• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 95–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that this Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rule does 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.

List of Subjects in 32 CFR Part 322

Privacy.

Accordingly, 32 CFR part 322 is proposed to be amended as follows:

1. The authority citation for 32 CFR part 322 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 322.7 is amended by adding paragraph (r) to read as follows:

§ 322.7 Exempt systems of records.

* * * * *

(r) GNSA 23.

(1) *System name:* NSA/CSS Operations Security Support and Program Files.

(2) *Exemption.* All portions of this system of records which fall within the scope of 5 U.S.C. 552a (k)(4) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(4).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

Dated: May 5, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–11140 Filed 5–16–08; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2008–0418; SW–FRL–8566–6]

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) Version 3.0 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. This proposal provides background information on the updates and revisions made to the DRAS, and the use of the DRAS in delisting decision-making. The EPA is also proposing to grant petitions submitted by Bayer Material Science in Baytown, Texas; Lockheed Martin Aeronautics Company in Ft. Worth, Texas; and ConnocoPhillips Company Borger Refinery in Borger, Texas, to exclude (or delist) certain solid wastes generated by these facilities from the lists of hazardous wastes.

DATES: We will accept comments until June 18, 2008. We will stamp comments postmarked after the close of the comment period as ''late.'' These ''late'' comments may not be considered in formulating a final decision.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–RCRA–2008–0418 by one of the following methods:

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

2. *E-mail: peace.michelle@epa.gov.*

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

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

Instructions: Direct your comments to Docket ID No. EPA–R06–RCRA–2008–0418. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, RCRA Branch, 1445 Ross Avenue, Dallas, TX 75202. The hard copy RCRA regulatory docket for this proposed rule, EPA–R06–RCRA–2008–0418, is available for viewing from 8 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from the regulatory docket at $0.15 per page. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: For further technical information concerning this document or for appointments to view the docket or the Bayer facility petition, contact Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202, by calling 214–665–7430 or by e-mail at *peace.michelle@epa.gov*.

For technical information regarding the ConocoPhillips Company petition, contact Youngmoo Kim at 214–665–6788 or by e-mail at *kim.youngmoo@epa.gov*.

For information regarding the Lockheed Martin petition, contact Wendy Jacques at (214) 665–7395 or by e-mail at *jacques.wendy@epa.gov*.

Your requests for a hearing must reach EPA by June 3, 2008. The request must contain the information described in § 260.20(d).

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

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

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

The information in this section is organized as follows:

I. Overview Information

A. What action is EPA proposing?

EPA is proposing to grant the delisting petitions submitted by Bayer, ConnocoPhillips Company, and Lockheed Martin Aeronautics Company (Lockheed Martin Aeronautics Company) to have their petitioned wastes excluded, or delisted, from the definition of a hazardous waste.

B. Why is EPA proposing to approve these delistings?

Each individual petition requests a delisting for the waste stream be delisted. They do not believe that their petitioned wastes meet the criteria for which EPA listed them. They also believe no additional constituents or factors could cause the wastes to be hazardous. EPA's review of these petitions 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 each of the petitioned wastes against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioners that the wastes are non-hazardous with respect to the original listing criteria. If EPA had found, based on these reviews, that the wastes remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petitions. EPA evaluated the wastes with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the wastes to be hazardous. EPA considered whether the wastes were acutely toxic, the concentration of the constituents in the wastes, their tendencies to migrate and to bioaccumulate, their persistence in the environment once released from the wastes, plausible and specific types of management of the petitioned waste, the quantities of wastes generated, and waste variability. EPA believes that the each petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's proposed decision to delist these individual waste streams from the facilities above is based on the information submitted in support of this rule, including descriptions of the waste and analytical data from each facility.

C. What is unique about these delistings?

Each of the petitioned wastes has been submitted by individual facilities. Each waste stream has been evaluated on its own merit. The proposed rule is being combined because each of these petitions have been evaluated using the new provisional delisting numbers generated by DRAS Version 3.0.

II. Background

A. What is the history of the delisting program?

EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. EPA has amended this list several times and published it in §§ 261.31 and 261.32. EPA lists these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What is a delisting petition, and what does it require of a petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions EPA because it does not believe the wastes should be hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which EPA lists a waste are in Part 261 and further explained in the background documents for the listed waste.

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

Generators remain obligated under RCRA to confirm whether their waste remains non-hazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the waste.

C. What factors must EPA consider in deciding whether to grant a delisting petition?

Besides considering the criteria in § 260.22(a) and section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those

for which EPA listed the waste, if a reasonable basis exists to determine that these additional factors could cause the waste to be hazardous.

EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See § 261.3(a)(2)(iii) and (iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

D. When would the proposed delisting exclusions be finalized?

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

RCRA section 3010(b)(1), at 42 USCA 6930(b)(1), allows rules to become effective in less than six months after EPA addresses public comments when the regulated facility does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How would this action affect the states?

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

EPA allows the states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under the state law. Delisting petitions approved by the EPA Administrator (or his designee) under 40 CFR 260.22 are effective in the State of Texas only after the final rule has been published in the **Federal Register**.

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

A. Bayer Material Science LLC, Baytown Texas—TDI Residue

1. What waste did Bayer petition EPA to delist?

On September 2, 2004, Bayer petitioned EPA to exclude from the lists of hazardous waste contained in § 261.32, toluene diisocyanate (TDI) residues generated from its facility located in Baytown, Texas. The waste falls under the classification of a listed waste under § 261.30. The waste is listed as K027 hazardous wastes. These are centrifuge and distillation residues from TDI production. Specifically, in its petition, Bayer requested that EPA grant a conditional exclusion for 9,780 cubic yards per year of the TDI residues.

2. Who is Bayer and what process does it use to generate the petitioned waste?

Bayer as a facility has four manufacturing groups: Plastics, Coatings, Polyurethanes, and Industrial Chemicals. They manufacture six products within the manufacturing groups. Hydrazine Hydrate; Maleic Anhydride; Coatings; Makrolon Polycarbonate; Methane Diisocyanate; and Toluene Diisocyanate (TDI) which is used in flexible foam applications such as auto seating, furniture and bedding.

TDI is produced by a reaction of toluene diamine (TDA) and phosgene. The reaction takes place in a solvent (orthodichlorobenzene, ODB). The reaction produces TDI, HCL gas and a small amount of high boiling impurities, which are removed in the TDI residue stream. The HCL gas is recovered and re-used, all the phosgene is stripped from the product stream and returned to the process in the reaction step. The TDI, ODB, and the residue stream are processed further by separating the residue from the TDI and ODB through a distillation process. The stream resulting from the distillation process contains bottom residues mixed with TDI and solvent. The residue separation step removes the TDI and ODB, leaving the residue waste. ODB is separated from TDI and recycled back into the process and pure TDI is sold as product.

