Actions Accomplished Previously

(g) Replacements done before the effective date of this AD according to Airbus Service Bulletin A300–27–0099 (for Model A300 B2 and B4 series airplanes), A300–24–6082 (for Model A300–600 series airplanes), or A310–24–2088 (for Model A310 series airplanes); dated October 11, 2002; as applicable; are acceptable for compliance with the corresponding action required by paragraph (a) of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(i) French airworthiness directive 2003–082R1, dated March 31, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on September 27, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–22267 Filed 10–1–04; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW FRL–7823–9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: EPA is proposing to grant a petition submitted by Bayer Polymers (Bayer) to exclude (or delist) a certain solid waste generated by its Baytown, Texas, facility from the lists of hazardous wastes.

EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment.

EPA bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, EPA would conclude that Bayer's petitioned waste is nonhazardous with respect to the original listing criteria and that the generation of K027, K104, K111, and K112 treated effluent from the facility's waste water treatment plant will not be hazardous at the point of generation because of the adequately reduces the likelihood of migration of constituents from this waste. EPA would also conclude that Bayer's process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: EPA will accept comments until November 3, 2004. EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by October 19, 2004. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send three copies of your comments. You should send two copies to the Chief, Corrective Action and Waste Minimization Section (6PD–C), Multimedia Planning and Permitting Division, U. S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. You should send a third copy to the Texas Commission on Environmental Quality, P.O. Box 13087, Austin, TX 78712. Identify your comments at the top with this regulatory docket number: [R6–TXDEL–FY04–Bayer]. You may submit your comments electronically to Michelle Peace at *peace.michelle@epa.gov*.

You should address requests for a hearing to Ben Banipal, Chief, Corrective Action and Waste Minimization Section (6PD–C), Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER TECHNICAL INFORMATION CONTACT: Michelle Peace (214) 665–7430.

SUPPLEMENTARY INFORMATION:

The information in this section is organized as follows:

I. Overview Information

A. What Action Is EPA Proposing?

EPA is proposing to grant the delisting petition submitted by Bayer to have its Outfall 007 Treated Effluent (K027, K104, K111, and K112 listed hazardous waste) excluded, or delisted, from the definition of a hazardous waste.

B. Why Is EPA Proposing To Approve This Delisting?

Bayer's petition requests a delisting for the treated effluent derived from the treatment of hazardous waste water listed as K027, K104, K111, and K112 and non-hazardous waste water identified as brine header waste water. Bayer does not believe that the petitioned waste meets the criteria for which EPA listed it. Bayer also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See Section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4). In making the initial delisting

determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's proposed decision to delist waste from the Bayer facility is based on the information submitted in support of this rule, including descriptions of wastes and analytical data from the Baytown, Texas facility.

C. How Will Bayer Manage the Waste, if it Is Delisted?

Bayer currently discharges the treated effluent as permitted by its Texas Pollutant Discharge Elimination System (TPDES) permit. If the delisting exclusion is finalized, Bayer intends to dispose of the petitioned waste (*i.e.*, treated effluent) in the same manner. This delisting does not relieve Bayer of its responsibility to comply with and conduct all tests required by its TPDES permit. The waste would be delisted in the Outfall Tank prior to its discharge from Outfall 007.

D. When Would the Proposed Delisting Exclusion Be Finalized?

RCRA section 3001(f) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion unless and until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1) at 42 USCA 6930(b)(1), allows rules to become effective in less than six months after EPA addresses public comments when the regulated facility does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How Would This Action Affect the States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude States who have received authorization from EPA to make their own delisting decisions.

EPA allows the States to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. 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, EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under the State law. Delisting petitions approved by EPA Administrator under 40 CFR 260.22 are effective in the State of Texas only after the final rule has been published in the **Federal Register**.

II. Background

A. What Is the History of the Delisting Program?

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. EPA has amended this list several times and published it in §§ 261.31 and 261.32. EPA lists 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 (a)(3).

Individual waste streams may vary, however, 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 hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does it Require of a Petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions EPA because it does not believe the wastes should be hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which EPA lists a waste are in Part 261 and further explained in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. See Part 261 and the background documents for the listed waste.

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the waste.

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

Besides considering the criteria in § 260.22(a) and section 3001(f) of RCRA, 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 EPA listed the waste, if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

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

excluded. See 66 FR 27266 (May 16, 2001).

