

training with F-16 aircraft. The proposed airspace would consist of area "A," a three by five statute mile impact area from the surface to 300 feet above ground level (AGL) for inert (nonexplosive) training munitions; area "B," a 300 feet AGL to FL 180 area; area "C," "FL 180 to FL 270; and area "D," FL 270 to FL 310. This airspace would total approximately 22 by 18 statute miles.

Section 73.46 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8L dated October 7, 2003.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Environmental Review**

This proposal will be subject to the appropriate environmental analysis in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 73**

Airspace, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

**PART 73—SPECIAL USE AIRSPACE**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

**§ 73.46 [Amended]**

2. § 73.46 is amended as follows:

\* \* \* \* \*

**R-4601A, Bearpaw, MT (New)**

Boundaries. Beginning at (lat. 48°03'33" N, long. 108°57'07" W); (lat. 48°03'33" N, long.

109°03'36" W); (lat. 48°06'09" N, long. 109°03'36" W); (lat. 48°06'09" N, long. 108°57'07" W); to point of beginning.

Designated altitudes. Surface up to, but not including, 300 feet AGL.

Time of designation. Intermittent by NOTAM.

Controlling agency. FAA, Salt Lake City ARTCC.

Using agency. 120th FW, Montana Air National Guard, Great Falls International Airport, MT.

**R-4601B, Bearpaw, MT (New)**

Boundaries. Beginning at (lat. 47°56'00" N, long. 108°54'00" W); (lat. 47°56'00" N, long. 109°17'00" W); (lat. 48°15'00" N, long. 109°17'00" W); (lat. 48°15'00" N, long. 108°54'00" W); to point of beginning.

Designated altitudes. 300 feet AGL up to, but not including, FL 180.

Time of designation. Intermittent by NOTAM.

Controlling agency. FAA, Salt Lake City ARTCC.

Using agency. 120th FW, Montana Air National Guard, Great Falls International Airport, MT.

**R-4601C, Bearpaw, MT (New)**

Boundaries. Beginning at (lat. 47°56'00" N, long. 108°54'00" W); (lat. 47°56'00" N, long. 109°17'00" W); (lat. 48°15'00" N, long. 109°17'00" W); (lat. 48°15'00" N, long. 108°54'00" W); to point of beginning.

Designated altitudes. FL 180 to FL 270.

Time of designation. Intermittent by NOTAM.

Controlling agency. FAA, Salt Lake City ARTCC.

Using agency. 120th FW, Montana Air National Guard, Great Falls International Airport, MT.

**R-4601D, Bearpaw, MT (New)**

Boundaries. Beginning at (lat. 47°56'00" N, long. 108°54'00" W); (lat. 47°56'00" N, long. 109°17'00" W); (lat. 48°15'00" N, long. 109°17'00" W); (lat. 48°15'00" N, long. 108°54'00" W); to point of beginning.

Designated altitudes. FL 270 to FL 310.

Time of designation. Intermittent by NOTAM.

Controlling agency. FAA, Salt Lake City ARTCC.

Using agency. 120th FW, Montana Air National Guard, Great Falls International Airport, MT.

\* \* \* \* \*

Issued in Washington, DC, on November 7, 2003.

**Reginald C. Matthews,**

*Manager, Airspace and Rules Division.*

[FR Doc. 03-28617 Filed 11-14-03; 8:45 am]

**BILLING CODE 4910-13-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 261**

[SW-FRL-7587-3]

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

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

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

**SUMMARY:** The EPA is proposing to grant a petition submitted by American Chrome & Chemicals L.P. (ACC) to exclude (or delist) certain dewatered sludge from the production of chrome oxide green pigments (K006) generated at its Corpus Christi, Texas facility from the lists of hazardous wastes.

The EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment.

The 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 conditionally exclude the petitioned waste, the dewatered sludge, from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, the EPA would conclude that ACC's petitioned waste is nonhazardous with respect to the original listing criteria and will substantially reduce the likelihood of migration of constituents from this waste. The EPA would also conclude that their process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

**DATES:** The EPA will accept comments until January 2, 2004. The 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 the EPA by December 2, 2003. 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 Wade Wheatley, Industrial Hazardous Waste Permits Division, Technical Evaluation Team, Texas Commission on Environmental Quality (TCEQ), P.O. Box 13087, Austin, Texas, 78711-3087. Identify your comments at the top with this regulatory docket number: "F-03-TXDEL-ACC" You may submit your comments electronically to [peace.michelle@epa.gov](mailto:peace.michelle@epa.gov).

