''Rules and Regulations'' section of this **Federal Register** publication.

Dated: December 14, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04–28196 Filed 12–27–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME R03–OAR–2004–DC–0001; FRL–7855–4]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Amendments to the Size Thresholds for Defining Major Sources and to the NSR Offset Ratios for Sources of VOC and NO_X

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the District of Columbia (the District) State Implementation Plan (SIP). The revisions reduce the size thresholds for defining major sources and increase the new source review (NSR) offset ratio requirements for sources of ozone precursors to meet the Clean Air Act (CAA) requirements for 1-hour ozone nonattainment areas classified as severe. These amendments to the District's SIP are required pursuant to the reclassification of the Metropolitan Washington, DC 1-hour ozone nonattainment area from serious to severe. In the Final Rules section of this **Federal Register**, EPA is approving the District's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 27, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–DC–0001 by one of the following methods:

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

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *morris.makeba@epa.gov.*

D. Mail: R03–OAR02004–DC–0001, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2004–DC–0001. 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.docket.epa.gov/rmepub/*, 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are 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 RME or 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 RME index at *http://www.docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the District submittal are available at the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, or by e-mail at *miller.linda@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information on this proposed approval of revisions to 20 DCMR Chapters 1, 2, 7 and 8 which reduce the major source size thresholds and increase the offset ratio requirements in order to satisfy the mandatory CAA requirements pursuant to the reclassification of the Metropolitan Washington DC 1-hour ozone nonattainment area from serious to severe, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: December 14, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04–28198 Filed 12–27–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7855–5]

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 Shell Oil Company (Shell Oil Company) to exclude (or delist) a certain liquid waste generated by its Houston, TX Deer Park

facility 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 Shell Oil Company's petitioned waste is nonhazardous with respect to the original listing criteria. EPA would also conclude that Shell Oil Company's process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: EPA will accept comments until February 11, 2005. EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by January 12, 2005. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send three copies of your comments. You should send two copies to the Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. You should send a third copy to Nicole Bealle, Waste Team Leader, Texas Commission on Environmental Quality, 5425 Polk Avenue, Suite A, Houston, TX 77023. Identify your comments at the top with this regulatory docket number: ''F–04–TEXDEL–Shell Oil.''

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

FOR FURTHER INFORMATION CONTACT: Comments may also be submitted electronically to Michelle Peace at *peace.michelle@epa.gov*.

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

I. Overview Information

A. What Action Is EPA Proposing?

EPA is proposing:

(1) To grant Shell Oil Company's delisting petition to have its multisource landfill leachate underlying the Minimum Technology Requirements (MTR) hazardous waste landfill 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?

Shell Oil Company's petition requests an exclusion from the F039 waste listing pursuant to 40 CFR 260.20 and 260.22. Shell Oil Company does not believe that the petitioned waste meets the criteria for which EPA listed it. Shell Oil Company 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 nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste 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 Shell Oil Company's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Deer Park, TX facility.

C. How Will Shell Oil Company Manage the Waste if it Is Delisted?

If the leachate is delisted, Shell will make piping modifications to allow the leachate to be routed to the North Effluent Treater (NET) for treatment. The treated effluent will be discharged through an Texas Pollutant Discharge Elimination System (TPDES) permitted outfall.

D. When Would the Proposed Delisting Exclusion 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 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 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 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 an 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 Shell Oil Company transports the petitioned waste to or manages the waste in any state with delisting authorization, Shell Oil Company must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the state.

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) 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 nonhazardous 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 Shell Oil Company Petition EPA To Delist?

On January 29, 2003, Shell Oil Company petitioned EPA to exclude from the lists of hazardous wastes contained in § 261.31, multisource landfill leachate (F039) generated from its facility located in Deer Park, Texas. The waste falls under the classification of listed waste pursuant to § 261.31. Specifically, in its petition, Shell Oil Company requested that EPA grant a standard exclusion for 3.36 million gallons (16,619 cu. yards) per year of the multisource landfill leachate.

