

section is 1 percent, compounded semi-annually.

(ii) Under paragraph (a) of this section, the loan from T to QI is treated as a compensation-related demand loan. Because there is no interest payable on the loan from T to QI, the loan is a below-market loan under section 7872. Under section 7872(e)(2), the amount of forgone interest on the loan for 2006 is \$833 ($\$1,000,000 \times .01/2 \times 1/6$). Under section 7872(e)(2), the forgone interest for 2007 is \$1667 ($\$1,000,000 \times .01/2 \times 2/6$). The \$833 for 2006 is deemed transferred as compensation by T to QI and retransferred as interest by QI to T on December 31, 2006. The \$1667 for 2007 is deemed transferred as compensation by T to QI and retransferred as interest by QI to T on March 1, 2007.

(d) *Effective date.* This section applies to exchange facilitator loans issued after the date these regulations are published as final regulations in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 06-1038 Filed 2-3-06; 8:45 am]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL-8027-7; EPA-HQ-RCRA-2005-0015]

Site-Specific Variance From the Land Disposal Restrictions Treatment Standard for 1,3-Phenylenediamine (1,3-PDA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revise the waste treatment standard for 1,3-phenylenediamine (1,3-PDA) for a biosludge generated at DuPont's Chambers Works facility in Deepwater, New Jersey. This variance is necessary because the facility is unable to measure compliance with the previously promulgated 1,3-PDA treatment standard in its multisource leachate biosludge matrix. As a practical matter, therefore, the facility cannot fully document compliance with the requirements of the treatment standard. For the same reason, EPA cannot ascertain compliance for this constituent. Furthermore, faced with the inability to demonstrate treatment residual content through analytical testing for this constituent, this facility faces potential curtailment of 1,3-PDA production operations. This site-specific variance will provide alternative technology treatment standards for 1,3-PDA in multisource leachate that do not

require analysis of the biosludge matrix to determine whether the numerical treatment standard is being met, thus ensuring that treatment reflecting performance of the Best Demonstrated Available Technology occurs and that threats to human health and the environment from land disposal of the waste are minimized.

In the "Rules and Regulations" section of the **Federal Register**, we are revising the 1,3-PDA multisource leachate (F039) treatment standard for the DuPont Chambers Works facility in Deepwater, New Jersey without prior proposal because we view the revision as noncontroversial and anticipate no adverse comment. We have explained our reasons for this approach in the preamble to the direct final rule. If we receive adverse comment on this revision, however, we will withdraw the direct final action for that portion of the variance and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on any amendment must do so at this time.

DATES: Comments must be received by March 9, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-RCRA-2005-0015, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- Email: rcra-docket@epa.gov and minnick.rhonda@epa.gov.
- Fax: 202-566-0272.
- Mail: RCRA Docket (5305T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of 3 copies.
- Hand Delivery: 1301 Constitution Ave., NW., Room B102, Washington, DC. 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 Docket ID No EPA-HQ-RCRA-2005-0015. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you

consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the HQ-Docket Center, Docket ID No EPA-HQ-RCRA-2005-0015, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the RCRA Docket is (202) 566-0270. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For more information on this proposed rulemaking, contact Rhonda Minnick, Hazardous Waste Minimization and Management Division, Office of Solid Waste (MC 5302 W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone (703) 308-8771; fax (703) 308-8443; or minnick.rhonda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. What Is the Basis for LDR Treatment Variances?

Under section 3004(m) of the Resource Conservation and Recovery Act (RCRA), EPA is required to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." We interpret this language to authorize treatment standards based on the performance of the Best Demonstrated Available Technology (BDAT). This interpretation was upheld by the DC Circuit in *Hazardous Waste Treatment Council v. EPA*, 886 F. 2d 355 (D.C. Cir. 1989).

We recognize that there may be wastes that cannot be treated to levels specified in the regulations (see 40 CFR 268.40) because an individual waste matrix or concentration can be substantially more difficult to treat than those wastes we evaluated in establishing the treatment standard (51 FR 40576, November 7, 1986). For such wastes, EPA has a process by which a generator or treater may seek a treatment variance (see 40 CFR 268.44). If granted, the terms of the variance establish an alternative treatment standard for the particular waste at issue.