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

A. What Waste Did Bayer Petition EPA To Delist?

On June 25, 2003, Bayer petitioned EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, the treated effluent that is discharged pursuant to Bayer's TPDES permit. The discharge originates at Outfall 007 and is piped to the discharge location described as the ''diffuser near Hog Island into the Houston Ship Channel.'' The waste stream is generated from the Bayer facility located in Baytown, Texas. The waste (EPA Hazardous Waste Nos. K027, K104, K111, and K112) is effluent, which has been treated at the facility's waste water treatment plant and is ultimately discharged to Outfall 007 in accordance with the facility's TPDES permit. Specifically, in its petition, Bayer requested that EPA grant an exclusion for 18,071,150 cubic yards (5.745 billion gallons) per calendar year of treated effluent resulting from the treatment of waste waters from the manufacturing processes at its facility.

B. Who Is Bayer and What Process Do They Use to Generate the Petition Waste?

Bayer produces plastics, coatings, polyurethanes, and industrial chemicals. Bayer is the first facility in the United States to employ Tower Biology, an onsite waste water treatment plant (the plant) process that uses bacteria to treat waste above ground to protect ground water resources. The waste waters treated at the plant are generated by the various manufacturing operations at the Baytown facility. Influent waste waters enter the plant via the ''normal waste water header'' or the ''brine waste water header.'' The waste water entering the plant via the normal waste water header is placed in the primary clarifier. From the primary clarifier, the waste water is placed in a tank that feeds the waste water to a denitrification reactor prior to treatment in the biological oxidation towers. Following biological treatment, the waste water is run through a secondary clarifier. Waste water from the clarifier is sent to an activated carbon absorption system. Upon exiting the carbon absorption system, the waste water is fed to a series of filters. After filtration, the treated waste water is placed in an outfall tank for subsequent discharge under Bayer's TPDES discharge permit.

Influent waste waters that enter the plant via the ''brine waste water header'' are placed in dedicated brine tanks and a brine carbon absorption system. After filtration, the brine waste water is commingled in the outfall tank with the treated normal waste water prior to being discharged in accordance with the Bayer TPDES discharge permit.

Treatment of the waste waters, which result from the manufacturing process generates the effluent that is classified as K027, K104, K111, and K112 listed hazardous wastes pursuant to 40 CFR § 261.31. The 40 CFR Part 261 Appendix VII hazardous constituents which are the basis for listing K027, K104, K111, and K112 hazardous wastes are: toluene diisocyanate, aniline, benzene, diphenylamine, nitrobenzene, phenylenediamine, 2,4-dinitrotoluene, 2,4-toluenediamine, o-toluidine, and p-toluidine.

C. What Information Did Bayer Submit To Support This Petition?

To support its petition, Bayer submitted:

(1) Results of the total constituent analysis for volatile and semivolatile organics, pesticides, herbicides, dioxins/furans, PCBs and metals for six samples.

(2) Descriptions of the waste water treatment process and effluent.

D. What Were the Results of Bayer's Analyses?

EPA believes that the descriptions of Bayer's waste water treatment process, in addition to the analytical data submitted in support of the petition show that the treated effluent is nonhazardous. Analytical data from Bayer's treated effluent samples were used in the Delisting Risk Assessment Software. The data summaries for detected constituents are presented in Table 1. EPA has reviewed the sampling procedures used by Bayer and has determined they satisfy EPA's criteria for collecting representative samples of the variations in constituent concentrations in the treated effluent. The data submitted in support of the petition show that constituents in Bayer's waste is presently below health-based risk levels used in the delisting decision-making. EPA believes that Bayer has successfully demonstrated that the treated effluent is nonhazardous.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS OF THE TREATED EFFLUENT AND CORRESPONDING DELISTING LIMITS [1]

