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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 261**

[EPA-R06-RCRA-2009-0312; SW FRL-9206-8]

**Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Direct Final Exclusion****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is proposing to grant a petition submitted by Eastman Chemical Company-Texas Operations (Eastman) to exclude (or delist) certain solid wastes generated by its Longview, Texas, facility from the lists of hazardous wastes. EPA used the Delisting Risk Assessment Software (DRAS) Version 3.0 in the evaluation of the impact of the petitioned waste on human health and the environment.

**DATES:** This rule is effective on November 23, 2010 without further notice, unless EPA receives relevant adverse comment by October 25, 2010. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-RCRA-2009-0312 by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail:* [peace.michelle@epa.gov](mailto:peace.michelle@epa.gov).

3. *Mail:* Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD-C, 1445 Ross Avenue, Dallas, TX 75202.

4. *Hand Delivery or Courier.* Deliver your comments to: Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD-C, 1445 Ross Avenue, Dallas, TX 75202.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-RCRA-2009-0312. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any

personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, RCRA Branch, 1445 Ross Avenue, Dallas, TX 75202. The hard copy of the RCRA regulatory docket for this proposed rule, EPA-R06-RCRA-2009-0312, is available for viewing from 8 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays. 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. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** For further technical information

concerning this document or for appointments to view the docket or the Eastman facility petition, contact Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD-C, 1445 Ross Avenue, Dallas, TX 75202, by calling (214) 665-7430 or by e-mail at [peace.michelle@epa.gov](mailto:peace.michelle@epa.gov).

Your requests for a hearing must reach EPA by October 12, 2010. The request must contain the information described in 40 CFR 260.20(d) (hereinafter all sectional references are to 40 CFR unless otherwise indicated).

**SUPPLEMENTARY INFORMATION:** Eastman submitted a petition under 40 CFR 260.20 and 260.22(a). Section 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273. Section 260.22 (a) specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists.

The Agency 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 conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude the petitioned waste from this facility is non-hazardous with respect to the original listing criteria and that the waste process used will substantially reduce the likelihood of migration of hazardous constituents from this waste. We would also conclude that the processes minimize short-term and long-term threats from the petitioned waste to human health and the environment.

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## I. Overview Information

### A. What action is EPA approving?

EPA is approving the delisting petition submitted by Eastman to have three waste streams generated from its rotary kiln incinerator (RKI) excluded, or delisted, from the definition of a hazardous waste. These waste streams are the rotary kiln incinerator (RKI) bottom ash, RKI fly ash, and RKI scrubber water blowdown. The RKI bottom ash and the RKI fly ash are derived from the management of several F-, K-, and U-waste codes. These waste codes are F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359. The Scrubber water blowdown produced by the RKI's air pollution control equipment is also derived from the management of several F-, K-, and U-waste codes as well as certain characteristic hazardous wastes. These waste codes are D001, D002, D003, D007, D008, D018, D022, F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359. The RKI is authorized to manage a list of additional F-, K-, U-, and P-codes to cover off-site sources not attributed to the above waste codes. If these waste codes are not specifically listed in the delisting exclusion, they are not covered by the exclusion and can not be managed as non-hazardous, unless and until, the exclusion is modified to include them.

### B. Why is EPA approving this delisting?

Eastman's petition requests a delisting for three waste streams: The RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown listed as D001, D002, D003, D007, D008, D018, D022, F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117,

U140, U147, U161, U213, and U359. Eastman does not believe that the petitioned wastes meet the criteria for which EPA listed them. Eastman also believes no additional constituents or factors could cause the wastes 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 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 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 wastes do not meet the listing criteria and thus should not be a listed waste. EPA's decision to delist the wastes identified above from the facility is based on the information submitted in support of this rule, including descriptions of the waste and analytical data from the Eastman, Longview, Texas facility.

### C. How will Eastman manage the waste, if it is delisted?

Eastman will dispose of the fly ash and bottom ash in an onsite landfill. The scrubber water blowdown will be managed in the waste water treatment plant (WWTP). The sludge from the WWTP has been delisted. See Appendix IX to Part 261, Table 1. All management occurs on-site and will remain the same after the delisting is granted.

### D. When would the 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 which 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 the lists several times and codified them 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 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 non-hazardous 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 to determine 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 Eastman petition EPA to delist?*

Eastman petitioned EPA on December 1, 2008, to exclude from the lists of hazardous wastes contained in §§ 261.24, 261.31, and 261.32, certain wastes from its rotary kiln incineration system. The three waste streams included in the petition were: the RKI fly ash, RKI bottom ash and RKI scrubber water blowdown.

The waste streams are generated from the Eastman facility located in Longview, Texas. The RKI fly ash and RKI bottom ash are listed under EPA Hazardous Waste No. F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359. The Scrubber water blowdown produced by the RKI's air pollution control equipment is also derived from the management of several F-, K-, and U-waste codes as well as certain characteristic hazardous wastes. These waste codes are D001, D002, D003, D007, D008, D018, D022, F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359. Specifically, in its petition, Eastman requested that EPA grant exclusions for 1,000 cubic yards per calendar year of RKI fly ash; 750 cubic yards per calendar year of RKI bottom ash; and 643,000 cubic yards (500,000 million gallons) of RKI scrubber water blowdown waste resulting from the operations of the rotary kiln incinerator at its facility.

