

and French will also be available at <http://www.fda.gov/oc/bioterrorism/bioact.html>.

## VI. Transcripts

Within 3 weeks of the satellite downlink public meeting, written transcripts in English, French, and Spanish will be available for viewing at DDM (see **ADDRESSES**) and posted on the following Web site: <http://www.fda.gov/oc/bioterrorism/bioact.html>. A written transcript of the satellite downlink meeting may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A-16, Rockville, MD 20857, 3 weeks after the satellite downlink public meeting at a cost of 10 cents per page. A copy of the videotaped meeting may also be viewed at DDM. Or you may contact Lou Carson for a copy of the videotaped meeting and specify format and language.

**Pre-event Test:** A pre-event test for downlink sites will be provided on October 28 from 12 noon EST to 1 p.m. EST. During that hour, technical assistance will be available through a trouble line at 1-888-626-8730.

Dated: September 26, 2003.

**Jeffrey Shuren,**

Assistant Commissioner for Policy.

[FR Doc. 03-24921 Filed 9-26-03; 4:13 pm]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

[SW-FRL-7567-1]

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

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

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

**SUMMARY:** The EPA is proposing to grant a petition submitted by OxyVinyls, LP (OxyVinyls) to exclude (or delist) a certain solid waste generated by its Houston, TX Deer Park VCM Plant from the lists of hazardous wastes.

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

The EPA bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision,

if finalized, would exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, the EPA would conclude that OxyVinyls' petitioned waste is nonhazardous with respect to the original listing criteria and that the Incinerator Offgas Treatment Scrubber Water generated from treating and neutralizing gasses generated in the firebox during the incineration process and not from a manufacturing process will adequately reduce the likelihood of migration of constituents from this waste. The EPA would also conclude that OxyVinyls' process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

**DATES:** The EPA will accept comments until November 17, 2003. The EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach the EPA by October 16, 2003. The request must contain the information prescribed in 40 CFR 260.20(d).

**ADDRESSES:** Please send three copies of your comments. You should send two copies to the Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD-C), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. You should send a third copy to Nicole Bealle, Waste Team Leader, Texas Commission on Environmental Quality, 5425 Polk Avenue, Suite A, Houston, TX 77023. Identify your comments at the top with this regulatory docket number: "F-02-TX-OXYVINYLS." You may submit your comments electronically to James Harris at [harris.jamesa@epa.gov](mailto:harris.jamesa@epa.gov).

You should address requests for a hearing to Steve Gilrein, Associate Director of RCRA, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

**FOR FURTHER INFORMATION CONTACT:** James A. Harris, Jr. (214) 665-8302.

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

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- B. Why is the EPA proposing to approve this delisting?
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- B. What is a delisting petition, and what does it require of a petitioner?
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#### XII. National Technology Transfer and Advancements Act

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## I. Overview Information

### A. What Action Is the EPA Proposing?

The EPA is proposing:

(1) To grant OxyVinyls' delisting petition to have its Incinerator Offgas Treatment Scrubber Water generated from treating and neutralizing gasses generated in the firebox during the incineration process excluded, or delisted, from the definition of a hazardous waste; and

(2) To use a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The EPA would use this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

### B. Why Is the EPA Proposing To Approve This Delisting?

OxyVinyls' petition requests a delisting from the K017, K019, and K020, waste listings under 40 CFR

260.20 and 260.22. OxyVinyls does not believe that the petitioned waste meets the criteria for which the EPA listed it, primarily because the Off-gas Scrubber Waste Water could be considered “derived from” a listed waste that has been incinerated to destroy the hazardous constituents of the listed waste. OxyVinyls also believes no additional constituents or factors could cause the waste to be hazardous. The 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) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, the EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, the EPA would have proposed to deny the petition.) The 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. The 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. The EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. The EPA’s proposed decision to delist waste from OxyVinyls’ facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Deer Park, TX facility.

*C. How Will OxyVinyls Manage the Waste if It Is Delisted?*

The Incinerator Offgas Treatment Scrubber Water combines with other aqueous wastes in the chemical sewer and flows by pipe to Shell Chemical L.P.’s South Effluent Treater (SET). The SET is a TPDES-permitted wastewater treatment unit which also holds a surface impoundment retrofitting variance issued by the EPA under RCRA

section 3005(j)(3) in November 1988, 42 U.S.C. § 6925(j)(3). It is RCRA permitted to manage listed hazardous waste.

