

Dated: April 3, 2009.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

■ For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as set forth below:

PART 228—[AMENDED]

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. Sections 1412 and 1418

■ 2. Section 228.15 is amended by adding paragraph (n)(6) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(n) * * *

(6) Rogue River, OR—Dredged Material Site

(i) *Location:* 42° 24'15.40" N, 124° 26'52.39" W; 42° 24'03.40" N, 124° 26'39.39" W; 42° 23'39.40" N, 124° 27'17.40" W; 42° 23'51.40" N, 124° 27'30.40" W (NAD 83)

(ii) *Size:* Approximately 1.1 kilometers long and 0.4 kilometers wide

(iii) *Depth:* Ranges from approximately 15 to 27 meters

(iv) *Primary Use:* Dredged material

(v) *Period of Use:* Continuing Use

(vi) *Restrictions:* (A) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13, from the Rogue River navigation channel and adjacent areas;

(B) Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP);

(C) Monitoring, as specified in the SMMP, is required.

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[FR Doc. E9-8660 Filed 4-14-09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA-R06-RCRA-2008-0456; SW-FRL-8787-9]

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

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is granting a petition

submitted by BAE Systems, Inc. (BAE) to exclude (or delist) the waste filter cake from its waste water treatment plant generated by BAE Sealy, Texas from the lists of hazardous wastes. This final rule responds to the petition submitted by BAE to delist F019 waste filter cake generated from the facility's waste water treatment plant. After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded the petitioned waste is not hazardous waste. This exclusion applies to 1,200 cubic yards per year of the F019 waste filter cake. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when it is disposed in a Subtitle D Landfill.

DATES: *Effective Date:* April 15, 2009.

ADDRESSES: The public docket for this final rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in EPA Freedom of Information Act review room on the 7th floor from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665-6444 for appointments. The reference number for this docket is EPA-R06-RCRA-2008-0456. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of \$0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD-C), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. For technical information concerning this notice, contact Wendy Jacques, Environmental Protection Agency Region 6, 1445 Ross Avenue, (6PD-F), Dallas, Texas 75202, at (214) 665-7395, or jacques.wendy@epa.gov.

SUPPLEMENTARY INFORMATION:

The information in this section is organized as follows:

- I. Overview Information
 - A. What action is EPA finalizing?
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 - C. What are the limits of this exclusion?
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 - C. How did BAE sample and analyze the waste data in this petition?
- IV. Public Comments Received on the Proposed Exclusion
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I. Overview Information

A. What action is EPA finalizing?

After evaluating the petition, EPA proposed, on September 23, 2008, to exclude the waste filter cake from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 73 FR 54760). EPA is finalizing the decision to grant BAE's delisting petition to have its waste filter cake managed and disposed as non-hazardous waste provided certain verification and monitoring conditions are met.

B. Why is EPA approving this action?

BAE's petition requests a delisting from the F019 waste listing under 40 CFR 260.20 and 260.22. BAE does not believe that the petitioned waste meets the criteria for which EPA listed it. BAE 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. See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)-(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final 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 non-hazardous 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 as 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 final decision to delist waste from BAE's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Sealy, Texas facility.

C. What are the limits of this exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in 40 CFR part 261, Appendix IX, Table 1 and the conditions contained herein are satisfied.

D. How will BAE manage the waste if it is delisted?

The waste filter cake from BAE will be disposed of in a RCRA Subtitle D landfill.

E. When is the final delisting exclusion effective?

This rule is effective April 15, 2009. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA, 42 U.S.C. 6930(b)(1) allows rules to become effective less than six months after the rule is published when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous waste. This reduction in existing requirements also provides a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How does this final rule affect 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 which have received authorization from EPA 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, 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.

EPA has also authorized some states (for example, Louisiana, Oklahoma, Georgia, and Illinois) to administer a RCRA 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 unless that state makes the rule part of its authorized program. If BAE transports the petitioned waste to or manages the waste in any state with delisting authorization, BAE must obtain delisting authorization from that state before it can manage the waste as non-hazardous in the state.

II. Background

A. What is a delisting petition?

A delisting petition is a request from a generator to EPA, or another agency with jurisdiction, to exclude or delist from the RCRA list of hazardous waste, certain wastes the generator believes should not be considered hazardous under RCRA.

B. What regulations allow facilities to delist a waste?

Under §§ 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste regulation by excluding them 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 40 CFR parts 260 through 265 and 268. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

C. What information must the generator supply?

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. Based on the information supplied by the generator, the Administrator must determine whether factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste. The generator must also supply information to demonstrate that the waste does not exhibit any of the characteristics defined in § 261.21–§ 261.24.

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

A. What waste did BAE petition EPA to delist?

On December 23, 2005, BAE petitioned EPA to exclude from the lists

of hazardous wastes contained in § 261.31, waste filter cake (F019) generated from its facility located in Sealy, Texas. The waste falls under the classification of listed waste pursuant to § 261.31.

B. How much waste did BAE propose to delist?

Specifically, in its petition, BAE requested that EPA grant a standard exclusion for 1,200 cubic yards per year of waste filter cake resulting from the treatment of waste waters from the manufacturing processes at its facility.

C. How did BAE sample and analyze the waste data in this petition?

To support its petition, BAE submitted:

- Analytical results of the toxicity characteristic leaching procedure and total constituent analysis for volatile and semi-volatile organics, pesticides, herbicides, dioxins/furans, PCBs and metals for seven filter cake samples;
- Analytical results from multiple pH leaching of metals; and
- Descriptions of the waste water treatment process.