#### *B. Who is Eastman and what process do they use to generate the petitioned waste?*

Eastman manufactures a variety of chemicals and plastics at its facility located in Longview, Texas. The Longview, Texas facility occupies roughly 6,000 acres of land and produces approximately 40 chemical and plastic product lines. While Eastman owns and operates a majority of individual production plants at the facility, there are some production

plants that are not owned by Eastman but are located on the facility. Eastman provides utility support to these captured facilities, such use of the wastewater treatment plant and waste management in the RKI through service agreements. The production processes employed by the captured facilities produce products in conjunction with Eastman. The Eastman-Longview Texas facility also accepts waste for processing in the RKI from other off-site Eastman facilities. This facility does not accept wastes from sources outside the Eastman family. The unit is dedicated to wastes similar to those generated by Eastman only facilities.

The RKI is a thermal combustion unit owned and operated by Eastman that is used for the destruction of hazardous and non-hazardous wastes generated by Eastman Chemicals as well as its captured facilities. The RKI operates at 1700–2200 °F and is RCRA permitted to manage a large variety of wastes including wastes generated from other Eastman divisions. These wastes can have a variety of D-, F-, U-, K-, and P-codes. In practice, the waste codes managed in the RKI will be associated with production processes from Eastman Chemicals.

The RKI Bottom and Fly Ashes and Scrubber Water Blowdown are generated by the RKI as residuals from the waste combustion process. Bottom ash is generated when large particulate matter drops from the secondary combustion chamber (SCC) into an ash removal pit situated directly under the SCC. Bottom ashes are removed from the pit via a chain driven ash conveyor system and placed in large containers for subsequent management. They are tested, may have polymers added to them for stabilization and disposed of in an on-site hazardous waste landfill. Fly ash is lighter than bottom ash and is associated with finer particulate matter that leaves the SCC as part of the “exhaust” gas. From the SCC, exhaust gases pass through a rapid quench tank and condenser, which have water layers to capture smaller particulate matter. Exhaust gas then proceeds through a wet scrubber where more particulate matter is removed. The “blowdown” water streams through the quench/condenser and scrubber systems are routed to a blowdown tank (clarifier). In the tank, the combined blowdown stream (fly ash and water) is phase separated with the scrubber water blowdown then going to the wastewater system and fly ash slurry going to a rotary filter for dewatering. It is at this point in the system that scrubber water blowdown is defined. It is also at this point in the system that dewatered

solids from the rotary filter are considered fly ash. The dewatered fly ash is removed from the filter and placed in large containers for subsequent management which can consist of testing, addition of polymers (as needed), and disposal in the on-site hazardous waste landfill.

Eastman intends to dispose of the delisted RKI bottom ash and RKI fly ash at a on-site Subtitle D Landfill, and the RKI scrubber water blowdown will be treated in the Wastewater Treatment Plant. Treatment of process wastes and wastes from captured facilities generate the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown that is

classified as F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359 listed hazardous wastes pursuant to 40 CFR 261.31 and 261.32. The 40 CFR Part 261 Appendix VII hazardous constituents which are the basis for listing can be found in Table 1 and Table 2.

TABLE 1—EPA WASTE CODES FOR RKI ASHES AND THE BASIS FOR LISTING

Waste code	Basis for listing
F001 .....	Tetrachloroethylene, methylene chloride trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F002 .....	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane.
F003 .....	N.A., xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexane, methanol.
F005 .....	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane.
F039 .....	All constituents for which treatment standards are specified for multi-source leachate (wastewaters and nonwastewaters) under 40 CFR 268.43, Table CCW.
K009 .....	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid.
K010 .....	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde.
U001 .....	Acetaldehyde.
U002 .....	Acetone.
U028 .....	Bis (2-ethyl hexyl) phthalate.
U031 .....	n-Butyl alcohol.
U069 .....	Dibutyl phthalate.
U088 .....	Di-ethyl phthalate.
U107 .....	Di-n-octyl phthalate.
U112 .....	Ethyl acetate.
U115 .....	Ethylene oxide.
U117 .....	Ethane, 1,1'-oxybis-(l).
U122 .....	Formaldehyde.
U140 .....	Isobutyl alcohol.
U147 .....	Maleic anhydride.
U154 .....	Methanol.
U159 .....	Methyl ethyl ketone.
U161 .....	Methyl isobutyl ketone.
U213 .....	Tetrahydrofuran.
U220 .....	Toluene.
U226 .....	1,1,1-Trichloroethane (methyl chloroform).
U239 .....	Xylene.
U359 .....	Ethylene glycol monoethyl ether.

TABLE 2—EPA WASTE CODES FOR RKI ASHES AND THE BASIS FOR LISTING

Waste code	Basis for listing
F001 .....	Tetrachloroethylene, methylene chloride trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F002 .....	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane.
F003 .....	N.A., xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexane, methanol.
F005 .....	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane.
F039 .....	All constituents for which treatment standards are specified for multi-source leachate (wastewaters and nonwastewaters) under 40 CFR 268.43, Table CCW.
K009 .....	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid.
K010 .....	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde.
U001 .....	Acetaldehyde.
U002 .....	Acetone.
U028 .....	Bis (2-ethyl hexyl) phthalate.
U031 .....	n-Butyl alcohol.
U069 .....	Dibutyl phthalate.
U088 .....	Di-ethyl phthalate.
U107 .....	Di-n-octyl phthalate.
U112 .....	Ethyl acetate.
U115 .....	Ethylene oxide.
U117 .....	Ethane, 1,1'-oxybis-(l).
U122 .....	Formaldehyde.
U140 .....	Isobutyl alcohol.
U147 .....	Maleic anhydride.
U154 .....	Methanol.
U159 .....	Methyl ethyl ketone.
U161 .....	Methyl isobutyl ketone.