*D. When Would the Proposed Delisting Exclusion Be Finalized?*

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

RCRA section 3010(b)(1) at 42 USC 6930(b)(1), allows rules to become effective in less than six months when the regulated community 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.

The 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 the 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 the EPA to make their own delisting decisions.

The EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than the 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, the EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, 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 OxyVinyls transports the petitioned waste to or manages the waste in any state with delisting authorization, OxyVinyls must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the State.

## II. Background

*A. What Is the History of the Delisting Program?*

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

The 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), (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3), or (3) they are wastes which are mixed with or derived from the treatment, storage or disposal of such characteristic and listed wastes and which therefore become hazardous under § 261.3(a)(2)(iv) or (c)(2)(i), known as the “mixture” and “derived-from” rules, respectively.

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations or resulting from the operation of the mixture or derived-from rules generally is hazardous, a specific waste from an individual facility may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that the 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 the EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions the EPA because it does not consider the wastes 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 the EPA lists a waste are in Part 261 and further explained in the background documents for the listed waste.

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

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

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

Besides considering the criteria in § 260.22(a) and § 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, the EPA must consider any factors (including additional constituents) other than those for which the EPA listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

The 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. The EPA’s Evaluation of the Waste Information and Data**

*A. What Waste Did OxyVinyls Petition the EPA To Delist?*

On October 11, 2002, OxyVinyls petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, Incinerator Offgas Treatment Scrubber Water generated from its facility located in Deer Park, Texas. The waste falls under the classification of listed waste under § 261.3.

Specifically, in its petition, OxyVinyls requested that the EPA grant a standard exclusion for 919,990 cubic yards per year of the Incinerator Offgas Treatment Scrubber Water.

<sup>1</sup>The EPA has not independently determined that the waste is hazardous based on the “derived-from” rule. Waste characterization is the responsibility of

*B. Who Is OxyVinyls and What Process Does It Use To Generate the Petitioned Waste?*

The OxyVinyls facility is located at 1000 Tidal Road Deer Park, Texas in the Shell Chemical Manufacturing Complex. OxyVinyls produces ethylene dichloride (EDC) and vinyl chloride monomer (VCM). EDC is produced only for internal use to make VCM. The primary SIC code for the facility is 2869. There are also support facilities including vent incineration, VCM storage and shipping, EDC intermediate storage, cooling towers and refrigeration and compressors. OxyVinyls utilizes two permitted, onsite RCRA incinerators to burn process vent gases, intermediate wastes generated during the production of EDC and VCM (K019 and K020), epichlorohydrin heavy ends from Resolution Performance Products LLC (K017) and waste oil. There are three wastewater streams generated from treatment of the off-gases from each of the two RCRA permitted incinerators. These three streams are components of the Incinerator Offgas Treatment Scrubber Water; (1) Rockbox Wastewater, which is neutralized scrubber water from the HCl (hydrochloric acid) absorption column, (2) Caustic Scrubber/Dehumidifier column blowdown, and (3) Wet Electrostatic Precipitator (WESP) blowdown. The HCl absorption column is designed to remove HCl from the combustion offgases, while the Caustic Scrubber is designed to remove both residual HCl and chlorine from the offgases, and is located downstream of the HCl absorption column. The further downstream WESP units are designed to remove particulate matter, semi-volatile metals (SVM) and low volatile metals (LVM) from the combustion offgases, including arsenic, beryllium, chromium, cadmium and lead. Dioxins will also be removed by the WESP units. Catalytic oxidizers follow the WESP units and are designed to destroy trace amounts of dioxins, but they do not generate a wastewater stream. The concentrations of constituents from these three units will be accounted for during sampling and analysis of the Offgas Treatment Scrubber Water.

