.125	10,000	0.3	4.88
barium	4,280	0.431	NA	1 100	2,000
beryllium	0.23	J0.008	20,000	1.3	4
bis (2-ethylhexyl) phthalate	J102	<0.05	NA	0.20	3.2
cadmium	0.93	<0.031	27,000	0.48	5
chloromethane	J0.087	<0.01	3,700	0.32	5.63
chromium	759	JX 0.127	4,100	5	100
cobalt	5.4	X 0.049	18,000	24	750
copper	J1,490	JX 0.039	NA	29,000	1,300
m-cresol	<367	0.0343	NA	110	1,875
p-cresol	<367	0.0343	NA	11	188
di-n-octyl phthalate	J91.5	<0.05	NA	0.22	2.6
ethylbenzene	J0.185	<0.01	NA	43	700
formaldehyde	4	J0.2	700	84	1,390
lead	J5,660	X 0.16	630,000	15	15
mercury	J0.11	<0.0055	10	1 0.2	2
methyl ethyl ketone	J0.179	<1	NA	1 200	22,500
methyl isobutyl ketone	J0.218	<0.05	NA	180	3,000
methylene chloride	<0.4	0.053	150,000	0.29	5
nickel	5,720	46.209	NA	91	750
phenol	<367	0.057	NA	690	11,300
selenium	2.6	X 0.015	NA	11	50
silver	1.1	X 0.09	NA	15	188
styrene	J0.017	<0.01	NA	6.1	100
thallium	1.5	X 0.009	140,000	0.28	2
tin	609	X 3.042	NA	720	22,500
toluene	J0.223	J0.0019	NA	61	1,000
vanadium	30.3	0.02	NA	87	338
xylenes	1.23	J0.0058	NA	110	1,800
zinc	16,300	JX 4.865	NA	900	11,300
cyanide (total)	18	J0.00831	NA	12	200
sulfide	991	1.58	NA	NA	NA
fluoride	498	1.75	NA	130	4,000
oil & grease	331,000	NA	NA	NA	NA
pH	8.09-11.3	NA	NA	NA	NA

These levels represent the highest concentration of each constituent found in any sample and do not necessarily represent the levels found in a single sample.

<sup>1</sup> The allowable level in a TCLP leachate defaults to the characteristic level set forth in 40 CFR part 261, subpart C.

<—Denotes that the constituent was not detected at the quantitation level.

J—Estimated value.

X—Constituent was not detected in one of the two OWEP extractions. In the final OWEP calculation, the sample quantitation limit was used as a worst case when a constituent was not detected in one of the extractions.

NA—The program did not calculate a delisting level for this constituent or the delisting level was significantly higher than the level expected to be found in the waste.

<sup>1</sup> Mercury was determined using SW-846 methods 7470A for aqueous samples and 7471A for nonaqueous samples.

<sup>2</sup> In step 7.10 of Method 1330, Method 1311 was substituted for Method 1310.

<sup>3</sup> Deionized water was used as the extraction fluid instead of the fluid specified in the method.

GM submitted a signed statement certifying accuracy and responsibility of the results. See 40 CFR 260.22(i)(12).

*E. How Did EPA Evaluate the Risk of Delisting This Waste?*

For this delisting determination, we assumed that the waste would be disposed in a Subtitle D landfill and we considered transport of waste constituents through ground water, surface water and air. We evaluated GM's petitioned waste using the Agency's Delisting Risk Assessment Software (DRAS) to predict the concentration of hazardous constituents that might be released from the petitioned waste and to determine if the waste would pose a threat. To predict the potential for release to groundwater from landfilled wastes and subsequent routes of exposure to a receptor, the DRAS uses dilution attenuation factors derived from EPA's Composite Model for leachate migration with Transformation Products. From a release to ground water, the DRAS considers routes of exposure to a human receptor of ingestion of contaminated ground water, inhalation from ground water while showering and dermal contact from ground water while bathing. From a release to surface water by erosion of waste from an open landfill into storm water run-off, DRAS evaluates the exposure to a human receptor by fish ingestion and ingestion of drinking water. From a release of waste particles and volatile emissions to air from the surface of an open landfill, DRAS considers routes of exposure of inhalation of volatile constituents, inhalation of particles, and air deposition of particles on residential soil and subsequent ingestion of the contaminated soil by a child. For a detailed description of the DRAS program and revisions see 65 FR 58015, September 27, 2000; 65 FR 59000, November 7, 2000; and 65 FR 75879, December 5, 2000.

At a target cancer risk of  $1 \times 10^{-6}$  and a target hazard quotient of one, the DRAS program determined maximum allowable concentrations for each constituent in both the waste and the leachate at an annual waste volume of 2,000 cubic yards. However, since naturally occurring levels of arsenic are often higher than allowable levels set by the DRAS at a risk of  $1 \times 10^{-6}$ , EPA set the allowable level of leachable arsenic at a target cancer risk of  $1 \times 10^{-4}$ , which corresponds to a concentration at the point of exposure of approximately one half of the existing MCL. Arsenic is not expected to be a major constituent of concern in this waste.