TABLE 2—EPA WASTE CODES FOR RKI ASHES AND THE BASIS FOR LISTING—Continued

Waste code	Basis for listing
U213 .....	Tetrahydrofuran.
U220 .....	Toluene.
U226 .....	1,1,1-Trichloroethane (methyl chloroform).
U239 .....	Xylene.
U359 .....	Ethylene glycol monoethyl ether.
D001 .....	Ignitability.
D002 .....	Corrosivity.
D003 .....	Reactivity.
D007 .....	Chromium.
D008 .....	Lead.
D018 .....	Benzene.
D022 .....	Chloroform.

*C. What information did Eastman submit to support this petition?*

To support its petition, Eastman submitted:

1. Analytical results of the toxicity characteristic leaching procedure and total constituent analysis for volatile and semivolatile organics, pesticides, herbicides, dioxins/furans, PCBs and metals for eight samples for the RKI fly ash and RKI bottom ash, and RKI scrubber water blowdown;

2. Analytical results of the total constituent analysis for volatile and semivolatile organics, pesticides, herbicides, dioxins/furans, PCBs and metals for eight samples for the RKI scrubber water blowdown;

3. Analytical results from multiple pH leaching of metals and;

4. Description of the operations and waste received of the RKI.

*D. What were the results of Eastman's analysis?*

EPA believes that the descriptions of Eastman's waste, and the analytical data submitted in support of the petition show that the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown are non-hazardous. Analytical data from Eastman's RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown samples were used in the Delisting Risk Assessment Software (DRAS). The data summaries for detected constituents are

presented in Table 3, 4, and 5. EPA has reviewed the sampling procedures used by Eastman and has determined that they satisfy EPA's criteria for collecting representative samples of the variations in constituent concentrations in the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown. The data submitted in support of the petition show that constituents in Eastman's wastes are presently below health-based risk levels used in the delisting decision-making. EPA believes that Eastman has successfully demonstrated that the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown are non-hazardous.

TABLE 3—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE RKI BOTTOM ASH<sup>1</sup>

Constituent	Maximum total (mg/kg)	Maximum TCLP (mg/l)	Maximum allowable TCLP delisting level (mg/L)
Antimony .....	16	0.062	0.801
Acetone .....	0.194	0.772	33.8
Arsenic .....	8.8	0.029	0.126
Acetaldehyde .....	1.37	<0.0100	5.35
Acenaphthylene .....	3.5	0.014	31.9
Anthracene .....	1.6	<0.0100	77.9
Acenaphthene .....	0.721	0.014	31.9
Barium .....	370	0.7	100
Benzene .....	<0.170	0.0048	0.231
Bis(2-ethylhexyl)phthalate .....	0.23	0.017	103.0
Benzo(a) anthracene .....	0.763	<0.0100	0.211
Benzo(a) pyrene .....	0.519	<0.0100	79.1
Benzo(b) flouranthene .....	0.343	<0.0100	673
Bromomethane .....	0.057	<0.0100	0.0526
n-Butyl alcohol .....	4.5	<0.0100	174
Cadmium .....	1.5	0.002	0.274
Chromium .....	14	0.02	5.0
Cobalt .....	31	0.023	0.643
Copper .....	29	0.048	73.8
Chloroform .....	0.0024	0.0047	0.241
Chrysene .....	0.545	<0.0100	211
Chloromethane .....	0.034	<0.0100	18.2
Cyanide .....	0.195	0.125	9.25
4,4-DDT .....	0.0032	<0.0100	0.0103
Di-n-butyl phthalate .....	<0.010	0.005	73.9
Dieldrin .....	0.0013	<0.0100	2.78
Ethylbenzene .....	0.0086	0.00855	32.6
Fluorene .....	2.24	0.031	14.7
Formaldehyde .....	4.6	0.23	347
Fluoranthrene .....	1.22	<0.0100	7.39

TABLE 3—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE RKI BOTTOM ASH<sup>1</sup>—Continued

Constituent	Maximum total (mg/kg)	Maximum TCLP (mg/l)	Maximum allowable TCLP delisting level (mg/L)
Isobutanol	1.9	1.88	521
Lead	7.1	0.016	1.95
Mercury	<0.017	<0.0002	0.2
Methyl Isobutyl ketone	0.0035	0.0048	139
2-Methylnaphthalene	0.501	0.012	2.18
Methylene Chloride	0.072	0.131	0.237
Naphthalene	<0.022	<0.0100	0.0983
Nickel	44,000	52	54.1
Phenanthrene	6.48	0.039	14.7
Pyrene	2.67	<0.0100	13.4
Selenium	15	0.074	1.0
Silver	0.027	<0.0020	5.0
Tetrachlorodibenzo-p-dioxin (TCDD) 2,3,7,8-	0.31E-06	<5.92E-08	7.46 E-06 mg/kg total
Thallium	3.7	0.017	0.110
Tin	3.9	<0.0100	22.5
Toluene	0.015	0.0066	45.4
Vanadium	7.1	0.11	10.4
Xylenes	0.049	0.0486	28.7
Zinc	550	8.5	600

<sup>1</sup> 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.