B. Who Is Shell Oil Company and What Process Does it Use To Generate the Petitioned Waste?

Shell Oil Company refines high sulfur crude oil from Mexico into products including gasoline, kerosene, jet fuel, fuel oil, lube oil and others. The hazardous wastes included incinerator ash, spent catalysts and filters,

Chloronated Plate Interceptor (CPI) sludge from the refinery wastewater treatment plant, NET and primary solids from Shell Chemical and the South Effluent Treater (SET). The wastes disposed of in the minimum technological requirements (MTR) landfill for the past four years have been Class 1 and Class 2 nonhazardous wastes. The landfill is designed to meet the minimum technological requirements specified in 40 CFR § 264.301. The design includes a primary leachate collection system and liner (underlying the deposited waste) followed by a secondary leachate collection system. Leachate from this landfill requires offsite disposal as an F039 (multisource leachate) listed waste. However, analytical data collected monthly for this aqueous stream shows that it is not a characteristic waste and contains little to no detectable concentrations of organic constituents.

C. How Did Shell Oil Company Sample and Analyze the Data in This Petition?

To support its petition, Shell Oil Company submitted:

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

(2) Results of the total constituent list for 40 CFR part 264 Appendix IX volatiles, semivolatiles, metals, pesticides, herbicides, dioxins and PCBs;

(3) Results of the constituent list for 40 CFR part 264 Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

(4) Analytical constituents of concern for F039;

(5) Results from total oil and grease analyses;

(6) Multiple pH testing for the petitioned waste.

D. What Were the Results of Shell Oil Company's Analyses?

EPA believes that the descriptions of the Shell Oil Company analytical characterization provide a reasonable basis to grant Shell Oil Company's petition for an exclusion of the multisource landfill leachate. EPA believes the data submitted in support of the petition show the multisource landfill leachate is non-hazardous. Analytical data for the multisource landfill leachate samples were used in the DRAS to develop delisting levels. The data summaries for detected constituents are presented in Table I. EPA has reviewed the sampling procedures used by Shell Oil Company and has determined that it satisfies EPA criteria for collecting representative samples of the variations in constituent concentrations in the multisource landfill leachate. In addition, the data submitted in support of the petition show that constituents in Shell Oil Company's waste are presently below health-based levels used in the delisting decision-making. EPA believes that Shell Oil Company has successfully demonstrated that the multisource landfill leachate is non-hazardous.

TABLE I.—MAXIMUM TCLP CONCENTRATIONS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATION OF THE MULTISOURCE LANDFILL LEACHATE AT THE SHELL OIL COMPANY DEER PARK, TX FACILITY [1]

Constituent	TCLP analyses (mg/l)	Maximum allowable delisting concentration levels (mg/l)
Antimony	0.0092	0.0204
Arsenic	0.011	[2] 0.385
Barium	0.252	2.92
Copper	0.00553	418.00
Chromium	0.0122	5.0
Cobalt	0.0126	2.25
Nickel	0.0368	1.13
Selenium	0.0128	0.0863
Acetone	0.033	1.46
Acetophenone	0.0031	1.58
Benzene	0.013	0.022
Dichloroethane, 1,2	0.0014	0.0803
Ethylbenzene	0.00098	4.51
Napthalene	0.0061	1.05
Phenanthrene [3]	0.0014	1.39
Phenol	0.056	9.46
TCDD,2,3,7,8	0.00000000325	0.0000926
Trichloropropane	0.00025	0.000574
Xylenes (total)	0.0016	97.60

[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.

[2] EPA defers to the maximum allowable delisting concentration based on the MCL. As a result, Shell Oil Company's analytical sampling results and consequent DRAS analysis meet the criteria for the proposed delisting petition approval.