3. What information did the facility submit to support this petition?

To support its petition, Bayer submitted:

- Analytical results of the toxicity characteristic leaching procedure (TCLP) and total constituent analysis for volatile and semivolatile organics, pesticides, herbicides, dioxins/furans, PCBs and metals for five TDI samples;
- Analytical results from multiple pH leaching of metals; and
- A description of the TDI production process.

4. What were the results of Bayer's analyses?

EPA believes that the descriptions of the Bayer analytical characterization provide a reasonable basis to grant Bayer's petition for an exclusion of the TDI residues. EPA believes the data submitted in support of the petition show the TDI residues are non-hazardous. Analytical data for the residue samples were used in the DRAS to develop delisting levels. The data summaries for compounds of concern (COC)s are presented in Table 1. EPA has reviewed the sampling procedures used by Bayer and has determined that it satisfies EPA criteria for collecting representative samples of the variations in constituent concentrations in the TDI residues. In addition, the data submitted in support of the petition show that constituents in Bayer's waste are presently below risk-based levels used in the delisting decision-making. EPA believes that Bayer has successfully demonstrated that the TDI residues are non-hazardous.

TABLE 1.—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE TDI RESIDUES AT BAYER POLYMERS LLC IN BAYTOWN, TX

Constituents	Maximum total (mg/kg)	Maximum TCLP (mg/L)	Maximum allowable TCLP delisting level (mg/L)
Arsenic	1.0	0.011	0.10
Barium	0.17	0.837	36.0
Chloromethane (Methyl Chloride)	0.09	0.033	6.06
Chromium	30.2	0.0034	2.27
Cobalt	0.42	0.0007	13.6
Copper	0.64	0.00610	25.9
Cyanide	0.265	0.0133	3.08
Dichlorophenoxyacetic acid	0.0310	0.0020	1.08
Diethyl phthalate	8.90	0.0010	1000.0
Endrin	0.28	0.0002	0.02
Lead	0.18	0.00210	0.702
Nickel	24.8	0.0525	13.5
Selenium	88.0	0.0209	0.89
Tin	1.70	0.0196	22.5
2–4 Toluenediamine	1.80	0.020	0.0459
Vanadium	8.40	0.0225	0.976
Zinc	2.20	0.0628	197.0

Note: 1. These levels represent the highest constituent concentration found in any one sample and do not necessarily represent the specific level found in one sample.

5. What did EPA conclude about the facility's analysis?

EPA concluded, after reviewing Bayer's processes that no other hazardous constituents of concern, other than those for which Bayer tested, are likely to be present or formed as reaction products or by-products in Bayer's wastes. In addition, on the basis of explanations and analytical data provided by Bayer, pursuant to § 260.22, EPA concludes that the petitioned waste, sludge, does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. See §§ 261.21, 261.22, 261.23, and 261.24 respectively.

6. What other factors did EPA consider in its evaluation?

During the evaluation of this petition, in addition to the potential impacts to the ground water, EPA also considered the potential impact of the petitioned waste via non-ground water exposure routes (*i.e.*, air emissions and surface runoff) for the sludge. With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from the petitioned waste is unlikely. No appreciable air releases are likely from the sludge under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from the waste water in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from the sludge.

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

The descriptions by Bayer's of the hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for EPA to grant the petition. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable concentrations (See Table 1). EPA believes that the sludge generated by Bayer contains hazardous constituents at levels which will present minimal short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes that it should grant to Bayer an exclusion from the list of hazardous wastes for the TDI residue. EPA believes that the data submitted in support of the petition show the Bayer's TDI residue to be non-hazardous.

EPA has reviewed the sampling procedures used by Bayer and has determined they satisfy EPA's criteria for collecting representative samples of variable constituent concentrations in the TDI residue. The data submitted in support of the petition show that constituents in Bayer's wastes are presently below the compliance-point concentrations used in the delisting decision-making process and would not pose a substantial hazard to the environment and the public. EPA believes that Bayer has successfully demonstrated that the TDI residue is non-hazardous.

EPA, therefore, proposes to grant an exclusion to Bayer for the TDI residue described in its July 2004 petition. EPA's decision to exclude this waste is based on analysis performed on samples taken of the TDI residue.

If EPA finalizes the proposed rule, EPA will no longer regulate 9,780 cubic yards per year of TDI residue from Bayer's Baytown facility under parts 262 through 268 and the permitting standards of part 270.

8. What is the final disposition of the waste?

If EPA finalizes the proposed rule, the TDI residue will be disposed of in a Subtitle D landfill.

B. ConocoPhillips Company, Borger, Texas—Thermal Desorber Residual Solids

1. What waste did ConocoPhillips Company petition EPA to delist?

On August 26, 2005, ConocoPhillips Company, (now WRB Refining LLC) petitioned EPA to exclude from the lists of hazardous wastes contained in §§ 261.31, thermal desorber residual solids from processing oil-bearing hazardous secondary materials including F037, F038, K048, K049, K050 and K051 generated by its facility located in Borger, Texas. The waste falls under the classification of listed waste pursuant to § 261.31. Specifically, in its petition, ConocoPhillips Company requested that EPA grant a conditional exclusion for 1500 cubic yards per year

of thermal desorber residual solids for a period of 10 years.

2. Who is ConocoPhillips Company and what process does it use to generate the petitioned waste?

Effective, January 1, 2007, ConocoPhillips and EnCana Corporation of Canada created an integrated North American heavy oil business consisting of both upstream and downstream assets. The downstream venture, WRB Refining LLC, consists of ConocoPhillips Company's Wood River Refinery located in Roxana, IL and Borger Refinery, located in Borger, TX. ConocoPhillips Company remains the operator of both refineries.

ConocoPhillips Company operates the WRB Refining LLC (formerly ConocoPhillips Company Borger Refinery which processes crude oil into unleaded gasoline, furnace oil, jet fuels, stove oil, kerosene, dual-purpose fuel oil, isobutene, propane, butane, hexane, heptane, propylene and sulfur. Processes used in the refining of these products are atmospheric distillation, vacuum distillation, desalting, fluid catalytic cracking, hydrotreating, hydrogen fluoride alkylation reforming. The use of the thermal desorption enables ConocoPhillips Company Borger Refinery to process its oil-bearing hazardous secondary materials in a manner that allows oil recovered from the desorption process to be recycled back into the refining process. The thermal desorber residual solids are currently disposed into the Texas Commission for Environmental Quality (TCEQ) Class I–H hazardous waste landfill, and the waste to be delisted will be disposed in the TCEQ Class I/II proposed non-hazardous landfill location on site. The Class I/II landfill is located within the facility and the nearest property line is located more than 500 feet from the area of landfill operations. The landfill is equipped with a 3-foot bentonite-amended clay liner and a 60-mil geomembrane on its bottom and side slopes, and a leachate collection system.

3. How did ConocoPhillips Company sample and analyze the data in this petition?

To support its petition, ConocoPhillips Company submitted:

- Historical information on waste generation and management practices;
- Results of the total constituents list for 40 CFR part 264, Appendix IX volatile and semi-volatile organic compounds and metals. These wastes are also analyzed for cyanide and sulfide.
- Results of the constituent list for appendix IX on Toxicity Characteristic Leaching Procedure(TCLP) extract for volatiles, semi-volatiles, and metals.
- Results from total oil and grease analyses and multiple pH measurements and;
- Results from a total of ten composite samples including two duplicates, representing 60 discrete thermal desorber residual solids samples.

4. What were the results of ConocoPhillips Company's analyses?

EPA believes that the descriptions of the ConocoPhillips Company analytical characterization provide a reasonable basis to grant ConocoPhillips Company's petition for an exclusion of the thermal desorber residual solids. EPA believes the data submitted in support of the petition show the thermal desorber residual solids are non-hazardous. Analytical data for the thermal desorber solid samples were used in the DRAS to develop delisting levels. The data summaries for compounds of concern (COC)s are presented in Table 2. EPA has reviewed the sampling procedures used by ConocoPhillips Company and has determined that it satisfies EPA criteria for collecting representative samples of the variations in constituent concentrations in the thermal desorber residual solids. In addition, the data submitted in support of the petition show that constituents in ConocoPhillips Company's waste are presently below risk-based levels used in the delisting decision-making. EPA believes that ConocoPhillips Company has successfully demonstrated that the thermal desorber residual solids are non-hazardous.

TABLE 2.—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATION OF THE THERMAL DESORBER RESIDUAL SOLIDS AT CONOCOPHILLIPS REFINERY COMPANY, BORGER, TEXAS

Constituents	Maximum total (mg/kg)	Maximum TCLP (mg/L)	Maximum allowable TCLP delisting level (mg/L)
Benzene	0.047	<0.05	0.5
Carbon Disulfide	0.040	<0.05	552.00
Ethylbenzene	0.008	<0.05	106.00
Methylene Chloride	0.016	<0.05	0.077
Trichlorofluoromethane	0.005	<0.05	151.00
Toluene	0.150	<0.05	148.00
Xylenes	0.040	<0.05	93.40
Acenapthene	2.60	<0.10	104.00
Anthracene	0.44	<0.10	253.00
2-chlorophenol	0.73	<0.10	28.10
1,4-Dichlorobenzene	1.90	<0.10	90.90
Dibenzofuran	0.59	<0.10	0.14
Fluoranthene	0.066	<0.10	24.00
Napthalene	0.94	<0.10	0.32
Phenol	1.20	<0.10	1690.00
Pyrene	1.10	<0.10	43.40
1,2,4-Trichlorobenzene	2.30	<0.10	9.68
Silver	8.70	<0.10	5.0
Barium	734.00	2.60	100.0
Beryllium	1.80	<0.05	0.76
Cobalt	70.30	<0.10	130.00
Chromium	320.00	<0.10	5.0
Copper	1090.00	0.23	234.00
Nickel	864.00	0.14	129.00
Tin	22.60	0.015	379000.00

TABLE 2.—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATION OF THE THERMAL DESORBER RESIDUAL SOLIDS AT CONOCOPHILLIPS REFINERY COMPANY, BORGER, TEXAS—Continued

Constituents	Maximum total (mg/kg)	Maximum TCLP (mg/L)	Maximum allowable TCLP delisting level (mg/L)
Vanadium	267.00	0.24	6.93
Zinc	1940.00	0.52	1930.00
Antimony	186.00	1.69	2.65
Arsenic	64.10	0.25	1.69
Cadmium	1.55	0001	1.0
Lead	135.00	0.007	5.00
Selenium	2280.00	0.37	1.0
Chromium+6	0.06	0.10	5.0
Mercury	0.05	0.002	0.20
Cyanide	1.30	0.012	30.10

5. What did EPA conclude about the facility's analysis?

EPA concluded, after reviewing ConocoPhillips Company's processes that no other hazardous constituents of concern, other than those for which ConocoPhillips Company tested, are likely to be present or formed as reaction products or by-products in ConocoPhillips Company's wastes. In addition, on the basis of explanations and analytical data provided by ConocoPhillips Company, pursuant to § 260.22, EPA concludes that the petitioned waste, sludge, does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. See §§ 261.21, 261.22, 261.23, and 261.24 respectively.

6. What other factors did EPA consider in its evaluation?

During the evaluation of this petition, in addition to the potential impacts to the ground water, EPA also considered the potential impact of the petitioned waste via non-ground water exposure routes (*i.e.*, air emissions and surface runoff) for the sludge. With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from the petitioned waste is unlikely. No appreciable air releases are likely from the sludge under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from the waste water in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from the sludge.

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

The descriptions by ConocoPhillips Company of the hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for EPA to grant the petition. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable concentrations (See Table 2). EPA believes that the thermal desorber residual solids generated by ConocoPhillips Company contain hazardous constituents at levels which will present minimal short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes that it should grant to WRB Refining LLC (formerly ConocoPhillips Company Borger Refinery) an exclusion from the list of hazardous wastes for the thermal desorber residual solids. EPA believes that the data submitted in support of the petition show the ConocoPhillips Company's thermal desorber residual solids to be non-hazardous.

EPA has reviewed the sampling procedures used by ConocoPhillips Company and has determined they satisfy EPA's criteria for collecting representative samples of variable constituent concentrations in the thermal desorber residual solids. The data submitted in support of the petition show that constituents in ConocoPhillips Company's thermal desorber residual solids are presently below the compliance-point concentrations used in the delisting decision-making process and would not pose a substantial hazard to the environment and the public. EPA believes that ConocoPhillips Company has successfully demonstrated that the thermal desorber residual solids are non-hazardous.

EPA, therefore, proposes to grant an exclusion to WRB Refining LLC (formerly ConocoPhillips Company Borger Refinery) for the thermal desorber residual solids described in its 2005 petition. EPA's decision to exclude this waste is based on analysis performed on samples taken of the solids.

If EPA finalizes the proposed rule, EPA will no longer regulate 1500 cubic yards per year of thermal desorber residual solids from WRB Refining LLC (formerly ConocoPhillips Company Borger Refinery), Borger, TX facility under Parts 262 through 268 and the permitting standards of Part 270.

8. What is the final disposition of the waste?

If EPA finalizes the proposed rule, the thermal desorber residual solids will be disposed of in an onsite non-hazardous industrial solid waste landfill.