TABLE 4—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE RKI FLY ASH<sup>1</sup>

Constituent	Maximum total (mg/kg)	Maximum TCLP (mg/l)	Maximum allowable TCLP delisting level (mg/L)
Antimony	25	0.18	0.433
Acetone	0.177	0.959	2070
Arsenic	18	0.045	0.418
Acetaldehyde	255	<0.001	0.6264
Barium	110	1.4	100
Bis(2-ethylhexyl)phthalate	0.157	0.006	0.0522
Cadmium	2.9	0.011	0.362
Chromium	5.9	0.015	5.0
Cobalt	86	0.1	0.852
Copper	100	0.52	97.1
Chloroform	0.002	0.0044	0.319
Chloromethane	0.0285	0.0018	24.1
Cyanide	0.17	<0.001	0.0154
Delta BHC	0.0031	<0.001	3
1,2-Dichlorobenzene	<0.5	0.0027	37
1,3-Dichlorobenzene	<0.5	0.0023	37
Formaldehyde	5.44	0.272	461
Lead	12	0.021	2.45
Methanol	12.2	<0.001	0.6743
Methyl isobutanol ketone	0.004	0.0048	184
Methylene Chloride	0.047	0.137	0.315
Nickel	110,000	47	53.8
Nitrobenzene	<0.5	0.011	1.15
Selenium	25	0.082	1.0
Silver	2.4	<0.001	5.0
Thallium	6.7	0.019	0.146
Tin	7.8	<0.001	22.5
Toluene	0.002	0.037	60.1
Vanadium	6.2	<0.001	14.36
Zinc	4200	<0.001	11.3
Tetrachlorodibenzo-p-dioxin (TCDD) 2,3,7,8-		2.8 E-06 mg/kg	8.39 E-05 mg/kg total

<sup>1</sup> 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.

TABLE 5—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE RKI SCRUBBER WATER BLOWDOWN <sup>1</sup>

Constituent	Maximum TCLP (mg/l)	Maximum allowable TCLP delisting level (mg/l)
Antimony .....	0.041	0.0568
Arsenic .....	0.013	0.112
Barium .....	0.61	11.6
Bis(2-ethylhexyl)phthalate .....	0.009	0.0522
Chromium .....	0.019	10.3
Cobalt .....	0.012	0.318
Copper .....	0.052	22.1
Chloroform .....	0.001	0.0163
Chloromethane .....	0.0021	1.48
Cyanide .....	0.0048	0.752
Di-n-butylphthalate .....	0.001	25.6
Lead .....	0.019	2.57
Methanol .....	0.42	70.6
Nickel .....	0.50	5.74
Silver .....	0.002	1.71
Thallium .....	0.011	0.0179
Tin .....	0.022	22.5
Vanadium .....	0.006	4.88
Zinc .....	16	77.7

<sup>1</sup> 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.

#### E. How did EPA evaluate the risk of delisting this waste?

The worst case scenario for management of the RKI bottom ash and RKI fly ash was modeled for disposal in a landfill. The worst case scenario for management of the RKI scrubber water blowdown was modeled for disposal in a surface impoundment. EPA used such information gathered to identify plausible exposure routes (i.e., ground water, surface water, soil, air) for hazardous constituents present in the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown. EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for Eastman's RKI bottom ash and RKI fly ash. EPA determined that disposal in a surface impoundment is the most reasonable, worst-case disposal scenario for Eastman's RKI scrubber water blowdown. EPA applied the DRAS described in 65 FR 58015 (September 27, 2000), 65 FR 75637 (December 4, 2000) and 73 FR 28768 (May 19, 2008), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned wastes after disposal and determined the potential impact of the disposal of Eastman's petitioned wastes on human health and the environment. In assessing potential risks to ground water, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS

program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10<sup>-5</sup> and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and Agency health-based numbers. Using the maximum compliance-point concentrations and EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in ground water.

EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill for the ashes, and a surface impoundment for the liquid scrubber water blowdown. A reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensured that the waste, once removed from hazardous waste regulation, will

not pose a significant threat to human health and/or the environment. The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (e.g., volatilization or wind-blown particulate from the landfill). As in the above ground water analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or "delisting levels").

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, the ground water monitoring data was submitted in the previous petition and these wastes do not appear to be impacting the ground water of the landfill.

EPA believes that the descriptions of Eastman's RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown and analytical characterizations of these wastes illustrate the presence of toxic constituents at lower concentrations in these waste streams. Therefore, it is reasonable to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized.

The DRAS results, which calculated the maximum allowable concentration of chemical constituents in the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown are presented in Tables 3, 4, and 5. Based on the comparison of the DRAS results and maximum TCLP concentrations found in Tables 3, 4, and 5, the petitioned wastes should be delisted because no constituents of concern are likely to be present or formed as reaction products or by products in Eastman's wastes.