[3] The DRAS program does not have a delisting concentration for phenanthrene. Consequently EPA substituted anthracene into the DRAS program to set a delisting level for phenanthrene. Anthracene has similar toxicological and health based properties as phenanthrene. The DRAS program contains a complete risk-based dataset for anthracene. Shell Oil Company's phenanthrene analytical sampling results and consequent DRAS analysis using anthracene input parameters meet the criteria for the proposed phenanthrene delisting level.

[4] Shell ran TCLP analysis only for the liquid wastes, total analysis were excluding because similar analytical results would be provided.

E. How Did EPA Evaluate the Risk of Delisting This Waste?

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (*i.e.*, groundwater, surface water, air) for hazardous constituents present in the petitioned waste. EPA determined that disposal in a surface impoundment is the most reasonable, worst-case disposal scenario for Shell Oil Company's petitioned waste. EPA applied the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000) and 65 FR 75637

(December 4, 2000), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of Shell Oil Company's petitioned waste on human health and the environment. A copy of this software can be found on the world wide web at *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm*. In assessing potential risks to groundwater, 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 groundwater 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 EPA health-based numbers. Using the maximum compliance-point concentrations and EPA's 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 groundwater.

EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible groundwater contamination resulting from disposal of the petitioned waste in a surface impoundment, 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 ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health 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 from the surface impoundment). As in the above groundwater 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. The waste must be disposed in the type of unit the fate and transport model evaluates.

EPA also considers the applicability of groundwater monitoring data during the evaluation of delisting petitions. In this case, Shell Oil Company will dispose of its wastewater in its TPDES permitted NET unit, with existing groundwater contamination sources. The groundwater contamination is currently being addressed and managed through a RCRA Corrective Actions Program. Consequently the groundwater data would not be relevant to this exclusion. Therefore, EPA has determined that it would be unnecessary to request groundwater monitoring data.

EPA believes that the descriptions of Shell Oil Company hazardous waste process and analytical characterization 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 calculate the maximum allowable concentration of chemical constituents in the waste are presented in Table I. Based on the comparison of results from the DRAS and maximum TCLP concentrations found in Table I, the petitioned waste should be delisted because no constituents of concern tested are likely to be present or formed as reaction products or by-products in Shell Oil Company's waste.

F. What Did EPA Conclude About Shell Oil Company's Analysis?

EPA concluded, after reviewing Shell Oil Company'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 Shell Oil Company, 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, 261.22 261.23 and 261.24, respectively.

G. What Other Factors Did EPA Consider in Its Evaluation?

During the evaluation of Shell Oil Company's petition, EPA also considered the potential impact of the petitioned waste via non-groundwater routes (*i.e.*, air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from Shell Oil Company's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from Shell Oil Company waste under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Shell Oil Company's waste in an open surface impoundment. 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 Shell Oil Company's multisource landfill leachate.

H. What Is EPA's Evaluation of This Delisting Petition?

The descriptions of Shell Oil Company's 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 exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (*see* Table I). EPA believes Shell Oil Company's process will substantially reduce the likelihood of migration of hazardous constituents from the petitioned waste. Shell Oil Company's process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes Shell Oil Company should be granted an exclusion for the multisource landfill leachate. EPA believes the data submitted in support of the petition show Shell Oil Company's multisource landfill leachate is non-hazardous. EPA has reviewed the sampling procedures used by Shell Oil Company and has determined that it satisfies EPA criteria for collecting representative samples of variable constituent concentrations in the multisource landfill leachate. The data submitted in support of the petition

show that constituents in Shell Oil Company'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 Shell Oil Company has successfully demonstrated that the multisource landfill leachate is non-hazardous.

EPA therefore, proposes to grant an exclusion to Shell Oil Company, in Deer Park, Texas, for the multisource landfill leachate 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 multisource landfill leachate.

