PENNSYLVANIA—PM–10—Continued

Designated area			Designation		Classification	
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7557–5]

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

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA, also the Agency or we in this preamble) today is granting a petition submitted by the Southeastern Public Service Authority (SPSA) and Onyx Environmental Services (Onyx) to exclude (or delist), on a one-time basis, a combustion ash from the lists of hazardous wastes.

After careful analysis, we have concluded that the petitioned waste does not present an unacceptable risk when disposed of in a Subtitle D (nonhazardous waste) landfill. This exclusion applies to combustion ash previously generated at the SPSA Power Plant in Portsmouth, Virginia, which is currently located at the SPSA Regional Landfill in Suffolk, Virginia. Accordingly, this final rule conditionally excludes a specific volume of the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when the petitioned waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

EFFECTIVE DATE: September 11, 2003.

ADDRESSES: The official docket for this rule is located at the offices of U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029, and is available for you to view from 8:30 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. Please call David M. Friedman at (215) 814–3395 for appointments. The public may copy material from the docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For information concerning this document, please contact David M. Friedman at the address above, at (215) 814–3395, or via e-mail at *friedman.davidm@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket

EPA has established an official docket for this action. The official docket consists of the petition submitted by SPSA/Onyx, the results of a risk assessment which evaluates the potential impact of the petitioned waste on human health and the environment, any public comments received, and other information related to this action. The official docket for this action is kept in a paper format, and is maintained at the address in the **ADDRESSES** section at the beginning of this document.

Outline

I. Overview Information

On June 18, 2003, we proposed to grant a petition submitted by SPSA/Onyx to exclude (or delist) from the definition of hazardous waste on a one-time basis, a combustion ash previously generated at the SPSA Power Plant in Portsmouth, Virginia, which is currently located at the SPSA Regional Landfill in Suffolk, Virginia. Today we are finalizing the decision to grant a conditional exclusion as described in the June 18, 2003, proposed rule.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a formal request from a generator asking EPA to exclude a specific waste from the lists of hazardous waste contained in the RCRA regulations, because the generator believes that its waste should not be considered hazardous.

In order for a petition to succeed, a petitioner must first show that a waste generated at its facility does not meet any of the criteria for which the waste was listed. The criteria which we use to list wastes are found in 40 CFR 261.11. An explanation of how these criteria apply to a particular waste is contained in the background document for that listed waste.

In addition, the petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics defined in subpart C of 40 CFR part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity), and must present sufficient information for us to determine whether any other factors (including additional constituents) warrant retaining the waste as a hazardous waste.

A generator remains obligated under RCRA to confirm that its waste remains non-hazardous based on the hazardous waste characteristics defined in subpart C of 40 CFR part 261, even if EPA has delisted its waste.

B. What Regulations Allow a Hazardous Waste Generator To Petition for a Delisting of Its Waste?

Under 40 CFR 260.20 and 260.22, a generator may petition EPA to remove its waste from hazardous waste regulation by excluding it from the lists of hazardous wastes contained in 40 CFR part 261, subpart D. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273 of Title 40 of the Code of Federal Regulations. 40 CFR 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator-specific'' basis from the hazardous waste lists.

C. What Information Must the Generator Supply?

A petitioner must provide sufficient information to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine that the waste is not hazardous for any other reason.

III. SPSA/Onyx's Delisting Petition

A. What Waste Is the Subject of SPSA/Onyx's Petition?

SPSA is the regional solid waste management agency for southeastern Virginia, where it operates a resource recovery facility consisting of a Refuse Derived Fuel (RDF) Plant and a Power Plant, and a disposal facility consisting of a Regional Landfill.

Onyx Environmental Services is a company that provides a wide range of environmental services to other companies. These services include hazardous and non-hazardous waste management.

On April 7, 2003, SPSA/Onyx petitioned EPA to exclude on a one-time basis a combustion ash generated at SPSA's waste-to-energy facility in Portsmouth, Virginia. The ash which is the subject of this petition is currently located at SPSA's Regional Landfill in Suffolk, Virginia. The total volume of the subject combustion ash at the Regional Landfill was determined by SPSA/Onyx to be 1410 cubic yards.

The ash was produced by the routine combustion of a batch of municipal and commercial solid waste which was processed in SPSA's RDF plant and burned in SPSA's Power Plant in Portsmouth, Virginia. Due to a shipping error, a small amount of this waste consisted of materials containing the spent non-halogenated solvent, methyl ethyl ketone (EPA Hazardous Waste Number F005). *See* the June 18, 2003, **Federal Register**, (68 FR 36528) for more details.

In the June 18, 2003 **Federal Register**, we described how a portion of the combustion ash had been used as daily cover in the Regional Landfill before SPSA was notified that the ash was subject to regulation as a hazardous waste. Furthermore, we stated that the area of the Landfill where the combustion ash was used as cover was cordoned off and that operations were suspended in this area. While this statement was true at the time that the petition was submitted, we have since been informed by SPSA that the Virginia Department of Environmental Quality has allowed operations to resume in this portion of the Landfill. However, the area in which the subject combustion ash is located has been marked in case removal of the ash is required. The resumption of operations does not impact the results of EPA's evaluation of the risks associated with management of this waste.