Chemical name	Waste stream total concentration (mg/kg)	Maximum allowable concentration (mg/kg)
Phenylenediamine, m-	5.00E–02	8.79E–01
Bis(2-ethylhexyl)phthalate	1.94E–03	1.26E+03
Di-n-octyl phthalate	2.50E–03	4.54E+02
Dinitrotoluene, 2,4-	1.50E–03	4.51E–03
Diphenylamine	1.50E–03	1.18E+01
Dioxane, 1,4-	1.40E+00	1.76E+00
Pyrene	2.00E–03	3.90E+01
Fluoranthene	2.50E–03	2.46E+01
Cyanide	2.84E–02	4.60E–01
Aniline	2.56E–03	6.80E–01
Tetrachloroethane, 1,1,1,2-	1.00E–03	7.03E–01
Acetone	2.80E+00	1.46E+01
Chloroform	1.40E–02	7.70E–02
Benzene	3.00E–03	5.90E–02
Mercury	6.80E–04	3.23E–02
Nickel	9.16E–02	1.13E+01
Thallium	5.00E–03	3.34E–02
Antimony	7.10E–03	8.16E–02
Arsenic	8.20E–03	3.85E–01

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS OF THE TREATED EFFLUENT AND CORRESPONDING DELISTING LIMITS [1]—Continued

Chemical name	Waste stream total concentration (mg/kg)	Maximum allowable concentration (mg/kg)
Barium	1.04E–01	2.22E+01
Chromium	9.10E–03	1.53E+02
Copper	1.02E–01	3.62E+03
Vanadium	1.38E–02	8.38E+00
Zinc	8.33E–02	1.12E+02
Methylene chloride	1.00E–03	2.90E–02
Bromodichloromethane	2.00E–03	7.19E–02
Selenium	9.10E–03	2.30E–01
Methyl ethyl ketone	1.00E–02	8.79E+01
Di-n-butyl phthalate	2.08E–03	1.49E+02
Toluidine, o-	2.00E–03	1.71E–02
Acetophenone	8.90E–04	1.58E+01
Toluidine, p-	1.50E–03	2.15E–02
Toluene diisocyanate	<1.0 E–02	1.0E–02
Nitrobenzene	1.50E–03	7.88E–02
2,4 toluenediamine	<1.0 E–02	1.21E–03

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

< Denotes that the constituent was below the detection limit. Concentrations reported below detect are not believed to be present in the waste.

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

For this delisting determination, we assumed that the most reasonable, worst case scenario would be if the effluent were disposed in a surface impoundment and we considered transport of waste constituents through ground water, surface water and air.

We evaluated Bayer'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. The DRAS uses EPA's Composite Model for leachate migration with Transformation Products (EPACMTP) to predict the potential for release to groundwater from the wastes and subsequent routes of exposure to a receptor. From a release to ground water, we considered routes of exposure to a human receptor via ingestion of contaminated ground water, inhalation from ground water via showering and dermal contact while bathing. The DRAS program evaluates the subsequent routes of exposure to a human receptor from such releases through exposure pathways of fish ingestion and ingestion of drinking water. The DRAS also considers releases of waste particles and volatile emissions to air from the surface of an open impoundment. From a release to air, we considered as routes of exposure of inhalation of particulates and absorption into the lungs; ingestion of particulates eliminated from respiratory passages and subsequently swallowed, air deposition of particulates and subsequent ingestion of the soil/waste mixture; and inhalation of volatile constituents.

We used the maximum estimated waste volume and the maximum reported total concentration to estimate the constituent concentrations in the ground water, soil, surface water and/or air.

Assuming a cancer risk of 1×10^{-5} and a hazard quotient of one, the DRAS program back calculated a maximum allowable concentration level which did not exceed protective levels in the waste for each constituent at the given annual waste volume of 18,071,150 cubic yards (5.475 billion gallons).

F. What Did EPA Conclude About Bayer Analysis?

EPA concluded, after reviewing Bayer's waste water treatment process that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by-products in Bayer's wastes. In addition, on the basis of explanations and analytical data provided by Bayer, pursuant to § 260.22, EPA concludes that the effluent does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. See §§ 261.21, 261.22 ,261.23, and 261.24 respectively.

G. What Other Factors Did EPA Consider in Its Evaluation?

During the evaluation of this petition, EPA also considered the potential impact of the petitioned waste via non-ground water routes (*i.e.*, air emissions and surface runoff) for the treated effluent. With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from the petitioned waste is unlikely. No appreciable air releases are likely from the treated effluent under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from the waste water in an open surface impoundment. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from the treated effluent waste water.

H. What Is EPA's Evaluation of This Delisting Petition?

The descriptions by Bayer of the hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable concentrations (See Table 1). EPA believes that the treated effluent generated by Bayer contains hazardous constituents at levels, which will present minimal short-term and long-term threats to human health and the environment.