OxyVinyls classified two waste streams (Rockbox Residue and Incinerator Offgas Treatment Scrubber Water), generated from the treatment of the offgas from the incinerators, as hazardous based on the “derived from” rule in 40 CFR 261.3(c)(2)<sup>1</sup>. The facility operates 24 hours per day, 7 days per

the generator of the waste. See 40 CFR 262.11. OxyVinyls made the characterization of the Incinerator Offgas Treatment Scrubber Water and

week, 365 days per year with the exception of periodic planned shutdowns for routine maintenance.

The Rockbox Residue was successfully delisted from hazardous waste classification by the EPA (64 FR 42033, August 3, 1999).

OxyVinyls is now petitioning the EPA for a standard exclusion of the Incinerator Offgas Treatment Scrubber Water from the K017, K019, and K020, waste listings.

*C. How Did OxyVinyls Sample and Analyze the Data in the Petition?*

To support its petition, OxyVinyls submitted:

(1) historical information on past waste generation and management practices;

(2) results of the total constituent list for 40 CFR Part 264 Appendix IX volatiles, semivolatiles, metals, pesticides, herbicides, dioxins and PCBs;

(3) results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

(4) analytical constituents of concern for K017, K019 and K020

(5) results from total oil and grease analyses

(6) multiple pH testing for the petitioned waste.

*D. What Were the results of OxyVinyls’ Analyses?*

The EPA believes that the descriptions of the OxyVinyls analytical characterization provide a reasonable basis to grant OxyVinyls’ petition for an exclusion of the incinerator offgas treatment scrubber water. The EPA believes the data submitted in support of the petition show the incinerator offgas treatment scrubber water is non-hazardous. Analytical data for the incinerator offgas treatment scrubber water samples were used in the DRAS. The data summaries for detected constituents are presented in Table I. The EPA has reviewed the sampling procedures used by OxyVinyls and has determined they satisfy the EPA’s criteria for collecting representative samples of the variations in constituent concentrations in the incinerator offgas treatment scrubber water. The data submitted in support of the petition show that constituents in OxyVinyls’ waste are presently below health-based levels used in the delisting decision-making. The EPA believes that OxyVinyls has successfully

requested delisting to resolve all ambiguity about the applicability of the “derived-from” rule to the waste.

demonstrated that the incinerator offgas

treatment scrubber water is non-hazardous.

TABLE I.—MAXIMUM TCLP CONSTITUENT CONCENTRATIONS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATION OF THE INCINERATOR OFFGAS TREATMENT SCRUBBER WATER AT THE OXYVINYLS L.P. DEER PARK VCM PLANT<sup>1</sup>

Constituent	TCLP constituent analyses (mg/l)	Maximum allowable delisting concentration levels (mg/l)
Antimony .....	0.00586	0.0204
Arsenic .....	0.02	<sup>2</sup> 0.385
Barium .....	0.291	2.92
Beryllium .....	0.00279	0.166
Cadmium .....	0.00112	0.0225
Chromium .....	0.0823	5.0
Cobalt .....	0.00543	13.14
Copper .....	0.0636	418.00
Lead .....	0.011	5.00
Nickel .....	0.0437	1.13
Mercury .....	0.00038	0.0111
Vanadium .....	0.0222	0.838
Zinc .....	0.0798	2.61
Acetone .....	0.03	1.46
Bromoform .....	0.016	0.481
Bromomethane .....	0.0017	8.20
Bromodichloromethane .....	0.012	0.0719
Chloroform .....	0.0051	0.683
Dibromochloromethane .....	0.013	0.057
Iodomethane .....	0.001	0.19
Methylene Chloride .....	0.0014	0.029
2,3,7,8-TCDD Equivalent .....	0.000000302	0.0000926

<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.

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

For this delisting determination, the EPA used such information gathered to identify plausible exposure routes (*i.e.*, groundwater, surface water, air) for hazardous constituents present in the petitioned waste. The EPA determined that disposal in a Subtitle D surface impoundment is the most reasonable, worst-case disposal scenario for OxyVinyls' petitioned waste. The EPA applied the most recent version of the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000) and 65 FR 75637 (December 4, 2000), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of OxyVinyls' petitioned waste on human health and the environment. A copy of this software can be found on the World Wide Web at [http://www.epa.gov/earth1r6/6pd/rcre\\_c/pd-o/dras.htm](http://www.epa.gov/earth1r6/6pd/rcre_c/pd-o/dras.htm). In assessing potential risks to groundwater, the 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 groundwater at a hypothetical receptor

well down gradient from the disposal site. Using the risk level (carcinogenic risk of  $10^{-5}$  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 the EPA health-based numbers. Using the maximum compliance-point concentrations and the 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 groundwater.

The EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible groundwater contamination resulting from disposal of the petitioned waste in a surface impoundment, and that 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 ensures that the waste, once removed

from hazardous waste regulation, will not pose a significant threat to human health 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 surface impoundment). As in the above groundwater 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, the EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, the EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. The EPA does control the type of unit

where the waste is disposed. The waste must be disposed in the type of unit the fate and transport model evaluates.

The EPA also considers the applicability of groundwater monitoring data during the evaluation of delisting petitions. In this case, OxyVinyls disposes of its wastewater in an NPDES permitted facility with surface impoundments (part of the Shell South Effluent Treatment system), with existing groundwater contamination sources other than the surface impoundments impacting monitoring wells in the area. The groundwater contamination is currently being addressed and managed through a RCRA Corrective Actions Program. Consequently the groundwater data would not be relevant to this exclusion. Therefore, the EPA has determined that it would be unnecessary to request groundwater monitoring data.

The EPA believes that the descriptions of OxyVinyls' hazardous waste process and analytical characterization provide a reasonable basis 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 calculate the maximum allowable concentration of chemical constituents in the waste are presented in Table I. Based on the comparison of the DRAS results and maximum TCLP concentrations found in Table I, the petitioned waste should be delisted because no constituents of concern tested are likely to be present or formed as reaction products or by products in OxyVinyls' waste. In addition, on the basis of explanations and analytical data provided by OxyVinyls, pursuant to § 260.22, the EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

#### *F. What Did the EPA Conclude About OxyVinyls' Analysis?*

The EPA concluded, after reviewing OxyVinyls' processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by-products in the wastes. In addition, on the basis of explanations and analytical data provided by OxyVinyls, pursuant to §§ 260.22, the EPA concludes that the petitioned wastes do not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22 and 261.23, respectively.

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

During the evaluation of OxyVinyls' petition, the EPA also considered the potential impact of the petitioned waste via non-groundwater routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, the EPA believes that exposure to airborne contaminants from OxyVinyls' petitioned waste is unlikely. Therefore, no appreciable air releases are likely from OxyVinyls waste under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from OxyVinyls' waste in an open surface impoundment. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from OxyVinyls' incinerator offgas treatment scrubber water. A description of the EPA's assessment of the potential impact of OxyVinyls' waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for this proposed rule, F-02-TX-OxyVinyls.

The EPA also considered the potential impact of the petitioned waste via a surface water route. The EPA believes that containment structures at municipal solid waste surface impoundments can effectively control surface water runoff, as the Subtitle D regulations (See 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in this notice due to the aggressive acidic medium used for extraction in the TCLP. The EPA believes that, in general, the incinerator offgas scrubber water is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Since the waste is a liquid, the concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as groundwater.

Based on the reasons discussed above, the EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, the EPA evaluated the potential impacts on surface water if OxyVinyls' waste were released from a

municipal solid waste surface impoundment through runoff and erosion. See the RCRA public docket for this proposed rule for further information on the potential surface water impacts from runoff and erosion. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below the EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that OxyVinyls incinerator offgas treatment scrubber water is not a present or potential substantial hazard to human health and the environment via the surface water exposure pathway.

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

The descriptions of OxyVinyls' hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for the EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (see Table I). The EPA believes OxyVinyls' process will substantially reduce the likelihood of migration of hazardous constituents from the petitioned waste. OxyVinyls' process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, the EPA believes that it should grant OxyVinyls an exclusion for the incinerator offgas treatment scrubber water. The EPA believes the data submitted in support of the petition show OxyVinyls' process can render the incinerator offgas treatment scrubber water non-hazardous.

The EPA has reviewed the sampling procedures used by OxyVinyls and has determined they satisfy the EPA criteria for collecting representative samples of variable constituent concentrations in the incinerator offgas treatment scrubber water. The data submitted in support of the petition show that constituents in OxyVinyls' waste are presently below the compliance point concentrations used in the delisting decision-making and would not pose a substantial hazard to the environment. The EPA believes that OxyVinyls has successfully demonstrated that the incinerator offgas treatment scrubber water is non-hazardous.

