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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–8264–7]

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

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: Environmental Protection Agency (EPA) is granting a petition submitted by General Motors Corporation-Arlington Truck Assembly Plant (GM-Arlington) to exclude (or delist) a wastewater treatment plant (WWTP) sludge generated by GM-Arlington in Arlington, TX from the lists of hazardous wastes. This final rule responds to the petition submitted by GM-Arlington to delist F019 WWTP sludge generated from the facility's waste water treatment plant.

After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded the petitioned waste is not hazardous waste. This exclusion applies to 3,000 cubic yards per year of the F019 WWTP sludge. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when it is disposed in a Subtitle D Landfill.

EFFECTIVE DATE: January 3, 2007.

ADDRESSES: The public docket for this final rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in EPA Freedom of Information Act review room on the 7th floor from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is ''F–05–TXDEL–GM-Arlington.''. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. For technical information concerning this notice, contact Youngmoo Kim, Environmental Protection Agency Region 6, 1445 Ross Avenue, (6PD–C), Dallas, Texas 75202, at (214) 665–6788, or *kim.youngmoo@epa.gov.*

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

I. Overview Information

A. What action is EPA finalizing?

After evaluating the petition, EPA proposed, on July 19, 2005, to exclude the waste water treatment plant sludge from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 70 FR 41358). EPA is finalizing the decision to grant GM-Arlington's delisting petition to have its waste water treatment sludge managed and disposed as non-hazardous waste provided certain verification and monitoring conditions are met.

B. Why is EPA approving this action?

GM-Arlington's petition requests a delisting from the F019 waste listing under 40 CFR 260.20 and 260.22. GM-Arlington does not believe that the petitioned waste meets the criteria for which EPA listed it. GM-Arlington also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste as originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's final decision to delist waste from GM-Arlington's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Arlington, Texas facility.

C. What are the limits of this exclusion?

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

D. How will GM-Arlington manage the waste if it is delisted?

The WWTP sludge from GM-Arlington will be disposed of in a RCRA Subtitle D landfill.

E. When is the final delisting exclusion effective?

This rule is effective January 3, 2007. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA, 42 U.S.C. 6930(b)(1), allows rules to become effective less than six months after the rule is published when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous waste. This reduction in existing requirements also provides a

basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How does this final rule affect states?

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

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some states (for example, Louisiana, Oklahoma, Georgia, and Illinois) to administer a RCRA delisting program in place of the Federal program; that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states unless that state makes the rule part of its authorized program. If GM-Arlington transports the petitioned waste to or manages the waste in any state with delisting authorization, GM-Arlington must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the state.

II. Background

A. What is a delisting petition?

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

B. What regulations allow facilities to delist a waste?

Under §§ 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of 40 CFR Parts 260 through 265 and 268. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

C. What information must the generator supply?

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste and that such factors do not warrant retaining the waste as a hazardous waste.

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

A. What waste did GM-Arlington petition EPA to delist?

On September 14, 2004, GM-Arlington petitioned EPA to exclude from the lists of hazardous wastes contained in §§ 261.31, WWTP sludge (F019) generated from its facility located in Arlington, Texas. The waste falls under the classification of listed waste pursuant to § 261.31.

B. How much waste did GM-Arlington propose to delist?

Specifically, in its petition, GM-Arlington requested that EPA grant a standard exclusion for 3,000 cubic yards per year of the WWTP sludge.

C. How did GM-Arlington sample and analyze the waste data in this petition?

To support its petition, GM-Arlington submitted:

(1) Historical information on waste generation and management practices;

(2) background information and Memorandum of Understanding for the Michigan ECOS project;

(3) analytical results from six samples for total concentrations of COCs; and

(4) analytical results from six samples for Toxicity Characteristic Leaching Procedure(TCLP) extract values.

IV. Public Comments Received on the Proposed Exclusion

A. Who submitted comments on the proposed rule?

Comments were submitted by General Motors Worldwide Facilities Group Environmental Services to correct information contained in the proposed rule and comments in support of granting the petition were submitted by the Alliance of Automobile Manufacturers.