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, Shell Oil Company, 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 Shell Oil Company must test the multisource landfill leachate, 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 Shell Oil Company'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 total concentrations. The limits described here do not relieve Shell Oil Company of its duty to comply with discharge limits in its TPDES permit.

(2) Waste Holding and Handling

The purpose of this paragraph is to ensure that Shell Oil Company manages and disposes of any multisource landfill leachate that contains hazardous levels of inorganic and organic constituents according to Subtitle C of RCRA. Managing the multisource landfill leachate 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

Shell Oil Company must complete a rigorous verification testing program on the multisource landfill leachate to assure that the treated multisource landfill leachate 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 multisource landfill leachate 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, Shell Oil Company may request quarterly testing. EPA will notify Shell Oil Company, 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 multisource landfill leachate for all constituents specified in Paragraph (1) of the exclusion language. EPA believes that the concentrations of the constituents of concern in the multisource landfill leachate may vary over time. Consequently this program will ensure that the leachate is evaluated in terms of variation in constituent concentrations in the waste over time.

The proposed subsequent testing would verify that Shell Oil Company operates a landfill where the constituent concentrations of the multisource landfill leachate do not exhibit unacceptable temporal and spatial levels of toxic constituents.

EPA is proposing to require Shell Oil Company to analyze representative samples of the multisource landfill leachate quarterly during the first year of waste generation. Shell Oil Company 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 Shell Oil Company has demonstrated that the waste consistently meets the delisting levels. To confirm that the characteristics of the waste do not change significantly over time, Shell Oil Company 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; Shell Oil Company must reinstate all testing in Paragraph (1) of the exclusion language. Shell Oil Company 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, Shell Oil Company 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 Shell Oil Company the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment process. However, Shell Oil Company must prove the effectiveness of the modified process and request approval from EPA. Shell Oil Company 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 Shell Oil Company's multisource landfill leachate is meeting the delisting levels, Shell Oil Company 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 Shell Oil Company 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 3.36 million gallons (16,619 cu. yards) per year of multisource landfill leachate, generated at the Shell Oil Company facility after successful verification testing.

EPA would require Shell Oil Company 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.

Shell Oil Company must manage waste volumes greater than 3.36 million gallons (16,619 cu. yards) per year of multisource landfill leachate as hazardous until EPA grants a new exclusion.

When this exclusion becomes final, Shell Oil Company's management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction. Shell Oil Company must either treat, store, or dispose of the waste in an on-site facility. If not, Shell Oil Company must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a state permit, license, or register to manage municipal or industrial solid waste.

(6) Reopener

The purpose of Paragraph (6) of the exclusion language is to require Shell Oil Company 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. Shell Oil Company 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 Shell Oil Company 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 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 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 Shell Oil Company provide a one-time notification to any state regulatory agency through which or to which the delisted waste is being carried. Shell Oil Company must provide this notification 60 days before commencing this activity.

B. What Happens if Shell Oil Company Violates the Terms and Conditions?

If Shell Oil Company 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 Shell Oil Company to conduct the appropriate waste analysis and comply with the criteria explained above in Paragraph (1) of the exclusion.

V. Public Comments

A. How Can 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 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 Nicole Bealle, Waste Team Leader, Texas Commission on Environmental Quality, 5425 Polk Avenue Suite A, Houston, TX 77023. Identify your comments at the top with this regulatory docket number: ''F–04–TEXDEL–Shell Oil.'' You may submit your comments electronically to Michelle Peace at *peace.michelle@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 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. Regulatory Impact

Under Executive Order 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory

flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on a small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, EPA hereby certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to state, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

EPA finds that this delisting decision is deregulatory in nature and does not impose any enforceable duty on any state, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 13045

The Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This proposed rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to have ''meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act, EPA is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, *etc.*) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that EPA to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, EPA has no need to consider the use of voluntary consensus standards in developing this final rule.

XIII. Executive Order 13132 Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with

state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless EPA consults with state and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

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: November 9, 2004.

