

### I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

### J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order 12898 (59 FR 7629) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

### K. Congressional Review Act

The Congressional Review Act (CRA), 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 the House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in

the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective sixty days from the date of publication in the **Federal Register** if no adverse comment is received.

### List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

**Authority:** This action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401, 1411, 1412.

Dated: June 3, 2010.

**Dennis J. McLerran,**  
*Regional Administrator, Region 10.*

■ For the reasons set out in the preamble, EPA amends chapter I, title 40 of the Code of **Federal Register** as follows:

### PART 228—[AMENDED]

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

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

■ 2. Section 228.15 is amended by revising paragraphs (n)(3) and (n)(4) to read as follows:

#### § 228.15 Dumping sites designated on a final basis.

\* \* \* \* \*

(n) \* \* \*

(3) Coos Bay, OR Dredged Material Site F

(i) **Location:** 43°22'54.8887" N., 124°19'28.9905" W.; 43°21'32.8735" N., 124°20'37.7373" W.; 43°22'51.4004" N., 124°23'32.4318" W.; 43°23'58.4014" N., 124°22'35.4308" W. (NAD 83).

(ii) **Size:** 4.45 kilometers long and 2.45 kilometers wide.

(iii) **Depth:** Ranges from 6 to 51 meters.

(iv) **Primary Use:** Dredged material determined to be suitable for ocean disposal.

(v) **Period of Use:** Continuing Use.

(vi) **Restriction:** Disposal shall be limited to dredged material determined to be suitable for unconfined disposal; Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMPMP); Monitoring, as specified in the SMPMP, is required.

(4) Coos Bay, OR Dredged Material Site H

(i) **Location:** 43°23'53" N., 124°22'48" W.; 43°23'42" N., 124°23'01" W.; 43°24'16" N., 124°23'26" W.; 43°24'05" N., 124°23'38" W.

(ii) **Size:** 0.13 square nautical mile.

(iii) **Depth:** Averages 55 meters.

(iv) **Primary Use:** Dredged material.

(v) **Period of Use:** Continuing use.

(vi) **Restriction:** Disposal shall be

limited to dredged material in the Coos Bay area of type 2 and 3, as defined in the site designation final EIS.

\* \* \* \* \*

[FR Doc. 2010-14242 Filed 6-14-10; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

[EPA-HQ-RCRA-2005-0017; FRL-9160-9]

**RIN 2050-AG57**

### Withdrawal of the Emission-Comparable Fuel Exclusion Under RCRA

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

**ACTION:** Final rule.

**SUMMARY:** This final action withdraws the conditional exclusion from regulations promulgated on December 19, 2008 under subtitle C of the Resource Conservation and Recovery Act (RCRA) for so-called Emission Comparable Fuel (ECF). These are fuels produced from hazardous secondary materials which, when burned in industrial boilers under specified conditions, generate emissions that are comparable to emissions from burning fuel oil in those boilers. EPA is withdrawing this conditional exclusion because the Agency has concluded that ECF is more appropriately classified as a discarded material and regulated as a hazardous waste. The exclusions for comparable fuel and synthesis gas fuel are not addressed or otherwise affected by this final rule.

**DATES:** This final rule is effective June 15, 2010.

**ADDRESSES:** The official public docket is identified by Docket ID No. EPA-HQ-RCRA-2005-0017. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave.,

NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the RCRA Docket is (202) 566-0270.

**FOR FURTHER INFORMATION CONTACT:**

Mary Jackson, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, Mailcode: 5302P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-8453; fax number: (703) 308-8433; e-mail address: [jackson.mary@epa.gov](mailto:jackson.mary@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**General Information**

*A. Does this action apply to me?*

Categories and entities potentially affected by this action include:

**EXAMPLE OF POTENTIALLY AFFECTED ENTITIES**

| NAICS code | Industry description  |
|------------|---|
| 3241 ..    | Petroleum and Coal Products Manufacturing.  |
| 3251 ..    | Basic Chemical Manufacturing.   |
| 3252 ..    | Resin, Synthetic Rubber, and Artificial Synthetic Fibers and Filaments Manufacturing. |
| 3254 ..    | Pharmaceutical and Medicine Manufacturing.  |
| 3255 ..    | Paint, Coating, and Adhesive Manufacturing.   |
| 3259 ..    | Other Chemical Product and Preparation Manufacturing.                                 |
| 3273 ..    | Cement Manufacturing.   |
| 4884 ..    | Support Activities for Road Transportation.   |
| 5614 ..    | Business Support Services.  |
| 5622 ..    | Waste Treatment and Disposal.   |
| 9281 ..    | National Security and International Affairs.  |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be impacted by this action. This table lists examples of the types of entities EPA is aware of that could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, *etc.*, is affected by this action, you should examine the applicability criteria in this final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**B. Docket Copying Costs**

You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies are 15 cents/page.

*C. How do I obtain a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of today's final rule will also be available on the Internet. Following the Administrator's signature, a copy of this document will be posted at <http://www.epa.gov/hwcmact>. This Web site also provides other information related to the NESHAP for hazardous waste combustors.

**D. Index of Contents**

The information presented in this preamble is organized as follows:

- I. Statutory Authority
- II. Background
  - A. What is the intent of the rule?
  - B. Who is affected by the rule?
- III. Final Rule
- IV. State Authority
  - A. Applicability of the Rule in Authorized States
  - B. Effect on State Authorization
- V. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
  - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  - K. Congressional Review Act

**I. Statutory Authority**

This regulation is promulgated under the authority of sections 1004 and 2002 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6903 and 6912.

**II. Background**

*A. What is the intent of the rule?*

This rule withdraws the conditional exclusion from regulation under subtitle

C of RCRA for Emission Comparable Fuel, as codified at § 261.38.<sup>1</sup> The conditional exclusion stated that hazardous secondary materials that meet all of the hazardous constituent specifications applicable to comparable fuel, except concentration limits for oxygenates and hydrocarbons, and that are stored and burned under prescribed conditions, are not discarded and, thus, are not solid wastes. The fundamental premise of the ECF rule is that ECF is no more hazardous than burning fuel oil, because combustion of this material will have comparable emissions.

However, to ensure that the material does not pose greater risks, EPA felt compelled to promulgate a very detailed set of conditions—the equivalent of a detailed regulatory scheme—for both the storage and combustion of ECF. As discussed in the proposed rule, (Withdrawal of the ECF Exclusion Proposed Rule (74 FR 64643, December 8, 2009)), the existing subtitle C permitting process provides for the necessary review on the operation of the combustion units and the storage units to assure that the appropriate storage and combustion conditions are met.

This rule does not affect the exclusions for comparable fuel and synthesis gas fuel that were promulgated in 1998<sup>2</sup> (also codified in § 261.38). In addition, this rule does not affect the clarifications and revisions to the conditions for comparable fuel that EPA promulgated concurrently with the ECF exclusion.<sup>3</sup>

*B. Who is affected by the rule?*

Entities that generate, burn, and store ECF would be potentially affected by this final rule. The rationale for the exclusion was that ECF is not a solid (and hazardous) waste as generated, and hence is not subject to the subtitle C regulations. Under today's rule, ECF is again classified as a hazardous waste, and all entities managing such hazardous secondary materials are again subject to all applicable subtitle C hazardous waste standards. Since the ECF exclusion was promulgated in December 2008 and became effective in January 2009, and since we are not aware that any States have adopted or applied for authorization for this rule, we would expect that very few facilities, if any, were managing hazardous secondary materials pursuant to this rule.