B. What were the comments and what are EPA's responses to them?

1. Waste Disposal in Subtitle D Landfill and Other Authorized States

Comment: GM requests that EPA clarify that GM, at its discretion, has the option to dispose of the waste in any Subtitle D landfill and is not bound to use the site Waste Management landfill. GM also requests that EPA clarify that an authorized state may accept EPA's decision or make their own determinations based upon their own review process. This comment was also supported by the Alliance of Automobile Manufacturers.

Response: EPA does not limit the disposal of the F019 to a specific Subtitle D landfill. EPA states, in the exclusion language on page 41366 of the proposed rule in Table 1, (2)(B), that GM-Arlington can manage and dispose of the nonhazardous WWTP sludge according to all applicable solid waste regulations. GM provided in its petition specific reference to the Waste Management, East Oak Landfill, 3201 Mostley Road, Oklahoma City, OK 73141 as a disposal site for this waste. Since this disposal site is cited in the GM delisting petition and Oklahoma Department of Environmental Quality (ODEQ) is authorized for delisting, GM should consult with ODEQ regarding waste disposal and meet ODEQ requirements. EPA's delisting authority does not apply in Oklahoma. If GM decides to dispose the waste in another Subtitle D landfill in a state not authorized for delisting, GM must notify EPA by a letter regarding the disposal site which meets all applicable Subtitle D solid waste regulations in accordance with the notification requirements in paragraph (7) of the exclusion.

2. Acrylamide

*Comment: In Section III B. of the preamble, EPA states ''Acrylamide was a major compound of concern for other nationwide GM plants' petitions * * *'' GM requests that EPA qualify this statement to accurately reflect that the issues previously experienced regarding acrylamide were due to complex modeling and analytical issues and not tangible environmental issues.*

Response: Acrylamide is not a compound of concern (COC) for the waste at GM-Arlington, because it is not detected in the waste.

3. Corrections

Multiple pH Testing

Comment: EPA incorrectly states that Multiple pH testing was performed on the waste.

Response: Multiple pH is incorrectly stated in Section III C.(5) of the preamble. No multiple pH testing was performed.

Table 1 Correction

Comment: GM requests that EPA revise Table 1, Analytical Results/ Maximum Allowable Concentrations to correct an error; tetracholoethane to tetrachloroethylene.

Response: We acknowledge the typographical error of tetrachoroethylene. However, EPA does not republish supporting tables from the proposed rule. Tetrachloroethylene will not be included in Table 1 because it is a non-detected compound and is not a COC.

Comment: GM requests that EPA Region VI incorporate the same risk level used by EPA Region V for arsenic. EPA should correct the cadmium concentration to 0.36 mg/l. GM is unable to recreate the levels presented for both the inorganic and organic constituents because EPA has yet to make available to the public a current and corrected version of the DRAS model.

Response:

- The maximum TCLP concentration of arsenic is below detection limit and is not a COC for GM-Arlington's delisting exclusion.
- The delisting level for cadmium is 0.36 mg/l and has been corrected in the final exclusion language.
- EPA Region 6 used DRAS Version 2.0 to evaluate risk from disposal of the GM-Arlington wastes. The maximum concentration levels we proposed for the GM-Arlington rule are based on the delisting process. We will provide GM with this Version of the DRAS on CD. The model is run at a risk level of 1×10^{-5} and a hazard quotient of 0.1. EPA Regions 5 and 6 currently use different risk level thresholds for calculating waste concentrations, Region 6 risk assessors feel confident that using the risk level and hazard quotient in this manner provide protective results for all Region 6 petitioners.

Web Link for Accessing DRAS

Comment: The web link referenced in the preamble to access the DRAS model is incorrect. GM suggests that EPA correct this link as follows: http://www.epa.gov/region6/6pd/rcra_c/pd-o/dras/dras.htm.

Response: We acknowledge the web link: *http://www.epa.gov/region6/6pd/rcra_c/pd-o/dras/dras.htm* is incorrect. The link to the risk assessment page of the Delisting Program Webpage is sometimes broken when updates to the web page are made. The DRAS can be accessed by using the Region 6 hazardous waste delisting program page as a point of entry. That web link is currently: *http://www.epa.gov/arkansas/6pd/rcra_c/pd-o/delist.htm.* The DRAS will be associated with the ''risk assessment'' link.