#### *F. What did EPA conclude about Eastman's analysis?*

EPA concluded, after reviewing Eastman's processes that no other hazardous constituents of concern, other than those for which Eastman tested, are likely to be present or formed as reaction products or by-products in Eastman's wastes. In addition, on the basis of explanations and analytical data provided by Eastman, pursuant to § 260.22, EPA concludes that the petitioned wastes: RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown do 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, in addition to the potential impacts to the ground water, EPA also considered the potential impact of the petitioned waste via non-ground water exposure routes (i.e., air emissions and surface runoff) for the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown. 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 RKI bottom ash and, RKI fly ash under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from the

wastewater in an open landfill. 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 RKI bottom ash and RKI fly ash. The RKI scrubber water blowdown was also evaluated for releases to the air from an impoundment and no substantial present or potential hazard was identified.

#### *H. What is EPA's evaluation of this delisting petition?*

The descriptions by Eastman 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 petition. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable concentrations (See Tables 3, 4, and 5). EPA believes that the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown generated by Eastman contains hazardous constituents at levels which will present minimal short-term and long-term threats from the petitioned wastes to human health and the environment.

Thus, EPA believes that it should grant to Eastman an exclusion from the list of hazardous wastes for the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown. EPA believes that the data submitted in support of the petition show the Eastman's RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown to be non-hazardous.

EPA has reviewed the sampling procedures used by Eastman and has determined they satisfy EPA's criteria for collecting representative samples of variable constituent concentrations in the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown. The data submitted in support of the petition show that constituents in Eastman'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 Eastman has successfully demonstrated that the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown are non-hazardous.

EPA, therefore, proposes to grant an exclusion to Eastman for the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown described in its December 2008 petition. EPA's decision to exclude these wastes is based on analysis performed on samples taken of the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown.

If EPA finalizes the proposed rule, EPA will no longer regulate 1,000 cubic yards/year of RKI bottom ash; 750 cubic yards/year of RKI fly ash, and 643,000 cubic yards/year (500,000 million gallons) of RKI scrubber water blowdown from Eastman's Longview facility 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, Eastman, must comply with the requirements in 40 CFR Part 261, Appendix IX, Tables 1, 2, and 3 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 for which Eastman RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown, below which these wastes would be considered non-hazardous.

EPA selected the set of inorganic and organic constituents specified in paragraph (1) and listed in 40 CFR part 261, appendix IX, tables 1, 2, or 3 based on information in the petition. EPA compiled the inorganic and organic constituents list from descriptions of the manufacturing process used by Eastman, 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 leachable concentrations of the RKI bottom ash and RKI fly ash, and total concentrations of the RKI scrubber water blowdown.

##### **(2) Waste Holding and Handling**

Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) has occurred for four consecutive quarterly sampling events. For example, if Eastman is issued a final exclusion in August, the first of four quarterly samples per waste stream can be collected in September. If EPA deems that the four representative composite samples of each waste stream meet all the indicator constituent delisting limits, classification of the waste as non-hazardous can begin in September of the next year. If constituent levels in any annual sample (and retest, if applicable) taken by Eastman exceed any of the delisting levels set in paragraph (1), Eastman must: (i) notify EPA in accordance with paragraph (6), and; (ii) manage and dispose of the RKI bottom ash, RKI fly

ash, and RKI scrubber water blowdown as hazardous waste generated under Subtitle C of RCRA.

### (3) Verification Testing Requirements

Eastman must complete a verification testing program on the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown to assure that the wastes do 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 in the petition, the exclusion will not cover the tested waste. This verification program operates on two levels.

The initial part of the verification testing program consists of testing four composite samples from four consecutive quarters of RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown for specified indicator parameters as described in paragraph (1). Levels of constituents measured in the samples of the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown that do not exceed the levels set forth in paragraph (1) can be considered non-hazardous after all four sets of sampling data meet the levels listed in paragraph (1).

The second part of the verification testing program is the annual testing of a representative composite sample of the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown for all constituents specified in paragraph (1). If any delisting levels are not met in an annual test sample, then a second composite sample shall be collected within 10 days of becoming aware of the failure, and it must be analyzed expeditiously for the TCLP constituent(s) that exceeded Delisting Levels.

If the annual testing of the wastes, and the retest, do not meet the delisting levels in paragraph (1), Eastman 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 as described in paragraph (6). Eastman must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

The final exclusion is effective upon publication in the **Federal Register** but the change in waste classification as "non-hazardous" cannot begin until the four quarterly initial verification samples comply with the levels specified in paragraph (1). The waste classification as "non-hazardous" is also not authorized, if Eastman fails to perform the testing as specified herein. Should Eastman conduct the yearly

testing as specified herein, then disposal of RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown as delisted waste may not occur in the following year(s) until Eastman obtains the written approval of EPA.

### (4) Changes in Operating Conditions

Paragraph (4) would allow Eastman the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment processes. However, Eastman must prove the effectiveness of the modified process and request approval from EPA. Eastman 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 Eastman facility is correctly managing the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown, Eastman must compile, summarize, and keep delisting records on-site for a minimum of five years. Eastman must keep all analytical data obtained pursuant to paragraph (3), including quality control information, for five years. Paragraph (5) requires that Eastman furnish these data upon request for inspection by any employee or representative of EPA or the State of Texas.