<sup>1</sup> See 73 FR 77954 (December 19, 2008).

<sup>2</sup> See 63 FR 33782 (June 19, 1998).

<sup>3</sup> See 73 FR at 77963-64.

### III. Final Rule

On December 8, 2009, EPA proposed to withdraw the conditional exclusion for ECF under 261.38, including the exclusion itself in § 261.38(a), the specifications and associated conditions applicable to ECF under § 261.38(a), the implementation conditions applicable to ECF under § 261.38(b), the storage and burning conditions for ECF under § 261.38(c), the provisions for failure to comply with the conditions for the ECF exclusion under § 261.38(d)(2), the alternative storage conditions for ECF under § 261.38(e), and the notification of closure of an ECF storage unit under § 261.38(f). EPA received no major comments on the proposed rule to withdraw the ECF exclusion, and therefore today's action makes final, with no changes, the withdrawal of the conditional exclusion for ECF under § 261.38, as previously described. (The one comment that EPA received on the proposal, along with EPA's response to the comment are contained in the docket to today's final rule.) Information on the intent and rationale of the exclusion can be found in the Withdrawal of the ECF Exclusion Proposed Rule (74 FR 64643, December 8, 2009) and is part of the record for this final rule.

As noted above, this rule does not affect the exclusions for comparable fuel or synthesis gas fuel, including the specifications and associated conditions for these materials under § 261.38(a), the implementation conditions applicable to these materials under § 261.38(b), and the provision for failure to comply with the conditions for exclusion of these materials under § 261.38(d)(1).

Finally, today's final rule does not affect the clarifications and revisions to the conditions for comparable fuel that EPA promulgated concurrently with the ECF exclusion; specifically: (1) Clarification that comparable fuel that is spilled or leaked and that no longer meets the conditions of the exclusion must be managed as a hazardous waste if it exhibits a hazardous waste characteristic or if it is otherwise a listed hazardous waste (§ 261.38(b)(15)); (2) clarification that comparable fuel tank systems and container storage units become subject to the RCRA hazardous waste facility standards if not cleaned of liquids and accumulated solids within 90 days of ceasing operations as a comparable fuel storage unit (§ 261.38(b)(13)); (3) waiver of the RCRA closure requirements for tank systems and container storage units that were used only to store hazardous wastes that are subsequently excluded as comparable fuel (§ 261.38(b)(14)); (4)

clarification that boiler residues, including bottom ash and emission control residue, from burning comparable fuel would be subject to regulation as hazardous waste if they exhibit a hazardous waste characteristic (§ 261.38(b)(12)); and (5) a condition<sup>4</sup> requiring that the one-time notice by the generator to regulatory officials must include an estimate of the average and maximum monthly and annual quantity of comparable fuel for which an exclusion is claimed (§ 261.38(b)(2)(i)(A)).

### IV. State Authority

#### A. Applicability of the Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer their own hazardous waste programs in lieu of the Federal program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for State authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that State, since only the State was authorized to issue RCRA permits. When new, more stringent Federal requirements were promulgated, the State was obligated to enact equivalent authorities within specified time frames. However, the new Federal requirements did not take effect in an authorized State until the State adopted the Federal requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed by the statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While

States must still adopt HSWA related provisions as State law to retain final authorization, EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their programs only when EPA enacts Federal requirements that are more stringent or broader in scope than the existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program (*see also* 40 CFR 271.1). Therefore, authorized States may, but are not required to, adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous Federal regulations.

#### B. Effect on State Authorization

By removing the ECF provisions, while maintaining the more stringent conditions applicable to comparable fuel in today's notice, it leads to final regulations that are considered to be more stringent than the current requirements; these provisions were not promulgated under the authority of HSWA. Therefore, States that have adopted the exclusion are required to modify their programs to remove the exclusion for ECF because they must conform to Federal regulations that are more stringent than the authorized State regulations. States that adopted the comparable fuel exclusion promulgated on June 19, 1998 and codified at § 261.38, but that have not adopted the ECF exclusion, will still need to revise their programs to adopt the more stringent conditions applicable to comparable fuel (*see* 73 FR at 77963–64) that were promulgated concurrently with the ECF exclusion on December 19, 2008.

Section 271.21(e)(2) of EPA's State authorization regulations (40 CFR part 271) requires that States with final authorization modify their programs to reflect Federal program changes and submit the modifications to EPA for approval. The deadline by which the States will need to modify their programs is determined by the date of promulgation of a final rule in accordance with § 271.21(e)(2). Once EPA approves the modification, the State requirements would become RCRA subtitle C requirements.

### V. Statutory and Executive Order Reviews

#### A. Executive Order 12866: Regulatory Planning and Review

This action is not a “significant regulatory action” under the terms of Executive Order (EO) 12866 (58 FR

<sup>4</sup> Please note that this condition applies prospectively to generators that newly claim the comparable fuel exclusion after December 19, 2008 and to generators that must submit a revised notification after December 19, 2008 because of a substantive change in the information required by the notice.

51735, October 4, 1993) and is therefore not subject to review under the EO. Our impact assessment<sup>5</sup> suggests that lost benefits would be, at most, \$6.6 million per year. If fewer States were to have adopted the December 2008 exclusion rule, the value of lost benefits would be smaller.

#### B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1361.15. Withdrawing the ECF exclusion will result in an increase in the reporting and recordkeeping burden for ECF generators and burners, back to the level prior to promulgation of the exclusion. That is, under the ECF conditional exclusion, because ECF was no longer classified as a hazardous waste, the generator and burner were not required to comply with the paperwork, reporting, and recordkeeping requirements under the subtitle C hazardous waste regulations. However, ECF generators and burners were subject to an annual public reporting and recordkeeping burden for the collection of information required under the conditional exclusion. Thus, overall, the reporting and recordkeeping burden for ECF generators and burners resulted in a net annual reduction of 32,900 hours (assuming that all authorized States adopted the rule, which has not occurred) and a savings of \$1.3 million in capital and operation and maintenance costs (based on the same assumption). Therefore, withdrawing the ECF conditional exclusion will result in a reporting and recordkeeping burden of 32,900 hours and a cost of \$1.3 million in capital, and operation and maintenance costs, again assuming full adoption by authorized States. However, since we believe this has not occurred, the new burden would be significantly less. If authorized States have not adopted the rule, withdrawing the ECF conditional exclusion will not change the reporting and recordkeeping burden from what existed prior to promulgation of the conditional exclusion. OMB has previously approved the information collection

requirements contained in the existing regulations at 40 CFR 261.38 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0073. Burden is defined at 5 CFR 1320.3(b). EPA has established a public docket for this final rule, which includes the ICR prepared in support of the final action. The Docket ID number is EPA–HQ–RCRA–2005–0017.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

*For purposes of assessing the impacts of today's rule on small entities, small entity is defined as:* (1) A small business, as defined by Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are facilities that generate, burn on-site, and store ECF. We have determined that the affected ECF generators are not owned by small governmental jurisdictions or nonprofit organizations. Therefore, only small businesses were analyzed for small entity impacts. A small entity is defined either by the number of employees or by the dollar amount of sales. The level at which a business is considered small is determined for each North American Industrial Classification System (NAICS) code by the Small Business Administration.