Carl E. Edlund,

Director, Multimedia Planning and Permitting Division, 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
*	*	* * * * *
Shell Oil Company	Deer Park, TX	Multisource landfill leachate (EPA Hazardous Waste No. F039) generated at a maximum annual rate of 3.36 million gallons (16,619 cu. yards) per calendar year after [insert publication date of the final rule] and disposed in accordance with the TPDES permit. The Delisting Levels set do not relieve Shell Oil Company of its duty to comply with the limits set in its TPDES permit. For the exclusion to be valid, Shell Oil Company must implement a verification testing program that meets the following Paragraphs: (1) *Delisting Levels*: All total concentrations for those constituents must not exceed the following levels (mg/l). The petitioner must analyze the aqueous waste on a total basis to measure constituents in the multisource landfill leachate. Multisource landfill leachate (i) Inorganic Constituents Antimony-0.0204; Arsenic-0.385; Barium-2.92; Copper-418.00; Chromium-5.0; Cobalt-2.25; Nickel-1.13; Selenium-0.0863; Thallium-0.005 (ii) Organic Constituents Acetone-1.46; Acrylonitrile-0.00745; Acetophenone-1.58; Benzene-0.0222; Cresol, p-0.0788; Bis(2-chlorethyl)ether-0.00583; Bis(2-ethylhexyl)phthlate-15800.00; Dichlorobenzene, 1,3–0.00478; Dichloroethane, 1,2–0.0803; Dimethoate-3.15; Dimethyphenol, 2,4–0.405; Dinitrophenol-0.0293; Dinitrotoluene, 2,4–0.00451; Dinitrololuene, 2,6–0.00451; Diphenylthydrazine-0.00484; Dichloroethylene, 1,1–0.00719; Ethylbenzene-4.51; Kepone-0.00407; Methacrylonitrile-0.00146; Methanol-7.32; Napthalene-1.05; Nitrobenzene 0.00788; Nitrosodiethylamine-0.000258; Nitrosodimethylamine-0.000076; Nitrosodi-n-butylamine-0.000826; N-Nitrosodi-n-propylamine-0.000553; N-Nitrosopiperdine-0.000102; N-Nitrosopyrrolidine-0.000841; N-Nitrosomethylethylamine-0.000176; PCB's-0.000841; Pentachlorophenol-1.58; Phenol-9.46; Pyridine-0.0146; 2,3,7,8-TCDD equivalents as TEQ–0.0000926; Trichloropropane-0.000574; Vinyl Chloride-0.0019; Xylenes (total)-97.60 (2) *Waste Management*: (A) Shell Oil Company must manage as hazardous all multisource landfill leachate 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 multisource landfill leachate that do not exceed the levels set forth in Paragraph (1) are non-hazardous. Shell Oil Company can manage and dispose of the non-hazardous multisource landfill leachate according to all applicable solid waste regulations. (C) If constituent levels in a sample exceed any of the Delisting Levels set in Paragraph (1), Shell Oil Company can collect one additional sample and perform expedited analyses to verify if the constituent exceeds the delisting level. If this sample confirms the exceedance, Shell Oil Company must, from that point forward, treat the waste as hazardous until it is demonstrated that the waste again meets the levels in Paragraph (1). (D) If the facility has not treated the waste, Shell Oil Company must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance. (E) 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), Shell Oil Company may proceed to manage its multisource landfill leachate as non-hazardous waste. If Subsequent Verification Testing indicates an exceedance of the Delisting Levels in Paragraph (1), Shell Oil Company must manage the multisource landfill leachate as a hazardous waste until two consecutive quarterly testing samples show levels below the Delisting Levels in Table I.