If the exclusion is made final, then it will apply only to 1,000 cubic yards/year of RKI bottom ash; 750 cubic yards/year of RKI fly ash, and 643,000 cubic yards/year (500,000 million gallons) of RKI scrubber water blowdown generated at the Eastman facility after successful initial verification testing.

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

(a) If Eastman significantly alters the waste treatment system except as described in paragraph (4).

(b) If Eastman uses any new manufacturing or production process(es), or significantly changes the current process(es) described in its petition; or

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

Eastman 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. EPA will publish an amendment to the exclusion, if the changes are acceptable.

Eastman must manage waste volumes greater than 1,000 cubic yards/year of

RKI bottom ash; 750 cubic yards/year of RKI fly ash and 643,000 cubic yards/year (500,000 million gallons) of RKI scrubber water blowdown as hazardous waste until EPA grants a revised exclusion. When this exclusion becomes final, the management by Eastman of the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown covered in this petition would be relieved from Subtitle C jurisdiction. Eastman may not classify the waste as non-hazardous until the revised exclusion is finalized.

### (6) Reopener

The purpose of paragraph (6) is to require Eastman 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. Eastman must also use this procedure if the waste sample (and retest, if applicable) 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 Eastman 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 delisting is merited in light of EPA's experience. See the **Federal Register** notice regarding 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, 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 on

a case-by-case basis. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. See APA section 553(b)(3)(B).

*B. What happens if Eastman violates the terms and conditions?*

If Eastman 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 Eastman to conduct the appropriate waste analysis and comply with the criteria explained above in paragraph (1) of the exclusion.

#### V. Final Action

EPA is approving the delisting petition for three waste streams generated at Eastman Chemical's Longview, Texas facility: (1) The RKI bottom ash; the RKI fly ash; and the RKI scrubber water blowdown.

EPA is publishing this rule without prior proposal because we view this as a non-controversial exclusion and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the petition if relevant adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We would address all public comments in a subsequent final rule based on the proposed rule. Please note that if we receive adverse comment on a paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### VI. 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, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this proposed rule does not have federalism implications. It 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, "Federalism," (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this proposed rule does not have tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. 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. 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, "Civil Justice Reform," (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. 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 this action under section 801 because this is a rule of particular applicability.

#### 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 8, 2010.

**Bill Luthans,**

*Acting Director, Multimedia Planning and Permitting 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 Tables 1, 2 and 3 of Appendix IX to 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 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* Eastman Chemical Com- pany— Texas Op- erations.	* Longview, TX.	<p>* RKI bottom ash (EPA Hazardous Waste Numbers F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359.) generated at a maximum rate of 1,000 cubic yards per calendar year after September 24, 2010 and disposed in Subtitle D Landfill.</p> <p>* RKI fly ash EPA Hazardous Waste Number F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359 generated at a maximum rate of 750 cubic yards per calendar year after September 24, 2010 and disposed in Subtitle D Landfill.</p> <p>* RKI scrubber water blowdown (EPA Hazardous Waste Numbers D001, D002, D003, D007, D008, D018, D022, F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359 generated at a maximum rate of 643,000 cubic yards (500,000 million gallons) per calendar year after September 24, 2010 and treated and discharged from a Wastewater Treatment Plant.</p> <p>* For the exclusion to be valid, Eastman must implement a verification testing program for each of the waste streams that meets the following Paragraphs:</p> <p>(1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph.</p> <p>(A) RKI Bottom Ash. Leachable Concentrations (mg/l): Antimony—0.801; Acetone—33.8; Arsenic—0.126; Acetaldehyde—5.35; Acenaphthylene—31.9; Anthracene—77.9; Acenaphthene—31.9; Barium—100; Benzene—0.231; Bis(2-ethylhexyl)phthalate—103; Benzo (a) anthracene—0.211; Benzo (a) pyrene—79.1; Benzo (b) flouranthene—673; Bromomethane—0.0526; n-Butyl Alcohol—174; Cadmium—0.274; Chromium—5.0; Cobalt—0.643; Copper—73.8; Chloroform—0.241; Chrysene—211; chloromethane—18.2; Cyanide—9.25; 4,4-DDT—0.0103; Di-n-butyl phthalate—73.9; Dieldrin—2.78; Ethylbenzene—32.6; Fluorene—14.7; Formaldehyde—347; Fluoranthrene—7.39; Isobutanol—521; Lead—1.95; Mercury—0.2; Methy Isobutyl ketone—139; 2-Methylnaphthalene—2.18; Methylene Chloride—0.237; Naphthalene—0.0983; Nickel—54.1; Phenanthrene—14.7; Pyrene—13.4; Selenium—1.0; Silver—5.0; Thallium—0.110; Tin—22.5; Toluene—45.4; Vanadium—10.4; Xylene—28.7; Zinc—600.</p> <p><i>Total Concentrations (mg/kg)</i> Tetrachlorodibenzo-p-dioxin (TCDD) 2,3,7,8—7.46 E–06 mg/kg.</p> <p>(B) RKI Fly Ash. Leachable Concentrations (mg/l): Antimony—0.111; Acetone—533; Arsenic—0.178; Barium—36.9; Bis(2-ethylhexyl)phthalate—6.15; Chromium—2.32; Copper—26.5; Ethylbenzene—11.1; Methylene Chloride—0.0809; Naphthalene—0.0355; Nickel—13.8; Phenanthrene—2.72; Toluene—15.5; Trichloroethane—11900; Trichloroethylene—0.0794; Vanadium—1.00; Zinc—202.</p> <p><i>Total Concentrations (mg/kg)</i> Tetrachlorodibenzo-p-dioxin (TCDD) 2,3,7,8—4.30 E–05 mg/kg.</p> <p>(C) RKI Scrubber Water Blowdown. TCLP Concentrations (mg/l): Antimony—0.0568; Arsenic—0.112; Barium—11.6; Bis(2-ethylhexyl)phthalate—0.0522; Chromium—5.0; Cobalt—0.318, Copper—22.1; Chloroform—0.0163, Chloromethane—1.48; Cyanide—0.752; Di-n-butylphthalate—25.6; Lead—2.57; Methanol—70.6; Nickel—5.74; Silver—1.71; Thallium—0.0179; Tin—22.5; Vanadium—4.88; Zinc—77.7;</p> <p>(2) Waste Holding and Handling:</p> <p>(A) Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) for RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown has occurred for four consecutive quarterly sampling events.</p> <p>(B) If constituent levels in any annual sample and retest sample taken by Eastman exceed any of the delisting levels set in paragraph (1) for the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown, Eastman must do the following:</p> <p>(i) notify EPA in accordance with paragraph (6) and</p> <p>(ii) manage and dispose the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown as hazardous waste generated under Subtitle C of RCRA.</p> <p>(3) Testing Requirements: Upon this exclusion becoming final, Eastman must perform analytical testing by sampling and analyzing the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown as follows:</p> <p>(A) Initial Verification Testing:</p> <p>(i) Collect four representative composite samples of the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown at quarterly intervals after EPA grants the final exclusion. The first composite sample of each waste stream 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) indicates that the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown must continue to be disposed as hazardous waste in accordance with the applicable hazardous waste requirements until such time that four consecutive quarterly samples indicate compliance with delisting levels listed in paragraph (1).</p> <p>(iii) Within sixty (60) days after taking its last quarterly sample, Eastman will report its analytical test data to EPA. If levels of constituents measured in the samples of the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown do not exceed the levels set forth in paragraph (1) of this exclusion for four consecutive quarters, Eastman can manage and dispose the non-hazardous RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown according to all applicable solid waste regulations.</p> <p>(B) Annual Testing:</p>