We have determined that this final rule is projected to result in increased costs to companies that may have started to use the conditional exclusion, as identified in the ECF Final Rule, although we suspect that very few facilities, if any, have actually begun to comply with this rule. However, any cost impacts to potentially affected small entities are not expected to be significant. The May 14, 2008 economic assessment<sup>6</sup> identified 34 facilities projected to take advantage of the ECF final rule (see Appendix E to the economic assessment document). Based on the corporate ownership of these facilities, one facility was confirmed as a small business based on the Small Business Administration size standards.<sup>7</sup> The size category of one other facility was undetermined. All other facilities were found to be owned by large businesses or the Federal government (e.g., DOE). For the one identified small business and the one of undetermined size, impacts to these companies was estimated to be up to a maximum of one percent of gross annual revenues. This impact estimate was based on the average annual gross revenues for the NAICS category (2002 Census data) and the average cost savings per generator, as reported in Exhibit 15 of the revised assessment.<sup>8</sup> This impact finding assumes both "small businesses" have fully implemented the ECF final rule and would therefore experience cost increases as a result of this withdrawal. However, as discussed above, we suspect that very few facilities, if any, have begun to comply with this rule.

#### D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Total annual cost impacts of this action are not expected to exceed \$6.6 million. Thus, this final rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. No

<sup>5</sup> USEPA, "Assessment of the Potential Costs, Benefits, and Other Impacts of the Expansion of the RCRA Comparable Fuel Exclusion-Final Rule," May 14, 2008.

<sup>6</sup> [http://www.sba.gov/idc/groups/public/documents/sba\\_homepage/serv\\_sstd\\_tablepdf.pdf](http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf).

<sup>7</sup> USEPA, "Revised Assessment of the Potential Costs, Benefits, and Other Impacts of the Expansion of the RCRA Comparable Fuel Exclusion-Final Rule," July 15, 2009.

<sup>5</sup> Assessment of the Potential Costs, Benefits, and Other Impacts of the Withdrawal of the Emission-Comparable Fuel Exclusion Under RCRA—Final Rule, May 11, 2010.

small governments are known to own or manage any of the potentially affected entities.

*E. Executive Order 13132: Federalism*

This action 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. This rulemaking primarily and directly affects generators and burners of ECF. There are no State and local government bodies that would incur direct compliance costs by this rulemaking. Thus, Executive Order 13132 does not apply to this final rule.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final rule will neither impose substantial direct compliance costs on Tribal governments nor preempt Tribal law. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, EPA specifically solicited comment on the proposed action from Tribal officials. No comments were received.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this final rule present a disproportionate risk to children. This action's health and risk assessments are contained in the original document(s) that established these materials as hazardous waste.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Because EPA is withdrawing the conditional exclusion for ECF under § 261.38, EPA is not using any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This action reverses the ECF final rule thereby reinstating the more stringent management requirements for these materials.

*K. Congressional Review Act*

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. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A Major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective June 15, 2010.

**List of Subjects in 40 CFR Part 261**

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

Dated: June 7, 2010.

**Lisa P. Jackson,**  
*Administrator.*

- For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations 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. 6903, 6912(b), 6925.

- 2. Section 261.4 is amended by revising paragraph (a)(16) to read as follows:

**§ 261.4 Exclusions.**

(a) \* \* \*

(16) Comparable fuels or comparable syngas fuels that meet the requirements of § 261.38.

\* \* \* \* \*

- 3. Section 261.38 is revised to read as follows:

**§ 261.38 Exclusion of comparable fuel and syngas fuel.**

(a) *Specifications for excluded fuels.* Wastes that meet the specifications for comparable fuel or syngas fuel under paragraphs (a)(1) or (a)(2) of this section, respectively, and the other requirements of this section, are not solid wastes.

(1) *Comparable fuel specifications.*—(i) *Physical specifications.*—(A) *Heating value.* The heating value must exceed 5,000 Btu/lbs. (11,500 J/g).

(B) *Viscosity.* The viscosity must not exceed: 50 cS, as-fired.

(ii) *Constituent specifications.* For compounds listed in Table 1 to this section, the specification levels and, where non-detect is the specification, minimum required detection limits are: (see Table 1 of this section).

(2) *Synthesis gas fuel specifications.*—Synthesis gas fuel (*i.e.*, syngas fuel) that is generated from hazardous waste must:

(i) Have a minimum Btu value of 100 Btu/Scf;

(ii) Contain less than 1 ppmv of total halogen;

(iii) Contain less than 300 ppmv of total nitrogen other than diatomic nitrogen ( $N_2$ );

(iv) Contain less than 200 ppmv of hydrogen sulfide; and

(v) Contain less than 1 ppmv of each hazardous constituent in the target list of appendix VIII constituents of this part.

(3) *Blending to meet the specifications.* (i) Hazardous waste shall not be blended to meet the comparable fuel specification under paragraph (a)(1) of this section, except as provided by paragraph (a)(3)(ii) of this section:

(ii) *Blending to meet the viscosity specification.* A hazardous waste blended to meet the viscosity specification for comparable fuel shall:

(A) As generated and prior to any blending, manipulation, or processing, meet the constituent and heating value specifications of paragraphs (a)(1)(i)(A) and (a)(1)(ii) of this section;

(B) Be blended at a facility that is subject to the applicable requirements of parts 264, 265, or 267 or § 262.34 of this chapter; and

(C) Not violate the dilution prohibition of paragraph (a)(6) of this section.

(4) *Treatment to meet the comparable fuel specifications.* (i) A hazardous waste may be treated to meet the specifications for comparable fuel set forth in paragraph (a)(1) of this section provided the treatment:

(A) Destroys or removes the constituents listed in the specification or raises the heating value by removing or destroying hazardous constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of parts 264, 265, or 267, or § 262.34 of this chapter; and

(C) Does not violate the dilution prohibition of paragraph (a)(6) of this section.

(ii) Residuals resulting from the treatment of a hazardous waste listed in subpart D of this part to generate a comparable fuel remain a hazardous waste.

(5) *Generation of a syngas fuel.* (i) A syngas fuel can be generated from the processing of hazardous wastes to meet the exclusion specifications of paragraph (a)(2) of this section provided the processing:

(A) Destroys or removes the constituents listed in the specification or raises the heating value by removing or destroying constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of parts 264, 265, or 267, or § 262.34 of this

chapter or is an exempt recycling unit pursuant to § 261.6(c); and

(C) Does not violate the dilution prohibition of paragraph (a)(6) of this section.

(ii) Residuals resulting from the treatment of a hazardous waste listed in subpart D of this part to generate a syngas fuel remain a hazardous waste.