Thus, EPA believes that it should grant to Bayer an exclusion for the treated effluent. EPA believes that the

data submitted in support of the petition shows the Bayer treated effluent to be nonhazardous.

EPA has reviewed the sampling procedures used by Bayer and has determined they satisfy EPA's criteria for collecting representative samples of variable constituent concentrations in the treated effluent. The data submitted in support of the petition show that constituents in Bayer's wastes are presently below the compliance-point concentrations used in the delisting decision-making process and would not pose a substantial hazard to the environment and the public. EPA believes that Bayer has successfully demonstrated that the treated effluent is nonhazardous.

EPA, therefore, proposes to grant an exclusion to Bayer, in Baytown, Texas, for the treated effluent described in its June 2003 petition. EPA's decision to exclude this waste is based on analysis performed on samples taken of the treated effluent.

If EPA finalizes the proposed rule, EPA will no longer regulate the treated effluent under Parts 262 through 268 and the permitting standards of Part 270.

IV. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, Bayer, must comply with the requirements in 40 CFR Part 261, Appendix IX, Table 2 as amended by this notice. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituent concentrations that Bayer must test for in the treated effluent, below which these wastes would be considered nonhazardous.

EPA selected the set of inorganic and organic constituents specified in paragraph (1) and listed in 40 CFR Part 261, Appendix IX, Table 2, based on information in the petition. EPA compiled the inorganic and organic constituents list from descriptions of the manufacturing process used by Bayer, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the total concentrations of the treated effluent. The limits described here do not relieve Bayer of its duty to comply with discharge limits described in its TPDES permit for the effluent.

(2) Waste Holding and Handling

Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) has occurred for two consecutive quarterly sampling events. For example, if Bayer is issued a final exclusion in August, the first quarter samples are due in November and the second quarter samples are due in February. If EPA deems that both the first and second quarter samples (a total of four) meet all the delisting limits, classification of the waste as non-hazardous cannot begin until March. If constituent levels in any sample taken by Bayer exceed any of the delisting levels set in paragraph (1), Bayer must do the following: (i) notify EPA in accordance with paragraph (6), and; (ii) manage and dispose the treated effluent per its TPDES discharge permit as hazardous waste generated under Subtitle C of RCRA. The delisting for the treated effluent applies only during periods of TPDES compliance.

(3) Verification Testing Requirements

Bayer must complete a verification testing program on the treated effluent to assure that the waste does not exceed the maximum levels specified in paragraph (1). If EPA determines that the data collected under this paragraph does not support the data provided for in the petition, the exclusion will not cover the tested waste. This verification program operates on two levels.

The first part of the quarterly verification testing program consists of testing a batch of treated effluent for specified indicator parameters as per paragraph (1). Each quarterly sampling event will consist of at least two samples of the treated effluent. Levels of constituents measured in the samples of the treated effluent that do not exceed the levels set forth in paragraph (1) can be considered nonhazardous after two consecutive quarters of sampling data meet the levels listed in paragraph (1).

The second part of the verification testing program is the annual testing of two representative composite samples of treated effluent for all constituents specified in paragraph (1).

If Bayer demonstrates for two consecutive quarters complete attainment of all specified limits, then Bayer may request approval of EPA to reduce the frequency of testing to annually. If, after review of performance of the treatment system, EPA finds that annual testing is adequately protective of human health and the environment, then EPA may authorize Bayer to reduce the quarterly comprehensive sampling frequency to an annual basis. If the annual testing of the waste does not meet the delisting levels in paragraph 1, Bayer must notify EPA according to the requirements in paragraph 6. EPA will then take the appropriate actions necessary to protect human health and the environment per paragraph 6. Bayer must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

The exclusion is effective upon publication in the **Federal Register** but the change in waste classification as ''non-hazardous'' cannot begin until two consecutive quarters of verification sampling comply with the levels specified in paragraph 1. The waste classification as ''non-hazardous'' is also not authorized if Bayer fails to perform the quarterly and yearly testing as specified herein. Should Bayer fail to conduct the quarterly/yearly testing as specified herein, then disposal of treated effluent as delisted waste may not occur in the following quarter(s)/year(s) until Bayer obtains the written approval of EPA.

(4) Changes in Operating Conditions

Paragraph (4) would allow Bayer the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment processes. However, Bayer must prove the effectiveness of the modified process and request approval from EPA. Bayer must manage wastes generated during the new process demonstration as hazardous waste through verification sampling within 30 days of start-up.