The EPA therefore, proposes to grant an exclusion to OxyVinyls, in Deer Park, Texas, for the incinerator offgas treatment scrubber water described in

its petition. The EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the incinerator offgas treatment scrubber water.

If the EPA finalizes the proposed rule, the EPA will no longer regulate the petitioned waste 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, OxyVinyls, must comply with the requirements in 40 CFR part 261, appendix IX, Table 1 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 constituents that OxyVinyls must test the incinerator offgas treatment scrubber water, below which these wastes would be considered non-hazardous.

The EPA selected the set of inorganic and organic constituents specified in Paragraph (1) of 40 CFR Part 261, Appendix IX, Table 1, based on information in the petition. The EPA compiled the inorganic and organic constituents list from the composition of the waste, descriptions of OxyVinyls' treatment process, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the total concentration analysis of the waste.

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

The purpose of this paragraph is to ensure that OxyVinyls manages and disposes of any incinerator offgas treatment scrubber water that contains hazardous levels of inorganic and organic constituents according to Subtitle C of RCRA. Managing the incinerator offgas treatment scrubber water as a hazardous waste until initial verification testing is performed will protect against improper handling of hazardous material. If EPA determines that the data collected under this Paragraph do not support the data provided for in the petition, the exclusion will not cover the petitioned waste. The exclusion is effective upon publication in the **Federal Register** but the disposal at a non-Subtitle C surface impoundment cannot begin until the verification sampling is completed.

###### (3) Verification Testing Requirements

OxyVinyls must complete a rigorous verification testing program on the incinerator offgas treatment scrubber water to assure that the treated incinerator offgas treatment scrubber water does not exceed the maximum levels specified in Paragraph (1). If the EPA determines that the data collected under this Paragraph does not support the data provided for in the petition, the exclusion will not cover the tested waste. This verification program operates on two levels.

The first part of the verification testing program consists of testing the incinerator offgas treatment scrubber water for specified indicator parameters as per Paragraph (1).

If the EPA determines that the data collected under this Paragraph do not support the data provided for the petition, the exclusion will not cover the generated wastes. If the data from the initial verification testing program demonstrate that the treatment process is effective, OxyVinyls may request quarterly testing. The EPA will notify OxyVinyls, in writing, if and when it may replace the testing conditions in paragraph (3)(A) with the testing conditions in (3)(B).

The second part of the verification testing program is the quarterly testing of representative samples of incinerator offgas treatment scrubber water for all constituents specified in Paragraph (1). The EPA believes that the concentrations of the constituents of concern in the incinerator offgas treatment scrubber water may vary over time. Consequently this program will ensure that OxyVinyls' treatment process can effectively handle any variation in constituent concentrations in the waste.

The proposed subsequent testing would verify that OxyVinyls operates an incinerator from which an aqueous stream is generated from treating and neutralizing gasses generated in the firebox during the incineration process as it did during the initial verification testing. It would also verify that the incinerator offgas treatment scrubber water does not exhibit unacceptable levels of toxic constituents.

The EPA is proposing to require OxyVinyls to analyze representative samples of the incinerator offgas treatment scrubber water quarterly during the first year of waste generation. OxyVinyls would begin quarterly sampling 60 days after the final exclusion as described in Paragraph (3)(B).

The EPA, per Paragraph 3(C), is proposing to end the subsequent testing

conditions after the first year if OxyVinyls has demonstrated that the waste consistently meets the delisting levels. To confirm that the characteristics of the waste do not change significantly over time, OxyVinyls must continue to analyze a representative sample of the waste on an annual basis. Annual testing requires analyzing the full list of components in Paragraph 1. If operating conditions change as described in Paragraph (4); OxyVinyls must reinstate all testing in Paragraph (1). It must prove through a new demonstration that its waste meets the conditions of the exclusion.