(6) *Dilution prohibition.* No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a hazardous waste to meet the specifications of paragraphs (a)(1)(i)(A) or (a)(1)(ii) of this section for comparable fuel, or paragraph (a)(2) of this section for syngas.

(b) *Implementation.*—(1) *General.*—(i) Wastes that meet the specifications provided by paragraph (a) of this section for comparable fuel or syngas fuel are excluded from the definition of solid waste provided that the conditions under this section are met. For purposes of this section, such materials are called excluded fuel; the person claiming and qualifying for the exclusion is called the excluded fuel generator and the person burning the excluded fuel is called the excluded fuel burner.

(ii) The person who generates the excluded fuel must claim the exclusion by complying with the conditions of this section and keeping records necessary to document compliance with those conditions.

(2) *Notices.* (i) *Notices to State RCRA and CAA Directors in authorized States or regional RCRA and CAA Directors in unauthorized States.* (A) The generator must submit a one-time notice, except as provided by paragraph (b)(2)(i)(C) of this section, to the Regional or State RCRA and CAA Directors, in whose jurisdiction the exclusion is being claimed and where the excluded fuel will be burned, certifying compliance with the conditions of the exclusion and providing the following documentation:

(1) The name, address, and RCRA ID number of the person/facility claiming the exclusion;

(2) The applicable EPA Hazardous Waste Code(s) that would otherwise apply to the excluded fuel;

(3) The name and address of the units meeting the requirements of paragraphs (b)(3) and (c) of this section, that will burn the excluded fuel;

(4) An estimate of the average and maximum monthly and annual quantity of material for which an exclusion would be claimed, except as provided by paragraph (b)(2)(i)(C) of this section; and

(5) The following statement, which shall be signed and submitted by the

person claiming the exclusion or his authorized representative:

Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of 40 CFR 261.38 have been met for all comparable fuels identified in this notification. Copies of the records and information required at 40 CFR 261.38(b)(8) are available at the generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(B) If there is a substantive change in the information provided in the notice required under this paragraph, the generator must submit a revised notification.

(C) Excluded fuel generators must include an estimate of the average and maximum monthly and annual quantity of material for which an exclusion would be claimed only in notices submitted after December 19, 2008 for newly excluded fuel or for revised notices as required by paragraph (b)(2)(i)(B) of this section.

(ii) *Public notice.* Prior to burning an excluded fuel, the burner must publish in a major newspaper of general circulation local to the site where the fuel will be burned, a notice entitled "Notification of Burning a Fuel Excluded Under the Resource Conservation and Recovery Act" and containing the following information:

(A) Name, address, and RCRA ID number of the generating facility(ies);

(B) Name and address of the burner and identification of the unit(s) that will burn the excluded fuel;

(C) A brief, general description of the manufacturing, treatment, or other process generating the excluded fuel;

(D) An estimate of the average and maximum monthly and annual quantity of the excluded fuel to be burned; and

(E) Name and mailing address of the Regional or State Directors to whom the generator submitted a claim for the exclusion.

(3) *Burning.* The exclusion applies only if the fuel is burned in the following units that also shall be subject to Federal/State/local air emission requirements, including all applicable requirements implementing section 112 of the Clean Air Act:

(i) Industrial furnaces as defined in § 260.10 of this chapter;

(ii) Boilers, as defined in § 260.10 of this chapter, that are further defined as follows:

(A) Industrial boilers located on the site of a facility engaged in a

manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or

(B) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;

(iii) Hazardous waste incinerators subject to regulation under subpart O of parts 264 or 265 of this chapter and applicable CAA MACT standards.

(iv) Gas turbines used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.

(4) *Fuel analysis plan for generators.* The generator of an excluded fuel shall develop and follow a written fuel analysis plan which describes the procedures for sampling and analysis of the material to be excluded. The plan shall be followed and retained at the site of the generator claiming the exclusion.

(i) At a minimum, the plan must specify:

(A) The parameters for which each excluded fuel will be analyzed and the rationale for the selection of those parameters;

(B) The test methods which will be used to test for these parameters;

(C) The sampling method which will be used to obtain a representative sample of the excluded fuel to be analyzed;

(D) The frequency with which the initial analysis of the excluded fuel will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

(E) If process knowledge is used in the determination, any information prepared by the generator in making such determination.

(ii) For each analysis, the generator shall document the following:

(A) The dates and times that samples were obtained, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any clean-up and sample preparation methods;

(F) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, *etc.*), laboratory quality assurance data, and the description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;

(G) All laboratory results demonstrating whether the exclusion specifications have been met; and

(H) All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in paragraph (b)(9) of this section and also provides for the availability of the documentation to the claimant upon request.

(iii) Syngas fuel generators shall submit for approval, prior to performing sampling, analysis, or any management of an excluded syngas fuel, a fuel analysis plan containing the elements of paragraph (b)(4)(i) of this section to the appropriate regulatory authority. The approval of fuel analysis plans must be stated in writing and received by the facility prior to sampling and analysis to demonstrate the exclusion of a syngas. The approval of the fuel analysis plan may contain such provisions and conditions as the regulatory authority deems appropriate.

(5) *Excluded fuel sampling and analysis.* (i) *General.* For wastes for which an exclusion is claimed under the specifications provided by paragraphs (a)(1) or (a)(2) of this section, the generator of the waste must test for all the constituents in appendix VIII to this part, except those that the generator determines, based on testing or knowledge, should not be present in the fuel. The generator is required to document the basis of each determination that a constituent with an applicable specification should not be present. The generator may not determine that any of the following categories of constituents with a specification in Table 1 to this section should not be present:

(A) A constituent that triggered the toxicity characteristic for the constituents that were the basis for listing the hazardous secondary material as a hazardous waste, or constituents for which there is a treatment standard for the waste code in 40 CFR 268.40;

(B) A constituent detected in previous analysis of the waste;

(C) Constituents introduced into the process that generates the waste; or

(D) Constituents that are byproducts or side reactions to the process that generates the waste.

**Note to paragraph (b)(5):** Any claim under this section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a generator from liability should that constituent later be found in the excluded fuel above the exclusion specifications.

(ii) *Use of process knowledge.* For each waste for which the comparable fuel or syngas exclusion is claimed where the generator of the excluded fuel is not the original generator of the hazardous waste, the generator of the excluded fuel may not use process knowledge pursuant to paragraph (b)(5)(i) of this section and must test to determine that all of the constituent specifications of paragraphs (a)(1) and (a)(2) of this section, as applicable, have been met.

(iii) The excluded fuel generator may use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis are unbiased, precise, and representative of the excluded fuel. For the fuel to be eligible for exclusion, a generator must demonstrate that:

(A) The 95% upper confidence limit of the mean concentration for each constituent of concern is not above the specification level; and

(B) The analyses could have detected the presence of the constituent at or below the specification level.

(iv) Nothing in this paragraph preempts, overrides or otherwise negates the provision in § 262.11 of this chapter, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) In an enforcement action, the burden of proof to establish conformance with the exclusion specification shall be on the generator claiming the exclusion.

(vi) The generator must conduct sampling and analysis in accordance with the fuel analysis plan developed under paragraph (b)(4) of this section.