(5) Data Submittals

To provide appropriate documentation that the Bayer facility is managing the treated effluent, Bayer must compile, summarize, and keep delisting records on-site for a minimum of five years. It should keep all analytical data obtained through paragraph (3), including quality control information, for five years. Paragraph (5) requires that Bayer furnish these data upon request for inspection by any employee or representative of EPA or the State of Texas.

If the proposed exclusion is made final, then it will apply only to 18,071,150 cubic yards (5.475 billion gallons) per calendar year of treated effluent generated at the Bayer facility after successful verification testing.

EPA would require Bayer to submit additional verification data under any of the following circumstances:

(a) If Bayer significantly alters the manufacturing process treatment system except as described in paragraph (4).

(b) If Bayer uses any new manufacturing or production

process(es), or significantly changes the current process(es) described in its petition; or

(c) If Bayer makes any changes that could affect the composition or type of waste generated.

Bayer must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream.

Bayer must manage waste volumes greater than 18,071,150 cubic yards (5.475 billion gallons) per calendar year of treated effluent as hazardous waste until EPA grants a revised exclusion. When this exclusion becomes final, the management of the treated effluent by Bayer covered in this petition would be relieved from Subtitle C jurisdiction. Bayer may not classify the waste as non-hazardous until the revised exclusion is finalized.

(6) Reopener

The purpose of paragraph (6) is to require Bayer to disclose new or different information related to a condition at the facility or disposal of the waste, if it is pertinent to the delisting. Bayer must also use this procedure, if the waste sample in the annual testing fails to meet the levels found in paragraph (1). This provision will allow EPA to reevaluate the exclusion, if a source provides new or additional information to EPA. EPA will evaluate the information on which it based the decision to see, if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented.

This provision expressly requires Bayer to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

It is EPA's position that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. § 551 (1978) *et seq.*, to reopen a delisting decision. EPA may reopen a delisting decision when it receives new information that calls into question the assumptions underlying the delisting.

EPA believes a clear statement of its authority in delistings is merited in light of EPA's experience. *See* Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations into the environment than the concentrations predicted when conducting the TCLP, thus leading EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations case-by-case. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. *See* APA section 553(b).

B. What Happens, if Bayer Violates the Terms and Conditions?

If Bayer violates the terms and conditions established in the exclusion, EPA will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, EPA will evaluate the need for enforcement activities on a case-by-case basis. EPA expects Bayer to conduct the appropriate waste analysis and comply with the criteria explained above in paragraph (1) of the exclusion.

V. Public Comments

A. How May I as an Interested Party Submit Comments?

EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to the Chief, Corrective Action and Waste Minimization Section, Multimedia Permitting and Planning Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to the Industrial Hazardous Waste Permits Division, Technical Evaluation Team, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, TX 78711–3087. Identify your comments at the top with this regulatory docket number: R6–FY04–Bayer. You may submit your comments electronically to Michelle Peace at *peace.michelle@epa.gov*.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at the U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, TX 75202. It is available for viewing in EPA Freedom of Information Act Review Room from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages and at fifteen cents per page for additional copies.

VI. Regulatory Impact

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 this 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.

VII. 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, EPA hereby 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.

VIII. Paperwork Reduction Act

Information collection and recordkeeping 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.

IX. 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, 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's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

EPA finds that this delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. 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, EPA 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 EPA. This proposed rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Because this action does not involve any requirements that affect Indian tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

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 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 to have ''meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act, EPA is directed 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 Act requires that EPA 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, EPA has no need to consider the use of voluntary consensus standards in developing this final rule.

XIII. 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'' are 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 imposes 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. EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA 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.

Lists 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: September 24, 2004.

