

TABLE 2—WASTE EXCLUDED FROM 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.

(7) Notification Requirements:
BAE Systems must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision.

(A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities.

(B) Update the one-time written notification if it ships the delisted waste into a different disposal facility.

(C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA-R06-RCRA-2008-0457; SW-FRL-8713-1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: EPA is proposing to grant a petition submitted by Cooper Crouse-Hinds (C-H) to exclude (or delist) a wastewater treatment plant (WWTP) sludge and filter sand (collectively, sludge) generated by C-H in Amarillo, TX from the lists of hazardous wastes. EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment.

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

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

If finalized, EPA would conclude that C-H's petitioned waste is non-hazardous with respect to the original listing criteria. EPA would also conclude that C-H's process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: We will accept comments until October 23, 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.

Your requests for a hearing must reach EPA by October 8, 2008. The request must contain the information described in § 260.20(d).

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-RCRA-2008-0457 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:* kim.youngmoo@epa.gov.
3. *Mail:* Youngmoo Kim, 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: Youngmoo Kim, 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-2008-0457. 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 [http://](http://www.regulations.gov)

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 at <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-2008-0457, is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from the regulatory docket at no cost for the first 100 pages and at \$0.15 per page for additional copies. 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 technical information regarding the Cooper Crouse-Hinds petition, contact Youngmoo Kim at 214-665-6788 or by e-mail at kim.youngmoo@epa.gov.

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

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

VI. Statutory and Executive Order Reviews

I. Overview Information

A. What action is EPA proposing?

EPA is proposing:
(1) To grant C-H's delisting petition to have its WWTP sludge excluded, or delisted, from the definition of a hazardous waste; and subject to certain verification and monitoring conditions.

(2) To use the Delisting Risk Assessment Software (DRAS) to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency used this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

B. Why is EPA proposing to approve this delisting?

C-H's petition requests an exclusion from the F006 waste listing pursuant to 40 CFR 260.20 and 260.22. C-H does not believe that the petitioned waste meets the criteria for which EPA listed it. C-H also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See

section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)-(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's proposed decision to delist waste from C-H is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Amarillo, TX facility.

C. How will C-H manage the waste, if it is delisted?

If the sludge is delisted, the WWTP sludge from C-H will be disposed of at the following RCRA Subtitle D lined landfill with a leachate collection system: The Allied Waste Service Southwest Subtitle D landfill in Canyon, Texas.

D. When would the proposed delisting exclusion be finalized?

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

RCRA section 3010(b)(1) at 42 USCA 6930(b)(1), allows rules to become effective in less than six months 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 states?

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

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

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

II. Background

A. What is the history of the delisting program?

EPA published an amended list of hazardous wastes from non-specific 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) The wastes typically and frequently exhibit one or more of the

characteristics of hazardous wastes identified in Subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity), (2) the wastes meet the criteria for listing contained in §§ 261.11(a)(2) or (a)(3), or (3) the wastes are mixed with or derived from the treatment, storage or disposal of such characteristic and listed wastes and which therefore become hazardous under §§ 261.3(a)(2)(iv) or (c)(2)(i), known as the "mixture" or "derived-from" rules, respectively.

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

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that 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 consider the wastes hazardous under RCRA regulations.

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

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for 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 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).

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

A. What waste did C-H petition EPA to delist?

On March 25, 2008, C-H petitioned EPA to exclude from the lists of hazardous wastes contained in § 261.31, WWTP sludge (F006) generated from its facility located in Amarillo, Texas. The waste falls under the classification of listed waste pursuant to § 261.31. Specifically, in its petition, C-H requested that EPA grant a standard exclusion for 819 cubic yards per year of the WWTP sludge.

B. Who is C-H and what process does it use to generate the petitioned waste?

The facility manufactures electrical fittings plated zinc for corrosion resistance. Non-current electrical wiring system products commonly called conduit fitting have been manufactured at this facility since 1982. The zinc plating system is non-cyanide containing zinc chloride to electroplate zinc onto cast gray iron electrical fittings to reduce the potential for the fittings to corrode when installed in outdoor or chemical environment. The sludge is generated by wastewater treatment of the zinc plating rinse water to remove oil, grease and metals.

The sludge is transferred to filter press and separate particles from the liquid, creating the filter press sludge cake. The final stage of wastewater treatment system includes two sand filters that serve to polish the discharged water. The sludge cake and used sands are listed as listed hazardous, F006 and disposed in a RCRA Subtitle C permitted hazardous waste landfill in Emelle, Alabama.

C. How did C-H sample and analyze the data in this petition?

To support its petition, C-H submitted:

- (1) Historical information on waste generation and management practices;
- (2) Analytical results from four samples for total concentrations of compounds of concern (COCs);
- (3) Analytical results from four samples for Toxicity Characteristic Leaching Procedure (TCLP) extract values of COCs; and

(4) Multiple pH testing for the petitioned waste.