B. What Information Did SPSA/Onyx Submit To Support This Petition?

In order to support the petition, SPSA/Onyx submitted detailed information related to the shipments of materials received for destruction at SPSA's Power Plant and detailed analytical results from representative samples of the ash obtained by SPSA/Onyx on October 15, 2002, and January 28, 2003.

IV. EPA's Evaluation and Final Decision

A. Why Is EPA Approving This Petition?

SPSA/Onyx petitioned EPA to exclude or delist on a one-time basis, the 1410 cubic yards of combustion ash currently located at the SPSA Regional Landfill because SPSA/Onyx believes that the petitioned waste does not meet the criteria for which it was listed as a hazardous waste, nor does it exhibit any characteristic of a hazardous waste. SPSA/Onyx also believes that the waste does not contain other constituents in concentrations that would cause it to be hazardous.

Review of this petition included consideration of the original listing criteria, as well as factors (including additional constituents) other than those for which the waste was listed, as required by the Hazardous and Solid Waste Amendments (HSWA) of 1984 to RCRA. *See,* section 3001 of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(a)(1) and (2).

On June 18, 2003, we proposed to conditionally exclude SPSA/Onyx's combustion ash from the list of hazardous wastes in 40 CFR 261.31, and requested public comment on the proposed rule. For reasons stated in both the proposed rule and this document, we believe that SPSA/Onyx's combustion ash should be excluded from hazardous waste regulation.

B. What Limitations Are Associated With This Exclusion?

This exclusion applies only to the estimated 1410 cubic yards of ash currently located at the SPSA Regional Landfill as described in SPSA/Onyx's petition. No ash other than the ash described in this petition could be managed as nonhazardous waste under this exclusion.

SPSA/Onyx state in their petition that the waste, if delisted, will remain at the SPSA Regional Landfill. However, as a matter of policy, EPA does not specify a specific location for disposal of a delisted waste, only that it be disposed of in a Subtitle D landfill. In order to adequately track wastes that have been delisted, in the event that a decision is made to dispose of all or part of the ash off-site, we will require that SPSA/Onyx provide a one-time notification to any State regulatory agency to which or through which the delisted waste will be transported for disposal at least sixty (60) calendar days prior to commencing these activities.

C. When Is the Final Rule Effective?

This rule is effective September 11, 2003. HSWA amended section 3010 of RCRA to allow 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 reduces, rather than increases, the existing requirements for persons generating hazardous wastes. For these same reasons, this rule can and will become effective immediately (that is, upon publication in the **Federal Register**) under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be directly 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 EPA's authorization to make their own delisting decisions. We describe these two situations below.

We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally-issued exclusion from taking effect in the State, or that prohibits a Federally-issued exclusion from taking effect in the State until the State approves the exclusion through a separate State administrative action. Because a dual system (that is, both Federal and State programs) may regulate a petitioner's waste, we urge petitioners to contact the applicable State regulatory authorities or agencies to establish the status of their waste under that State's program.

We have also authorized some States to administer a delisting program in place of the Federal program; that is, to make State delisting decisions.

Therefore, this exclusion does not necessarily apply within those authorized States. If SPSA/Onyx transports the petitioned waste to, or manages the waste in, any State with delisting authorization, SPSA/Onyx must obtain delisting approval from that State before it can manage the waste as nonhazardous in that State.

V. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

We received public comments on the June 18, 2003, proposed exclusion from one individual in Portsmouth, Virginia.

B. Comments and Responses From EPA

Comment: The solvent rags were incorrectly classified as a spent solvent waste (F005), and, therefore, are not hazardous waste. In order to be a F005 listed waste, the spent solvent would have to contain any concentration of the solvents specified in the F005 listing, and contain at least 10 percent by volume of any of the solvents listed in F001, F002, F003, or F004. A solvent consisting of 100 percent methyl ethyl ketone would not be considered an F005 listed waste.

Response: The commenter incorrectly reads the spent solvent listings. On May 19, 1980, EPA promulgated the first phase of the hazardous waste regulations including the spent solvent listings (Hazardous waste nos. F001–F005) (*See* 40 CFR 261.31). These listings applied only to spent solvents resulting from the use of individual solvents that were technical grade or in pure form, and the still bottoms from the recovery of these spent solvents. EPA soon recognized that limiting the universe of the spent solvent listings to wastes resulting from the use of only single ingredient solvents created a regulatory loophole by allowing wastes resulting from the use of mixtures containing one or more of the listed solvents to remain unregulated. In the final rule published in the **Federal Register** on December 31, 1985 (50 FR 53315), EPA amended these listings to include spent solvents resulting from the use of solvent mixtures or blends which contained, before use, 10 percent or more total listed solvent by volume in addition to spent solvents resulting from the use of listed single ingredient solvents. Therefore, the current listings for spent solvents (such as the F005 listing) apply to the following three (3) categories: spent solvents resulting from the use of individual (single ingredient) listed solvents that are technical grade or in pure form, spent solvents resulting from the use of solvent mixtures or blends which contain, before use, 10 percent or more total listed solvent by volume, and still bottoms from the recovery of any of these spent solvents.