4. Data Submittal/Changes in Operating Conditions

Comment: GM requests that EPA clarify the preamble language to match the language in condition (4) Changes in Operating Conditions, in Table 1. The condition requires EPA approval, when and if, there is a significant change in the waste that may or could result in a significant change in composition of the waste. This comment is also supported by the Alliance of Automobile Manufacturers.

Response: As stated above, we do not republish preamble language. As GM states, the language found in the exclusion language of Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22. Table 1—Waste Excluded From Non-Specific Sources, explains what GM must do in cases where operating conditions change. Any changes which affect waste composition, waste volume, and toxicants' concentration levels above health-based safe criteria require notification of EPA whether it is a process or an equipment change in operation.

5. Table 1 Delisting Levels

Comment: GM requests that EPA reevaluate the list of constituents of concern identified in the proposed conditions for the delisting. GM requests that 51 chemicals be removed from the list of constituents with corresponding delisting levels. There also 5 chemicals that were detected but the TCLP results were not within 2 orders of magnitude of the DRAS exit level. GM requests that these five chemicals be removed also. This comment is also supported by the Alliance of Automobile Manufacturers.

Response: The undetected constituents will be removed from Table 1. EPA Region 6 lists all detected constituents with a corresponding delisting concentration level in its exclusions. If the concentrations ever exceed the delisting limit, they would go unmonitored because testing was not required for the verification and annual testing. The following sixteen (16) chemicals will remain in the final rule as COCs: (1) Acetone; (2) Ethyl Benzene; (3) n-Butyl Alcohol; (4) Toluene; (5) Bis(2-Ethylhexyl) Phthalate; (6) p-Cresol; (7) Naphthalene; (8) Barium; (9) Cadmium; (10) Chromium; (11) Cobalt; (12) Lead; (13) Nickel; (14) Silver; (15) Tin; and (16) Zinc.

6. Verification Testing

Comment: The verification testing requirements as described in the preamble and proposed conditions for delisting are confusing and inconsistent with other delisting conditions for similar waste streams. This comment is also supported by the Alliance of Automobile Manufacturers.

Response: Delistings are site-specific rule makings. The verification and sampling requirements for a petition will vary and be structured under consideration of the site specific conditions.

Initial Verification Sampling and Quarterly Sampling

Comment: GM believes eight samples required for the initial sampling schedule is overly rigorous and requests that EPA remove the initial sampling verification requirement. GM proposes that it will manage the waste as hazardous until it has performed verification testing of one sample analyzed for ten constituents. Provided that the delisting levels are not exceeded, then GM may manage the waste as nonhazardous. This is consistent with the delisting petition issued in Region 5 for similar facilities. GM-Arlington will be at a competitive disadvantage, if it were to have to manage its wastes differently from those included in the Region 5 petition. This comment is also supported by the Alliance of Automobile Manufacturers.

Response: Sixteen data points are necessary to perform statistical analysis on the data received. GM proposes in its comment to perform only one sample. One sample cannot be a statistical pool. EPA proposed, during the verification period, that 18 samples would be collected. The verification requirements of eight (8) initial samples, 6 samples over the next three quarters, in addition to the 6 samples initially provided was proposed so that enough data would be collected to complete statistical analysis of the data provided. The EPA has considered the comments made by GM and the requirement of eight initial samples will be reduced to two. The number of samples for the quarterly sampling will remain the same, two each quarter for the first year. EPA will not evaluate the data using a statistical approach; we will use the highest concentration of each chemical to evaluate the petition. The Verification Testing Language has been revised to represent the following: (1) Two samples taken in the first 30 days after the exclusion is issued; (2) The report

provided to EPA thirty days after the samples are taken, which is 60 days after the exclusion has been issued—Management of the waste as non-hazardous may begin after the EPA reviews and approves the data; (3) GM must then perform subsequent verification by collecting and analyzing two samples for each sampling event for the next three quarters of the first year. Quarterly reports are due to EPA within 30 days of the sampling event; and (4) After completion of the Initial and Subsequent testing and notification by letter from EPA, GM will be required to collect one sample annually, and provide EPA with the results from the annual verification test within 30 days of the sampling event.

Initial Sludge Management

Comment: GM requests that the Arlington, TX facility be allowed to manage its sludge as non-hazardous upon completion of the first successful verification sampling event.