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

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

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

I. Overview Information

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

II. Background

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

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

- A. What waste did ACC petition the EPA to delist?
- B. Who is ACC and what process does it use to generate the petitioned waste?
- C. How did ACC sample and analyze the waste in this petition?
- D. What were the results of ACC's analysis?
- E. How did the EPA evaluate the risk of delisting this waste?
- F. What did the EPA conclude about ACC's analysis?
- G. What other factors did the EPA consider in its evaluation?
- H. What is the EPA's Final evaluation of this delisting petition?

IV. Next Steps

- A. With what conditions must the petitioner comply?
- B. What happens if ACC violates the terms and conditions?

V. Public Comments

- A. How may I as an interested party submit comments?
- B. How may I review the docket or obtain copies of the proposed exclusions?

VI. Regulatory Impact

VII. Regulatory Flexibility Act

VIII. Paperwork Reduction Act

IX. Unfunded Mandates Reform Act

X. Executive Order 13045

XI. Executive Order 13084

XII. National Technology Transfer and Advancement Act

XIII. Executive Order 13132 Federalism

**I. Overview Information**

*A. What Action Is the EPA Proposing?*

The EPA is proposing to grant ACC's petition to have its dewatered sludge (chromic oxide) excluded, or delisted, from the definition of a hazardous waste, subject to certain verification and monitoring conditions.

*B. Why Is the EPA Proposing To Approve This Delisting?*

ACC's petition requests a delisting for a listed hazardous waste. ACC does not believe that the petitioned waste meets the criteria of K006 for which the EPA listed it. ACC also believes no additional constituents or factors could cause the waste to be hazardous. The EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)-(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, the EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the petition waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, the EPA would have proposed to deny the petition.) The 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. The 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. The EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. The EPA's proposed decision to delist waste from ACC's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Corpus Christi, Texas facility.

*C. How Will ACC Manage the Waste if It Is Delisted?*

For the past 12 years, ACC's dewatered sludge (chromic oxide) has been transferred off-site for treatment/disposal at Texas Ecologists, Inc. a nondedicated, off-site, land-based hazardous waste unit in Robstown, Texas. The waste management method used for the wastewater sludge at Texas Ecologists, Inc. is landfilling. The most recent transfer of the petitioned waste to Texas Ecologists was October 17, 2000.

ACC originally proposed to dispose of the dewatered sludge in an on-site surface impoundment. However, because the DRAS model cannot accommodate ACC's site specific parameters for the surface impoundment scenario, accurate estimates of potential ground water risks could not be made. Therefore, ACC has determined that the delisted waste will be disposed of in a non-hazardous waste landfill. If the delisting exclusion is finalized, ACC will dispose of the petitioned waste, dewatered sludge, at a Subtitle D solid waste landfill.

*D. When Would the EPA Finalize the Proposed Delisting?*

RCRA section 3001(f) specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, the 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 community 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.

The 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 the 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

two categories of states: States having a dual system that includes Federal RCRA requirements and their own requirements, and states which have received authorization from the EPA to make their own delisting decisions.

The EPA allows states to impose its own non-RCRA regulatory requirements that are more stringent than the 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, the EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

The EPA has also authorized some states (for example, Louisiana, 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 ACC transports the petitioned waste to or manages the waste in any state with delisting authorization, ACC 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?

The 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. The EPA has amended this list several times and published it in §§ 261.31 and 261.32.

The EPA lists these wastes as hazardous because: (1) they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

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

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove

that the 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 the EPA or an authorized state to exclude wastes from the list of hazardous wastes. The facility petitions the Agency 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 the 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 the 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 the EPA has "delisted" the waste.