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

Facility	Address	Waste Description
		(3) *Verification Testing Requirements*: Shell Oil Company must perform sample collection and analyses, including quality control procedures, according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). If EPA judges the process to be effective under the operating conditions used during the initial verification testing, Shell Oil Company may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). Shell Oil Company must continue to test as specified in Paragraph (3)(A) until and unless notified by EPA in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B). (A) *Initial Verification Testing*: After EPA grants the final exclusion, Shell Oil Company must do the following: (i) Within 60 days of this exclusion becoming final, collect eight samples, before disposal, of the multisource landfill leachate. (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, Shell Oil Company will report initial verification analytical test data for the multisource landfill leachate, 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 multisource landfill leachate 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, Shell Oil Company can manage and dispose of the multisource landfill leachate according to all applicable solid waste regulations. (B) *Subsequent Verification Testing*: Following written notification by EPA, Shell Oil Company may substitute the testing conditions in (3)(B) for (3)(A). Shell Oil Company must continue to monitor operating conditions, and analyze two representative samples of the multisource landfill leachate 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 multisource landfill leachate. The results are to be compared to the Delisting Levels in Condition (1). (C) *Termination of Testing*: (i) After the first year of quarterly testing, if the Delisting Levels in Paragraph (1) are being met, Shell Oil Company may then request that EPA not require quarterly testing. After EPA notifies Shell Oil Company in writing, the company may end quarterly testing. (ii) Following cancellation of the quarterly testing, Shell Oil Company must continue to test a representative sample for all constituents listed in Paragraph (1) annually. (4) *Changes in Operating Conditions*: If Shell Oil Company 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 nonhazardous until the wastes meet the Delisting Levels set in Paragraph (1) and it has received written approval to do so from EPA. (5) *Data Submittals*: Shell Oil Company must submit the information described below. If Shell Oil 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. Shell Oil Company must: (A) Submit the data obtained through Paragraph 3 to the Section Chief, Region 6 Corrective Action and Waste Minimization Section, EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD-C) within the time specified. (B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the state of Texas request 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:*

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

Facility	Address	Waste Description
		(A) If, anytime after disposal of the delisted waste, Shell Oil Company possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at 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 the annual testing of the waste does not meet the delisting requirements in Paragraph 1, Shell Oil 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 Shell Oil 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. (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*: Shell Oil Company 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.
*	*	* * * * *

[FR Doc. 04–28199 Filed 12–27–04; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU06

Endangered and Threatened Wildlife and Plants; Proposed Critical Habitat Designation for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that we are soliciting additional comments on certain areas included in our September 24, 2002, proposed rule (hereinafter referred to as the September 2002 proposal) to designate critical habitat for 4 vernal pool crustaceans and 11 vernal pool plants in California and southern Oregon (67 FR 59884). We issued a final rule based on the September 2002 proposal on August 6, 2003 (68 FR 46684). In the final rule we excluded certain specific lands that had been included in the September 2002 proposal. We excluded these lands pursuant to section 4(b)(2) of the Act based on either policy or economic reasons. On October 28, 2004, a court remanded the final designation to the Service in part, ordering the Service to make a new determination as to whether to designate the excluded areas (*Butte Environmental Council* v. *Norton,* NO. CIV. S–04–0096 (E.D. Cal. Oct. 28, 2004). The August 6, 2003, final rule is still in effect while we reconsider the exclusions from the proposed rule and make a new final determination. Pursuant to the court order, we will evaluate the exclusions made to our proposal in two separate actions: (1) A re-evaluation of exclusions based on policy or non-economic reasons addressed herein; and (2) a re-evaluation of exclusions based on economic concerns in a subsequent **Federal Register** notice. Comments previously submitted on the September 2002 proposal need not be resubmitted because we will incorporate them into the public record as part of this reopening of the comment period and will fully consider them in development of a new final rule.

DATES: We will accept public comments on the policy (non-economic) exclusions to our September 2002 proposal and any new information concerning the 15 vernal pool species addressed in this critical habitat designation until January 27, 2005.

ADDRESSES: If you wish to comment, you may submit your comments and materials by any one of several methods: