

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: June 11, 1996.

Jane N. Saginaw,  
Regional Administrator.

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

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

2. In Table 2 of Appendix IX of Part 261 it is proposed 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 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* Bekaert Steel Corpora- tion.	* Rogers, Arkansas .....	* Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations (at a maximum annual rate of 1,250 cubic yards to be measured on a calendar year basis) after [insert publication date of the final rule]. In order to confirm that the characteristics of the waste do not change significantly, the facility must, on an annual basis, before July 1 of each year, analyze a representative composite sample for the constituents listed in 261.24 as well as antimony, copper, nickel, and zinc using the method specified therein. The annual analytical results, including quality control information, must be compiled, certified according to § 260.22(i)(12) of this chapter, maintained on site for a minimum of five years, and made available for inspection upon request of any employee or representative of EPA or the State of Arkansas. Failure to maintain the required documents on site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. <i>Notification Requirements:</i> Bekaert Steel Corporation 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 for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.
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### 40 CFR Part 261

[SW-FRL-5525-2]

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

**AGENCY:** Environmental Protection Agency.

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

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to grant a petition to the Texas Eastman Division of Eastman Chemical Company (Texas Eastman) to exclude (or “delist”), certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.24, 261.31, 261.32 and 261.33 (hereinafter all sectional references are to 40 CFR unless otherwise indicated). This petition was submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of 40 CFR Parts 260 through 266, 268 and 273, and under 40 CFR 260.22, which specifically provides generators the opportunity to

petition the Administrator to exclude a waste on a “generator specific” basis from the hazardous waste lists. This proposed decision is based on an evaluation of waste-specific information provided by the petitioner. If this proposed decision is finalized, the petitioned waste will be conditionally excluded from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

**DATES:** The EPA is requesting public comments on this proposed decision. Comments will be accepted until August 9, 1996. Comments postmarked after the close of the comment period will be stamped “late.”

Any person may request a hearing on this proposed decision by filing a request with Jane N. Saginaw, Regional Administrator, whose address appears below, by July 10, 1996. The request must contain the information prescribed in 40 CFR 260.20(d).

**ADDRESSES:** Send three copies of your comments. Two copies should be sent to William Gallagher, Delisting Program, Multimedia Planning and Permitting Division (6PD-O), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202. A third copy should be sent to the Texas

Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753. Identify your comments at the top with this regulatory docket number: “F-96-TXDEL-TXEASTMAN.”

Requests for a hearing should be addressed to the Regional Administrator, Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

The RCRA regulatory docket for this proposed rule is located at the Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202 and is available for viewing in the EPA library on the 12th floor from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665-6444 for appointments. The docket may also be viewed at the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at \$0.15 per page for additional copies.

**FOR FURTHER INFORMATION, CONTACT:** For technical information concerning this notice, contact Michelle Peace, Delisting Program (6PD-O), Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665-7430.

**SUPPLEMENTARY INFORMATION:****I. Background****A. Authority**

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, the EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in § 261.24, § 261.31, § 261.32 and § 261.33. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or 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. Therefore, § 260.20 and § 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See, § 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the EPA to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any of the other identified constituents at hazardous levels. See, § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes that are "delisted" have been evaluated to decide whether they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See, §§ 261.3(a)(2)(iv) and (c)(2)(I), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to the EPA on procedural grounds. See, *Shell Oil Co. v. EPA*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). On December 21, 1995, the EPA proposed rules related to waste mixtures and residues at 60 FR 66344 and invited public comment. These references should be consulted for more information regarding mixtures and residues.

**B. Approach Used to Evaluate This Petition**

Texas Eastman's petition requests a delisting for a listed hazardous waste. 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 agreed with the petitioner that the waste is non-hazardous 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 then 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, and considered the toxicity of the constituents, 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.

For this delisting determination, the EPA used such information 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 Texas Eastman's petitioned waste, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, the EPA is proposing to use a particular fate and transport model, the EPA Composite Model for Landfills (EPACML), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the disposal of Texas Eastman's petitioned waste on human health and the environment. Specifically, the EPA used the maximum estimated waste volume and the maximum reported extract concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the current health-based levels used in delisting decision-making for the hazardous constituents of concern.

The EPA believes that this fate and transport model represents a reasonable worst-case scenario for 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 a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. 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 waste will be managed after delisting. Therefore, the EPA does not currently consider extensive site-specific factors when applying the fate and transport model. The EPA also considers the applicability of groundwater monitoring data during the evaluation of delisting petitions. The EPA normally requests groundwater monitoring data for wastes managed on-site to determine whether hazardous constituents have migrated to the underlying groundwater. Groundwater monitoring data provides significant additional information important to fully characterize the potential impact (if any) of the disposal of a petitioned waste on human health and the environment. In this case, the EPA determined that the groundwater

monitoring data was applicable to the evaluation of the petitioned waste. Texas Eastman's petitioned waste is transported to an on-site hazardous waste landfill that has been designed to meet the RCRA minimum technology requirements and has groundwater monitoring wells to monitor the landfill. The EPA believes that data collected from Texas Eastman's groundwater monitoring system provides a clear measure of whether the landfill has adversely impacted groundwater quality at the Texas Eastman site. The data provided from the groundwater monitoring system and the landfill leachate seem to indicate that no adverse impact on the groundwater has occurred and that the leachate collected from the system is currently below health based limits. The potential impact of these wastes on the groundwater will also be predicted

through the application of the EPACML, fate and transport model. Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

## II. Disposition of Delisting Petition

Eastman Chemical Company—Texas Eastman Division, Longview, Texas, 75607.