If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, OxyVinyls must notify the EPA according to the requirements in Paragraph 6. The facility must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

###### (4) Changes in Operating Conditions

Paragraph (4) would allow OxyVinyls the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment process. However, OxyVinyls must prove the effectiveness of the modified process and request approval from the EPA. OxyVinyls must manage wastes generated during the new process demonstration as hazardous waste until it has obtained written approval and Paragraph (3) is satisfied.

###### (5) Data Submittals

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

If the proposed exclusion is made final, it will apply only to 919,990 cubic yards per year of incinerator offgas treatment scrubber water generated at the OxyVinyls facility after successful verification testing.

The EPA would require OxyVinyls to file a new delisting petition under any of the following circumstances:

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

(b) If OxyVinyls uses any new manufacturing or production

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

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

OxyVinyls must manage waste volumes greater than 919,990 cubic yards per year of incinerator offgas treatment scrubber water as hazardous until the EPA grants a new exclusion.

When this exclusion becomes final, OxyVinyls' management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction. OxyVinyls must either treat, store, or dispose of the waste in an on-site facility. If not, OxyVinyls must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a State permit, license, or register to manage municipal or industrial solid waste.

#### (6) Reopener

The purpose of Paragraph 6 is to require OxyVinyls 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. OxyVinyls must also use this procedure, if the waste sample in the annual testing fails to meet the levels found in Paragraph 1. This provision will allow the EPA to reevaluate the exclusion if a source provides new or additional information to the EPA. The 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 the EPA to deny the petition if presented.

This provision expressly requires OxyVinyls 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 the 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.

The EPA believes 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. The EPA may reopen a delisting decision when new information is received that calls into question the assumptions underlying the delisting.

The EPA believes a clear statement of its authority in delistings is merited in light of the EPA's experience. See Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the

delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading the EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, the EPA will continue to address these situations case by case. Where necessary, the EPA will make a good cause finding to justify emergency rulemaking. See APA section 553(b).

#### (7) Notification Requirements

In order to adequately track wastes that have been delisted, the EPA is requiring that OxyVinyls provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. OxyVinyls must provide this notification within 60 days of commencing this activity.

#### B. What Happens if OxyVinyls Violates the Terms and Conditions?

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

### V. Public Comments

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

The EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to the Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD-C), Environmental Protection Agency (EPA), 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to Nicole Bealle, Waste Team Leader, Texas Commission on Environmental Quality, 5425 Polk Avenue Suite A, Houston, TX 77023. Identify your comments at the top with this regulatory docket number: "F-02-TX-OxyVinyls." You may submit your comments electronically to James Harris at [harris.jamesa@epa.gov](mailto:harris.jamesa@epa.gov).

You should submit requests for a hearing to Steven Gilrein, Associate Director of RCRA, Multimedia Planning and Permitting Division (6PD), U. S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

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

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665-6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

### VI. Regulatory Impact

Under Executive Order 12866, the EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of the EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from the EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

### VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on a small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of the EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have

a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

### VIII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

### IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, which was signed into law on March 22, 1995, the EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year.

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

Before the EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

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

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

small government agency plan under UMRA section 203.

### X. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that the EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA. This proposed rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

### XI. Executive Order 13084

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

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

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

In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to have "meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### XII. National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act, the EPA is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by the EPA, the Act requires that the EPA provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the EPA has no need to consider the use of voluntary consensus standards in developing this final rule.

### XIII. Executive Order 13132 Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires the EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

#### Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous Waste, Recycling, Reporting and recordkeeping requirements.

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

Dated: September 19, 2003.