Response: As stated above, EPA Region 6 will allow GM to manage its waste as non-hazardous if the sludge meets the delisting levels after the initial verification testing.

Retesting

Comment: GM supports the delisting conditions of Table 1, condition 2(c) which allows GM-Arlington to collect one additional sample and perform expedited analysis to verify an exceedance of a delisting level.

Response: While in such limited testing scenarios EPA does not expect a petitioned waste to fail the delisting levels, there are instances where anomalous results may be reported. EPA will allow a petitioner to retest to confirm or disprove an anomalous result.

Reduced Verification Requirements

Comment: GM supports EPA's approach to allow GM to end the quarterly sampling requirement after one year of successfully demonstrating that the waste meets the delisting levels.

Response: Annual sampling is required after one year of quarterly sampling as it states in Table 1 Condition (3)(C)(ii).

Analytical Quality Control Information

Comment: GM requests clarification as to what information will satisfy the requirement in Condition (3)(A)(iii) regarding analytical quality control information.

Response: EPA expects that analytical quality control information and the sample analysis include the data from an equipment blank, quality of distilled water or extraction solvent, duplicates for precision measurement, a spike to measure % recovery for accuracy to define the closeness of the true values of measured data.

7. Data Submittals/Certification Statement

Comment: GM requests that EPA allow GM to replace the certification language proposed with the certification language in 40 CFR 260.22(i)(12), consistent with other delisting petitions granted by EPA for similar waste streams. This comment is also supported by the Alliance of Automobile Manufacturers.

Response: The certification language included in the proposed exclusion is consistent with the language in all EPA Region 6 conditional exclusions. No change to this language will be made.

Other Comments and Changes in the EPA Proposed Rule for GM

1. Page 41360, III A. There is a typographical error ''Felist''. This should be ''Delist''.

2. Page 41360. Arsenic should be deleted from Table 1, since its concentration is below the detection limit.

3. Page 41362. The web link to access the DRAS model should be corrected.

4. Page 41362. The middle column states ''Using the risk level(carcinogenic risk of 10–5 and non-cancer hazard index of 1.0) * * *'' We use a hazard quotient for individual chemical is 0.1, assuming average number of chemicals on site is 10. Therefore, the wording of hazard index of 1.0 should be changed to hazard *quotient of 0.1* because we are talking about the risk level of each chemical. Hazard index means the summation of quotients from individual non-carcinogenic compounds.

5. Page 41366. For Table 1 the number of delisting sixty-six (66) constituents will be reduced to sixteen (16) chemicals by eliminating undetected chemicals.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review '' (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, 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 final 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 final 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 today's action under section 801 because this is a rule of particular applicability.

List 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: December 20, 2006.

Carl E. Edlund,

Director Multimedia Planning and Permitting Division Region 6.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