### A. Petition for Exclusion

Eastman Chemical Company—Texas Eastman Division (Texas Eastman), located in Longview, Texas is involved in the manufacturing of organic chemicals and plastics. Texas Eastman petitioned the EPA for a conditional

exclusion of approximately 7,000 cubic yards of Fluidized Bed Incinerator (FBI) ash generated per calendar year. The FBI ash, presently disposed of in an on-site hazardous waste landfill, is generated from the incineration of sludges from its wastewater treatment plant. The FBI ash is listed for 56 EPA Hazardous Waste Numbers due to the "derived-from" and mixture rules. The waste is listed as D001, D003, D018, D019, D021, D022, D027, D028, D029, D030, D032, D033, D034, D035, D036, D038, D039, D040, F001, F003, F005, K009, K010, U001, U002, U003, U019, U028, U031, U037, U044, U056, U069, U070, U107, U108, U112, U113, U115, U117, U122, U140, U147, U151, U154, U159, U161, U169, U190, U196, U211, U213, U226, U239, and U359. The listed constituents of concern for these EPA Hazardous Waste Numbers are shown in Table 1 (See, Part 261, Appendix VII).

TABLE 1.—HAZARDOUS WASTE CODES ASSOCIATED WITH WASTEWATER STREAMS

Waste code	Basis for characteristic/listing
D001 .....	Ignitability.
D003 .....	Reactivity.
D018 .....	Benzene.
D019 .....	Carbon Tetrachloride.
D021 .....	Chlorobenzene.
D022 .....	Chloroform.
D027 .....	1,4-Dichlorobenzene.
D028 .....	1,2-Dichloroethane.
D029 .....	1,1-Dichloroethylene.
D030 .....	2,4-Dinitrotoluene.
D032 .....	Hexachlorobenzene.
D033 .....	Hexachlorobutadiene.
D034 .....	Hexachloroethane.
D035 .....	Methyl ethyl ketone.
D036 .....	Nitrobenzene.
D038 .....	Pyridine.
D039 .....	Tetrachloroethylene.
D040 .....	Trichloroethylene
F001 .....	Tetrachloroethylene, methylene chloride, Trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F002 .....	Tetrachloroethylene, methylene chloride, Trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2 trichlorofluoroethane, ortho-dichlorobenzene, trichlorofluoromethane.
F005 .....	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane.
K009 .....	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid.
K010 .....	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde.
U001 .....	Acetaldehyde.
U002 .....	Acetone.
U003 .....	Acetonitrile.
U019 .....	Benzene.
U028 .....	Benzenetrichloride.
U031 .....	n-Butyl alcohol.
U037 .....	Chlorobenzene.
U044 .....	Chloroform.
U056 .....	Cyclohexane.
U069 .....	Dibutyl phthlate.
U070 .....	o-Dichlorobenzene.
U107 .....	Di-n-octyl-phthlate.
U108 .....	1,4-Diethyleneoxide.
U112 .....	Ethyl acetate.
U113 .....	Ethyl acrylate.
U115 .....	Ethylene oxide.
U117 .....	Ethyl ether.

TABLE 1.—HAZARDOUS WASTE CODES ASSOCIATED WITH WASTEWATER STREAMS—Continued

Waste code	Basis for characteristic/listing
U122 .....	Formaldehyde.
U140 .....	Isobutyl alcohol.
U147 .....	Maleic anhydride.
U151 .....	Mercury.
U154 .....	Methanol.
U159 .....	Methyl ethyl ketone.
U161 .....	Methyl isobutyl ketone.
U169 .....	Nitrobenzene.
U190 .....	Phthalic anhydride.
U196 .....	Pyridine.
U211 .....	Carbon Tetrachloride.
U213 .....	Tetrahydrofuran
U226 .....	1,1,1-Trichloroethane (methyl chloroform).
U239 .....	Xylene.
U359 .....	Ethylene glycol monoethyl ether.

Texas Eastman petitioned the EPA to exclude this annual volume of FBI ash because it does not believe that the waste meets the criteria for which it was listed. Texas Eastman also believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the HSWA of 1984. See, Section 222 of HSWA, 42 U.S.C. § 6921(f), and 40 CFR § 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the EPA's evaluation of Texas Eastman's petition.

#### B. Background

On December 29, 1994, Texas Eastman petitioned the EPA to exclude, from the lists of hazardous wastes contained in 40 CFR § 261.31 and § 261.32, an annual volume of incinerator ash generated from incineration of sludge from its wastewater treatment plant. Specifically, in its petition, Texas Eastman requested that the EPA grant a standard exclusion for 7,000 cubic yards of incinerator ash generated per calendar year.

In support of its petition, Texas Eastman submitted: (1) descriptions of its wastewater treatment processes and the incineration activities associated with the petitioned waste; (2) results from total constituent analyses for the Toxicity Characteristic (TC) metals listed in § 261.24 (i.e., the TC metals) antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, nickel, selenium, silver, thallium, tin, vanadium, and zinc from representative samples of the waste; (3) results from the Toxicity Characteristic Leaching Procedure (TCLP), (SW-846 Method 1311) for the TC metals antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper,

lead, mercury, nickel, selenium, silver, thallium, tin, vanadium, and zinc from representative samples of the waste; (4) results from the Multiple Extraction Procedure (MEP), (SW-846 Method 1330) for antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, nickel, selenium, silver, thallium, tin, vanadium, and zinc from representative samples of the waste; (5) test results from the total constituent analyses for dioxins/furans from representative samples of the waste; (6) results from total oil and grease analyses from representative samples of the waste; (7) test results and information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity; (8) results from total constituent and TCLP analyses for 40 CFR Part 264 Appendix IX volatile and semi-volatile organic compounds from representative samples of the waste; and (9) results from the Land Disposal Restriction Analysis performed on the untreated ash. Texas Eastman also provided total constituent analyses and for the biological treatment sludge, scrubber water blowdown, influent waste water and waste liquid fuel associated with the generation of the FBI ash. To meet the Land Disposal Restriction's interim treatment standard for nickel, Texas Eastman had to stabilize the nickel in the FBI ash by adding a polymer. Since the universal treatment standards were finalized in 1995, and designated the TCLP treatment standard for nickel as 5.0 mg/l, Texas Eastman no longer has to add the polymer to the ash.

Texas Eastman is an active organic chemical and plastics manufacturing plant. Current facility operations, including wastewater treatment, are not significantly different from the operations occurring at this facility for the last 10 years. There are two major raw materials (propane and ethane)

used at the Texas Eastman facility. Most of the products from this facility are in similar product groupings, therefore the wastewater resulting from the manufacturing of these products is fairly well defined. Texas Eastman believes that several factors dampen the spatial and temporal variability that may occur in the wastewater: (1) the majority of wastewater volume generated at the Texas Eastman facility is from low strength sources and the high strength sources generated are from a few low volume sources; (2) the daily volume of wastewater flow is such that very large mass loading is necessary to influence the concentrations of a constituent reaching the wastewater treatment plant (WWTP); (3) the hydraulic retention time of 17 days within the WWTP is very high as well as the corresponding sludge age which minimizes the chance of a shock load influencing the resulting feed to the incinerator; (4) the collection system for the WWTP is equipped with "shock" load sensors and a monitoring system which prevent large mass loadings from being introduced into the WWTP; (5) the WWTP is equipped with emergency storage tanks capable of holding approximately 20 hours of influent; and (6) the liquid fuels used as supplemental fuels in the incinerator are relatively uniform in characteristics and constituents.

During the various production processes, wastewaters are generated and flow into a centralized collection system. All wastewaters are routed to the wastewater treatment plant for treatment, via biological degradation, and subsequent discharge into receiving waters. To facilitate growth of new microorganisms, a portion of the biological mass (i.e., sludge) is removed from the wastewater treatment system. The biological sludge is routed to a storage tank and then to the FBI for thermal treatment. The FBI is a

permitted incinerator operated at a temperature of 1550°F. The total heat content of all feeds introduced into the FBI, including the waste feeds and auxiliary fuels are not permitted to exceed 42 million BTU/hr. After incineration, the flue gases are routed through a heat exchanger and a venturi scrubber. A mixture of ash solids and scrubber water is sent to the ash thickener. This mixture is dewatered by passing it through a rotary vacuum filter. After being scraped from the filter, the ash drops into a dumpster where it is stored prior to disposal. The resulting FBI ash generated annually is the subject of Texas Eastman's delisting petition.

Texas Eastman developed a list of constituents of concern from comparing a list of the wastes generated at the plant with the list of constituents that appear in 40 CFR § 261, Appendix VIII, as well as the following six constituents not found in Appendix VIII: acetone, ethylbenzene, isophorone, 4-methyl-2-pentanone, styrene, and total xylenes. It was decided due to the availability of test methods and process knowledge, that Texas Eastman would analyze its waste for those constituents found in 40 CFR § 264, Appendix IX, except for pesticides, herbicides, and polychlorinated biphenyls (PCBs).

The sampling and analysis of the FBI ash took place in April and May 1994. The sampling program consisted of two individual test runs which together spanned 42 days. During the two test runs, two extreme FBI operating conditions (high sludge and high liquids) were represented in addition to normal operations. During one worst case test condition, biological treatment sludge was fed to the FBI at approximately 12,000 pounds per hour (lbs/hr), and waste liquid fuels were fed to the FBI at approximately 540 lbs/hr. During the other worst case test condition, waste liquid fuels were fed to the FBI at approximately the maximum feed rate of 684 lbs/hr and biological treatment sludge was fed at approximately 8,000 lbs/hr. Each test condition consisted of one run. The tests for extreme conditions (high sludge or high liquids) lasted two days due to the limited availability to produce sufficient sludge volume for a longer duration test. The tests for normal operations lasted five days. The FBI was operated continuously at the designated test condition throughout the test period. This allowed for the collection

of samples of FBI ash during each test, yielding a total of 10 sets of FBI ash data from the eight tests: 8 from the individual test conditions, 1 duplicate, and 1 from the untreated ash. Samples of four streams (the treated and untreated FBI ash, biological treatment sludge, and waste liquid fuels) were collected at 6-hour intervals during each of the eight tests. With the exception of VOA vials collected for volatiles analysis, the 6-hour interval samples of each stream collected during each run were composited at the Texas Eastman facility and shipped to the analytical laboratories. The composite samples were analyzed for the total concentrations (i.e., mass of a particular constituent per mass of waste) of the eight TCLP metals, antimony, beryllium, cobalt, copper, nickel, thallium, tin, vanadium, and zinc, selected volatile and semi-volatile organic constituents, dioxins/furans, and oil and grease content. The samples were also analyzed to determine whether the waste exhibited the reactive properties, including analysis for total constituent concentrations of cyanide, sulfide, reactive cyanide, and reactive sulfide. These samples were also analyzed for TCLP concentrations (i.e., mass of a particular constituent per unit volume of extract) of the eight TC metals, antimony, beryllium, cobalt, copper, nickel, thallium, tin, vanadium, zinc, and selected volatile and semi-volatile organic constituents.

Texas Eastman has also collected samples of the treated and untreated ash to maintain compliance with the Land Disposal Restrictions. For compliance with LDR, the untreated ash is analyzed for total constituents concentrations of a select group of volatile and semivolatile organics expected to be present in the ash and the eight TCLP metals, nickel and vanadium. LDR leachate results for the treated ash were provided in the 1994 petition. Since, treatment of the ash is no longer necessary, results from four samples of the untreated ash have been provided to support this petition. The four samples were collected for four consecutive months from December 1995–March 1996.

### C. Agency Analysis

Texas Eastman used SW-846 Methods 7041, 7060, 7421, 7471, 7740, and 7841 to quantify the total constituent concentrations of antimony, arsenic, lead, mercury, selenium, and thallium; and SW-846 Method 6010 to quantify

total constituent concentrations of barium, beryllium, cadmium, chromium, nickel, silver, vanadium, and zinc in the samples of FBI ash (treated and untreated), sludge, and liquid fuels. Texas Eastman used SW-846 Methods 9010 to quantify the total constituent concentrations of cyanide for these samples. Texas Eastman used 9030 to quantify the total constituent concentrations of sulfide.

Using method M-413.2 from the "Methods for Chemical Analysis of Water and Wastes", EPA-600/4-79-020, March 1983, Texas Eastman determined that oil and grease content was not detected in the untreated ash.

Texas Eastman used SW-846 Method 1311 (TCLP)/Method 6010 to quantify the leachable concentrations of the eight TC metals, antimony, beryllium, copper, cobalt, nickel, vanadium, and zinc in the ash samples. SW-846 Method 7471 was used for mercury analyses of the extracts from the samples. Texas Eastman used SW-846 Method 1311 /Method 9010 to quantify leachable cyanide concentrations in the samples. The samples taken for the LDR program used SW-846 Method 1311 (TCLP)/Method 6010 to quantify the TC metals present in the untreated ash. Method 8290 was used to quantify the total concentrations of dioxin and furans.

The analyses for reactive cyanide and reactive sulfide (SW-846 Methods 7.3.3.2 and 7.3.4.2, respectively) were provided to verify that the untreated ash was not characteristic. The ash does not meet the definitions of ignitability and corrosivity provided in 40 CFR § 261.21 (a)(2) and § 261.22.

Table 1 presents the maximum total constituent and leachate concentrations for the eight TC metals, antimony, beryllium, cyanide, nickel, vanadium, and zinc for the composite samples of the petitioned waste. Table 1 also presents the maximum reactive cyanide and reactive sulfide concentrations.

The detection limits presented in Table 1 represent the lowest concentrations quantifiable by Texas Eastman when using the appropriate SW-846 or Agency-approved analytical methods to analyze the untreated ash. (Detection limits may vary according to the waste and waste matrix being analyzed, i.e., the "cleanliness waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits).

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS (PPM) <sup>1</sup> UNTREATED FBI ASH

Inorganic constituents	Total constituent analyses	Leachate analyses	
		TCLP	MEP
Antimony .....	12.5	0.0217	0.0092
Arsenic .....	1.49	<0.000647	0.0138
Barium .....	302	0.346	0.025
Beryllium .....	0.4203	<0.00051	<0.00051
Cadmium .....	1.23	<0.00386	0.0140
Chromium (total) .....	45.4	<0.00524	0.0171
Cobalt .....	46.7	0.0350	0.0141
Copper .....	198	0.0783	0.00989
Lead .....	41.3	<0.0022	<0.0022
Mercury .....	< 0.0125	0.0002	<0.00003
Nickel .....	837	0.411	0.176
Selenium .....	1.30	<0.00708	0.00399
Silver .....	10.4	0.00601	<0.00519
Thallium .....	< 0.273	<0.00173	<0.00185
Tin .....	4.16	<0.0145	0.0161
Vanadium .....	63.1	0.0397	0.0687
Zinc .....	1930	0.568	0.345
Hydrogen Cyanide .....	< 0.25		
Hydrogen Sulfide .....	< 24.8		
Oil and Grease .....	<126		

< Denotes that the constituent was not detected at the detection limit specified in the table.

<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.

Texas Eastman used SW-846 Methods 8240 and 8270 to quantify the total constituent concentrations of 50 volatile and 115 semivolatile organic compounds, respectively, in the ash. This suite of constituents included all of the nonpesticide organic constituents listed in § 261.24. Also, Texas Eastman used SW-846 Methods 8240 and 8270 to quantify the leachable concentrations of 50 volatile and 115 semi-volatile organic compounds, respectively, in the untreated ash samples, following

extraction by SW-846 Method 1311 (TCLP). This suite of constituents included all of the organic constituents listed in § 261.24.

In addition to analyzing the FBI ash for TC metals, samples of the ash were analyzed for metals using the modified multiple extraction procedure (MEP) (SW-846, Method 1330). The MEP simulates the long-term effects of leaching in a landfill and is used to determine the overall effectiveness of a stabilization process. During the sampling program, a sample of

untreated ash was analyzed using the MEP test to determine the long-term leachability of metals. Table 2 presents the maximum total and leachate concentrations of all detected organic constituents in Texas Eastman's waste and waste extract samples. Lastly, on the basis of explanations and analytical data provided by Texas Eastman, none of the analyzed samples exhibited the characteristics of ignitability, corrosivity, or reactivity. See, § 261.21, § 261.22 and § 261.23.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS (PPM) <sup>1</sup> UNTREATED FBI ASH

Organic constituents	Total constituent analyses	TCLP leachate analyses
Acetone .....	0.021	0.059
Benzo(a)pyrene .....	0.0217	< 0.00441
Carbon Disulfide .....	0.0526	0.0151
Benzo(g,h,i) perylene .....	0.0444	< 0.00626
Indeno (1,2,3-cd) pyrene .....	0.0188	< 0.0049
Methylene Chloride .....	0.077	< 0.0185

< Denotes that the constituent was not detected at the detection limit specified in the table.

<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.

Texas Eastman submitted a signed certification stating that the maximum annual generation rate of the FBI ash will be 7,000 cubic yards of waste. The EPA reviews a petitioner's estimates and, on occasion, has requested a petitioner to reevaluate estimated waste volume. The EPA accepted Texas

Eastman's certified estimate of 7,000 cubic yards of FBI ash.

The EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The EPA, however, has maintained a spot-check sampling and

analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting a final exclusion.

*D. Agency Evaluation*

The EPA considered the appropriateness of alternative waste management scenarios for Texas Eastman's FBI ash and decided, based on the information provided in the petition, that disposal in a municipal solid waste landfill is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The EPA, therefore, evaluated Texas Eastman's petitioned waste using the modified EPA Composite Model for Landfills (EPACML) which predicts the potential for groundwater contamination from wastes that are landfilled. See, 56 *FR* 32993 (July 18, 1991), 56 *FR* 67197

(December 30, 1991), and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worst-case contaminant levels in groundwater at a compliance point (i.e., a receptor well serving as a drinking water supply). Specifically, the model estimated the dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from groundwater recharge for a specific volume of waste. The EPA requests comments on the use of the EPACML as applied to the evaluation of Texas Eastman's petitioned waste (FBI untreated ash).

For the evaluation of Texas Eastman's petitioned waste, the EPA used the EPACML to evaluate the mobility of the hazardous inorganic constituents detected in the extract of samples of Texas Eastman's FBI untreated ash. DAFs are currently calculated assuming an ongoing process generates wastes for 20 years. The DAF for the waste volume of 7,000 cubic yards/year assuming 20 years of generation is 45. The EPA's evaluation, using a DAF of 45, maximum waste volume estimate of 7,000 cubic yards and the maximum reported TCLP or MEP leachate concentrations (See, Table 1), yielded compliance-point concentrations (See, Table 3) that are below the current health-based levels used in delisting decision-making.

TABLE 3.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (PPM) UNTREATED FBI ASH

Inorganic constituents	Compliance point concentrations <sup>1</sup> (mg/l)	Levels of regulatory concern <sup>2</sup> (mg/l)
Antimony .....	0.00048	0.006
Arsenic .....	0.00031	0.05
Barium .....	0.00769	2.0
Cadmium .....	0.00031	0.005
Chromium .....	0.00038	0.1
Cobalt .....	0.00078	2.1
Copper .....	0.00174	1.3
Mercury .....	0.0002	0.001
Nickel .....	0.00913	0.1
Selenium .....	0.00009	0.20
Silver .....	0.00013	0.2
Tin .....	0.00036	21.0
Vanadium .....	0.00153	0.3
Zinc .....	0.01262	10.0

<sup>1</sup> Using the maximum TCLP leachate level and based on a DAF of 45 calculated using the EPACML for a maximum volume generated annually of 7,000 cubic yards.

<sup>2</sup> See, "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," May 1996 located in the RCRA public docket for today's notice.

The maximum reported or calculated leachate concentrations of arsenic, antimony, barium, cadmium, chromium, copper, nickel, mercury, selenium, silver, vanadium, and zinc in the FBI ash yielded compliance point concentrations well below the health-based levels used in delisting decision-making. The EPA did not evaluate the mobility of the remaining inorganic constituents (i.e., beryllium, lead, and thallium) from Texas Eastman's waste because they were not detected in the leachate using the appropriate analytical test methods (See, Table 1). The EPA believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. If a

constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), the EPA assumes that the constituent is not present and therefore does not present a threat to human health or the environment.

The EPA also evaluated the potential hazards of acetone and carbon disulfide, the organic constituents detected in the TCLP extract of samples of Texas Eastman's FBI ash. In particular, were these leachate concentrations evaluated using the EPACML, the calculated compliance-point concentration would be 0.00131 ppm and 0.00034 ppm respectively; these values are significantly below the respective health based values of 4.

As reported in Table 1, the concentrations of reactive cyanide and

sulfide were not detected in Texas Eastman's untreated FBI ash. These concentrations are below the EPA's interim standards of 250 and 500 ppm, respectively. See, "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, internal Agency Memorandum in the RCRA public docket. Therefore, reactive cyanide and sulfide levels are not of concern.

The EPA concluded, after reviewing Texas Eastman's processes, that no other hazardous constituents of concern, other than those tested for, are likely to be present or formed as reaction products or by-products in Texas Eastman's waste. In addition, on the basis of explanations and analytical data provided by Texas Eastman, pursuant to § 260.22, the EPA concludes that the waste does not exhibit any of the

characteristics of ignitability, corrosivity, or reactivity. See, § 261.21, § 261.22, and § 261.23, respectively.

During the evaluation of Texas Eastman's petition, the EPA also considered the potential impact of the petitioned waste via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, the EPA believes that exposure to airborne contaminants from Texas Eastman's petitioned waste is unlikely. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Texas Eastman's waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from Texas Eastman's FBI ash. A description of the EPA's assessment of the potential impact of Texas Eastman's waste, with regard to airborne dispersion of waste contaminants, is presented in the RCRA public docket for today's proposed rule.

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 run-off, 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 or MEP leachate analyses reported in today's notice, due to the aggressive acid medium used for extraction in the TCLP and MEP tests. The EPA believes that, in general, leachate derived from the waste is unlikely to enter a surface water body directly without first traveling through the saturated subsurface zone where further dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of the 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. The reported TCLP and MEP extraction data show that the metals in Texas Eastman's FBI ash that might be released from Texas Eastman's waste to surface water would be likely to remain undissolved or leach in concentrations that would be below the health-based levels of concern. Finally, any transported constituents would be further diluted in the receiving surface water body.

Based on the reasons discussed above, EPA believes that contamination of surface water through run-off from the waste disposal area is very unlikely. Nevertheless, the EPA evaluated potential impacts on surface water if Texas Eastman's waste were released from a municipal solid waste landfill through run-off and erosion. See, the RCRA public docket for today's proposed rule. 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 Texas Eastman's untreated FBI ash is not a substantial present or potential hazard to human health and the environment via the surface water exposure pathway.

#### *E. Conclusion*

The EPA believes that the descriptions of the Texas Eastman incineration process and analytical characterizations, in conjunction with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis to grant Texas Eastman's petition for a conditional exclusion of the untreated FBI ash. The EPA believes that the lack of variability between the treated and untreated ash samples collected from the characterization of the ash in 1994 and the LDR data for the untreated ash adequately represent the variations in the raw materials and processing. The EPA believes that the data submitted in support of the petition show that Texas Eastman's incineration process can render the sludge from the waste water treatment system non-hazardous. The EPA has reviewed the sampling procedures used by Texas Eastman and has determined that they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations of the FBI ash. The data submitted in support of the petition show that constituents in Texas Eastman's waste are presently below the health-based levels used in the delisting decision-making. The EPA believes that Texas Eastman has successfully demonstrated that the untreated FBI ash is non-hazardous.

The EPA, therefore, proposes to grant a conditional exclusion to Texas Eastman, located in Longview, Texas, for the untreated FBI ash described in its petition. The EPA's decision to exclude this waste is based on descriptions of the incineration activities associated with the petitioned waste and characterization of the FBI ash. If the proposed rule is finalized, the

petitioned waste will no longer be subject to regulation under Parts 262 through 268 and the permitting standards of Part 270.

#### *F. Verification Testing Conditions*

1. *Delisting Levels:* All leachable concentrations for those metals must not exceed the following levels (ppm). Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR Part 261.24.

##### *(A) Inorganic Constituents*

Antimony—0.27; Arsenic—2.25; Barium—90.0; Beryllium—0.0009; Cadmium—0.225; Chromium—4.5; Cobalt—94.5; Copper—58.5; Lead—0.675; Mercury—0.045; Nickel—4.5; Selenium—1.0; Silver—5.0; Thallium—0.135; Tin—945.0; Vanadium—13.5; Zinc—450.0

##### *(B) Organic Constituents*

Acenaphthene—90.0  
Acetone—180.0  
Benzene—0.135  
Benzo(a)anthracene—0.00347  
Benzo(a)pyrene—0.00045  
Benzo(b) fluoranthene—0.00320  
Bis(2 ethylhexyl) phthalate—0.27  
Butylbenzyl phthalate—315.0  
Chloroform—0.45  
Chlorobenzene—31.5  
Carbon Disulfide—180.0  
Chrysene—0.1215  
1,2-Dichlorobenzene—135.0  
1,4-Dichlorobenzene—0.18  
Di-n-butyl phthalate—180.0  
Di-n-octyl phthalate—35.0  
1,4 Dioxane—0.36  
Ethyl Acetate—1350.0  
Ethyl Ether—315.0  
Ethylbenzene—180.0  
Flouranthene—45.0  
Fluorene—45.0  
1-Butanol—180.0  
Methyl Ethyl Ketone—200.0  
Methylene Chloride—0.45  
Methyl Isobutyl Ketone—90.0  
Naphthalene—45.0  
Pyrene—45.0  
Toluene—315.0  
Xylenes—3150.0

This paragraph provides the levels of constituents for which Texas Eastman must test the leachate from the FBI ash, below which the ash would be considered non-hazardous. The EPA selected the set of inorganic constituents specified after reviewing information about the composition of the waste, descriptions of Texas Eastman's treatment process, previous test data provided for the untreated ash and the health-based levels used in delisting decision-making.

The EPA established the proposed delisting levels for this paragraph by



back-calculating the maximum allowable leachate concentrations (MALs) from the health-based levels (HBLs) for the constituents of concern using the EPACML chemical-specific DAFs of 45 (See, previous discussions in Section D—*Agency Evaluation*), i.e.,  $MAL = HBL \times DAF$ . These delisting levels correspond to the allowable levels measured in the TCLP extract of the waste.

**2. Waste Holding and Handling:** Texas Eastman must store in accordance with its RCRA permit, or continue to dispose of as hazardous all FBI ash generated until the Initial and Subsequent Verification Testing described in Paragraph 4 and 5 below is completed and valid analyses demonstrate that all Verification Testing Conditions are satisfied. After completion of Initial and Subsequent Verification Testing, if the levels of constituents measured in the samples of the FBI ash do not exceed the levels set forth in Paragraph 1 above, and written notification is given by EPA, then the waste is non-hazardous and may be managed and disposed of in accordance with all applicable solid waste regulations.

The purpose of this paragraph is to ensure that ash which contains hazardous levels of inorganic and organic constituents are managed and disposed of in accordance with Subtitle C of RCRA. Holding the waste until characterization is complete will protect against improper handling of hazardous material. If the EPA determines that the data collected under this condition do not support the data provided for the petition, the exclusion will not cover the generated incinerator ash.

**3. Verification Testing Requirements:** Sample collection and analyses, including quality control procedures, must be performed according to SW-846 methodologies. If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing described in Paragraph 4 below, Texas Eastman may replace the testing required in Paragraph 4 with the testing required in Paragraph 5 below. Texas Eastman must, however, continue to test as specified in Paragraph 4 until notified by EPA in writing that testing in Paragraph 4 may be replaced by the testing described in Paragraph 5.

**4. Initial Verification Testing:** During the first 40 operating days of the FBI incinerator after the final exclusion is granted, Texas Eastman must collect and analyze daily composites of the FBI ash. Daily composites must be composed of representative grab samples collected every 6 hours during each 24-hour FBI operating cycle. The FBI ash must be analyzed, prior to disposal of the ash, for all constituents listed in Paragraph 1. Texas Eastman must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 90 days after the incineration of the wastewater treatment sludge.

The EPA believes that an initial period of 40 days is sufficient for a facility to collect sufficient data to verify that the data provided for the untreated ash in the 1994 petition and LDR information is representative of the ash to be delisted.

**5. Subsequent Verification Testing:** Following the completion of the Initial Verification Testing, Texas Eastman may request to monitor operating conditions and analyze samples representative of each quarter of operation during the first year of ash generation. The samples must represent the untreated ash generated over one quarter. Following written notification from EPA, Texas Eastman may begin the quarterly testing described in this Paragraph.

The EPA believes that the concentrations of the constituents of concern in the FBI ash may vary somewhat over time. As a result, in order to ensure that Texas Eastman's treatment process can effectively handle any variation in constituent concentrations in the incinerator ash, the EPA is proposing a subsequent verification testing condition. The proposed subsequent testing would verify that the FBI is operated in a manner similar to its operation during the initial verification testing and that the untreated incinerator ash does not exhibit unacceptable levels of toxic constituents. Therefore, the EPA is proposing to require Texas Eastman to analyze representative samples of the incinerator ash on a quarterly basis during the first year of waste generation. If the EPA determines that the data from the initial verification period demonstrates that the incineration process is effective, Texas Eastman may request that EPA allow it to perform verification testing on a quarterly basis. If approved in writing by EPA, then Texas Eastman may begin verification testing quarterly.