**William Luthans,**  
*Acting Director, Multimedia Planning and Permitting Division, Region 6.*

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

#### PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

2. In Table 1 of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

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

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility/Address	Waste description
OxyVinyls, L.P., Deer Park, TX .....	<p>Incinerator Offgas Scrubber Water (EPA Hazardous Waste Nos. K017, K019 and K020) generated at a maximum annual rate of 919,990 cubic yards per calendar year after [insert publication date of the final rule] and disposed in a Subtitle D surface impoundment.</p> <p>For the exclusion to be valid, OxyVinyls must implement a testing program that meets the following Paragraphs:</p> <p>(1) <i>Delisting Levels:</i> All leachable concentrations for those constituents must not exceed the following levels (mg/l). The petitioner must use the leaching specified in 40 CFR Part 261.24 to measure constituents in the incinerator offgas scrubber water.</p> <p>Incinerator offgas treatment scrubber water (i) Inorganic Constituents Antimony-0.0204; Arsenic-0.385; Barium-2.92; Beryllium-0.166; Cadmium-0.0225; Chromium-5.0; Cobalt-13.14; Copper-418.00; Lead-5.0; Nickel-1.13; Mercury-0.0111; Vanadium-0.838; Zinc-2.61</p> <p>(ii) Organic Constituents Acetone-1.46; Bromoform-0.481; Bromomethane-8.2; Bromodichloromethane-0.0719; Chloroform-0.683; Dibromochloromethane-0.057; Iodomethane-0.19; Methylene Chloride-0.029; 2,3,7,8-TCDD equivalents as TEQ-0.0000926</p> <p>(2) <i>Waste Management:</i></p> <p>(A) OxyVinyls must manage as hazardous all incinerator offgas treatment scrubber water generated, until it has completed initial verification testing described in Paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied.</p> <p>(B) Levels of constituents measured in the samples of the incinerator offgas treatment scrubber water that do not exceed the levels set forth in Paragraph (1) are non-hazardous. OxyVinyls can manage and dispose the non-hazardous incinerator offgas treatment scrubber water according to all applicable solid waste regulations.</p> <p>(C) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), OxyVinyls can collect one additional sample and perform expedited analyses to confirm if the constituent exceeds the delisting level. If this sample confirms the exceedance, OxyVinyls must, from that point forward, treat the waste as hazardous until it is demonstrated that the waste again meets the levels.</p> <p>(D) If the facility has not treated the waste, OxyVinyls must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance.</p> <p>(E) Upon completion of the Verification Testing described in Paragraph 3(A) and (B) as appropriate and the transmittal of the results to the EPA, and if the testing results meet the requirements of Paragraph (1), OxyVinyls may proceed to manage its incinerator offgas treatment scrubber water as non-hazardous waste. If Subsequent Verification Testing indicates an exceedance of the Delisting Levels in Paragraph (1), OxyVinyls must manage the incinerator offgas treatment scrubber water as a hazardous waste until two consecutive quarterly testing samples show levels below the Delisting Levels.</p> <p>(3) <i>Verification Testing Requirements:</i> OxyVinyls must perform sample collection and analyses, including quality control procedures, according to SW-846 methodologies. If the EPA judges the process to be effective under the operating conditions used during the initial verification testing, OxyVinyls may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). OxyVinyls must continue to test as specified in Paragraph (3)(A) until and unless notified by the EPA in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B).</p> <p>(A) <i>Initial Verification Testing:</i> After the EPA grants the final exclusion, OxyVinyls must do the following:</p> <p>(i) Within 60 days of this exclusion's becoming final, collect four samples, before disposal, of the incinerator offgas treatment scrubber water.</p> <p>(ii) The samples are to be analyzed and compared against the delisting levels in Paragraph (1).</p>