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

Facility	Address	Waste description
		<p>(i) If Eastman 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), Eastman must begin annual testing as follows: Eastman must test a representative composite sample of the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown for all constituents listed in paragraph (1) at least once per calendar year. If any measured constituent concentration exceeds the delisting levels set forth in paragraph (1), Eastman must collect an additional representative composite sample within 10 days of being made aware of the exceedance and test it expeditiously for the constituent(s) which exceeded delisting levels in the original annual sample.</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 Eastman RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown 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 delisted waste in cubic yards disposed during the calendar year.</p> <p>(4) Changes in Operating Conditions: If Eastman 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>Eastman 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: Eastman must submit the information described below. If Eastman 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). Eastman 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 comparable electronic media.</p> <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: “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.”</p> <p>(6) Reopener (A) If, anytime after disposal of the delisted waste Eastman 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 a 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 annual testing (and retest, if applicable) of the waste does not meet the delisting requirements in paragraph 1, Eastman 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 Eastman 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>

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

Facility	Address	Waste description
		<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 receipt 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) <i>Notification Requirements:</i>                      Eastman 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> <p>(B) For onsite disposal a notice should be submitted to the State to notify the State that disposal of the delisted materials have begun.</p> <p>(C) Update one-time written notification, if it ships the delisted waste into a different disposal facility.</p> <p>(D) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.</p>

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Eastman Chemical Company—Texas Operations.	Longview, TX.	<p>RKI Bottom Ash. (EPA Hazardous Waste Number F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359) generated at a maximum rate of 1,000 cubic yards per calendar year after September 24, 2010 and disposed in Subtitle D Landfill.</p> <p>RKI Fly Ash. EPA Hazardous Waste Number F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359 generated at a maximum rate of 2,000 cubic yards per calendar year after September 24, 2010 and disposed in Subtitle D Landfill.</p> <p>RKI Scrubber Water Blowdown (EPA Hazardous Numbers D001, D002, D003, D007, D008, D018, D022, F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359) generated at a maximum rate of 643,000 cubic yards (500,000 million gallons) per calendar year after September 24, 2010 and treated and discharged from a Wastewater Treatment Plant.</p> <p>Eastman must implement the testing program in Table 1. Wastes Excluded from Non-Specific Sources for the petition to be valid.</p>

TABLE 3—WASTE EXCLUDED FROM COMMERCIAL CHEMICAL PRODUCTS, OFF-SPECIFICATION SPECIES, CONTAINER RESIDUES, AND SOIL RESIDUES THEREOF

Facility	Address	Waste description
Eastman Chemical Company—Texas Operations.	Longview, TX.	<p>RKI bottom ash (EPA Hazardous Waste Number F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359) generated at a maximum rate of 1,000 cubic yards per calendar year after September 24, 2010 and disposed in Subtitle D Landfill.</p> <p>RKI fly ash EPA Hazardous Waste Number F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359 generated at a maximum rate of 2,000 cubic yards per calendar year after September 24, 2010 and disposed in Subtitle D Landfill.</p> <p>RKI scrubber water blowdown (EPA Hazardous Numbers D001, D002, D003, D007, D008, D018, D022, F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359) generated at a maximum rate of 643,000 cubic yards (500,000 million gallons) per calendar year after September 24, 2010 and treated and discharged from a Wastewater Treatment Plant.</p> <p>Eastman must implement the testing program in Table 1. Wastes Excluded from Non-Specific Wastes for the petition to be valid.</p>