**6. Termination of Organic Testing:** Texas Eastman must continue testing as required under Paragraph 5 for organic constituents specified in Paragraph 1 until the analyses submitted under Paragraph 5 show a minimum of two consecutive quarterly samples below the delisting levels in Paragraph 1. Texas Eastman may then request that quarterly organic testing be terminated. After EPA notifies Texas Eastman in writing it may terminate quarterly organic testing.

**7. Annual Testing:** Following termination of quarterly testing under either Paragraphs 5 or 6, Texas Eastman must continue to test a representative composite sample for all constituents listed in Paragraph 1 (including organics) on an annual basis (no later than twelve months after the date that the final exclusion is effective).

The EPA is proposing to terminate the subsequent testing conditions for organics as allowed in Paragraph 6 after

Texas Eastman has demonstrated the delisting levels for the untreated ash are consistently met. In order to confirm that the characteristics of the waste do not change significantly over time, Texas Eastman must continue to analyze a representative sample of the untreated FBI ash for organic constituents on an annual basis (no later than twelve months after the date that the final exclusion is effective). The Fluidized Bed Incinerator as described in the petition has demonstrated its effectiveness in removing organic constituents from solid matrices, but not inorganic constituents. Therefore, Paragraph 1 (A), which requires Texas Eastman to test for the specified inorganic constituents of concern that may not be treated by this process, is not subject to the termination provision in Paragraph 6.

**8. Changes in Operating Conditions:** If Texas Eastman significantly changes the incineration process described in its petition or implements any new manufacturing or production process(es) which generate(s) the ash and which may or could affect the composition or type of waste generated established under Paragraph 3 (by illustration {but not limitation}, use of stabilization reagents or operating conditions of the fluidized bed incinerator), Texas Eastman must notify the EPA in writing and may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in Paragraph 1 and it has received written approval to do so from EPA.

Paragraph 8 would allow Texas Eastman the flexibility of modifying its processes (e.g., use of new treatment reagents or change in operating conditions) to improve its treatment process. However, Texas Eastman must demonstrate the effectiveness of the modified process and request approval from the EPA. Wastes generated during the new process demonstration must be managed as a hazardous waste until written approval has been obtained and Paragraph 1 is satisfied. If Texas Eastman changes operating conditions as described in Paragraph 8, then Texas Eastman must reinstate all testing in Paragraph 3, pending a new demonstration under this condition for termination.

**9. Data Submittals:** The data obtained through Paragraph 3 must be submitted to Mr. William Gallagher, Chief, Region 6 Delisting Program, U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733, Mail Code, (6PD-O) within the time period specified. Records of operating conditions and analytical data from Paragraph 3 must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, and

made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 USC § 1001 and 42 USC § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

To provide appropriate documentation that Texas Eastman's facility is properly treating the waste, all analytical data obtained through Paragraph 3, including quality control information, must be compiled, summarized, and maintained on site for a minimum of five years. Paragraph 9 requires that these data be furnished upon request and made available for inspection by any employee or representative of EPA or the State where the treatment facility is located.

If made final, the proposed exclusion will apply only to the 7,000 cubic yards generated annually of FBI ash generated during the treatment of its wastewater sludge in the Texas Eastman fluidized bed incinerator after successful verification testing. Except as described in Paragraph 8, the facility would be required to submit a new exclusion if the treatment process specified for the FBI incinerator or the WWTP is significantly altered. Texas Eastman would be required to file a new petition for any new manufacturing or production process(es), or significant changes from the current process(es) described in its petition which generates the ash or which may or could affect the composition or type of waste generated. The facility must treat any FBI ash in excess of the original 7,000 cubic yards

as hazardous unless a new exclusion is granted.

Although management of the waste covered by this petition would be removed from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

### III. Effective Date

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 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, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. § 553(d).

### IV. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. This proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact due to today's rule. Therefore, 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.

### V. Regulatory Flexibility Act

Pursuant to 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 that describes the impact of the rule on small entities (i.e., 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 any small entities.

This rule, if promulgated, will not have any adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, 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.

### VI. Paperwork Reduction Act

Information collection and recordkeeping 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.

### VII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA

establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local or tribal governments or the private sector. EPA finds that today's proposed delisting decision is deregulatory in

nature and does not impose any enforceable duty upon state, local or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