IV. Public Comments Received on the Proposed Exclusion

A. Who submitted comments on the proposed rule?

No comments were received during the comment period. However, the EPA received a Freedom of Information request for BAE's original delisting petition and all supporting documents from Arnold & Porter LLP. The EPA submitted BAE's original delisting petition and all supporting documents, excluding all confidential material, to Arnold & Porter LLP.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (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 (OMB). 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.*) because it applies to a particular facility only. 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) (Pub. L. 104–4). Because this rule will affect only a particular facility,

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		<p>(3) Testing Requirements: Upon this exclusion becoming final, BAE may perform quarterly analytical testing by sampling and analyzing the filter cake as follows:</p> <p>(A) Quarterly Testing:</p> <p>(i) Collect two representative composite samples of the filter cake 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 must be performed in accordance with the sampling plan approved by EPA in support of the exclusion.</p> <p>(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 filter cake must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements.</p> <p>(iii) Within thirty (30) days after taking its first quarterly sample, BAE will report its first quarterly analytical test data to EPA. If levels of constituents measured in the samples of the filter cake do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, BAE can manage and dispose the non-hazardous filter cake according to all applicable solid waste regulations.</p> <p>(B) Annual Testing:</p> <p>(i) If BAE completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), BAE may begin annual testing as follows: BAE must test two representative composite samples of the filter cake for all constituents listed in paragraph (1) at least once per calendar year.</p> <p>(ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the BAE filter cake are representative for all constituents listed in paragraph (1).</p> <p>(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.</p> <p>(iv) The annual testing report should include the total amount of waste in cubic yards disposed during the calendar year.</p> <p>(4) Changes in Operating Conditions: If BAE 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 (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing and it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA.</p> <p>BAE 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.</p> <p>(5) Data Submittals: BAE must submit the information described below. If BAE 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). BAE must:</p> <p>(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.</p>

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		<p>(B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years.</p> <p>(C) Furnish these records and data when either EPA or the State of Texas requests them for inspection.</p> <p>(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:</p> <p>“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.</p> <p>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.</p> <p>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.”</p> <p>(6) Reopener</p> <p>(A) If, anytime after disposal of the delisted waste BAE 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.</p> <p>(B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph (1), BAE must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.</p> <p>(C) If BAE 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.</p> <p>(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.</p> <p>(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.</p> <p>(7) Notification Requirements</p> <p>BAE Systems must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision.</p> <p>(A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities.</p>

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
[FR Doc. E9-8646 Filed 4-14-09; 8:45 am] BILLING CODE 6560-50-P	EPA-R06-RCRA-2008-0457. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of \$0.15 per page for additional copies. FOR FURTHER INFORMATION CONTACT: Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD-C), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. For technical information concerning this notice, contact Youngmoo Kim, Environmental Protection Agency Region 6, 1445 Ross Avenue, (6PD-C), Dallas, Texas 75202, at (214) 665-6788, or kim.youngmoo@epa.gov .	EPA is finalizing the decision to grant Cooper Crouse-Hinds' delisting petition to have its WWTP sludge managed and disposed as non-hazardous waste provided certain verification and monitoring conditions are met. <i>B. Why is EPA approving this action?</i> Cooper Crouse-Hinds' petition requests a delisting from the F006 waste listing under 40 CFR 260.20 and 260.22. Cooper Crouse-Hinds does not believe that the petitioned waste meets the criteria for which EPA listed it. Cooper Crouse-Hinds 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. See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)-(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final 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 non-hazardous 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 as 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 final decision to delist waste from Cooper Crouse-Hinds' facility is based on the
ENVIRONMENTAL PROTECTION AGENCY		
40 CFR Part 261		
[EPA-R06-RCRA-2008-0457; SW-FRL-8787-8]		
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion		
AGENCY: Environmental Protection Agency.		
ACTION: Final rule.		
SUMMARY: Environmental Protection Agency (EPA) is granting a petition submitted by Cooper Crouse-Hinds to exclude (or delist) the sludge and filter sand (called sludge hereinafter) from its wastewater treatment plant (WWTP) generated by Cooper Crouse-Hinds in Amarillo, Texas from the lists of hazardous wastes. This final rule responds to the petition submitted by Cooper Crouse-Hinds, to delist the WWTP sludge with Hazardous Waste Number, F006. After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded the petitioned waste is not hazardous waste. This exclusion applies to 816 cubic yards per year of the WWTP sludge with Hazardous Waste Number: F006. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when it is disposed in a Subtitle D Landfill.	SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:	
DATES: <i>Effective Date:</i> April 15, 2009.	I. Overview Information	
ADDRESSES: The public docket for this final rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in EPA Freedom of Information Act review room on the 7th floor from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665-6444 for appointments. The reference number for this docket is	A. What action is EPA finalizing? B. Why is EPA approving this action? C. What are the limits of this exclusion? D. How will Cooper Crouse-Hinds manage the waste if it is delisted? E. When is the final delisting exclusion effective? F. How does this final rule affect states? II. Background A. What is a delisting? B. What regulations allow facilities to delist a waste? C. What information must the generator supply? III. EPA's Evaluation of the Waste Information and Data A. What waste did Cooper Crouse-Hinds petition EPA to delist? B. How much waste did Cooper Crouse-Hinds propose to delist? C. How did Cooper Crouse-Hinds sample and analyze the waste data in this petition? IV. Public Comments Received on the Proposed Exclusion A. Who submitted comments on the proposed rule? V. Statutory and Executive Order Reviews	
I. Overview Information		
<i>A. What action is EPA finalizing?</i>		
After evaluating the petition, EPA proposed on September 23, 2008, to exclude the WWTP sludge from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 73 FR 54770).		