### C. What Factors Must the 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, the EPA must consider any factors (including additional constituents) other than those for which we listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

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

### A. What Waste Did ACC Petition the EPA To Delist?

On April 17, 2002, ACC petitioned the EPA to exclude from the list of hazardous waste contained in § 261.32, the dewatered sludge generated from its facility located in Corpus Christi, Texas. The waste, the EPA Hazardous Waste No. K006, falls under the classification of listed waste because of the "derived-from" rule in § 261.3. Specifically, in its petition, ACC requested that the EPA grant an exclusion for 1450 cubic yards per year of dewatered sludge resulting from its process of manufacturing chromic oxide. The resulting waste is listed, in accordance with the "derived-from" rule.

ACC's wastewater sludge contains approximately 11% solids. The petitioned waste is only the dewatered portion of the sludge, not the entire sludge (solids and wastewater) that is generated from the current wastewater treatment process. Currently, ACC discharges the wastewater sludge through Outfall 201, into an on-site storage tank. The discharge is permitted by Texas Commission on Environmental Quality (TCEQ) through a Texas Pollution Discharges Elimination System (TPDES) Permit No. 003490 (EPA NPDES Permit No. TX0004685).

### B. Who Is ACC and What Process Does It Use To Generate the Petitioned Waste?

The ACC facility is located in an industrial/commercial setting in the western portion of the City of Corpus Christi, Nueces County, Texas. ACC produces various grades of chromic oxide at their Corpus Christi, Texas facility. Chromic oxide is produced through the chemical reaction of sodium dichromate and ammonium sulfate. The produced chromic oxide is washed to create the desired purity of the final product. The sludge generated from this process is listed hazardous waste and identified as K006. The facility operates 24 hours per day, 7 days per week, 365 days per year with the exception of periodic planned shutdowns for routine maintenance.

### C. How Did ACC Sample and Analyze the Waste in This Petition?

To support its petition, ACC 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, and PCBs;

(3) results of the constituent list for appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract;

(4) results from total oil and grease analyses; and

(5) multiple pH testing of the petitioned waste.

#### *D. What Were the Results of ACC's Analyses?*

The EPA believes that the descriptions of the ACC hazardous waste process and analytical characterization in conjunction with the proposed verification testing requirements (as discussed later in this document), provide a reasonable basis to grant ACC's petition for an exclusion of the petitioned waste. The EPA believes the data submitted in support of the petition show the dewatered sludge is non-hazardous. Analytical data for the petitioned waste samples were used in the Delisting Risk Assessment Software (DRAS). The EPA has reviewed the sampling procedures used by ACC and has determined they satisfy the EPA criteria for collecting representative samples of the variations in constituent concentrations in the dewatered wastewater sludge. The data submitted in support of the petition show that constituents in ACC's waste are presently below health-based levels used in the delisting decision-making. The EPA believes that ACC has successfully demonstrated that the petitioned waste is non-hazardous.

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

For this delisting determination, the EPA used such information gathered to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. The EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for ACC's petitioned waste. The EPA applied the 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 ACC'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](http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm). In assessing potential risks to ground water, the 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 the 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.

The 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 results 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 or

wind-blown particulate from the landfill). 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, the EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, the EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. The 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.

The EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, ACC has never directly disposed of this material in an on-site solid waste landfill, so no representative data exists. Therefore, the EPA has determined that it would be unnecessary to request ground water monitoring data.

The EPA believes that the descriptions of ACC's 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 along with the data summary of the detected constituents are presented in Table I. Based on the comparison of the DRAS results and maximum TCLP concentrations, the petitioned waste should be delisted because no constituents of concern exceed the delisting concentrations.

TABLE I.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS OF THE DEWATERED WASTEWATER SLUDGE <sup>1</sup>

Constituent	Total constituent analyses (mg/kg)	TCLP concentration (mg/L)	Maximum allowable TCLP concentration from DRAS (mg/L)
Arsenic .....	74.3	*0.00495	0.0377
Barium .....	21.8	*5	100
Chromium .....	113,000	0.644	5
Thallium .....	23	*0.05	0.355

TABLE I.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS OF THE DEWATERED WASTEWATER SLUDGE<sup>1</sup>—  
Continued

Constituent	Total constituent analyses (mg/kg)	TCLP concentration (mg/L)	Maximum allowable TCLP concentration from DRAS (mg/L)
Zinc .....	38.8	*0.1	1130