#### 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: June 11, 1996.

Jane N. Saginaw,

*Regional Administrator.*

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

#### **PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

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

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

2. In Tables 1, 2, and 3 of Appendix IX of Part 261 it is proposed 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
*	*	*
Texas Eastman .....	Longview, Texas ...	<p>Incinerator ash (at a maximum generation of 7,000 cubic yards per calendar year) generated from the incineration of sludge from the wastewater treatment plant (EPA Hazardous Waste No.D001, D003, D018, D019, D021, D022, D027, D028, D029, D030, D032, D033, D034, D035, D036, D038, D039, D040, F001, F002, F003, F005, after [insert publication date of the final rule]. Texas Eastman must implement a testing program that meets the following conditions for the petition to be valid:</p> <p>1. <i>Delisting Levels:</i> All leachable concentrations for those metals must not exceed the following levels (ppm). Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR Part 261.24.</p> <p>(A) Inorganic Constituents</p> <p>Antimony—0.27; Arsenic—2.25; Barium—90.0; Beryllium—0.0009; Cadmium—0.225; Chromium—4.5; Cobalt—94.5; Copper—58.5; Lead—0.675; Mercury—0.045; Nickel—4.5; Selenium—1.0; Silver—5.0; Thallium—0.135; Tin—945.0; Vanadium—13.5; Zinc—450.0.</p> <p>(B) Organic Constituents</p> <p>Acenaphthene—90.0; Acetone—180.0; Benzene—0.135; Benzo(a)anthracene—0.00347; Benzo(a)pyrene—0.00045; Benzo(b) fluoranthene—0.00320; Bis(2 ethylhexyl) phthalate—0.27; Butylbenzyl phthalate—315.0; Chloroform—0.45; Chlorobenzene—31.5; Carbon Disulfide—180.0; Chrysene—0.1215; 1,2-Dichlorobenzene—135.0; 1,4-Dichlorobenzene—0.18; Di-n-butyl phthalate—180.0; Di-n-octyl phthalate—35.0; 1,4 Dioxane—0.36; Ethyl Acetate—1350.0; Ethyl Ether—315.0; Ethylbenzene—180.0; Fluoranthene—45.0; Fluorene—45.0; 1-Butanol—180.0; Methyl Ethyl Ketone—200.0; Methylene Chloride—0.45; Methyl Isobutyl Ketone—90.0; Naphthalene—45.0; Pyrene—45.0; Toluene—315.0; Xylenes—3150.0.</p> <p>2. <i>Waste Holding and Handling:</i> Texas Eastman must store in accordance with its RCRA permit, or continue to dispose of as hazardous all FBI ash generated until the Initial and Subsequent Verification Testing described in Paragraph 4 and 5 below is completed and valid analyses demonstrate that all Verification Testing Conditions are satisfied. After completion of Initial and Subsequent Verification Testing, if the levels of constituents measured in the samples of the FBI ash do not exceed the levels set forth in Paragraph 1 above, and written notification is given by EPA, then the waste is non-hazardous and may be managed and disposed of in accordance with all applicable solid waste regulations.</p> <p>3. <i>Verification Testing Requirements:</i> Sample collection and analyses, including quality control procedures, must be performed according to SW-846 methodologies. If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing described in Paragraph 4 below, Texas Eastman may replace the testing required in Paragraph 4 with the testing required in Paragraph 5 below. Texas Eastman must, however, continue to test as specified in Paragraph 4 until notified by EPA in writing that testing in Paragraph 4 may be replaced by the testing described in Paragraph 5.</p> <p>4. <i>Initial Verification Testing:</i> During the first 40 operating days of the FBI incinerator after the final exclusion is granted, Texas Eastman must collect and analyze daily composites of the FBI ash. Daily composites must be composed of representative grab samples collected every 6 hours during each 24-hour FBI operating cycle. The FBI ash must be analyzed, prior to disposal of the ash, for all constituents listed in Paragraph 1. Texas Eastman must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 90 days after the incineration of the wastewater treatment sludge.</p>

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

Facility	Address	Waste description
		<p>5. <i>Subsequent Verification Testing:</i> Following the completion of the Initial Verification Testing, Texas Eastman may request to monitor operating conditions and analyze samples representative of each quarter of operation during the first year of ash generation. The samples must represent the untreated ash generated over one quarter. Following written notification from EPA, Texas Eastman may begin the quarterly testing described in this Paragraph.</p> <p>6. <i>Termination of Organic Testing:</i> Texas Eastman must continue testing as required under Paragraph 5 for organic constituents specified in Paragraph 1 until the analyses submitted under Paragraph 5 show a minimum of two consecutive quarterly samples below the delisting levels in Paragraph 1. Texas Eastman may then request that quarterly organic testing be terminated. After EPA notifies Texas Eastman in writing it may terminate quarterly organic testing.</p> <p>7. <i>Annual Testing:</i> Following termination of quarterly testing under either Paragraphs 5 or 6, Texas Eastman must continue to test a representative composite sample for all constituents listed in Paragraph 1 (including organics) on an annual basis (no later than twelve months after the date that the final exclusion is effective).</p> <p>8. <i>Changes in Operating Conditions:</i> If Texas Eastman significantly changes the incineration process described in its petition or implements any new manufacturing or production process(es) which generate(s) the ash and which may or could affect the composition or type of waste generated established under Paragraph 3 (by illustration {but not limitation}, use of stabilization reagents or operating conditions of the fluidized bed incinerator), Texas Eastman must notify the EPA in writing and may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in Paragraph 1 and it has received written approval to do so from EPA.</p> <p>9. <i>Data Submittals:</i> The data obtained through Paragraph 3 must be submitted to Mr. William Gallagher, Chief, Region 6 Delisting Program, U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733, Mail Code, (6PD-O) within the time period specified. Records of operating conditions and analytical data from Paragraph 3 must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by 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 USC § 1001 and 42 USC § 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>In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.</p> <p>10. <i>Notification Requirements:</i> Texas Eastman 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 for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.</p>

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* Texas Eastman .....	* Longview, Texas ...	* Incinerator ash (at a maximum generation of 7,000 cubic yards per calendar year) generated from the incineration of sludge from the wastewater treatment plant (EPA Hazardous Waste No. K009 and K010, after [insert publication date of the final rule]. Texas Eastman must implement a testing program that meets conditions found in Table 1. Wastes Excluded From Non-Specific Sources for the petition to be valid.

Facility	Address	Waste description
Texas Eastman .....	Longview, Texas ....	Incinerator ash (at a maximum generation of 7,000 cubic yards per calendar year) generated from the incineration of sludge from the wastewater treatment plant (EPA Hazardous Waste No. U001, U002, U003, U019, U028, U031, U037, U044, U056, U069, U070, U107, U108, U112, U113, U115, U117, U122, U140, U147, U151, U154, U159, U161, U169, U190, U196, U211, U213, U226, U239, and U359, after [insert publication date of the final rule]. Texas Eastman must implement the testing program described in Table 1. Wastes Excluded From Non-Specific Sources for the petition to be valid.
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Upon determination that at least one of the criteria described in 300.425(e) has been met, U.S. EPA may formally begin deletion procedures once the State has concurred. This Federal Register