B. What Is the Basis of the Current 1,3-PDA Treatment Standard?

The treatment standard for 1,3-PDA was promulgated in the Dyes and Pigments (K181) hazardous waste listing on February 24, 2005 (70 FR 9138) and it became effective on August 23, 2005. The 1,3-PDA treatment standard was placed in the Table of Treatment Standards (see 40 CFR 268.40) under "K181" (the waste code for the Dyes and Pigments listing) and under "F039" (the waste code for multisource leachate). It is the F039 treatment standard for 1,3-PDA that is addressed in this site-specific variance. We also added this constituent to the Universal Treatment Standard Table (see 40 CFR 268.48), which means that when 1,3-PDA is reasonably expected to be present in a characteristic waste at point of generation it must be considered an underlying hazardous constituent requiring treatment.

In the final rule, we set a numerical nonwastewater treatment standard of 0.66 mg/kg for 1,3-PDA, based on use of the best demonstrated available technology (BDAT) of combustion. For purposes of establishing the treatment standard, we grouped 1,3-PDA with

other waste constituents (notably 1,2-PDA, but also including o-Anisidine, p-Cresidine, 2,4-dimethylaniline, aniline and 4-chloroaniline). No actual treatment data were available for 1,3-PDA. However, the 0.66 mg/kg treatment standard was based on: (1) The thermal stability index ranking system and incinerability index (if the most difficult to treat constituents can be destroyed via incineration, then all less stable constituents can also be destroyed); and (2) similar chemical structures and chemical and physical properties that are exhibited by the constituents in each treatability group (incineration should be able to destabilize and destroy each of the compounds in a similar fashion). See the "Best Demonstrated Available Technology (BDAT) Background Document for Dyes and Pigments Production Wastes," December 2004, section 2.2.3.

II. What Is the Basis for Today's Determination?

A. What Criteria Govern a Treatment Variance?

Facilities can apply for a site-specific variance in cases where a waste that is generated under conditions specific to only one site cannot be treated to the specified levels. In such cases, the generator or treatment facility may apply to the Administrator, or a delegated representative, for a site-specific variance from a treatment standard. One of the demonstrations that an applicant for a site-specific variance may make is that it is not physically possible to treat the waste to the level specified in the treatment standard (40 CFR 268.44(h)(1)). This is the criteria pertinent to today's variance, in that it is not technically possible to measure the constituent in DuPont's biosludge treatment residual, as explained below.

B. What Does DuPont Request?

DuPont contacted EPA about an analytical problem it is having with 1,3-PDA in their multisource leachate (F039) treatment biosludge. The facility produces 1,3-PDA in their plant and then pipes the wastewaters from manufacturing 1,3-PDA to an onsite biological wastewater treatment plant. DuPont ultimately disposes of the biosolids containing 1,3-PDA into their hazardous waste landfill. The mass loading levels of the waste 1,3-PDA do not trigger the K181 listing, so such placement is not considered land disposal of a hazardous waste. However, the landfill is permitted to accept biosolids with several listed hazardous

waste and, as a result, generates F039 (a hazardous waste), which is reasonably expected to contain 1,3-PDA. The F039 is introduced by pipeline into DuPont's biological treatment system, a two-step biological process that includes the use of activated carbon. Biodegradation reduces organics in this system by approximately 99%. The treatment residual is a F039 biosludge that is high in carbon. It is this biosludge that is the basis of the requested treatability variance.

DuPont has sent the biosludge to several commercial laboratories for analysis to see if it met the treatment standard and could be legally land disposed. The laboratories have consistently been unable to detect 1,3-PDA in this high carbon matrix. When asked if they could develop a new detection method for this constituent, only one laboratory was interested in attempting to do so, but indicated that it could take a year to develop and it likely would have a detection limit around 13 mg/kg (the detection limit for a similar compound, 1,4-PDA). This detection limit is much higher than the 1,3-PDA treatment standard of 0.66 mg/kg.

DuPont pointed out that when the treatment standard for a similar compound, 1,2-PDA (1,2-phenylenediamine, o-phenylenediamine), was promulgated in the dyes and pigments listing rule, we set a treatment standard expressed as specified technologies because of method detection problems: we specified that combustion (CMBST), or chemical oxidation (CHOXD) followed by biodegradation (BIODG) or carbon adsorption (CARBN), or a treatment train of BIODG followed by CARBN are the treatment standard. DuPont requested that we provide a variance that would set specified technologies as the treatment standard for 1,3-PDA at their Chambers Works facility, as we did for 1,2-PDA. We believe that this is a reasonable request because when we evaluated the waste constituents to determine the original treatment standards, we grouped 1,3-PDA with 1,2-PDA (and other constituents) because they are similar in chemical structure and physical properties.