<sup>1</sup> These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

\*Denotes that the constituent was not detected at the noted detection limit

#### F. What Did the EPA Conclude About ACC's Analysis?

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

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

During the evaluation of ACC's petition, the EPA also considered the potential impact of ACC's petitioned waste via non-ground water routes (*i.e.*, air emission and surface runoff). With regard to airborne dispersion in particular, the EPA believes that exposure to airborne contaminants from ACC's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from the petitioned waste under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from ACC's petitioned 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 ACC's petitioned waste. A description of the EPA's assessment of the potential impact of ACC's petitioned waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for this proposed rule, F-03-TXDEL-ACC.

The EPA also considered the potential impact of the petitioned waste via a surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (See 56 FR 50978, October 9, 1991) prohibit

pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in this action due to the acidic medium used for extraction in the TCLP. The EPA believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as ground water.

Based on the reasons discussed above, the EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, the EPA evaluated the potential impacts on surface water if ACC's petitioned waste were released from a municipal solid waste landfill through runoff and erosion. See the RCRA public docket for this proposed rule for further information on the potential surface water impacts from runoff and erosion. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below the EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that the petitioned waste would not present potential hazard to human health and the environment via the surface water exposure pathway.

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

The descriptions of ACC's hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for the 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). We believe ACC's process will substantially reduce the likelihood of migration of hazardous constituents from the petitioned waste. ACC's process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

The EPA has reviewed the sampling procedures used by ACC and has determined they satisfy the EPA criteria for collecting representative samples of variable constituent concentrations in the petitioned sludge. The data submitted in support of the petition show that constituents in ACC's petitioned waste are presently below the compliance point concentrations used in the delisting decision-making and would not pose a substantial hazard to the environment.

The EPA believes that ACC has successfully demonstrated that the petitioned waste is non-hazardous, and therefore, proposes to grant an exclusion to ACC, in Corpus Christi, Texas, for the dewatered sludge described in its petition. The EPA's decision to exclude this waste is based on descriptions of the treatment activities and characterization of the petitioned waste.

If we finalize the proposed rule, the Agency 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, ACC, must comply with the requirements in 40 CFR part 261, appendix IX, Table 2 as amended by this notice. The text below gives the rationale and details of those requirements.

##### (1) Delisting Levels

This paragraph provides the levels of constituents for which ACC must test the leachate from the dewatered sludge, below which the waste would be considered nonhazardous.

The EPA selected the set of constituents specified in Paragraph (1)

of 40 CFR part 261, appendix IX, Table 2, based on information in the petition. We compiled the list from the composition of the waste, descriptions of ACC'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 extract of the waste.

#### (2) Waste Holding and Handling

The purpose of this paragraph is to ensure that any dewatered sludge which might contain hazardous levels of constituents are managed and disposed of in accordance with Subtitle C of RCRA. Holding the petitioned waste until characterization is complete will protect against improper handling of hazardous material. If the EPA determines that the data collected under this Paragraph do not support the data provided in the petition, the exclusion will not cover the petitioned waste. The exclusion is effective when we sign it, but the disposal cannot begin until the verification sampling is completed. The dewatered sludge must pass paint filter test as described in EPA SW-846, Method 9095 before it is allowed to be shipped off-site. ACC must maintain a record of the date and the actual volume of the dewatered sludge removed from the tank according to the requirements in Paragraph (5).

#### (3) Verification Testing Requirements

ACC shall conduct verification testing each time it is ready to evacuate the tank sludge for disposal. Four (4) representative composite samples for verification shall be collected from the dewatered sludge. ACC shall analyze the verification samples according to the constituent list specified in Paragraph (1) of 40 CFR part 261, appendix IX, Table 2. The results from each event should be submitted to EPA within 10 days of receiving the results.

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. The EPA will notify ACC of the decision in writing within two weeks of receiving this information.

#### (4) Changes in Operating Conditions

Paragraph (4) would allow ACC the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment process. ACC must prove the effectiveness of the modified process by testing and request approval from the EPA. ACC must

manage wastes generated during the new process demonstration as hazardous waste until it receives a written approval from the EPA and the delisting levels specified in Paragraph (1) are satisfied.