(vii) *Viscosity condition for comparable fuel.* (A) Excluded comparable fuel that has not been blended to meet the kinematic viscosity specification shall be analyzed as-generated.

(B) If hazardous waste is blended to meet the kinematic viscosity specification for comparable fuel, the generator shall:

(1) Analyze the hazardous waste as-generated to ensure that it meets the constituent and heating value specifications of paragraph (a)(1) of this section; and

(2) After blending, analyze the fuel again to ensure that the blended fuel meets all comparable fuel specifications.

(viii) Excluded fuel must be re-tested, at a minimum, annually and must be retested after a process change that could change its chemical or physical

properties in a manner than may affect conformance with the specifications.

(6) (Reserved)

(7) *Speculative accumulation.*

Excluded fuel must not be accumulated speculatively, as defined in § 261.1(c)(8).

(8) *Operating record.* The generator must maintain an operating record on site containing the following information:

(i) All information required to be submitted to the implementing authority as part of the notification of the claim:

(A) The owner/operator name, address, and RCRA ID number of the person claiming the exclusion;

(B) For each excluded fuel, the EPA Hazardous Waste Codes that would be applicable if the material were discarded; and

(C) The certification signed by the person claiming the exclusion or his authorized representative.

(ii) A brief description of the process that generated the excluded fuel. If the comparable fuel generator is not the generator of the original hazardous waste, provide a brief description of the process that generated the hazardous waste;

(iii) The monthly and annual quantities of each fuel claimed to be excluded;

(iv) Documentation for any claim that a constituent is not present in the excluded fuel as required under paragraph (b)(5)(i) of this section;

(v) The results of all analyses and all detection limits achieved as required under paragraph (b)(4) of this section;

(vi) If the comparable fuel was generated through treatment or blending, documentation of compliance with the applicable provisions of paragraphs (a)(3) and (a)(4) of this section;

(vii) If the excluded fuel is to be shipped off-site, a certification from the burner as required under paragraph (b)(10) of this section;

(viii) The fuel analysis plan and documentation of all sampling and analysis results as required by paragraph (b)(4) of this section; and

(ix) If the generator ships excluded fuel off-site for burning, the generator must retain for each shipment the following information on-site:

(A) The name and address of the facility receiving the excluded fuel for burning;

(B) The quantity of excluded fuel shipped and delivered;

(C) The date of shipment or delivery;

(D) A cross-reference to the record of excluded fuel analysis or other information used to make the

determination that the excluded fuel meets the specifications as required under paragraph (b)(4) of this section; and

(E) A one-time certification by the burner as required under paragraph (b)(10) of this section.

(9) *Records retention.* Records must be maintained for a period of three years.

(10) *Burner certification to the generator.* Prior to submitting a notification to the State and Regional Directors, a generator of excluded fuel who intends to ship the excluded fuel off-site for burning must obtain a one-time written, signed statement from the burner:

(i) Certifying that the excluded fuel will only be burned in an industrial furnace, industrial boiler, utility boiler, or hazardous waste incinerator, as required under paragraph (b)(3) of this section;

(ii) Identifying the name and address of the facility that will burn the excluded fuel; and

(iii) Certifying that the State in which the burner is located is authorized to exclude wastes as excluded fuel under the provisions of this section.

(11) *Ineligible waste codes.* Wastes that are listed as hazardous waste because of the presence of dioxins or furans, as set out in appendix VII of this part, are not eligible for these exclusions, and any fuel produced from or otherwise containing these wastes remains a hazardous waste subject to the full RCRA hazardous waste management requirements.

(12) *Regulatory status of boiler residues.* Burning excluded fuel that was otherwise a hazardous waste listed under §§ 261.31 through 261.33 does not subject boiler residues, including bottom ash and emission control residues, to regulation as derived-from hazardous wastes.

(13) *Residues in containers and tank systems upon cessation of operations.* (i) Liquid and accumulated solid residues that remain in a container or tank system for more than 90 days after the container or tank system ceases to be operated for storage or transport of excluded fuel product are subject to regulation under parts 262 through 265, 267, 268, 270, 271, and 124 of this chapter.

(ii) Liquid and accumulated solid residues that are removed from a container or tank system after the container or tank system ceases to be operated for storage or transport of excluded fuel product are solid wastes subject to regulation as hazardous waste if the waste exhibits a characteristic of hazardous waste under §§ 261.21

through 261.24 or if the fuel were otherwise a hazardous waste listed under §§ 261.31 through 261.33 when the exclusion was claimed.

(iii) Liquid and accumulated solid residues that are removed from a container or tank system and which do not meet the specifications for exclusion under paragraphs (a)(1) or (a)(2) of this section are solid wastes subject to regulation as hazardous waste if:

(A) The waste exhibits a characteristic of hazardous waste under §§ 261.21 through 261.24; or

(B) The fuel were otherwise a hazardous waste listed under §§ 261.31 through 261.33. The hazardous waste code for the listed waste applies to these liquid and accumulated solid residues.

(14) *Waiver of RCRA Closure Requirements.* Interim status and permitted storage and combustion units, and generator storage units exempt from the permit requirements under § 262.34 of this chapter, are not subject to the closure requirements of 40 CFR Parts 264, 265, and 267 provided that the storage and combustion unit has been used to manage only hazardous waste that is subsequently excluded under the conditions of this section, and that afterward will be used only to manage fuel excluded under this section.

(15) *Spills and leaks.* (i) Excluded fuel that is spilled or leaked and that therefore no longer meets the conditions of the exclusion is discarded and must be managed as a hazardous waste if it exhibits a characteristic of hazardous waste under §§ 261.21 through 261.24 or if the fuel were otherwise a hazardous waste listed in §§ 261.31 through 261.33.

(ii) For excluded fuel that would have otherwise been a hazardous waste listed in §§ 261.31 through 261.33 and which is spilled or leaked, the hazardous waste code for the listed waste applies to the spilled or leaked material.

(16) Nothing in this section preempts, overrides, or otherwise negates the provisions in CERCLA Section 103, which establish reporting obligations for releases of hazardous substances, or the Department of Transportation requirements for hazardous materials in 49 CFR parts 171 through 180.

(c) *Failure to comply with the conditions of the exclusion.* An excluded fuel loses its exclusion if any person managing the fuel fails to comply with the conditions of the exclusion under this section, and the material must be managed as hazardous waste from the point of generation. In such situations, EPA or an authorized State agency may take enforcement action under RCRA section 3008(a).

Table 1 to § 261.38--Detection and Detection Limit Values for Comparable Fuel Specification

| Chemical name  | CAS No.   | Concentration Limit (mg/kg at 10,000 Btu/lb) | Minimum Required Detection Limit (mg/kg) |
|--|-----------|--|--|
| Total Nitrogen as N.....                               | NA        | 4900   | .....                                    |
| Total Halogens as Cl.....                              | NA        | 540  | .....                                    |
| Total Organic Halogens as Cl.....                      | NA        | ( <sup>a</sup> )                             | .....                                    |
| Polychlorinated biphenyls, total [Aroclors, total]     | 1336-36-3 | ND   | 1.4                                      |
| Cyanide, total.....                                    | 57-12-5   | ND   | 1  |
| Metals:  |           |  |  |
| Antimony, total.....                                   | 7440-36-0 | 12   | .....                                    |
| Arsenic, total.....                                    | 7440-38-2 | 0.23   | .....                                    |
| Barium, total.....                                     | 7440-39-3 | 23   | .....                                    |
| Beryllium, total.....                                  | 7440-41-7 | 1.2  | .....                                    |
| Cadmium, total.....                                    | 7440-43-9 | 1.2  | .....                                    |
| Chromium, total.....                                   | 7440-47-3 | 2.3  | .....                                    |
| Cobalt.....  | 7440-48-4 | 4.6  | .....                                    |
| Lead, total.....                                       | 7439-92-1 | 31   | .....                                    |
| Manganese.....   | 7439-96-5 | 1.2  | .....                                    |
| Mercury, total.....                                    | 7439-97-6 | 0.25   | .....                                    |
| Nickel, total.....                                     | 7440-02-0 | 58   | .....                                    |
| Selenium, total.....                                   | 7782-49-2 | 0.23   | .....                                    |
| Silver, total.....                                     | 7440-22-4 | 2.3  | .....                                    |
| Thallium, total.....                                   | 7440-28-0 | 23   | .....                                    |
| Hydrocarbons:  |           |  |  |
| Benzo[a]anthracene.....                                | 56-55-3   | 2400   | .....                                    |
| Benzene.....   | 71-43-2   | 4100   | .....                                    |
| Benzo[b]fluoranthene.....                              | 205-99-2  | 2400   | .....                                    |
| Benzo[k]fluoranthene.....                              | 207-08-9  | 2400   | .....                                    |
| Benzo[a]pyrene.....                                    | 50-32-8   | 2400   | .....                                    |
| Chrysene.....  | 218-01-9  | 2400   | .....                                    |
| Dibenzo[a,h]anthracene.....                            | 52-70-3   | 2400   | .....                                    |
| 7,12-Dimethylbenz[a]anthracene.....                    | 57-97-6   | 2400   | .....                                    |
| Fluoranthene.....                                      | 206-44-0  | 2400   | .....                                    |
| Indeno(1,2,3-cd)pyrene.....                            | 193-39-5  | 2400   | .....                                    |
| 3-Methylcholanthrene.....                              | 56-49-5   | 2400   | .....                                    |
| Naphthalene.....                                       | 91-20-3   | 3200   | .....                                    |
| Toluene.....   | 108-88-3  | 36000  | .....                                    |
| Oxygenates:  |           |  |  |
| Acetophenone.....                                      | 98-86-1   | 2400   | .....                                    |
| Acrolein.....  | 107-02-8  | 39   | .....                                    |
| Allyl alcohol.....                                     | 107-18-6  | 30   | .....                                    |
| Bis(2-ethylhexyl)phthalate [Di-2-ethylhexyl phthalate] | 117-81-7  | 2400   | .....                                    |
| Butyl benzyl phthalate.....                            | 85-68-7   | 2400   | .....                                    |
| o-Cresol [2-Methyl phenol].....                        | 95-48-7   | 2400   | .....                                    |
| m-Cresol [3-Methyl phenol].....                        | 108-39-4  | 2400   | .....                                    |
| p-Cresol [4-Methyl phenol].....                        | 106-44-5  | 2400   | .....                                    |
| Di-n-butyl phthalate.....                              | 84-74-2   | 2400   | .....                                    |

|   |           |      |       |
|---|-----------|------|-------|
| Diethyl phthalate.....                                    | 84-66-2   | 2400 | ..... |
| 2,4-Dimethylphenol.....                                   | 105-67-9  | 2400 | ..... |
| Dimethyl phthalate.....                                   | 131-11-3  | 2400 | ..... |
| Di-n-octyl phthalate.....                                 | 117-84-0  | 2400 | ..... |
| Endothall.....  | 145-73-3  | 100  | ..... |
| Ethyl methacrylate.....                                   | 97-63-2   | 39   | ..... |
| 2-Ethoxyethanol [Ethylene glycol monoethyl ether]         | 110-80-5  | 100  | ..... |
| Isobutyl alcohol.....                                     | 78-83-1   | 39   | ..... |
| Isosafrole.....   | 120-58-1  | 2400 | ..... |
| Methyl ethyl ketone [2-Butanone].....                     | 78-93-3   | 39   | ..... |
| Methyl methacrylate.....                                  | 80-62-6   | 39   | ..... |
| 1,4-Naphthoquinone.....                                   | 130-15-4  | 2400 | ..... |
| Phenol.....   | 108-95-2  | 2400 | ..... |
| Propargyl alcohol [2-Propyn-1-ol].....                    | 107-19-7  | 30   | ..... |
| Safrole.....  | 94-59-7   | 2400 | ..... |
| <b>Sulfonated Organics:</b>                               |           |      |       |
| Carbon disulfide.....                                     | 75-15-0   | ND   | 39    |
| Disulfoton.....   | 298-04-4  | ND   | 2400  |
| Ethyl methanesulfonate.....                               | 62-50-0   | ND   | 2400  |
| Methyl methanesulfonate.....                              | 66-27-3   | ND   | 2400  |
| Phorate.....  | 298-02-2  | ND   | 2400  |
| 1,3-Propane sultone.....                                  | 1120-71-4 | ND   | 100   |
| Tetraethylthiopyrophosphate [Sulfotep].....               | 3689-24-5 | ND   | 2400  |
| Thiophenol [Benzenethiol].....                            | 108-98-5  | ND   | 30    |
| O,O,O-Triethyl phosphorothioate.....                      | 126-68-1  | ND   | 2400  |
| <b>Nitrogenated Organics:</b>                             |           |      |       |
| Acetonitrile [Methyl cyanide].....                        | 75-05-8   | ND   | 39    |
| 2-Acetylaminofluorene [2-AAF].....                        | 53-96-3   | ND   | 2400  |
| Acrylonitrile.....  | 107-13-1  | ND   | 39    |
| 4-Aminobiphenyl.....                                      | 92-67-1   | ND   | 2400  |
| 4-Aminopyridine.....                                      | 504-24-5  | ND   | 100   |
| Aniline.....  | 62-53-3   | ND   | 2400  |
| Benzidine.....  | 92-87-5   | ND   | 2400  |
| Dibenz[a,j]acridine.....                                  | 224-42-0  | ND   | 2400  |
| O,O-Diethyl O-pyrazinyl phosphorothioate [Thionazin]      | 297-97-2  | ND   | 2400  |
| Dimethoate.....   | 60-51-5   | ND   | 2400  |
| p-(Dimethylamino) azobenzene [4-Dime thylaminoazobenzene] | 60-11-7   | ND   | 2400  |
| 3,3[prime]-Dimethylbenzidine.....                         | 119-93-7  | ND   | 2400  |
| $\alpha$ , $\alpha$ -Dimethylphenethylamine.....          | 122-09-8  | ND   | 2400  |
| 3,3[prime]-Dimethoxybenzidine.....                        | 119-90-4  | ND   | 100   |
| 1,3-Dinitrobenzene [m-Dinitrobenzene].....                | 99-65-0   | ND   | 2400  |
| 4,6-Dinitro-o-cresol.....                                 | 534-52-1  | ND   | 2400  |
| 2,4-Dinitrophenol.....                                    | 51-28-5   | ND   | 2400  |
| 2,4-Dinitrotoluene.....                                   | 121-14-2  | ND   | 2400  |
| 2,6-Dinitrotoluene.....                                   | 606-20-2  | ND   | 2400  |
| Dinoseb [2-sec-Butyl-4,6-dinitrophenol].....              | 88-85-7   | ND   | 2400  |
| Diphenylamine.....  | 122-39-4  | ND   | 2400  |
| Ethyl carbamate [Urethane].....                           | 51-79-6   | ND   | 100   |
| Ethylenethiourea (2-Imidazolidinethione).....             | 96-45-7   | ND   | 110   |