■ 2. In Table 1 of Appendix IX 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
*	*	* * * * *
General Motors	Arlington, TX	Wastewater Treatment Sludge (WWTP) (EPA Hazardous Waste No. F019) generated at a maximum annual rate of 3,000 cubic yards per calendar year after January 3, 2007 and disposed in a Subtitle D landfill. For the exclusion to be valid, GM-Arlington must implement a verification testing program that meets the following paragraphs: (1) *Delisting Levels:* All leachable concentrations for those constituents must not exceed the following levels (mg/l for TCLP). (i) Inorganic Constituents: Barium-100; Cadmium-0.36; Chromium-5 (3.71) ; Cobalt-18.02; Lead-5; Nickel-67.8; Silver-5; Tin-540; Zinc-673. (ii) Organic Constituents: Acetone-171; Ethylbenzene-31.9; N-Butyl Alcohol-171; Toluene-45.6; Bis(2-Ethylhexyl) Phthalate-0.27; p-Cresol-8.55; Naphthalene-3.11. (2) *Waste Management:* (A) GM-Arlington must manage as hazardous all WWTP sludge 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. (B) Levels of constituents measured in the samples of the WWTP sludge that do not exceed the levels set forth in paragraph (1) are non-hazardous. GM-Arlington can manage and dispose of the non-hazardous WWTP sludge according to all applicable solid waste regulations. (C) If constituent levels in a sample exceed any of the delisting levels set in paragraph (1), GM-Arlington can collect one additional sample and perform expedited analyses to verify if the constituent exceeds the delisting level. If this sample confirms the exceedance, GM-Arlington must, from that point forward, treat the waste as hazardous until it is demonstrated that the waste again meets the levels in paragraph (1). GM-Arlington must manage and dispose of the waste generated under Subtitle C of RCRA from the time it becomes aware of any exceedance. (D) Upon completion of the Verification Testing described in paragraph 3(A) and (B), as appropriate, and the transmittal of the results to EPA, and if the testing results meet the requirements of paragraph (1), GM-Arlington may proceed to manage its WWTP sludge as non-hazardous waste. If subsequent Verification Testing indicates an exceedance of the Delisting Levels in paragraph (1), GM-Arlington must manage the WWTP sludge as a hazardous waste until two consecutive quarterly testing samples show levels below the Delisting Levels in paragraph (1). (3) *Verification Testing Requirements:* GM-Arlington must perform sample collection and analyses, including quality control procedures, according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution) for all constituents listed in paragraph (1). If EPA judges the process to be effective under the operating conditions used during the initial verification testing, GM-Arlington may replace the testing required in paragraph (3)(A) with the testing required in paragraph (3)(B). GM-Arlington Plant must continue to test as specified in paragraph (3)(A) until and unless notified by EPA in writing that testing in paragraph (3)(A) may be replaced by paragraph (3)(B). (A) *Initial Verification Testing:* After EPA grants the final exclusion, GM-Arlington must do the following: (i) Within 30 days of this exclusion becoming final, collect two (2) samples, before disposal, of the WWTP sludge. (ii) The samples are to be analyzed and compared against the Delisting Levels in paragraph (1). (iii) Within 60 days of the exclusion becoming final, GM-Arlington must report to EPA the initial verification analytical test data for the WWTP sludge, including analytical quality control information for the first thirty (30) days of operation after this exclusion becomes final. If levels of constituents measured in these samples of the WWTP sludge do not exceed the levels set forth in paragraph (1), GM-Arlington can manage and dispose of the WWTP sludge according to all applicable solid waste regulations.

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

Facility	Address	Waste description
		(B) *Subsequent Verification Testing:* Following written notification by EPA, GM-Arlington may substitute the testing conditions in paragraph (3)(B) for paragraph (3)(A). GM-Arlington must continue to monitor operating conditions, and analyze two representative samples of the WWTP sludge for the next three quarters of operation during the first year of waste generation. The samples must represent the waste generated during the quarter. Quarterly reports are due to EPA, thirty days after the samples are taken. After the first year of analytical sampling, verification sampling can be performed on a single annual sample of the WWTP sludge. The results are to be compared to the delisting levels in paragraph (1). (C) *Termination of Testing:* (i) After the first year of quarterly testing, if the delisting levels in paragraph (1) are being met, GM-Arlington may then request that EPA not require quarterly testing. (ii) Following cancellation of the quarterly testing by EPA letter, GM-Arlington must continue to test one representative sample for all constituents listed in paragraph (1) annually. Results must be provided to EPA within 30 days of the testing. (4) *Changes in Operating Conditions:* If GM-Arlington significantly changes the process described in its petition or starts any process that generates 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 EPA in writing; it may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA. (5) *Data Submittals:* GM-Arlington must submit the information described below. If GM-Arlington 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. GM-Arlington must: (A) Submit the data obtained through paragraph(3) to the Section Chief, Region 6 Corrective Action and Waste Minimization Section, EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–C) within the time specified. (B) Compile records of operating conditions and analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the State of Texas requests them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: ''Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.'' (6) *Re-opener;* (A) If, anytime after disposal of the delisted waste, GM-Arlington 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 a level higher than the delisting level allowed by EPA in granting the petition, then the facility must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph 1, GM-Arlington must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (C) If GM-Arlington fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, EPA will make a preliminary determination as to whether the reported information requires action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If EPA determines that the reported information requires action, EPA will notify the facility in writing of the actions it 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 explaining why the proposed EPA action is not necessary. The facility shall have 10 days from the date of EPA's notice to present such information.

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

Facility	Address	Waste description
		(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), EPA will issue a final written determination describing the actions that are necessary to protect human health and/or the environment. Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise. (7) *Notification Requirements:* GM-Arlington 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. (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. (B) Update the one-time written notification if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
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