We used the maximum estimated annual waste volume and the maximum reported total and leachate concentrations as inputs to estimate the constituent concentrations in the ground water, soil, surface water or air. If, using an appropriate analytical method, a constituent was not detected in any sample or in the leachate of any sample, it was considered not to be present in the waste.

*F. What Did EPA Conclude About GM's Analysis?*

The maximum reported leachate concentrations and the maximum reported levels of the hazardous constituents found in this waste are presented in the table above. The table also presents the maximum allowable levels. The concentrations of all constituents in both the waste and the leachate are below the allowable levels of concern calculated by the DRAS program at the target risk levels. We therefore conclude that GM's wastewater treatment sludge is not a substantial or potential hazard to human health and the environment when disposed of in a Subtitle D landfill.

We therefore propose to grant an exclusion for this waste. If this exclusion is finalized, GM must dispose of this waste in a Subtitle D landfill permitted or licensed by a state, and will remain obligated to verify that the waste meets the allowable levels set forth here. The Agency will no longer regulate the petitioned waste under 40 CFR parts 262 through 268 and the permitting standards of part 270.

**IV. Conditions for Exclusion**

*A. When Would EPA Finalize the Proposed Delisting Exclusion?*

HSWA specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not make a final decision or grant an exclusion until it has addressed all timely public comments on today's proposal, including any at public hearings.

Since this rule would reduce the existing requirements for persons generating hazardous wastes, the regulated community does not need a six-month period to come into compliance in accordance with sec. 3010 of RCRA as amended by HSWA.

*B. How Will GM Manage the Waste If It Is Delisted?*

If the petitioned waste is delisted, GM must dispose of it in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste.

*C. What Are the Maximum Allowable Concentrations of Hazardous Constituents in the Waste?*

Concentrations measured in the TCLP (or OWE, where appropriate) extract of the waste of the following constituents must not exceed the following levels (mg/l): antimony—0.66; arsenic—0.30; chromium—5; lead—5; mercury—0.2; nickel—91; selenium—1; silver—5; thallium—0.28; tin—720; zinc—900; fluoride—130; p-cresol—11; formaldehyde—84; methylene chloride—0.29. The total concentrations in the waste of the following constituents must not exceed the following levels (mg/kg): formaldehyde—700; chromium—4,100; mercury—10.

*D. How Frequently Must GM Test the Waste?*

GM must analyze a representative sample of the WWTP filter press sludge on a quarterly basis to demonstrate that the constituents of concern in the petitioned waste do not exceed the levels of concern in section IV.C above. GM must use methods with appropriate detection levels with appropriate quality control procedures.

*E. What Data Must GM Submit?*

GM must submit the data obtained through quarterly verification testing to U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, upon the anniversary of the effective date of this exclusion. GM must compile, summarize, and maintain on site records of operating conditions and analytical data. GM must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

*F. What Happens if GM Fails To Meet the Conditions of the Exclusion?*

If GM violates the terms and conditions established in the exclusion, the Agency may start procedures to withdraw the exclusion.

If the verification testing of the waste does not meet the delisting levels described in section IV.C above or other data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicates that any constituent is at a level in the leachate higher than the specified delisting level, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration in the table in Section III.D. GM must notify the Agency within 10 days of first possessing or being made aware of the data. The exclusion will be suspended

and the waste managed as hazardous until GM has received written approval from the Agency to continue the exclusion. GM may provide sampling results which support the continuation of the delisting exclusion.

The EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978) *et seq.* to reopen a delisting decision if we receive new information indicating that the conditions of this exclusion have been violated, or are otherwise not being met.

#### *G. What Must GM Do if the Process Changes?*

If GM significantly changes the manufacturing or treatment process or the chemicals used in the manufacturing or treatment process, GM may not handle the WWTP filter press sludge generated from the new process under this exclusion until it has demonstrated to the EPA that the waste meets the levels set in section IV.C and that no new hazardous constituents listed in Appendix VIII of 40 CFR part 261 have been introduced. GM must manage wastes generated after the process change as hazardous waste until GM has received written notice from EPA that the delisting is reinstated.

### **V. Regulatory Impact**

#### *A. How Would This Action Affect the 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 exclusion may not be effective in states which have received our authorization to make their own delisting decisions.

EPA allows 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. We urge petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

EPA has 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 apply in those authorized states. If GM manages the waste in any state with delisting authorization, GM must obtain delisting authorization from that state before it can manage the waste as nonhazardous in that state.

#### *B. Is an Assessment of Costs and Benefits Required?*

Under Executive Order 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, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from today's proposed rule, 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**

Under 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 (that is, 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, the Agency certifies 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. Paperwork Reduction Act**

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (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 generally must prepare a written statement for rules with federal mandates that may result in estimated costs to state, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA 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.