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

Facility/Address	Waste description
	<p>(iii) Within sixty (60) days after this exclusion becomes final, OxyVinyls will report initial verification analytical test data, including analytical quality control information for the first thirty (30) days of operation after this exclusion becomes final of the incinerator offgas treatment scrubber water. If levels of constituents measured in the samples of the incinerator offgas treatment scrubber water that do not exceed the levels set forth in Paragraph (1) are also non-hazardous in two consecutive quarters after the first thirty (30) days of operation after this exclusion, OxyVinyls can manage and dispose of the incinerator offgas treatment scrubber water according to all applicable solid waste regulations.</p> <p>(B) <i>Subsequent Verification Testing:</i> Following written notification by the EPA, OxyVinyls may substitute the testing conditions in (3)(B) for (3)(A). OxyVinyls must continue to monitor operating conditions, and analyze representative samples for each quarter of operation during the first year of waste generation. The samples must represent the waste generated during the quarter. After the first year of analytical sampling Verification sampling can be performed on a single annual sample of the incinerator offgas treatment scrubber water. The results are to be compared to the delisting levels in Condition (1).</p> <p>(C) <i>Termination of Testing:</i> (i) After the first year of quarterly testing, if the Delisting Levels in Paragraph (1) are being met, OxyVinyls may then request that the EPA stop quarterly testing. After the EPA notifies OxyVinyls in writing, the company may end quarterly testing.</p> <p>(ii) Following cancellation of the quarterly testing, OxyVinyls must continue to test a representative sample for all constituents listed in Paragraph (1) annually.</p> <p>(4) <i>Changes in Operating Conditions:</i> If OxyVinyls significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could significantly affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify the EPA in writing; OxyVinyls may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in Paragraph (1) and it has received written approval to do so from the EPA.</p> <p>(5) <i>Data Submittals:</i> OxyVinyls must submit the information described below. If OxyVinyls fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. OxyVinyls must:</p> <p>(A) Submit the data obtained through Paragraph 3 to the Section Chief, Region 6 Oklahoma/Texas Section, the EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733, Mail Code, (6PD-O) within the time specified.</p> <p>(B) Compile records of operating conditions and 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 the EPA or the State of Texas request 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 style="padding-left: 40px;">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 style="padding-left: 40px;">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 style="padding-left: 40px;">If any of this information is determined by the 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 the 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) <i>Reopener</i></p> <p>(A) If, anytime after disposal of the delisted waste OxyVinyls possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater 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 Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data.</p> <p>(B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, OxyVinyls must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data.</p> <p>(C) If OxyVinyls 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 Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires the EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.</p>

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

Facility/Address	Waste description
	<p>(D) If the Regional Administrator or his delegate determines that the reported information does require action by the EPA's Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate 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 Regional Administrator or his delegate'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 Regional Administrator or his delegate will issue a final written determination describing the EPA actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise.</p> <p>(7) Notification Requirements: OxyVinyls 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) Update the one-time written notification if it ships the delisted waste into a different disposal facility.</p> <p>(C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.</p>

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[FR Doc. 03-24910 Filed 9-30-03; 8:45 am]  
**BILLING CODE 6560-50-P**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 16 and 39

[FAR Case 2003-008]

RIN 9000-AJ74

#### Federal Acquisition Regulation; Share-in-Savings Contracting

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to solicit comments to assist in the implementation of section 210 of the E-Government Act of 2002, Public Law 107-347. Section 210 authorizes Governmentwide use of Share-in-Savings (SIS) contracts for information technology (IT). SIS contracts offer an

innovative approach for encouraging industry to share creative technology solutions with the Government. Through a properly structured SIS contract, agencies may lower costs and improve service delivery without large “up front” investments by having the contractor provide the technology investment and allowing the contractor to share with the Government in the savings achieved. The Councils seek the public’s comment on the challenges associated with SIS contracts, such as the establishment of quantifiable baselines and a reasonable return on investment (ROI) over the life-cycle of the investment, so that this tool can be applied effectively to improve mission performance.

**DATES:** Interested parties should submit comments in writing on or before October 31, 2003, to be considered in the formulation of a final rule.

**ADDRESSES:** Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to [ANPR.2003-008@gsa.gov](mailto:ANPR.2003-008@gsa.gov).

Please submit comments only and cite ANPR FAR case 2003-008 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501-4755 for information pertaining to status or publication

schedules. For clarification of content, contact Mr. Craig R. Goral, Procurement Analyst, at (202) 501-3856. Please cite FAR case 2003-008.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 210 of the E-Government Act amends the Armed Services Procurement Act and the Federal Property and Administrative Services Act to authorize the use of SIS contracts for IT. Share-in-Savings is an innovative, performance-based concept that is intended to help an agency leverage its limited resources to improve or accelerate mission-related or administrative processes and lower costs for the taxpayer. Under an SIS contract, the contractor finances the work and then shares with the agency in the savings generated from contract performance. Pursuant to the authority in section 210, which sunsets at the end of fiscal year 2005, agencies are permitted to enter into SIS contracts for up to 5 years, and, with appropriate approval, up to 10 years. Agencies are obligated to pay the contractor for services performed only if savings are realized and, in such cases, only a portion of the total savings realized. The agency may retain its share of the savings, with certain exceptions.

Section 210 authorizes the Federal Government to award any number of SIS IT contracts where funds are available and sufficient to make payments with respect to the first fiscal