Comment: The commenter noted that although lead and chromium were present in detectable concentrations in the total constituent analysis, they were not present above the reporting limit when the Toxicity Characteristic Leaching Procedure (TCLP) analysis was performed on this waste. The commenter theorized that the presence of iron in the combustion ash was masking the TCLP analysis for lead and chromium, and requested that EPA require that the ash be analyzed for total iron concentration.

Response: After careful consideration, we have decided not to ask SPSA/Onyx to collect additional samples for iron analysis. There are a number of factors that affect the leaching potential of inorganic constituents. Among them are the pH, redox conditions, liquid-to-solid ratio, and solubility. While the addition of iron in the form of fines, filings, or dust, may temporarily retard the leaching of lead, it does not provide long-term treatment. Therefore, EPA determined that this practice constitutes ''impermissible dilution'' when done for the purpose of achieving a treatment standard for lead under the land disposal restrictions regulations. (*See* 40 CFR 268.3(d)).

However, this is not the case at SPSA's waste-to-energy facility where SPSA aggressively removes ferrous (and aluminum) metals from the waste stream. Large pieces of metal are manually removed from the waste stream both at SPSA's transfer stations and on the tipping floor of the RDF Plant. Then, a system of magnets removes the small ferrous metal items from the waste stream prior to it being sent to the power plant for combustion, thereby significantly reducing levels of iron in the combustion ash. SPSA performs TCLP metals analysis on the ash generated by its waste-to-energy facility on a quarterly basis.

VI. Administrative Assessments

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a ''regulatory action'' subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List 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: September 2, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

■ For the reasons set forth in the preamble, 40 CFR part 261 is 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.

Appendix IX of Part 261—[Amended]

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

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

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * * * *
Southeastern Public Service Authority (SPSA) and Onyx Environmental Service (Onyx).	Suffolk, Virginia	Combustion ash generated from the burning of spent solvent methyl ethyl ketone (Hazardous Waste Number F005) and disposed in a Subtitle D landfill. This is a one-time exclusion for 1410 cubic yards of ash and is effective after September 11, 2003. (1) *Reopener Language* (a) If SPSA and/or Onyx discovers that any condition or assumption related to the characterization of the excluded waste which was used in the evaluation of the petition or that was predicted through modeling is not as reported in the petition, then SPSA and/or Onyx must report any information relevant to that condition or assumption, in writing, to the Regional Administrator and the Virginia Department of Environmental Quality within 10 calendar days of discovering that information. (b) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Regional Administrator will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate action deemed necessary to protect human health or the environment. (2) *Notification Requirements* In the event that the delisted waste is transported off-site for disposal, SPSA/Onyx must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported at least sixty (60) calendar days prior to the commencement of such activities. Failure to provide such notification will be deemed to be a violation of this exclusion and may result in revocation of the decision and other enforcement action.
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–7557–4]

Pennsylvania: Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Commonwealth of Pennsylvania (Commonwealth or State) has applied for final approval of its underground storage tank (UST) program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Pennsylvania's application and has made a determination that the Commonwealth's UST program satisfies all of the requirements necessary to qualify for final approval.

EFFECTIVE DATE: Final approval of Pennsylvania's UST program shall be effective on September 11, 2003.

FOR FURTHER INFORMATION CONTACT: Carletta Parlin, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, telephone number (215) 814–3380.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6991c, authorizes EPA to approve state underground storage tank programs to operate in lieu of the Federal UST program. EPA may approve a state program if the Agency finds pursuant to RCRA section 9004(b), 42 U.S.C. 6991c(b), that the state's program is ''no less stringent'' than the Federal program in all seven elements set forth at RCRA section 9004(a) (1) through (7), 42 U.S.C. 6991c(a)(1) through (7), meets the notification requirements of RCRA section 9004(a)(8), 42 U.S.C. 6991c(a)(8), and also provides for adequate enforcement of compliance with UST standards in accordance with RCRA section 9004(a), 42 U.S.C. 6991c(a).

On November 25, 2002, Pennsylvania submitted to EPA a complete program application, in accordance with 40 CFR part 281, seeking authorization of its UST program. On January 3, 2003, EPA published a proposed rule announcing its tentative determination to approve Pennsylvania's UST program. EPA announced that the proposed rule was subject to a thirty-day public comment period. The public comment period ended on February 13, 2003. Further, EPA stated that if it received adverse comments on its intent to authorize Pennsylvania's UST program, it would subsequently publish a final determination responding to such comments and announce its final decision as to whether or not to authorize Pennsylvania's program. EPA received adverse written comments during the public comment period. Today's action responds to those