If the proposed exclusion is made final, it will apply only to 1450 cubic yards of dewatered sludge, generated annually at the ACC's facility after successful verification testing.

ACC must manage waste volumes greater than 1450 cubic yards of petitioned waste as hazardous until the EPA grants a new exclusion.

When this new exclusion becomes final, ACC's management of the waste covered by this petition would be relieved from Subtitle C jurisdiction. ACC must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a state permit, license, or registration to manage municipal or industrial solid waste.

The EPA would require ACC 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)

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

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

#### (5) Data Submittals

To provide appropriate documentation that ACC's facility is properly treating the waste, ACC must compile, summarize, and keep delisting records on-site for a minimum of five years. They must keep all analytical data obtained through Paragraph (3) including quality control information for five years. Paragraph (5) requires that ACC furnish these data when the EPA or the State of Texas request them for inspection.

#### (6) Reopener

The purpose of Paragraph (6) is to require ACC 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. ACC must also use this procedure if the verification sampling testing fails to meet the delisting levels found in Paragraph 1. This provision will allow the EPA to reevaluate the exclusion if a source provides new or additional information to the Agency. The EPA will evaluate the information on which it based the decision to see if it is still correct, or if circumstances have changed so that the information is no

longer correct or would cause the EPA to deny the petition if presented.

This provision expressly requires ACC to report differing site conditions or assumptions used in the petition in addition to failure to meet the verification testing conditions within 10 days of discovery. If the 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.

The 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. The EPA may reopen a delisting decision when we receive new information that calls into question the assumptions underlying the delisting.

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

#### (7) Notification Requirements

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

#### B. What Happens if ACC Violates the Terms and Conditions?

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

## V. Public Comments

### A. How May I as an Interested Party Submit Comments?

The EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to Section Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD-C), Environmental Protection Agency (EPA), 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to Industrial Hazardous Waste Permits Division, Technical Evaluation Team, Texas Commission on Environmental Quality (TCEQ), P.O. Box 13087, Austin, Texas, 78711-3087. Identify your comments at the top with this regulatory docket number: "F-03-TXDEL-ACC." You may submit your comments electronically to [peace.michelle@epa.gov](mailto:peace.michelle@epa.gov).

You should submit requests for a hearing to Carl Edlund, Director, Multimedia Planning and Permitting Division (6PD), 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. Regulatory Impact

Under Executive Order 12866, the 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 the EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from the 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 the EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify 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 (Pub. L. 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), Pub. L. 104-4, which was signed into law on March 22, 1995, the 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 the 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. The 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 the 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 the 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.

The 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 the 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, the Agency 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 the Agency. This proposed rule is not subject to Executive Order 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, the 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, the 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 the 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 the 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, the Agency 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 the EPA, the Act requires that Agency 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, the Agency 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 the 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, the 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 the EPA consults with state and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts state

law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This 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 6, 2003.

**Bill Luthans,**

*Acting Director, Multimedia Planning and Permitting Division.*

For the reasons set out in the preamble, 40 CFR part 261 is 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 2 of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

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

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
American Chrome & Chemicals.	Corpus Christi, Texas.	Dewatered sludge (the EPA Hazardous Waste No. K006) generated at a maximum generation of 1450 cubic yards per calendar year after [publication date of the final rule] and <i>disposed</i> in a Subtitle D landfill. ACC must implement a verification program that meets the following Paragraphs: (1) Delisting Levels: All leachable constituent concentrations must not exceed the following levels (mg/l). The petitioner must use the method specified in 40 CFR 261.24 to measure constituents in the waste leachate. Dewatered wastewater sludge: Arsenic-0.0377; Barium-100.0; Chromium-5.0; Thallium-0.355; Zinc-1130.0. (2) Waste Holding and Handling: (A) ACC is a 90 day facility and does not have a RCRA permit, therefore, ACC must store the dewatered sludge following the requirements specified in 40 CFR 262.34, or continue to dispose of as hazardous all dewatered sludge generated, until they have completed verification testing described in Paragraph (3), as appropriate, and valid analyses show that paragraph (1) is satisfied. (B) Levels of constituents measured in the samples of the dewatered sludge that do not exceed the levels set forth in Paragraph (1) are non-hazardous. ACC can manage and dispose the non-hazardous dewatered sludge according to all applicable solid waste regulations.