|   |            |    |      |
|---|------------|----|------|
| Famphur.....  | 52-85-7    | ND | 2400 |
| Methacrylonitrile.....                              | 126-98-7   | ND | 39   |
| Methapyrilen.....                                   | 91-80-5    | ND | 2400 |
| Methomyl.....                                       | 16752-77-5 | ND | 57   |
| 2-Methylacrylonitrile, [Acetone cyanohydrin]....    | 75-86-5    | ND | 100  |
| Methyl parathion.....                               | 298-00-0   | ND | 2400 |
| MNNG (N-Methyl-N-nitroso-N[prime]-nitroguanidine)   | 70-25-7    | ND | 110  |
| 1-Naphthylamine, [ $\alpha$ -Naphthylamine].....    | 134-32-7   | ND | 2400 |
| 2-Naphthylamine, [ $\beta$ -Naphthylamine].....     | 91-59-8    | ND | 2400 |
| Nicotine.....                                       | 54-11-5    | ND | 100  |
| 4-Nitroaniline, [p-Nitroaniline].....               | 100-01-6   | ND | 2400 |
| Nitrobenzene.....                                   | 98-96-3    | ND | 2400 |
| p-Nitrophenol, [p-Nitrophenol].....                 | 100-02-7   | ND | 2400 |
| 5-Nitro-o-toluidine.....                            | 99-55-8    | ND | 2400 |
| N-Nitrosodi-n-butylamine.....                       | 924-16-3   | ND | 2400 |
| N-Nitrosodiethylamine.....                          | 55-18-5    | ND | 2400 |
| N-Nitrosodiphenylamine, [Diphenylnitrosamine]..     | 86-30-6    | ND | 2400 |
| N-Nitroso-N-methylethylamine.....                   | 10595-95-6 | ND | 2400 |
| N-Nitrosomorpholine.....                            | 59-89-2    | ND | 2400 |
| N-Nitrosopiperidine.....                            | 100-75-4   | ND | 2400 |
| N-Nitrosopyrrolidine.....                           | 930-55-2   | ND | 2400 |
| 2-Nitropropane.....                                 | 79-46-9    | ND | 2400 |
| Parathion.....                                      | 56-38-2    | ND | 2400 |
| Phenacetin.....                                     | 62-44-2    | ND | 2400 |
| 1,4-Phenylene diamine, [p-Phenylenediamine]....     | 106-50-3   | ND | 2400 |
| N-Phenylthiourea.....                               | 103-85-5   | ND | 57   |
| 2-Picoline [alpha-Picoline].....                    | 109-06-8   | ND | 2400 |
| Propylthiouracil, [6-Propyl-2-thiouracil].....      | 51-52-5    | ND | 100  |
| Pyridine.....                                       | 110-86-1   | ND | 2400 |
| Strychnine.....                                     | 57-24-9    | ND | 100  |
| Thioacetamide.....                                  | 62-55-5    | ND | 57   |
| Thiofanox.....                                      | 39196-18-4 | ND | 100  |
| Thiourea.....                                       | 62-56-6    | ND | 57   |
| Toluene-2,4-diamine [2,4-Diaminotoluene].....       | 95-80-7    | ND | 57   |
| Toluene-2,6-diamine [2,6-Diaminotoluene].....       | 823-40-5   | ND | 57   |
| o-Toluidine.....                                    | 95-53-4    | ND | 2400 |
| p-Toluidine.....                                    | 106-49-0   | ND | 100  |
| 1,3,5-Trinitrobenzene, [sym-Trinitobenzene]....     | 99-35-4    | ND | 2400 |
| Halogenated Organics:                               |            |    |      |
| Allyl chloride.....                                 | 107-05-1   | ND | 39   |
| Aramite.....  | 140-57-8   | ND | 2400 |
| Benzal chloride [Dichloromethyl benzene].....       | 98-87-3    | ND | 100  |
| Benzyl chloride.....                                | 100-44-77  | ND | 100  |
| bis(2-Chloroethyl)ether [Dichloroethyl ether]...    | 111-44-4   | ND | 2400 |
| Bromoform [Tribromomethane].....                    | 75-25-2    | ND | 39   |
| Bromomethane [Methyl bromide].....                  | 74-83-9    | ND | 39   |
| 4-Bromophenyl phenyl ether [p-Bromo diphenyl ether] | 101-55-3   | ND | 2400 |
| Carbon tetrachloride.....                           | 56-23-5    | ND | 39   |
| Chlordane.....                                      | 57-74-9    | ND | 14   |