C. New Treatment Standard for 1,3-PDA

We are granting DuPont's request in today's site-specific variance. Under one of the criteria for a variance from the treatment standard, the applicant must demonstrate that it is not physically possible to treat the waste to the level specified in the treatment standard. We believe that today's variance falls into this category, in that it is technically

impossible for DuPont to demonstrate that it complies with a treatment level when laboratories have not been able to detect the waste in DuPont's particular, site-specific biosludge matrix.¹ Therefore, certification that this constituent has been treated in the F039 biosludge matrix is not possible, and without the certification, disposal of the F039 biosludge cannot legally occur. This situation may impede production of 1,3-PDA at the facility, because legal disposal of this waste would no longer be available. See *Steel Manufacturers Association v. EPA*, 27 F.3d 642, 646-47 (D.C. Cir. 1994) (absence of a treatment standard providing a legal means of disposing of wastes from a process is equivalent to shutting down that process).

The alternative treatment standard established by today's site-specific variance is: Combustion (CMBST), or chemical oxidation (CHOXD) followed by biodegradation (BIODG) or carbon adsorption (CARBN), or a treatment train of BIODG followed by CARBN, the same treatment standard we set in the K181 listing rule for a similar constituent, 1,2-PDA. By altering the treatment standard for 1,3-PDA to allow certification of compliance based on the use of specified treatment technologies without constituent-specific testing, we can ensure that effective treatment occurs without delay and can also assure that threats to human health and the environment are minimized. We believe that DuPont's two-step biological treatment system that

includes the use of activated carbon effectively treats 1,3-PDA in the F039 multisource leachate waste.² And, as mentioned in footnote 1, we made a similar finding that treatment of other carbamate waste constituents would adequately treat 1,2-PDA, when we withdrew it as a constituent of concern in 1998. Likewise, we believe that treatment of the other constituents of concern in DuPont's F039 multisource leachate waste will serve as a surrogate for 1,3-PDA.

III. Administrative Requirements

For a complete discussion of all of the administrative requirements applicable to this action, see the direct final rule in the Rules and Regulations section of today's **Federal Register**.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

This treatment variance does not create any new regulatory requirements. Rather, it establishes an alternative treatment standard for a specific waste stream that replaces a standard already

in effect, and it applies to only one facility. Therefore, I hereby certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: January 27, 2006.

Susan Parker Bodine,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. Section 268.44, the table in paragraph (o) is amended by adding in alphabetical order an additional entry for "DuPont Environmental Treatment Chambers Works, Deepwater, NJ" and adding a new footnote 13 to read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *
(o) * * *

TABLE.—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40

Facility name ¹ and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/L)	Notes	Concentration (mg/kg)	Notes
* * * DuPont Environmental Treatment-Chambers Works, Deepwater, NJ.	F039	* Standards under § 268.40.	* 1,3-phenylene-dia-mine (1,3-PDA).	* NA	* NA	* CMBST; CHOXD fb BIODG or CARBN; or BIODG fb CARBN.	* (13)
* * *		* * *	* * *	* * *	* * *	* * *	* * *

¹ A facility may certify compliance with these treatment standards according to provisions in 40 CFR 268.7.

¹³ This treatment standard applies to 1,3-PDA in biosludge from treatment of F039. Note: NA means Not Applicable.

¹ This finding is similar to a previous LDR determination. We originally promulgated a numerical treatment standard for 1,2-PDA (o-phenylenediamine) on April 8, 1996 (61 FR 15583). However, we subsequently withdrew the treatment standard because of poor method performance on

September 4, 1998. We stated at that time that treatment of other constituents would provide adequate treatment for o-phenylenediamine (63 FR 47409)).

² When we originally promulgated treatment standards for F039, we stated that constituents on

the BDAT list serve as surrogates for those constituents that may be present in the multisource leachate that cannot be adequately analyzed (55 FR 22622, June 1, 1990).