Bill Luthans,

Acting Division Director, Multimedia Permitting and Planning 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 2 of Appendix IX of part 261 add the following waste stream in alphabetical order by facility to read as follows:

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

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * *
Bayer Polymers	Baytown, TX	Outfall 007 treated effluent (EPA Hazardous Waste Nos. K027, K104, K111, and K112) generated at a maximum rate of 18,071,150 cubic yards (5.475 billion gallons) per calendar year after [publication date of the final rule] as it exits the Outfall Tank and disposed in accordance with the TPDES permit. The delisting levels set do not relieve Bayer of its duty to comply with the limits set in its TPDES permit. For the exclusion to be valid, Bayer must implement a verification testing program that meets the following Paragraphs: (1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/kg specified in this paragraph. (A) Outfall No. 7 Treated Effluent Total Concentrations (mg/kg): Antimony—0.0816; Arsenic—0.385, Barium—22.2; Chromium—153.0; Copper—3620.0; Cyanide—0.46; Mercury—0.0323; Nickel—11.3; Selenium—0.23; Thallium—0.0334; Vanadium—8.38; Zinc—112.0; Acetone—14.6; Acetophenone—15.8; Aniline—0.680; Benzene—0.0590; Bis(2-ethylhexyl)phthalate—1260.0; Bromodichloromethane—0.0719; Chloroform—0.077; Di-n-octyl phthalate—454.0; 2,4-Dinitrotoluene—0.00451; Diphenylamine—11.8; 1,4-Dioxane—1.76; Di-n-butyl phthalate—149.0; Fluoranthene—24.6; Methylene chloride—0.029; Methyl ethyl ketone—87.9;Nitrobenzene—0.0788; m-phenylenediamine—0.879; Pyrene—39.0; 1,1,1,2-Tetrachloroethane—0.703; o-Toluidine—0.0171; p-Toluidine—0.215; 2,4-Toluenediamine—0.00121. Toluene diisocyanate—0.001. (2) Waste Holding and Handling: (A) Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) for the treated effluent has occurred for two consecutive quarterly sampling events. The delisting for the treated effluent applies only during periods of TPDES compliance. (B) If constituent levels in any sample taken by Bayer exceed any of the delisting levels set in paragraph (1) for the treated effluent, Bayer must do the following: (i) notify EPA in accordance with paragraph (6) and (ii) manage and dispose the treated effluent as hazardous waste generated under Subtitle C of RCRA. (3) Quarterly Testing Requirements: Upon this exclusion becoming final, Bayer may perform quarterly analytical testing by sampling and analyzing the treated effluent as follows: (A)(i) Collect two representative composite samples of the treated effluent at quarterly intervals after EPA grants the final exclusion. The first composite samples may be taken at any time after EPA grants the final approval. Sampling should be performed in accordance with the sampling plan approved by EPA in support of the exclusion. (ii) Analyze the samples for all constituents listed in paragraph 1. Any composite sample taken that exceeds the delisting levels listed in paragraph (1) for the treated effluent must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements its TPDES discharge permit. (iii) Within thirty (30) days after taking its first quarterly sample, Bayer will report its first quarterly analytical test data to EPA. If levels of constituents measured in the samples of the treated effluent do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, Bayer can manage and dispose the nonhazardous treated effluent according to all applicable solid waste regulations. (4) Annual Testing:

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(i) If Bayer completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent with a level which exceeds the limits set forth in paragraph (1), Bayer may begin annual testing as follows: Bayer must test two representative composite samples of the treated effluent for all constituents listed in paragraph (1) at least once per calendar year. (ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution) for all constituents listed in paragraph (1). (iii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken. (4) Changes in Operating Conditions: If Bayer 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), it must notify EPA in writing; it 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 it has received written approval to do so from EPA. Bayer must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream. (5) Data Submittals: Bayer must submit the information described below. If Bayer 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). Bayer must: (A) Submit the data obtained through paragraph 3 to the Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, U. S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, Texas 75202, within the time specified. All supporting data can be submitted on CD–ROM or some comparable electronic media. (B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when either 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

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) If, anytime after disposal of the delisted waste Bayer possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water 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 Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph 1, Bayer must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If Bayer 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 Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/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 Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director 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 EPA action is not necessary. The facility shall have 10 days from the date of the Division Director'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 Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise.
*	*	* * * * *

[FR Doc. 04–22235 Filed 10–1–04; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7823–7]

Nebraska: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Nebraska has applied to the EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act. The EPA proposes to grant final authorization to Nebraska. In the ''Rules and Regulations'' section of this **Federal Register**, the EPA is authorizing the changes by an immediate final rule. The EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we receive written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by November 3, 2004.

ADDRESSES: Comments may be mailed to Lisa Haugen, Environmental Protection Agency, ARTD/RESP, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the direct final rule which is located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen at the above address, by phone at (913) 551–7877, or by e-mail at *haugen.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: September 2, 2004.

William Rice,

Acting Regional Administrator, Region 7.

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