ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7826–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA (also, ''the Agency'' or ''we'' in this preamble) is granting a petition submitted by General Motors Corporation (GM) Lordstown Assembly Plant in Lordstown, Ohio, to exclude or ''delist'' up to 2,000 cubic yards of wastewater treatment sludge from the conversion coating on aluminum, RCRA hazardous waste F019, generated by its wastewater treatment plant from the lists of hazardous wastes contained in Subpart D of 40 CFR part 261.

After analysis, the EPA has concluded that the petitioned waste is not hazardous when disposed of in a Subtitle D landfill. Today's action conditionally excludes the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) only if the waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste.

EFFECTIVE DATE: This rule is effective on October 12, 2004.

ADDRESSES: The RCRA regulatory docket for this final rule, number R5–LRDTWN–04, 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 at (312) 886–1482 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

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

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

I. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in Title 40, Code of Federal Regulations (CFR) 261.11 and in the background document for the waste. A petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether any factors other than those for which the waste was listed warrant retaining it as a hazardous waste.

A generator remains obligated under RCRA to confirm that its waste remains nonhazardous even if EPA has ''delisted'' the waste.

B. What Regulations Allow a Waste To Be Delisted?

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

II. GM Lordstown's Delisting Petition

A. What Waste Did GM Lordstown Petition EPA To Delist?

In February, 1999 GM submitted a petition to exclude wastewater treatment sludge from the conversion coating of aluminum, RCRA hazardous F019, generated at its Lordstown Assembly Plant in Lordstown Ohio from the list of hazardous wastes contained in 40 CFR 261.31.

B. What Information Must the Generator Supply?

A generator must provide sufficient information to allow the EPA to determine that the waste does not meet any of the criteria for which it was listed as a hazardous waste, and that there are no other factors, including additional constituents, that could cause the waste to be hazardous. To support its petition, GM submitted descriptions and schematic diagrams of its manufacturing processes and the results of the chemical analysis of the petitioned waste.

III. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

Today the EPA is finalizing an exclusion for up to 2,000 cubic yards of wastewater treatment sludge generated annually at the GM Lordstown Assembly Plant in Lordstown, Ohio.

GM petitioned EPA to exclude, or delist, the wastewater treatment sludge because GM believed that the petitioned waste does not meet the criteria for which it was listed and that there are no additional constituents or factors which could cause the waste to be hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). *See* section 222 of HSWA, 42 United States Code (U.S.C.) 6921(f), and 40 CFR 260.22(d)(2)–(4).

On June 25, 2004 EPA proposed to exclude or delist the wastewater treatment sludge generated at GM's Lordstown facility from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (65 FR 58015). EPA considered all comments received, and for reasons stated in both the proposal and this document, we believe that the wastewater treatment sludge from GM's Lordstown facility should be excluded from hazardous waste control.

B. What Are the Terms of This Exclusion?

GM must dispose of the wastewater treatment sludge in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial waste. Any amount exceeding 2,000 cubic yards, annually, is not delisted under this exclusion. GM must verify on a quarterly basis that the concentrations of the constituents of concern do not exceed the allowable levels set forth in this exclusion. This exclusion is effective only if all

conditions contained in today's rule are satisfied.

C. When Is the Delisting Effective?

This rule is effective October 12, 2004. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does 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 having a dual system that includes Federal RCRA requirements and their own requirements, or 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. Because a dual system (that is, both Federal and State programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

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 transports the petitioned waste to or manages the waste in any State with delisting authorization, GM must obtain a delisting from that State before it can manage the waste as nonhazardous in the State.

IV. Public Comments Received and EPA's Responses

Comments were received from Alliance of Automobile Manufacturers and General Motors, Worldwide Facilities Group. Both commenters were supportive of the proposed rule.

Comment: Commenter supports the proposed delisting and the current efforts of the Agency to develop a national solution to the F019 problem, recognizing that the process used by the automotive industry does not use the constituents of concern.

Response: The Agency is currently reviewing available data in order to assess how best to address the waste generated by zinc phosphating operations at automotive assembly plants.

Comment: Commenter expressed concern over the exceptionally long period of time required to delist this waste and urged the Region to expedite the final decision on this petition.

Response: The Region proceeded to prepare the final decision on this petition as soon as the comment period ended.

Comment: The version of the software used to evaluate a petition should be available to the public.

Response: The software initially used to evaluate this petition is available online. However, in the course of evaluating this petition, several errors were discovered in the software. Rather than wait until all errors could be identified and corrected in the software and the risk data could be updated, several allowable limits in this final rule were calculated manually. The software is currently being revised and an updated version will be available to the public again after data inputs have been updated and corrections have been made.

Comment: Total concentrations do not indicate the potential of a constituent to leach in a landfill and should not be used in setting allowable levels for this waste.

Response: Although total concentrations do not indicate leachability to groundwater, they are used to estimate potential risk from surface pathways including runoff to surface water, air dispersion, and volatilization in the plausible mismanagement scenario that the waste in the landfill is not always covered on a daily basis and that the surface water runoff is not always controlled.

Comment: The Alliance previously requested that EPA issue an interpretive rule to exclude this waste from the F019 classification. Because EPA did not act on the request or address the industry's concern, facilities have had to prepare costly and resource intensive individual petitions to delist this waste.

Response: The Agency is currently reviewing available data in order to assess how best to address the waste generated by zinc phosphating operations at automotive assembly plants.

Comment: EPA has not reduced the regulatory burden despite the pollution prevention efforts and the elimination of hexavalent chromium and cyanide from the waste.

Response: The Agency is reviewing the available data in order to assess how best to address the wastes generated by zinc phosphating operations at automotive assembly plants. The Agency must consider all factors including other constituents which could cause the waste to be hazardous.

Comment: By failing to address this concern, the EPA is penalizing the industry for the introduction of aluminum panels which could yield environmental benefits.

Response: EPA recognizes the value of introducing aluminum but must consider the presence of any constituent in the waste that could cause it to be hazardous. See above response.

V. Regulatory Impact

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

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

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

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

Dated: September 29, 2004.

Margaret M. Guerriero,

Director, Waste, Pesticides and Toxics Division.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

■ 2. In Table 1 of Appendix IX toPpart 261 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 Assembly Plant, Lordstown, Ohio	Waste water treatment plant sludge, F019, that is generated at General Motors Corporation's Lordstown Assembly Plant 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. Delisting Levels: (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—0.15; nickel—90; 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. 2. Quarterly Verification Testing: 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. 3. Changes in Operating Conditions: 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.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility/Address	Waste description
	4. Data Submittals: 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). 5. Reopener Language: (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.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3051, MB Docket No. 04–188, RM–9880]

Digital Television Broadcast Service; Glendive, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Glendive Broadcasting Corporation, substitutes DTV channel 10 for DTV channel 15 at Glendive. *See* 69 FR 30855, June 1, 2004. DTV channel 10 can be allotted to Glendive, Montana, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 47–03–15 N. and 104–40–45 W. with a power of 30, HAAT of 152 meters and with a DTV service population of 23,000. With this action, this proceeding is terminated.

DATES: Effective November 15, 2004.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04–188, adopted September 23, 2004, and released October 1, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 301–816–2820, facsimile 301–816–0169, or via-e-mail *joshir@erols.com*.

This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Commission will send a copy of this [Report & Order etc.] in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).