|  |            |    |       |
|--|------------|----|-------|
| p-Chloroaniline.....                                   | 106-47-8   | ND | 2400  |
| Chlorobenzene.....                                     | 108-90-7   | ND | 39    |
| Chlorobenzilate.....                                   | 510-15-6   | ND | 2400  |
| p-Chloro-m-cresol.....                                 | 59-50-7    | ND | 2400  |
| 2-Chloroethyl vinyl ether.....                         | 110-75-8   | ND | 39    |
| Chloroform.....  | 67-66-3    | ND | 39    |
| Chloromethane [Methyl chloride].....                   | 74-87-3    | ND | 39    |
| 2-Chloronaphthalene [beta-Chloronaphthalene]...        | 91-58-7    | ND | 2400  |
| 2-Chlorophenol [o-Chlorophenol].....                   | 95-57-8    | ND | 2400  |
| Chloroprene [2-Chloro-1,3-butadiene].....              | 1126-99-8  | ND | 39    |
| 2,4-D [2,4-Dichlorophenoxyacetic acid].....            | 94-75-7    | ND | 7     |
| Diallate.....  | 2303-16-4  | ND | 3400  |
| 1,2-Dibromo-3-chloropropane.....                       | 96-12-8    | ND | 39    |
| 1,2-Dichlorobenzene [o-Dichlorobenzene].....           | 95-50-1    | ND | 2400  |
| 1,3-Dichlorobenzene [m-Dichlorobenzene].....           | 541-73-1   | ND | 2400  |
| 1,4-Dichlorobenzene [p-Dichlorobenzene].....           | 106-46-7   | ND | 2400  |
| 3,3[prime]-Dichlorobenzidine.....                      | 91-94-1    | ND | 2400  |
| Dichlorodifluoromethane [CFC-12].....                  | 75-71-8    | ND | 39    |
| 1,2-Dichloroethane [Ethylene dichloride].....          | 107-06-2   | ND | 39    |
| 1,1-Dichloroethylene [Vinylidene chloride]....         | 75-35-4    | ND | 39    |
| Dichloromethoxy ethane [Bis(2-chloroethoxy)methane]    | 111-91-1   | ND | 2400  |
| 2,4-Dichlorophenol.....                                | 120-83-2   | ND | 2400  |
| 2,6-Dichlorophenol.....                                | 87-65-0    | ND | 2400  |
| 1,2-Dichloropropane [Propylene dichloride]....         | 78-87-5    | ND | 39    |
| cis-1,3-Dichloropropylene.....                         | 10061-01-5 | ND | 39    |
| trans-1,3-Dichloropropylene.....                       | 10061-02-6 | ND | 39    |
| 1,3-Dichloro-2-propanol.....                           | 96-23-1    | ND | 30    |
| Endosulfan I.....                                      | 959-98-8   | ND | 1.4   |
| Endosulfan II.....                                     | 33213-65-9 | ND | 1.4   |
| Endrin.....  | 72-20-8    | ND | 1.4   |
| Endrin aldehyde.....                                   | 7421-93-4  | ND | 1.4   |
| Endrin Ketone.....                                     | 53494-70-5 | ND | 1.4   |
| Epichlorohydrin [1-Chloro-2,3-epoxy propane]...        | 106-89-8   | ND | 30    |
| Ethyldene dichloride [1,1-Dichloroethane]....          | 75-34-3    | ND | 39    |
| 2-Fluoroacetamide.....                                 | 640-19-7   | ND | 100   |
| Heptachlor.....  | 76-44-8    | ND | 1.4   |
| Heptachlor epoxide.....                                | 1024-57-3  | ND | 2.8   |
| Hexachlorobenzene.....                                 | 118-74-1   | ND | 2400  |
| Hexachloro-1,3-butadiene [Hexachlorobutadiene].        | 87-68-3    | ND | 2400  |
| Hexachlorocyclopentadiene.....                         | 77-47-4    | ND | 2400  |
| Hexachloroethane.....                                  | 67-72-1    | ND | 2400  |
| Hexachlorophene.....                                   | 70-30-4    | ND | 59000 |
| Hexachloropropene [Hexachloropropylene].....           | 1888-71-7  | ND | 2400  |
| Isodrin.....   | 465-73-6   | ND | 2400  |
| Kepone [Chlordecone].....                              | 143-50-0   | ND | 4700  |
| Lindane [gamma-BHC] [gamma-Hexachlorocyclohexane]..... | 58-89-9    | ND | 1.4   |
| Methylene chloride [Dichloromethane].....              | 75-09-2    | ND | 39    |
| 4,4[prime]-Methylene-bis(2-chloroaniline).....         | 101-14-4   | ND | 100   |
| Methyl iodide [Iodomethane].....                       | 74-88-4    | ND | 39    |

|  |            |    |      |
|--|------------|----|------|
| Pentachlorobenzene.....                                      | 608-93-5   | ND | 2400 |
| Pentachloroethane.....                                       | 76-01-7    | ND | 39   |
| Pentachloronitrobenzene [PCNB] [Quintobenzene] [Quintozone]. | 82-68-8    | ND | 2400 |
| Pentachlorophenol.....                                       | 87-88-5    | ND | 2400 |
| Pronamide.....   | 23950-58-5 | ND | 2400 |
| Silvex [2,4,5-Trichlorophenoxypropionic acid]..              | 93-72-1    | ND | 7    |
| 2,3,7,8-Tetrachlorodibenzo-p-dioxin [2,3,7,8-TCDD]           | 1746-01-6  | ND | 30   |
| 1,2,4,5-Tetrachlorobenzene.....                              | 95-94-3    | ND | 2400 |
| 1,1,2,2-Tetrachloroethane.....                               | 79-35-4    | ND | 39   |
| Tetrachloroethylene [Perchloroethylene].....                 | 127-18-4   | ND | 39   |
| 2,3,4,6-Tetrachlorophenol.....                               | 58-90-2    | ND | 2400 |
| 1,2,4-Trichlorobenzene.....                                  | 120-82-1   | ND | 2400 |
| 1,1,1-Trichloroethane [Methyl chloroform].....               | 71-56-6    | ND | 39   |
| 1,1,2-Trichloroethane [Vinyl trichloride].....               | 79-00-5    | ND | 39   |
| Trichloroethylene.....                                       | 79-01-6    | ND | 39   |
| Trichlorofluoromethane [Trichloromonofluoromethane].....     | 75-69-4    | ND | 39   |
| 2,4,5-Trichlorophenol.....                                   | 95-95-4    | ND | 2400 |
| 2,4,6-Trichlorophenol.....                                   | 88-06-2    | ND | 2400 |
| 1,2,3-Trichloropropane.....                                  | 96-18-4    | ND | 39   |
| Vinyl Chloride.....  | 75-01-4    | ND | 39   |

Notes:

NA--Not Applicable.

ND--Nondetect.

(<sup>a</sup>) 25 or individual halogenated organics listed below.

[FR Doc. 2010-14097 Filed 6-14-10; 8:45 am]

BILLING CODE 6560-50-C

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA-HQ-SFUND-1999-0013; FRL-9162-3]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Many Diversified Interests, Inc. Superfund Site

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 6 is publishing a direct final Notice of Deletion of the soils of Operable Unit 1 and the underlying ground water of the approximately 8-acre western portion of Operable Unit 1 of the Many Diversified Interests, Inc. (MDI) Superfund Site located in Houston, Texas (Harris County), from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution

Contingency Plan (NCP). This direct final partial deletion is being published by EPA with the concurrence of the State of Texas, through the Texas Commission on Environmental Quality, because EPA has determined that all appropriate response actions at these identified parcels under CERCLA have been completed. However, this partial deletion does not preclude future actions under Superfund.

This partial deletion pertains to the soils of Operable Unit 1 and the underlying ground water of the approximately 8-acre western portion of Operable Unit 1 of the MDI Superfund Site. Operable Unit 2, Operable Unit 3, and the ground water underlying the remainder of Operable Unit 1 will remain on the NPL and are not being considered for deletion as part of this action.

**DATES:** This direct final partial deletion is effective August 16, 2010 unless EPA receives adverse comments by July 15, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the partial deletion will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-1999-0013, by one of the following methods:

- <http://www.regulations.gov>: Follow internet on-line instructions for submitting comments.

- *E-mail*: Rafael Casanova, [casanova.rafael@epa.gov](mailto:casanova.rafael@epa.gov).

- *Fax*: 214-665-6660.

- *Mail*: Rafael A. Casanova; U.S.

Environmental Protection Agency, Region 6; Superfund Division (6SF-RA); 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202-2733.

- *Hand Delivery*: U.S. Environmental Protection Agency, Region 6; 1445 Ross Avenue, Suite 700; Dallas, Texas 75202-2733; Contact: Rafael A. Casanova (214) 665-7437. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-AFUND-1999-0013. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is