C. Lockheed Martin Aeronautics Company, Fort Worth, Texas—F019 Waste Water Treatment Sludge

1. What waste did Lockheed Martin Aeronautics Company petition EPA to delist?

Lockheed Martin Aeronautics Company petitioned EPA on February 21, 2006, to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, the sludge from its waste water treatment plant. The sludge waste stream is generated from the Lockheed Martin Aeronautics Company facility located in Fort Worth, Texas. The sludge is listed under EPA Hazardous Waste No. F019, because it is derived from the treatment of listed waste water which is treated at the facility's waste water treatment plant. Specifically, in its petition, Lockheed Martin Aeronautics Company requested that EPA grant an exclusion for 90 cubic yards per calendar year of sludge resulting from the treatment of waste waters from the manufacturing processes at its facility.

2. Who is Lockheed Martin Aeronautics Company and what process do they use to generate the petition waste?

Lockheed Martin Aeronautics Company is engaged in design, development, production and full system support of fighter/attack aircraft for the United States Air Force and foreign governments. The United States Air Force Plant No. 4 (AFP4), operated by Lockheed Martin Aeronautics Company, consists of over seven million square feet of advanced tactical fighter aircraft manufacturing, research, development, and office area on a six hundred acre site. Manufacturing advanced aircraft requires typical metal finishing techniques such as aqueous cleaning, sulfuric acid anodizing, and chromate conversion coating. Waste water from these processes is routed to a centralized pre-treatment industrial waste water pre-treatment facility through segregated waste collection lines. Industrial waste water is primarily generated from the sulfuric acid anodize and chromated conversion coating process line. This line consists of fourteen, 8,000 gallon tanks arranged in linear fashion for the etch-clean-rinse-clean-rinse-anodize-rinse-seal process.

Lockheed Martin Aeronautics Company intends to dispose of the delisted sludge at a Subtitle D Landfill.

Treatment of the waste waters, which result from the manufacturing process generates the sludge that is classified as F019 listed hazardous waste pursuant to 40 CFR 261.31. The 40 CFR Part 261, Appendix VII hazardous constituents which are the basis for listing F019 hazardous waste are: Hexavalent chromium and cyanide.

3. What information did Lockheed Martin Aeronautics Company submit to support this petition?

To support its petition, Lockheed Martin Aeronautics Company submitted:

- Analytical results of the toxicity characteristic leaching procedure and total constituent analysis for volatile and semivolatile organics, pesticides, herbicides, dioxins/furans, PCBs and metals for six sludge samples;
- Analytical results from multiple pH leaching of metals; and
- Descriptions of the waste water treatment process.

4. What were the results of Lockheed Martin Aeronautics Company's analysis?

EPA believes that the descriptions of Lockheed Martin Aeronautics Company's waste, and the analytical data submitted in support of the petition show that the sludge is non-hazardous. Analytical data from Lockheed Martin Aeronautics Company's sludge samples were used in the Delisting Risk Assessment Software. The data summaries for detected constituents are presented in Table 3. EPA has reviewed the sampling procedures used by Lockheed Martin Aeronautics Company and has determined that they satisfy EPA's criteria for collecting representative samples of the variations in constituent concentrations in the sludge. The data submitted in support of the petition show that constituents in Lockheed Martin Aeronautics Company's wastes are presently below health-based risk levels used in the delisting decision-making. EPA believes that Lockheed Martin Aeronautics Company has successfully demonstrated that the sludge is non-hazardous.

TABLE 3.—MAXIMUM TCLP AND TOTAL CONSTITUENT CONCENTRATIONS OF THE SLUDGE AND CORRESPONDING DELISTING LIMITS [1]

Chemical name	Waste stream total concentration (mg/kg)	Waste stream TCLP concentration (mg/l)	Delisting concentration (mg/l)
Acetone	3.40E+00	5.00E–02	4.06E+04
Acetonitrile	2.20E–02	<1.00E–02	7.66E+02
Antimony	6.30E+02	1.30E–01	8.45E+00
Arsenic	9.30E+01	<5.00E–02	6.57E–01
Barium	3.40E+02	6.80E–01	1.00E+02
Bis(2-Ethylhexyl) Phthalate	3.20E+03	<1.00E–01	4.68E+29
Cadmium	<1.20E+01	6.10E–02	1.00E+00
Carbon Disulfide	1.00E–02	<1.00E–02	4.40E+03
Chromium	2.50E+04	1.60E+00	5.00E+00
Chromium, Hexavalent	4.00E+2	<2.00E–02	5.00E+00
Cobalt	8.50E+01	5.60E–01	1.04E+03
Copper	4.00E+03	2.10E+01	1.81E+03
Cyanide	3.00E+02	9.90E–01	2.40E+02
Ethylbenzene	2.20E–02	<1.00E–02	8.46E+02
Formaldehyde	1.20E+02	1.40E+03	6.76E+03
Lead	3.80E+03	1.40E–01	5.00E+00
Mercury	1.90E+00	<2.00E–02	2.00E–01
Methyl Ethyl Ketone (2-butanone)	7.80E–01	2.50E–02	2.00E+02
Methyl Isobutyl Ketone	<4.80E–02	<5.00E–02	3.61E+03
Methylene Chloride	3.90E–01	6.00E–02	6.16E+00
Nickel	4.90E+03	3.00E+01	3.00E+01
Selenium	<6.00E+01	2.20E–02	1.00E+00
Silver	3.30E+02	4.00E–02	5.00E+00
Toluene	1.10E–02	<1.00E–02	1.18E+03
Vanadium	1.10E+03	1.30E–02	5.15E+01
Xylenes, Total	6.70E–02	<2.50E–02	7.45E+02
Zinc	2.50E+03	1.50E+01	1.58E+04

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

< # Denotes that the constituent was below the detection limit.

5. What did EPA conclude about the facility's analysis?

EPA concluded, after reviewing Lockheed Martin Aeronautics Company's processes that no other hazardous constituents of concern, other than those for which Lockheed Martin Aeronautics Company tested, are likely to be present or formed as reaction products or by-products in Lockheed Martin Aeronautics Company's wastes. In addition, on the basis of explanations and analytical data provided by Lockheed Martin Aeronautics Company, pursuant to § 260.22, EPA concludes that the petitioned waste, sludge, does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. See §§ 261.21, 261.22, 261.23, and 261.24 respectively.

6. What other factors did EPA consider in its evaluation?

During the evaluation of this petition, in addition to the potential impacts to the ground water, EPA also considered the potential impact of the petitioned waste via non-ground water exposure routes (*i.e.*, air emissions and surface runoff) for the sludge. With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from the petitioned waste is unlikely. No appreciable air releases are likely from the sludge under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from the waste water in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from the sludge.

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

The descriptions by Lockheed Martin Aeronautics Company of the hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for EPA to grant the petition. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable concentrations (See Table 3). EPA believes that the sludge generated by Lockheed Martin Aeronautics Company contains hazardous constituents at levels which will present minimal short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes that it should grant to Lockheed Martin Aeronautics Company an exclusion from the list of hazardous wastes for the sludge. EPA believes that the data submitted in support of the petition show the Lockheed Martin Aeronautics Company's sludge to be non-hazardous.

EPA has reviewed the sampling procedures used by Lockheed Martin Aeronautics Company and has determined they satisfy EPA's criteria for collecting representative samples of variable constituent concentrations in the sludge. The data submitted in support of the petition show that constituents in Lockheed Martin Aeronautics Company's wastes are presently below the compliance-point concentrations used in the delisting decision-making process and would not pose a substantial hazard to the environment and the public. EPA believes that Lockheed Martin Aeronautics Company has successfully demonstrated that the sludge is non-hazardous.

EPA, therefore, proposes to grant an exclusion to Lockheed Martin Aeronautics Company for the sludge described in its February 2006 petition. EPA's decision to exclude this waste is based on analysis performed on samples taken of the sludge.

If EPA finalizes the proposed rule, EPA will no longer regulate 242,000 pounds per year of sludge from Lockheed Martin Aeronautics Company's Fort Worth facility under Parts 262 through 268 and the permitting standards of Part 270.

IV. The Risk Evaluation

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

The worst case scenario for management of the sludge was modeled for disposal in a landfill. EPA used such information gathered to identify plausible exposure routes (*i.e.*, ground water, surface water, soil, air) for hazardous constituents present in the sludge. EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for the wastes. In assessing potential risks to ground water, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and Agency health-based numbers. Using the maximum compliance-point concentrations and EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in ground water.

EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensured that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health and/or the environment. The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.*, volatilization or wind-blown particulate from the landfill). As in the above ground water analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or ''delisting levels'').

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. EPA does control the type of unit where the waste is disposed.

EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, the facilities have never directly disposed of this material in a solid waste landfill, so no representative data exists. Therefore, EPA has

determined that it would be unnecessary to request ground water monitoring data.

EPA believes that the descriptions of the wastes and analytical characterization which illustrate the presence of toxic constituents at lower concentrations in these waste streams provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized.

The DRAS results, which calculated the maximum allowable concentration of chemical constituents in the wastes are presented in Tables 1, 2 and 3. Based on the comparison of the DRAS results and maximum TCLP concentrations found in Tables 1, 2, and 3, the petitioned wastes should be delisted because no constituents of concern are likely to be present or formed as reaction products or by products in the wastes.

B. What changes have been made to the DRAS model?

In July 2007, U.S. EPA prepared an update of the *Delisting Risk Assessment Software (DRAS)* by releasing version 3.0. The update addressed a number of issues with version 2 and improved the fate and transport modeling.

To estimate the downgradient concentrations of waste leachate constituents released into groundwater, the *DRAS* utilizes conservative dilution-attenuation factors (DAFs) taken from Monte-Carlo applications of U.S. EPA's *Composite Model for Leachate Migration with Transformation Products (CMTP). DRAS 3.0* includes all new DAFs from new CMTP modeling runs. The new modeling takes advantage of: Updated saturated flow and transport modules; a new surface impoundment module and database; model corrections for unrealistic scenarios (like water tables modeled above the ground surface); new isotherms for metals; and a revised recharge and infiltration database. As a result, many of the DAFs used in previous versions of *DRAS* have changed.

Further affecting the groundwater calculation, the relationships for determining scaling factors used to scale the DAFs to account for very small waste streams have been updated to reflect the new database information on landfills and surface impoundments and were also corrected for a metric conversion of cubic meters to cubic yards. The new scaling factors are generally higher than those of previous versions of *DRAS*, resulting in higher estimated dilution and attenuation at lower waste volumes for both landfills and surface impoundments.

The new metals DAFs, based on MINTEQA2 isotherms, can vary as a function of the landfill leachate concentration. This means that the effective DAF (including a scaling factor adjustment, if necessary) for an input concentration may differ significantly with the effective DAF that corresponds to the allowable leachate concentration. *DRAS 3.0* now displays the DAFs in both the forward calculated risk tables and the tables of maximum allowable concentrations so that the difference is evident to the user. The isotherms that vary by leachate concentration are represented in *DRAS* by a look-up table with leachate concentrations paired with DAFs. In the event that an actual concentration input to *DRAS* lies between two values in the table, or an allowable receptor concentration lies between two calculated receptor concentrations from the table, *DRAS 3.0* will linearly and proportionally extrapolate between the two values to determine the corresponding exposure or allowable leachate concentration.

EPA changed the calculation for particle emissions caused by vehicles driving over the waste at the landfill to provide a more realistic estimate. The estimate depends upon the number of trips per day landfill vehicles make back and forth over the waste. In previous versions of *DRAS*, this value was conservatively set at a 100 trips per day, corresponding with an extremely high annual waste volume. In *DRAS 3.0*, a minimum number of trips per day was conservatively assumed from the Subtitle D landfill survey (7.4 trips per day at the 95th percentile of values reported). The number of trips per day specific to the actual waste volume is then added to the minimum to reflect the impact of very large waste streams. This will considerably reduce the particle emission estimate for wastes generated at all but the largest annual volumes.

EPA added a conversion from English to metric tons to the calculation of particle emissions from waste unloading, resulting in a decrease of roughly 10% over previous versions of *DRAS*. We also made a unit-conversion factor correction to part of the air-volatile pathway which will reduce the impact to the receptor.

An error in the back-calculation for fish ingestion pathway was corrected to reflect the difference between freely dissolved and total water column waste constituent concentrations.

For the estimation of risk and hazard, we made a number of updates to the forward and back calculations. Previous versions of *DRAS* assumed that only 12.5% of particles are absorbed by the receptor's respiratory system. This is no longer necessary as toxicity reference values for inhalation currently recommended by U.S. EPA relate risk or hazard directly to exposure concentration. *DRAS 3.0* does not include the 12.5% reduction. This change significantly increases estimated risks due to particle inhalation and lowers corresponding allowable concentrations.

DRAS Version 3.0.47 has a reformulated back calculation of the allowable leachate concentrations from exposure due to contaminants volatilized during household water use to match the forward calculation of risk. In previous versions of *DRAS*, the forward calculation summed the risks from exposure to all three evaluated household compartments (the shower, the bathroom, and the whole house) while the back calculation based the maximum allowable level on the single most conservative compartment. The *DRAS 3.0* maximum allowable leachate concentrations are now based on the combined impact of all three compartments. The house exposure was also expanded to a 900 minute (15 hour) daily exposure to reflect non-working residents who have an overall 16 hour in-house exposure (the other 1 hour is spent in the shower and bathroom).

EPA resolved the inconsistencies with the way *DRAS* chooses limiting pathways for specific waste constituents in *DRAS 3.0*.

EPA checked all toxicity reference values in *DRAS* and updated where necessary. Approximately 180 changes were made to the toxicity reference values in *DRAS* based on data in IRIS, PPRTV, HEAST, NCEA, CalEPA and other sources. Some route-to-route extrapolations of oral toxicity data to inhalation exposure have been returned to *DRAS 3.0* if consistent with Agency policy. See U.S. EPA 2006 for full accounting of this methodology. The same reference also includes discussions of toxicity reference choices where the multiple values were available or where the toxicity reference values were specific to particular species of constituents.

V. Next Steps

A. With What Conditions Must the Petitioners Comply?

The petitioners must comply with the requirements in 40 CFR Part 261, Appendix IX, Tables 1 and 2 as amended by this notice. The text below

gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituent concentrations for which the facility must test in the petitioned wastes, below which these wastes would be considered non-hazardous.

EPA selected the set of inorganic and organic constituents specified in paragraph (1) and listed in 40 CFR Part 261, Appendix IX, Tables 1 and 2, based on information in the petition. EPA compiled the inorganic and organic constituents list from descriptions of the manufacturing processes used by the facilities, previous test data provided for the wastes, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the leachable concentrations of the petitioned wastes.

(2) Waste Holding and Handling

Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) has occurred for two consecutive quarterly sampling events. For example, if the facility is issued a final exclusion in August, the first quarter samples are due in November and the second quarter samples are due in February. If EPA deems that both the first and second quarter samples (a total of four) meet all the delisting limits, classification of the waste as non-hazardous can begin in March. If constituent levels in any sample taken by the facility exceed any of the delisting levels set in paragraph (1), the facility must: (i) notify EPA in accordance with paragraph (6), and; (ii) manage and dispose of the petitioned waste as hazardous waste generated under Subtitle C of RCRA.

(3) Verification Testing Requirements

The petitioner must complete a verification testing program on the wastes to assure that they do not exceed the maximum levels specified in paragraph (1). If EPA determines that the data collected under this paragraph does not support the data provided in the petition, the exclusion will not cover the tested waste. This verification program operates on two levels.

The first part of the quarterly verification testing program consists of testing a batch of sludge for specified indicator parameters as described in paragraph (1). Each quarterly sampling event will consist of at least two samples of the waste. Levels of constituents measured in the samples of the waste that do not exceed the levels set forth in paragraph (1) can be considered non-hazardous after two consecutive quarters of sampling data meet the levels listed in paragraph (1).

The second part of the verification testing program is the annual testing of two representative composite samples of the wastes for all constituents specified in paragraph (1).

If the petitioner demonstrates for two consecutive quarters complete attainment of all specified limits, then the facility may request approval of EPA to reduce the frequency of testing to annually. If, after review of performance of the treatment system, EPA finds that annual testing is adequately protective of human health and the environment, then EPA may authorize the facility to reduce the quarterly comprehensive sampling frequency to an annual basis. If the annual testing of the wastes does not meet the delisting levels in paragraph (1), the facility must notify EPA according to the requirements in paragraph (6). EPA will then take the appropriate actions necessary to protect human health and the environment as described in paragraph (6). The facility must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

The exclusion is effective upon publication in the **Federal Register** but the change in waste classification as ''non-hazardous'' cannot begin until two consecutive quarters of verification sampling comply with the levels specified in paragraph (1). The waste classification as ''non-hazardous'' is also not authorized, if the facility fails to perform the quarterly and yearly testing as specified herein. Should the facility fail to conduct the quarterly/yearly testing as specified herein, then disposal of sludge as delisted waste may not occur in the following quarter(s)/year(s) until the facility obtains the written approval of EPA.

(4) Changes in Operating Conditions

Paragraph (4) would allow the facility the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment processes. However, the facility must prove the effectiveness of the modified process and request approval from EPA. The facility must manage wastes generated during the new process demonstration as hazardous waste through verification sampling within 30 days of start-up.

(5) Data Submittals

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

If the proposed exclusion is made final, then it will apply only to amount of wastes designated by the exclusion per calendar year.

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

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

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

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

The facility must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream. EPA will publish an amendment to the exclusion if the changes are acceptable.

The facility must manage waste volumes greater than those designated by the exclusion as hazardous waste until EPA grants a revised exclusion. When this exclusion becomes final, the management by the facility of the wastes covered in this petition would be relieved from Subtitle C jurisdiction. The facility may not classify the waste as non-hazardous until the revised exclusion is finalized.

(6) Reopener

The purpose of paragraph (6) is to require the facility to disclose new or different information related to a condition at the facility or disposal of the waste, if it is pertinent to the delisting. The petitioner must also use this procedure if the waste sample in the annual testing fails to meet the levels found in paragraph (1). This provision will allow EPA to reevaluate the exclusion, if a source provides new or additional information to EPA. EPA will evaluate the information on which it based the decision to see if it is still correct or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented.

This provision expressly requires the petitioner to report differing site

conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

It is EPA's position that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978) *et seq.*, to reopen a delisting decision. EPA may reopen a delisting decision when it receives new information that calls into question the assumptions underlying the delisting.

EPA believes a clear statement of its authority in delisting is merited in light of EPA's experience. See the **Federal Register** notice regarding Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations into the environment than the concentrations predicted when conducting the TCLP, leading EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations on a case-by-case basis. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. See APA section 553 (b)(3)(B).

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

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

VI. Public Comments

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

EPA is requesting public comments on this proposed decision. You may submit comments on one of the three petitions or the decision as a whole. Please send three copies of your comments. Send two copies to the Chief, Corrective Action and Waste Minimization Section, Multimedia Permitting and Planning Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to the Industrial Hazardous Waste Permits Division, Technical Evaluation Team, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, TX 78711–3087. Identify your comments at the top with this regulatory docket number. You may submit your comments electronically to Michelle Peace at *peace.michelle@epa.gov.*

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

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

VII. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism,'' (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this proposed rule does not have tribal implications, as specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, ''Civil Justice Reform,'' (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties, 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Lists of Subjects in 40 CFR Part 261

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

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

Dated: May 2, 2008.

Bill Luthans,

Acting Director, Multimedia Planning and Permitting Division.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Lockheed Martin Aeronautics Company.	Fort Worth, TX	Sludge (EPA Hazardous Waste Number F019) generated at a maximum rate of 90 cubic yards per calendar year after [insert publication date of the final rule]. For the exclusion to be valid, Lockheed Martin Aeronautics Company must implement a verification testing program that meets the following Paragraphs: (1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. Sludge Leachable Concentrations (mg/l): Antimony—8.45; Arsenic—0.657; Barium—100.0; Cadmium—1.00; Chromium—5.0; Chromium, Hexavalent—5.0; Cobalt—1040; Copper—1810; Cyanide—240; Lead—5.0; Mercury—0.20; Nickel—1040; Selenium—1.0; Silver—5.0; Vanadium—51.5; Zinc—15800; Acetone—40600; Acetonitrile—766; Carbon Disulfide—4400; Ethylbenzene—846; Methyl Ethyl Ketone—200.0; Methyl Isobutyl Ketone—3610; Methylene Chloride—6.16; Toluene—1180; Xylenes—745. (2) Waste Holding and Handling: (A) Waste classification as non-hazardous can not begin until compliance with the limits set in paragraph (1) for sludge has occurred for two consecutive quarterly sampling events. (B) If constituent levels in any sample taken by Lockheed Martin Aeronautics Company exceed any of the delisting levels set in paragraph (1) for the sludge, Lockheed Martin Aeronautics Company must do the following: (i) Notify EPA in accordance with paragraph (6) and (ii) Manage and dispose of the sludge as hazardous waste generated under Subtitle C of RCRA. (3) Testing Requirements: Upon this exclusion becoming final, Lockheed Martin Aeronautics Company may perform quarterly analytical testing by sampling and analyzing the sludge as follows: (A) Quarterly Testing: (i) Collect two representative composite samples of the sludge at quarterly intervals after EPA grants the final exclusion. The first composite samples may be taken at any time after EPA grants the final approval. Sampling should be performed in accordance with the sampling plan approved by EPA in support of the exclusion. (ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) for the sludge must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements. (iii) Within thirty (30) days after taking each quarterly sample, Lockheed Martin Aeronautics Company will report its quarterly analytical test data to EPA. If levels of constituents measured in the samples of the sludge do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters or sampling events, Lockheed Martin Aeronautics Company can manage and dispose the non-hazardous sludge according to all applicable solid waste regulations. (B) Annual Testing: (i) If Lockheed Martin Aeronautics Company completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), Lockheed Martin Aeronautics Company may begin annual testing as follows: Lockheed Martin Aeronautics Company must test two representative composite samples of the sludge for all constituents listed in paragraph (1) at least once per calendar year. (ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B,1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the Lockheed Martin Aeronautics Company sludge are representative for all constituents listed in paragraph (1).

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

Facility	Address	Waste description
		(iii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken. (iv) The annual testing report should include the total amount of waste in cubic yards disposed during the calendar year. (4) Changes in Operating Conditions: If Lockheed Martin Aeronautics Company significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing and it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA. Lockheed Martin Aeronautics Company must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream. (5) Data Submittals: Lockheed Martin Aeronautics Company must submit the information described below. If Lockheed Martin Aeronautics Company fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). Lockheed Martin Aeronautics Company must: (A) Submit the data obtained through paragraph (3) to the Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, Texas, 75202, within the time specified. All supporting data can be submitted on CD–ROM or some comparable electronic media. (B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when either EPA or the State of Texas requests them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: ''Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.'' (6) Reopener: (A) If, anytime after disposal of the delisted waste Lockheed Martin Aeronautics Company possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at a level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph 1, Lockheed Martin Aeronautics Company must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If Lockheed Martin Aeronautics Company fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

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

Facility	Address	Waste description
		(D) If the Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise.

* * * * *

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

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

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
WRB Refining LLC	Borger, TX	Thermal desorber residual solids (Hazardous Waste No. F037, F038, K048, K049, K050, K051) generated at a maximum annual rate of 1,500 cubic yards per calendar year after [insert publication date of the final rule] and disposed in Subtitle D Landfill. For the exclusion to be valid, WRB Refining LLC must implement a verification testing program that meets the following Paragraphs: (1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. Thermal Desorber Residual Solid Leachable Concentrations (mg/l): Antimony—2.65; Arsenic—1.69; Barium—100; Beryllium—0.76; Cadmium—1.00; Chromium—5.0; Chromium, Hexavalent—5.0; Cobalt—130.0; Copper—234.0; Cyanide—30.10; Lead—5.0; Mercury—0.20; Nickel—129.0; Selenium—1.0; Silver—5.0; Tin—3790.00; Vanadium—6.93; Zinc—1930.0; Acenapthene—104.0; Anthracene—253.0; Benzene—0.5; Carbon Disulfide—552.0; Dibenzofuran—0.14; 1,4-Dichlororbenzene—7.50; Ethylbenzene—106.0; Fluoranthene—24.00; Methylene Chloride—0.077; Naphthalene—0.32; Phenol—1690.00; Pyrene—43.40; Toluene—148.0; 1,2,4-Trichlorobenzene—9.68; Trichlorofluoromethane—151.0; Xylenes—93.40. (2) Waste Holding and Handling: (A) Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) for thermal desorber residual solids has occurred for two consecutive quarterly sampling events. (B) If constituent levels in any sample taken by WRB Refining LLC exceed any of the delisting levels set in paragraph (1) for the thermal desorber residual solids, WRB Refining LLC must do the following: (i) Notify EPA in accordance with paragraph (6) and (ii) Manage and dispose the thermal desorber residual solids as hazardous waste generated under Subtitle C of RCRA. (3) Testing Requirements: Upon this exclusion becoming final, WRB Refining LLC may perform quarterly analytical testing by sampling and analyzing the desorber residual solids as follows: (A) Quarterly Testing: (i) Collect two representative composite samples of the sludge at quarterly intervals after EPA grants the final exclusion. The first composite samples may be taken at any time after EPA grants the final approval. Sampling should be performed in accordance with the sampling plan approved by EPA in support of the exclusion. (ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) for the sludge must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements. (iii) Within thirty (30) days after taking its first quarterly sample, WRB Refining LLC will report its first quarterly analytical test data to EPA. If levels of constituents measured in the samples of the sludge do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, WRB Refining LLC can manage and dispose the non-hazardous thermal desorber residual solids according to all applicable solid waste regulations.

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

Facility	Address	Waste description
		(B) Annual Testing: (i) If WRB Refining LLC completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), WRB Refining LLC may begin annual testing as follows: WRB Refining LLC must test two representative composite samples of the thermal desorber residual solids for all constituents listed in paragraph (1) at least once per calendar year. (ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the WRB Refining LLC thermal desorber residual solids are representative for all constituents listed in paragraph (1). (iii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken. (iv) The annual testing report should include the total amount of waste in cubic yards disposed during the calendar year. (4) Changes in Operating Conditions: If WRB Refining LLC significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing and it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA. WRB Refining LLC must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream. (5) Data Submittals: WRB Refining LLC must submit the information described below. If WRB Refining LLC fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). WRB Refining LLC must: (A) Submit the data obtained through paragraph (3) to the Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, U. S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, Texas, 75202, within the time specified. All supporting data can be submitted on CD–ROM or some comparable electronic media. (B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when either EPA or the State of Texas requests them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: ''Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.'' (6) Reopener (A) If, anytime after disposal of the delisted waste WRB Refining LLC possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.

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

Facility	Address	Waste description
		(B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph 1, WRB Refining LLC must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If WRB Refining LLC fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise.

* * * * *

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

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

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Bayer Material Science LLC	Baytown, TX	Toluene Diisocyanate (TDI) Residue (EPA Hazardous Waste Nos. K027) generated at a maximum rate of 9,780 cubic yards per calendar year after [insert publication date of the final rule]. For the exclusion to be valid, Bayer must implement a verification testing program that meets the following Paragraphs: (1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. TDI Residue Leachable Concentrations (mg/l): Arsenic—0.10, Barium—36.0; Chloromethane—6.06; Chromium—2.27; Cobalt—13.6; Copper—25.9; Cyanide—3.08; Dichlorophenoxyacetic acid—1.08; Diethyl phthalate—1000.0; Endrin—0.02; Lead—0.702; Nickel—13.5; Selenium—0.89; Tin—22.5; Vanadium—0.976; Zinc—197.0; 2,4-Toluenediamine—0.0459. (2) Waste Holding and Handling: (A) Waste classification as non-hazardous can not begin until compliance with the limits set in paragraph (1) for the TDI residue has occurred for two consecutive quarterly sampling events and the reports have been approved by EPA. (B) If constituent levels in any sample taken by Bayer exceed any of the delisting levels set in paragraph (1) for the TDI residue, Bayer must do the following: (i) Notify EPA in accordance with paragraph (6) and (ii) Manage and dispose of the TDI residue as hazardous waste generated under Subtitle C of RCRA. (3) Testing Requirements: Upon this exclusion becoming final, Bayer must perform quarterly analytical testing by sampling and analyzing the TDI residue as follows: (A) Quarterly Testing: (i) Collect two representative composite samples of the TDI residue at quarterly intervals after EPA grants the final exclusion. The first composite samples may be taken at any time after EPA grants the final approval. Sampling should be performed in accordance with the sampling plan approved by EPA in support of the exclusion. (ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) for the TDI residue must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements. (iii) Within thirty (30) days after taking its first quarterly sample, Bayer will report its first quarterly analytical test data to EPA. If levels of constituents measured in the samples of the TDI residue do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, Bayer can manage and dispose the non-hazardous TDI residue according to all applicable solid waste regulations. (B) Annual Testing:

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(i) If Bayer completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), Bayer can begin annual testing as follows: Bayer must test two representative composite samples of the TDI residue for all constituents listed in paragraph (1) at least once per calendar year. (ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the Bayer spent carbon are representative for all constituents listed in paragraph (1). (iii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken. (iv) The annual testing report must include the total amount of waste in cubic yards disposed during the calendar year. (4) Changes in Operating Conditions: If Bayer significantly changes the process described in its petition or starts any process that generates the waste that may or could affect the composition or type of waste generated (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing and it may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA. Bayer must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream. (5) Data Submittals: Bayer must submit the information described below. If Bayer fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). Bayer must: (A) Submit the data obtained through paragraph 3 to the Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, U. S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, Texas 75202, within the time specified. All supporting data can be submitted on CD–ROM or some comparable electronic media. (B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when either EPA or the State of Texas requests them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted.'' Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.'' (6) Reopener: (A) If, anytime after disposal of the delisted waste Bayer possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, then the facility must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph 1, Bayer must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data.

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(C) If Bayer fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, EPA will make a preliminary determination as to whether the reported information requires action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If EPA determines that the reported information requires action, EPA will notify the facility in writing of the actions it believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information explaining why the proposed EPA action is not necessary. The facility shall have 10 days from the date of EPA's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), EPA will issue a final written determination describing the actions that are necessary to protect human health and/or the environment. Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise.

* * * * *

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

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

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	* *	* * * *
WRB Refining LLC (formerly ConocoPhillips Company).	Borger, TX	Thermal desorber residual solids (Hazardous Waste No. F037, F038, K048, K049, K050, K051) generated at a maximum annual rate of 1,500 cubic yards per calendar year after [insert publication date of the final rule] and disposed in Subtitle D Landfill. ConocoPhillips must implement the testing program described in Table 1.—Waste Excluded From Non-Specific Sources for the petition to be valid.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[EPA–HQ–RCRA–2008–0123; FRL–8567–2]

RIN 2050–AG42

Polychlorinated Biphenyls: Manufacturing (Import) Exemption for Veolia ES Technical Solutions, L.L.C.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of informal hearing.

SUMMARY: This **Federal Register** publication is providing notice that EPA will hold an informal public hearing on June 19, 2008, in Port Arthur, Texas, on the proposed rule entitled, Polychlorinated Biphenyls (PCBs): Manufacturing (Import) Exemption for Veolia ES Technical Solutions, L.L.C. published on March 6, 2008 (73 FR 12053). On November 14, 2006, Veolia ES Technical Solutions, L.L.C., (Veolia) submitted a petition to EPA to import up to 20,000 tons of PCB waste from Mexico for disposal at Veolia's TSCA-approved facility in Port Arthur, Texas. As a result of that petition, on March 6, 2008, EPA proposed to grant the request and provided a 45-day public comment period. The Agency extended the comment period, based on a request from a commenter, by 45 days to June 5, 2008. In addition, the Agency also agreed to hold a public hearing on the proposed rule.

DATES: The hearing will take place on Thursday, June 19, 2008, from 3:30 p.m. to 8:30 p.m. All those wishing to provide oral comments at the hearing must send a written request to EPA. Requests must be received on or before June 12, 2008.

ADDRESSES: The hearing will be held at City Hall, 444 4th Street, Port Arthur, Texas 77640, telephone (409) 983–8105. The hearing will be on the 5th floor of City Hall in the Council Chambers.

Requests to Participate: A request to provide oral comments at the informal hearing must be submitted to the Hearing Clerk by one of the following methods.

- *E-mail:* Requests may be sent by electronic mail to: *noggle.william@epa.gov,* Attention Docket ID No. EPA–HQ–RCRA–2008–0123.
- *Fax:* Requests may be faxed to (703) 308–0514, Attention: William Noggle; Docket ID No. EPA–HQ–RCRA–2008–0123.
- *Mail:* Requests may be sent to William Noggle, U.S. EPA, Office of Solid Waste, 5304P, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–RCRA–2008–0123. Request must be received by June 12, 2008. Note that mail is subject to significant delays due to security screening, so please plan for additional delivery time.
- *Hand Delivery:* Requests may be hand delivered to William Noggle, U.S. EPA, Office of Solid Waste, Two Potomac Yard, 2733 South Crystal Drive, 5th Floor, N5612, Arlington, VA 22202. Such deliveries are only accepted during business hours from 9 a.m. to 5 p.m. on Monday through Friday.