### **IX. 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 Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of

their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, 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.

**X. 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 proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

**XI. 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 communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities. 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.

**XII. National Technology Transfer and Advancement Act**

Under section 12(d) if the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (for example,

materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where EPA does not use available and potentially applicable voluntary consensus standards, the Act 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.

**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: June 16, 2004.

**Margaret M. Guerriero,**  
*Director, Waste, Pesticides and Toxics 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 Table 1 of Appendix IX to 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
* General Motors Corporation.	* Lordstown, Ohio .....	* Waste water treatment plant sludge, F019, that is generated at General Motors Corporation's Lordstown facility at a maximum annual rate of 2,000 cubic yards per year. The sludge must be disposed of in a Subtitle D landfill which is licensed, permitted, or otherwise authorized by a state to accept the delisted wastewater treatment sludge. The exclusion becomes effective as of (insert final publication date).  1. <i>Delisting Levels:</i> (A) The constituent concentrations measured in the TCLP extract may not exceed the following levels (mg/L): antimony—0.66; arsenic—0.30; chromium—5; lead—5; mercury—0.2; nickel—91; selenium—1; silver—5; thallium—0.28; tin—720; zinc—900; fluoride—130; p-cresol—11; formaldehyde—84; and methylene chloride—0.29 B) The total constituent concentration measured in any sample of the waste may not exceed the following levels (mg/kg): chromium—4,100 ; formaldehyde—700; and mercury—10. (C) Maximum allowable groundwater concentrations (µg/L) are as follows: antimony—6; arsenic—4.88; chromium—100; lead—15; mercury—2; nickel—750; selenium—50; silver—188; thallium—2; tin—22,500; zinc—11,300; fluoride—4,000; p-cresol—188; formaldehyde—1,390; and methylene chloride—5.

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

Facility	Address	Waste description
		<p>2. <i>Quarterly Verification Testing:</i> To verify that the waste does not exceed the specified delisting levels, GM must collect and analyze one waste sample on a quarterly basis using methods with appropriate detection levels and elements of quality control.</p> <p>3. <i>Changes in Operating Conditions:</i> The facility must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process significantly change. GM must handle wastes generated after the process change as hazardous until it has demonstrated that the wastes continue to meet the delisting levels and that no new hazardous constituents listed in appendix VIII of part 261 have been introduced and it has received written approval from EPA.</p> <p>4. <i>Data Submittals:</i> The facility must submit the data obtained through verification testing or as required by other conditions of this rule to U.S. EPA Region 5, Waste Management Branch, RCRA Delisting Program (DW-8J), 77 W. Jackson Blvd., Chicago, IL 60604. The quarterly verification data and certification of proper disposal must be submitted annually upon the anniversary of the effective date of this exclusion. The facility must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. The facility must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).</p> <p>5. <i>Reopener Language—</i>(A) If, anytime after disposal of the delisted waste, GM possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent is at a level in the leachate higher than the specified delisting level, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration in paragraph (1), then GM must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify the facility in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing GM with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. GM shall have 30 days from the date of the Regional Administrator's notice to present the information. (D) If after 30 days GM presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.</p>

[FR Doc. 04-14460 Filed 6-24-04; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 04-1652; MB Docket No. 04-224; RM-10853, RM-10854]

### Radio Broadcasting Services; Lake Havasu City, Arizona and Pahrump, NV

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on two mutually exclusive Petitions for Rule Making. The first proposal, filed by SSR Communications Incorporated, proposes the allotment of Channel 272C3 at Pahrump, Nevada, as that community's third local service. The second proposal, filed by Steven M.

Greeley, licensee of Station KJJJ(FM), Lake Havasu City, Arizona, requests the substitution of Channel 272C for Channel 272B at Lake Havasu City, Arizona, the reallocation of Channel 272C from Lake Havasu City to Pahrump, Nevada, as its third local service, and modification of Station KJJJ(FM)'s license accordingly. Channel 272C3 can be allotted to Pahrump, Nevada, in conformity with the Commission's Rules, provided there is a site restriction of 6.1 kilometers (3.8 miles) northwest of the community. The reference coordinates for Channel 272C3 at Pahrump are 36-14-09 North Latitude and 116-02-32 West Longitude. Alternatively, Channel 272C can be allotted to Pahrump, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, provided there is a site restriction of 15.6 kilometers (9.7 miles) west of the community. The reference coordinates for Channel 272C at Pahrump are 36-15-25 North

Latitude and 116-08-45 West Longitude.

**DATES:** Comments must be filed on or before August 2, 2004, and reply comments on or before August 17, 2004.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Matthew K. Wesolowski, General Manager, SSR Communications Incorporated, 5270 West Jones Bridge Road, Norcross, GA 30092-1628 and Robert L. Olender, Esq., c/o Steven M. Greeley, Koerner & Olender, PC, 5809 Nicholson Lane, Suite 124, North Bethesda, Maryland 20852-5706.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No.