D. What were the results of C-H's analyses?

EPA believes that the descriptions of the C-H analytical characterization provide a reasonable basis to grant C-H's petition for an exclusion of the WWTP sludge. EPA believes the data submitted in support of the petition show the WWTP sludge is non-hazardous. Analytical data for the WWTP sludge samples were used in the DRAS to develop delisting levels. The

data summaries for COCs are presented in Table I. EPA has reviewed the sampling procedures used by C-H and has determined that it satisfies EPA criteria for collecting representative samples of the variations in constituent concentrations in the WWTP sludge. In addition, the data submitted in support of the petition show that constituents in C-H's waste are presently below health-based levels used in the delisting decision-making. EPA believes that C-H has successfully demonstrated that the WWTP sludge is non-hazardous.

TABLE 1—ANALYTICAL RESULTS/MAXIMUM ALLOWABLE DELISTING CONCENTRATION
[Wastewater Treatment Sludge—Cooper Crouse-Hinds, Amarillo, Texas]

Constituents	Maximum total (mg/kg)	Maximum TCLP (mg/L)	Maximum allowable TCLP delisting level (mg/L)
Arsenic	<2.00	0.072	0.0759
Barium	11.2	1.08	(100)
Benzene	<0.02	0.00218	(0.5)
Cadmium	1.58	0.006	0.819
Cooper	7.41	0.049	216
Iron	26200	0.197	1.24
Manganese	693	1.60	145
Nickel	4.71	0.014	119
Zinc	27300	1.51	1810

Notes:

- 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.
- 2. The delisting levels are from the DRAS analyses except the chemicals with a parenthesis which are the TCLP regulatory levels.

E. 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 Table 1. Based on the comparison of the DRAS results and maximum TCLP concentrations found in Table 1, 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.

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

Since July 2004, EPA has been preparing an update of the DRAS version 2.0. The software will be released as version 3.0. This methodology was used to evaluate the C-H petition. The DRAS 3.0 addresses 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 ground water, 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 ground water 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 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 the Delisting Technical Support Document 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.

G. What did EPA conclude about C-H's analysis?

EPA concluded, after reviewing C-H's processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products

or by-products in the waste. In addition, on the basis of explanations and analytical data provided by C–H, pursuant to § 260.22, EPA concludes that the petitioned waste do not exhibit any of the characteristics of ignitability, corrosivity, reactivity or toxicity. See §§ 261.21, 261.22 and 261.23, respectively.

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

During the evaluation of C–H's petition, EPA also considered the potential impact of the petitioned waste via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from C–H's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from C–H's waste under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from C–H's waste 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 C–H's WWTP waste.

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

The descriptions of C–H's hazardous waste process and analytical characterization provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the leachable concentrations (see Table I). EPA believes that C–H's waste, F006 from zinc electroplating process will not impose any threat to human health and the environment.

Thus, EPA believes C–H should be granted an exclusion for the WWTP sludge. EPA believes the data submitted in support of the petition show C–H's WWTP sludge is non-hazardous. The data submitted in support of the petition show that constituents in C–H's waste are presently below the compliance point concentrations used in the delisting decision and would not pose a substantial hazard to the environment. EPA believes that C–H has successfully demonstrated that the WWTP sludge is non-hazardous.

EPA therefore, proposes to grant an exclusion to C–H in Amarillo, Texas, for the WWTP sludge described in its petition. EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the

petitioned waste and characterization of the WWTP sludge.

If EPA finalizes the proposed rule, EPA will no longer regulate the petitioned waste under parts 262 through 268 and the permitting standards of part 270.

IV. Next Steps

A. With what conditions must the petitioner comply?

The petitioner, C–H, must comply with the requirements in 40 CFR part 261, appendix IX, Table 1. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituents for which C–H must test the WWTP sludge, below which these wastes would be considered non-hazardous. EPA selected the set of inorganic and organic constituents specified in paragraph (1) of 40 CFR part 261, appendix IX, Table 1, (the exclusion language) based on information in the petition. EPA compiled the inorganic and organic constituents list from the composition of the waste, descriptions of C–H's treatment process, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the TCLP concentrations.

(2) Waste Holding and Handling

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

(3) Verification Testing Requirements

C–H must complete a rigorous verification testing program on the WWTP sludge to assure that the sludge does not exceed the maximum levels specified in paragraph (1) of the exclusion language. This verification program operates on two levels. The first part of the verification testing

program consists of testing the WWTP sludge for specified indicator parameters as per paragraph (1) of the exclusion language. If EPA determines that the data collected under this paragraph do not support the data provided for the petition, the exclusion will not cover the generated wastes. If the data from the initial verification testing program demonstrate that the leachate meets the delisting levels, C–H may request quarterly testing. EPA will notify C–H in writing, if and when it may replace the testing conditions in paragraph (3)(A) with the testing conditions in (3)(B) of the exclusion language.