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**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Part 271****[EPA-R07-RCRA-2008-0830; FRL-9205-3]****Nebraska: Final Authorization of State  
Hazardous Waste Management  
Program Revisions****AGENCY:** Environmental Protection  
Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the Federal program. Nebraska has applied to EPA for final authorization of the changes to its hazardous waste program under RCRA. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization and is authorizing the State's changes through this immediate final action.

**DATES:** This Final authorization will become effective on September 24, 2010.

**FOR FURTHER INFORMATION CONTACT:** Lisa Haugen, EPA Region 7, AWMD/RESP, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551-7877, or by e-mail at [haugen.lisa@epa.gov](mailto:haugen.lisa@epa.gov).

**SUPPLEMENTARY INFORMATION:****A. Why are revisions to state programs necessary?**

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, a State must change its program accordingly and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, the State must change its program because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

Nebraska initially received final authorization on January 24, 1985, effective February 7, 1985 (50 FR 3345),

to implement the RCRA hazardous waste management program. EPA granted authorization for changes to Nebraska's program on October 4, 1985, effective December 3, 1988 (53 FR 38950); June 25, 1996, effective August 26, 1996 (61 FR 32699); April 10, 2003, effective June 9, 2003 (68 FR 17553); and October 4, 2004, effective December 3, 2004.

On April 29, 2008, Nebraska submitted a final complete program revision application, seeking authorization of its changes in accordance with 40 CFR 271.21. On December 30, 2008, EPA published both an Immediate Final Rule (73 FR 79661) granting Nebraska final authorization for these revisions to its Federally-authorized hazardous waste program, along with a companion Proposed Rule announcing EPA's proposal to grant such a final authorization (73 FR 79761). EPA announced in both documents that the Immediate Final Rule and the Proposed Rule were subject to a thirty-day comment period. The public comment period ended on January 29, 2009. EPA received written comments from one commenter during the public comment period. Today's action responds to the comments EPA received and publishes EPA's final determination granting Nebraska final authorization of its program revisions. Further background on EPA's Immediate Final Rule and its tentative determination to grant authorization to Nebraska for its program revisions appears in the aforementioned **Federal Register** notices. The issues raised by the commenter are summarized and responded to as follows.

**B. What were the comments and responses to EPA's proposal?**

The comments did not address specific concerns with EPA's approval of the additional RCRA regulatory provisions in Nebraska's authorized hazardous waste program; rather the comments address a previous rule promulgated by EPA. The commenter's arguments relate specifically to EPA's promulgation of the Zinc Fertilizer Rule on July 24, 2002 (67 FR 48393). Specifically, the commenter argued that the Phase IV Land Disposal Restriction (LDR)—which is more stringent than the Zinc Fertilizer Rule—resulted from an “affirmative finding of safety” when zinc-containing hazardous wastes were disposed in Subtitle C landfills, so it is counterintuitive to claim that the same zinc-containing hazardous wastes can now “safely” be used as fertilizer. For the reasons set forth below, we do not agree with the commenter.

EPA promulgated all of the rules included in Nebraska's revision pursuant to the authority granted to EPA by Congress under RCRA. Those rules, including the Zinc Fertilizer Rule, were finalized after full consideration of any and all comments submitted in a timely manner. By adopting the rule promulgated by EPA, Nebraska revised its hazardous waste program to be equivalent to and consistent with the Federal program. Pursuant to 42 U.S.C. 6926(b), EPA has the authority to authorize State programs that are equivalent to and consistent with the Federal program. The comments submitted speak directly to the Federal rule and not to EPA's authorization of Nebraska's program revisions. Therefore, we have determined that there is no basis to deny authorizing approval based on these comments.

In addition, the commenter argues that exempting zinc-containing hazardous wastes from regulation as solid waste is not supported by Nebraska Revised Statute 75-362. This comment is not relevant to this action. The criteria for authorization of a State hazardous waste program are set forth at section 3006 of RCRA, 42 U.S.C. 6926(b). In reviewing an application under this section, EPA considers whether the State program (1) is equivalent to the Federal program under subchapter III, which governs hazardous waste; (2) is consistent with Federal or “State programs applicable to other States”; and (3) provides adequate enforcement of compliance with the requirements of subchapter III of RCRA. As part of this review, EPA considers whether the State is imposing requirements less stringent than those authorized under subchapter III respecting the same matter as governed by such regulation. The commenter's argument with regard to Nebraska Revised Statute 75-362 falls outside the scope of our review of Nebraska's application for the hazardous waste rules authorized herein. Therefore, the comment regarding Nebraska Revised Statute 75-362 is not relevant to this action.

**C. What decisions have we made in this rule?**

Based on EPA's response to public comments, the Agency has determined that approval of Nebraska's RCRA program revisions should proceed. EPA has made a final determination that Nebraska's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Nebraska final authorization to operate its hazardous waste program