[FR Doc. 06-1072 Filed 2-6-06; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Gunnison's Prairie Dog as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Gunnison's prairie dog (*Cynomys gunnisoni*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial scientific and commercial data indicating that listing the Gunnison's prairie dog may be warranted. Therefore, we will not be initiating a formal status review to determine if listing this species is warranted. We will work with the States where information is currently unavailable to develop information that will assist in determining and monitoring the status of Gunnison's prairie dog. Once those results are available we will reevaluate the status of Gunnison's prairie dog.

DATES: The finding announced in this document was made on January 30, 2006.

ADDRESSES: The petition, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the South Dakota Ecological Services Office, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota, 57501. Submit new information, materials, comments or questions concerning this taxon to the Field Supervisor at the above address.

FOR FURTHER INFORMATION CONTACT: Pete Gober, Field Supervisor, South Dakota Ecological Services Office at the above address (telephone 605-224-8693; facsimile 605-224-9974).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or

commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition and other information that is readily available to us (*e.g.*, in our files). To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial scientific information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific information was presented, we are required to commence a review of the status of the species.

In making this finding, we relied on information provided by the petitioners and information in our files, and evaluated that information in accordance with 50 CFR 424.14(b). Our process of coming to a 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the "substantial scientific information" threshold.

We do not conduct additional research to make a 90-day finding, nor do we subject the petition to rigorous critical review. Rather, as the Act and regulations contemplate, in coming to a 90-day finding, we acknowledge the petitioner's sources and characterizations of the information unless we have specific information to the contrary.

Our 90-day findings consider whether the petition states a reasonable case for listing on its face. Thus, our finding expresses no view as to the ultimate issue of whether the species should be listed. We reach a conclusion on that issue only after a more thorough review of the species' status.

Petition

On February 23, 2004, the Service received a petition of the same date, from Forest Guardians and 73 other organizations and individuals (Forest Guardians *et al.* 2004). This petition requested that the Gunnison's prairie dog (*Cynomys gunnisoni*), found in Arizona, Colorado, New Mexico, and Utah, be listed as threatened or endangered and that critical habitat be designated for the species.

Action on this petition was precluded by court orders and settlement agreements for other listing actions that

required nearly all of our listing funds for fiscal year 2004. On July 29, 2004, we received a 60-day notice of intent to sue (Forest Guardians *et al.* 2004) for failure to complete a finding. On December 7, 2004, an amended complaint for failure to complete a finding for this and other species was filed (Biodiversity Conservation Alliance *et al.* 2004). We reached a settlement agreement with the plaintiffs for submittal to the **Federal Register** of a 90-day finding for the Gunnison's prairie dog by January 26, 2006. This notice constitutes our 90-day finding for the petition to list the Gunnison's prairie dog.

Species Information

The Gunnison's prairie dog is a member of the Sciuridae family, which includes squirrels, chipmunks, marmots, and prairie dogs. Prairie dogs constitute the genus *Cynomys*. Taxonomists currently recognize 5 species of prairie dogs belonging to 2 subgenera, all in North America (Goodwin 1995). The white-tailed subgenus, *Leucocrossuromys*, includes Utah (*C. parvidens*), white-tailed (*C. leucurus*), and Gunnison's prairie dogs (Goodwin 1995). The black-tailed subgenus, *Cynomys*, consists of Mexican (*C. mexicanus*) and black-tailed (*C. ludovicianus*) prairie dogs (Goodwin 1995). The number of chromosomes for the Gunnison's prairie dog ($2n = 40$) is different from all other prairie dog species ($2n = 50$), suggesting the species' uniqueness and its early evolutionary divergence from other prairie dog species (Goodwin 1995; Pizzimenti 1975).

The Gunnison's prairie dog has sometimes been divided into 2 subspecies: *C. g. gunnisoni* and *C. g. zuniensis* (Hollister 1916). The petition addressed the species, with no subspecies consideration. However, the petitioners later requested that the petition be considered to apply to both the full species and either of the subspecies (Rosmarino *in litt.* 2005). The most recent published analyses do not support subspecies designation (Goodwin 1995, Pizzimenti 1975), and this is position we currently hold. Research on the issue of subspeciation is ongoing (Hafner 2004; Hafner *et al.* 2005).

Gunnison's prairie dog adults vary in length from 309–373 millimeters (mm) (12–15 inches (in)) and weigh 650–1200 grams (gm) (23–42 ounces (oz)), with males averaging slightly larger than females (Hall 1981; Pizzimenti and Hoffman 1973). The dorsal color is yellowish buff intermixed with blackish hairs. The top of the head, sides of