The second part of the verification testing program is the quarterly testing of representative samples of WWTP sludge for all constituents specified in paragraph (1) of the exclusion language. EPA believes that the concentrations of the constituents of concern in the WWTP sludge may vary over time. Consequently this program will ensure that the sludge is evaluated in terms of variation in constituent concentrations in the waste over time.

The proposed subsequent testing would verify that C–H operates a treatment facility where the constituent concentrations of the WWTP sludge do not exhibit unacceptable temporal and spatial levels of toxic constituents. EPA is proposing to require C–H to analyze representative samples of the WWTP sludge quarterly during the first year of waste generation. C–H would begin quarterly sampling 60 days after the final exclusion as described in paragraph (3)(B) of the exclusion language. EPA, per paragraph 3(C) of the exclusion language, is proposing to end the subsequent testing conditions after the first year, if C–H has demonstrated that the waste consistently meets the delisting levels. To confirm that the characteristics of the waste do not change significantly over time, C–H must continue to analyze a representative sample of the waste on an annual basis. Annual testing requires analyzing the full list of components in paragraph (1) of the exclusion language. If operating conditions change as described in paragraph (4) of the exclusion language; C–H must reinstate all testing in paragraph (1) of the exclusion language. C–H must prove through a new demonstration that their waste meets the conditions of the exclusion. If the annual testing of the waste does not meet the delisting requirements in paragraph (1), C–H must notify EPA according to the requirements in paragraph (6) of the exclusion language. The facility must provide sampling results that support

the rationale that the delisting exclusion should not be withdrawn.

(4) Changes in Operating Conditions

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

(5) Data Submittals

To provide appropriate documentation that C-H's WWTP sludge is meeting the delisting levels, C-H must compile, summarize, and keep delisting records on-site for a minimum of five years. It should keep all analytical data obtained through paragraph (3) of the exclusion language including quality control information for five years. Paragraph (5) of the exclusion language requires that C-H 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, it will apply only to 819 yards per year of wastewater treatment sludge generated at the C-H after successful verification testing.

EPA would require C-H to file a new delisting petition under any of the following circumstances:

(a) If it significantly alters the manufacturing process treatment system except as described in paragraph (4) of the exclusion language;

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

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

C-H must manage waste volumes greater than 819 cubic yards per year of WWTP waste as hazardous until EPA grants a new exclusion. When this exclusion becomes final, C-H's management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction, the WWTP sludge from C-H will be disposed to the RCRA Subtitle D landfill of the Allied Waste Service Southwest in Canyon, TX.

(6) Reopener

The purpose of paragraph (6) of the exclusion language is to require C-H 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. C-H 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 EPA 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 C-H 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.

EPA believes that it has the authority under RCRA and the Administrative Procedure Act (APA), 5 U.S.C. 551 (1978) *et seq.*, to 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 delistings is merited in light of EPA's experience. See Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading 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 553(b).

(7) Notification Requirements

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

B. What happens if C-H violates the terms and conditions?

If C-H 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 C-H to conduct the appropriate waste analysis and comply with the criteria explained above in paragraph (1) of the exclusion.

V. Public Comments

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

EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section (6PD-C), Multimedia Planning and Permitting Division, Environmental Protection Agency (EPA), 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to Jackee Hardy, Waste Division, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, TX 78711. Identify your comments at the top with this regulatory docket number: "EPA-R06-RCRA-2008-0457." You may submit your comments electronically to Youngmoo Kim at kim.youngmoo@epa.gov.

You should submit requests for a hearing to Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section (6PD-C), Multimedia Planning and Permitting Division, U. S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

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

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9 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.

VI. 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) (Public Law 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: August 28, 2008.

Bill Luthans,

Acting Director, Multimedia Planning and Permitting Division, EPA Region 6.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

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

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

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * * * *	* * * * *	* * * * *
Cooper Crouse-Hinds	Amarillo, TX	Wastewater Treatment Sludge (EPA Hazardous Waste No. F006) generated at a maximum annual rate of 819 cubic yards per calendar year after [insert publication date of the final rule] will be disposed in Subtitle D landfill. For the exclusion to be valid, C-H must implement a verification testing program that meets the following paragraphs: (1) <i>Delisting Levels:</i> All leachable concentrations for those constituents must not exceed the following levels (mg/l for TCLP): Arsenic-0.0759; Barium-100; Cadmium-0.819; Copper-216; Iron-1.24; Manganese-145; Nickel-119; Zinc-18; Benzene-0.5. (2) <i>Waste Management:</i> (A) C-H must manage as hazardous all WWTP sludge generated, until it has completed initial verification testing described in paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph(1) is satisfied. (B) Levels of constituents measured in the samples of the WWTP sludge that do not exceed the levels set forth in paragraph (1) are non-hazardous. C-H can manage and dispose of the non-hazardous WWTP sludge according to all applicable solid waste regulations.

