

regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule 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, because it merely proposes approval of a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. In addition, redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*(d) Executive Order 13175*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this proposed rule.

*(e) Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions.

This proposed approval will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP proposed approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA* U.S.A., 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2). Redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Redesignation to attainment is an action that affects the legal designation of a geographical area and does not impose any regulatory requirements. Therefore, because the Federal SIP proposed approval does not create any new requirements, I certify that the proposed approval of the redesignation request will not have a significant economic impact on a substantial number of small entities.

*(f) Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the

private sector. This Federal action proposes approval of pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

*40 CFR Part 81*

Air pollution control, National parks, Wilderness areas.

Dated: April 27, 2001.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 70**

[TN–T5–2001–03; FRL–6977–7]

**Clean Air Act Proposed Full Approval of Operating Permit Program; Tennessee and Memphis-Shelby County**

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

**ACTION:** Proposed rule; reopening of the public comment period.

**SUMMARY:** In response to a request from Mr. George Hays as counsel for the National Parks Conservation Association, EPA is reopening the comment period for a proposed rule published on March 20, 2001, in the **Federal Register** (66 FR 15680) for full approval of the operating permit programs submitted by the Tennessee Department of Environment and Conservation and the Memphis-Shelby County Health Department.

**DATES:** Written comments must be received by EPA on or before June 11, 2001.

**ADDRESSES:** Comments should be addressed to Ms. Kim Pierce, Regional Title V Program Manager, Air & Radiation Technology Branch, EPA Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8909.

**FOR FURTHER INFORMATION CONTACT:** Kim Pierce, EPA Region 4, at (404) 562–9124 or [pierce.kim@epa.gov](mailto:pierce.kim@epa.gov).

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule located in the final rules section and the proposed rule located in the proposed rules section of the **Federal Register** published on March 20, 2001.

Dated: May 3, 2001.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 01-11911 Filed 5-10-01; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

[SW-FRL-6958-1]

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

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

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

**SUMMARY:** The EPA is proposing to use the Delisting Risk Assessment Software (DRAS) in the evaluation of a delisting petition. Based on waste specific information provided by the petitioner, EPA is proposing to use the DRAS to evaluate the impact of the petitioned waste on human health and the environment.

The EPA is also proposing to grant a petition submitted by Tenneco Automotive, Inc. (Tenneco) to exclude (or delist) certain solid wastes generated by its Paragould, Arkansas, facility from the lists of hazardous wastes contained in 40 CFR 261.24 and 261.31 (hereinafter all sectional references are to 40 CFR unless otherwise indicated).

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

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude that Tenneco's petitioned waste is

nonhazardous with respect to the original listing criteria and that the stabilization process Tenneco used will substantially reduce the likelihood of migration of constituents from this waste. We would also conclude that their process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

**DATES:** We will accept comments until June 25, 2001. We will stamp comments received after the close of the comment period as "late." These "late" comments may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by June 11, 2001. The request must contain the information prescribed in 40 CFR 260.20(d).

**ADDRESSES:** Please send three copies of your comments. You should send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD-O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. You should send a third copy to the Arkansas Department of Environmental Quality (ADEQ), P.O. Box 8913, Little Rock, Arkansas, 72209-8913. Identify your comments at the top with this regulatory docket number: "F-00-ARDEL-TENNECO."

You should address requests for a hearing to the Director, Carl Edlund, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

**FOR FURTHER INFORMATION CONTACT:** Michelle Peace at (214) 665-7430.

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

#### I. Overview Information

- A. What action is EPA proposing?
- B. Why is EPA proposing to approve this delisting?
- C. How will Tenneco manage the waste if it is delisted?
- D. When would EPA finalize the proposed delisting?
- E. How would this action affect States?

#### II. Background

- A. What is the history of the delisting program?
- B. What is a delisting petition, and what does it require of a petitioner?
- C. What factors must EPA consider in deciding whether to grant a delisting petition?

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

- A. What wastes did Tenneco petition EPA to delist?
- B. What is Tenneco, and how did it generate this waste?
- C. What information and analyses did Tenneco submit to support its petition?

D. What were the results of Tenneco's analysis?

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

F. What did EPA conclude about Tenneco's analysis?

G. What other factors did EPA consider?

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

#### IV. Next Steps

A. With what conditions must the petitioner comply?

B. What happens if Tenneco violates the terms and conditions?

#### V. Public Comments

A. How can I as an interested party submit comments?

B. How may I review the docket or obtain copies of the proposed exclusions?

#### VI. Regulatory Impact

#### VII. Regulatory Flexibility Act

#### VIII. Paperwork Reduction Act

#### IX. Unfunded Mandates Reform Act

#### X. Executive Order 13045

#### XI. Executive Order 13084

#### XII. National Technology Transfer and Advancements Act

#### XIII. Executive Order 13132 Federalism

### I. Overview Information

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

The EPA is proposing:

(1) To grant Tenneco's petition to have its stabilized sludge excluded, or delisted, from the definition of a hazardous waste; and

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

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

Tenneco's petition requests a delisting for listed hazardous wastes. Tenneco does not believe that the petitioned waste meets the criteria for which EPA listed it. Tenneco also believes no additional constituents or factors could cause the waste to be hazardous. The EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)-(4). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the