TABLE 2.—WASTE EXCLUDED FROM 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), ACC must retreat the batches of waste used to generate the representative sample until it meets the levels. ACC must repeat the analyses of the treated waste.</p> <p>(D) If the facility does not treat the waste or retreat it until it meets the delisting levels in Paragraph (1), ACC must manage and dispose the waste generated under Subtitle C of RCRA.</p> <p>(E) The dewatered sludge must pass paint filter test as described in SW 846, Method 9095 before it is allowed to leave the facility. ACC must maintain a record of the actual volume of the dewatered sludge to be disposed of-site according to the requirements in Paragraph (5).</p> <p>(3) Verification Testing Requirements: ACC must conduct verification testing each time it decides to evacuate the tank contents. Four (4) representative composite samples shall be collected from the dewatered sludge. ACC shall analyze the verification samples according to the constituent list specified in Paragraph (1) and submit the analytical results to EPA within 10 days of receiving the analytical results. If the 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. The EPA will notify ACC the decision in writing within two weeks of receiving this information.</p> <p>(4) Changes in Operating Conditions: If ACC significantly changes the process described in its petition or starts any processes that may or could 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), they must notify the EPA in writing; they may no longer handle the wastes generated from the new process as nonhazardous until the test results of the wastes meet the delisting levels set in Paragraph (1) and they have received written approval to do so from the EPA.</p> <p>(5) Data Submittals: ACC must submit the information described below. If ACC fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. ACC must:</p> <p>(A) Submit the data obtained through Paragraph 3 to the Section Chief, Corrective Action and Waste Minimization Section, Environmental Protection Agency, 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 the EPA or the State of Texas request 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 the 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 the 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) Reopener:</p> <p>(A) If, anytime after disposal of the delisted waste, ACC 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 verification testing of the waste does not meet the delisting requirements in Paragraph 1, ACC 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 ACC 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 Agency action to protect human health 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> <p>(D) If the Division Director determines that the reported information does require Agency action, 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 Agency action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information.</p>

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
*	*	<p>(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 the Agency actions that are necessary to protect human health or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise.</p> <p>(7) Notification Requirements: ACC 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.</p> <p>(A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. If ACC transports the excluded waste to or manages the waste in any state with delisting authorization, ACC must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the state.</p> <p>(B) Update the one-time written notification if they ship the delisted waste to a different disposal facility.</p> <p>(C) Failure to provide the notification will result in a violation of the delisting variance and a possible revocation of the Exclusion.</p>
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[FR Doc. 03-28650 Filed 11-14-03; 8:45 am]  
BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-7586-7]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed notice of intent to delete the Follansbee Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region III is issuing a notice of intent to delete the Follansbee Superfund Site (Site), Follansbee, WV, from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at appendix B of 40 CFR part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of West Virginia, through the Department of Environmental Protection, have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

In the "Rules and Regulations" section of today's **Federal Register**, we are publishing a direct final notice of

deletion of the Follansbee Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

**DATES:** Comments concerning this Site must be received by December 17, 2003.

**ADDRESSES:** Written comments should be addressed to: David Polish, Community Involvement Coordinator, U.S. EPA 3HS43, 1650 Arch Street, Philadelphia, PA 19103-2029, [polish.david@epa.gov](mailto:polish.david@epa.gov), (215) 814-3227.

**INFORMATION REPOSITORIES:** Repositories have been established to provide detailed information concerning this decision at the following locations: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-5364, Monday through Friday 8 a.m. to 4:30 p.m. Follansbee

City Library, 844 Main Street, Follansbee, WV 26037, (304) 527-0860, Monday through Thursday 11 a.m. to 7 p.m., Friday and Saturday 9 a.m. to 1 p.m.

**FOR FURTHER INFORMATION CONTACT:** Anthony C. Iacobone, Remedial Project Manager, U.S. EPA 3HS23, 1650 Arch Street, Philadelphia, PA 19103-2029, [iacobone.anthony@epa.gov](mailto:iacobone.anthony@epa.gov), (215) 814-5237.

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

#### Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03-28575 Filed 11-14-03; 8:45 am]

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