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

Facility	Address	Waste description
		<p>(C) If constituent levels in a sample exceed any of the Delisting Levels set in paragraph (1) C–H can collect one additional sample and perform expedited analyses to verify if the constituent exceeds the delisting level. If this sample confirms the exceedance, C–H must, from that point forward, treat the waste as hazardous until it is demonstrated that the waste again meets the levels in paragraph (1) C–H must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance.</p> <p>(D) Upon completion of the verification testing described in paragraph 3(A) and (B) as appropriate and the transmittal of the results to EPA, and if the testing results meet the requirements of paragraph (1), C–H may proceed to manage its WWTP sludge as non-hazardous waste. If subsequent Verification Testing indicates an exceedance of the Delisting Levels in paragraph (1), C–H must manage the WWTP sludge as a hazardous waste until two consecutive quarterly testing samples show levels below the Delisting Levels in paragraph (1).</p> <p>(3) <i>Verification Testing Requirements:</i> C–H must perform sample collection and analyses, including quality control procedures, using 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 8260B, 1311/8260B, 8270C, 1311/8270C, 6010B, 7470, 9034A, 9012A, ASTM–4982B, ASTM–5049, E413.2. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of C–H’s F006 sludge meet the delisting levels in paragraph (1). If EPA judges the process to be effective under the operating conditions used during the initial verification testing, C–H may replace the testing required in paragraph (3)(A) with the testing required in paragraph (3)(B). C–H Plant must continue to test as specified in paragraph (3)(A) until and unless notified by EPA in writing that testing in paragraph (3)(A) may be replaced by paragraph (3)(B).</p> <p>(A) <i>Initial Verification Testing:</i> After EPA grants the final exclusion, C–H must do the following:</p> <ul style="list-style-type: none"> (i) Within 60 days of this exclusions becoming final, collect eight samples, before disposal, of the WWTP sludge. (ii) The samples are to be analyzed and compared against the Delisting Levels in paragraph (1). (iii) Within sixty (60) days after this exclusion becomes final, C–H will report initial verification analytical test data for the WWTP sludge, including analytical quality control information for the first thirty (30) days of operation after this exclusion becomes final. If levels of constituents measured in the samples of the WWTP sludge that do not exceed the levels set forth in paragraph (1) are also non-hazardous in two consecutive quarters after the first thirty (30) days of operation after this exclusion become effective, C–H can manage and dispose of the WWTP sludge according to all applicable solid waste regulations. <p>(B) <i>Subsequent Verification Testing:</i> Following written notification by EPA, C–H may substitute the testing conditions in (3)(B) for (3)(A). C–H must continue to monitor operating conditions, and analyze two representative samples of the wastewater treatment sludge for each quarter of operation during the first year of waste generation. The samples must represent the waste generated during the quarter. After the first year of analytical sampling verification sampling can be performed on a single annual sample of the wastewater treatment sludge. The results are to be compared to the Delisting Levels in paragraph (1).</p> <p>(C) <i>Termination of Testing:</i> (i) After the first year of quarterly testing, if the Delisting Levels in paragraph (1) are met, C–H may then request that EPA not require quarterly testing.</p> <ul style="list-style-type: none"> (ii) Following cancellation of the quarterly testing, C–H Plant must continue to test a representative sample for all constituents listed in paragraph (1) annually.

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

Facility	Address	Waste description
		<p>(4) <i>Changes in Operating Conditions:</i> If C–H significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could significantly affect the composition or type of waste generated as established under paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing; 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.</p> <p>(5) <i>Data Submittals:</i> C–H must submit the information described below. If C–H 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.C–H must:</p> <p>(A) Submit the data obtained through paragraph (3) to the Section Chief, Corrective Action and Waste Minimization Section, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–C) within the time specified.</p> <p>(B) Compile records of operating conditions and analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years.</p> <p>(C) Furnish these records and data when EPA or the state of Texas requests them for inspection.</p> <p>(D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted:</p> <p>Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. § 1001 and 42 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.</p> <p>As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.</p> <p>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.</p> <p>(6) <i>Re-Opener:</i> (A) If, anytime after disposal of the delisted waste, C–H 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.</p> <p>(B) If the annual testing of the waste does not meet the delisting requirements in paragraph (1), C–H must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.</p> <p>(C) If C–H 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.</p>

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

Facility	Address	Waste description
*	*	*
*	*	*
*		

- (D) If the Division Director determines that the reported information does require action, EPA's 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 action by EPA 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's 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.
- (7) *Notification Requirements:* C–H must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision.
 - (A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities.
 - (B) Update one-time written notification, if it ships the delisted waste into a different disposal facility.
 - (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.