

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on March 29, 2004.

#### List of Subjects in 40 CFR Part 147

Environmental protection, Incorporation by reference, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Dated: February 9, 2004.

**Michael O. Leavitt,**  
Administrator.

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

#### PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

■ 1. The authority citation for part 147 continues to read as follows:

**Authority:** 42 U.S.C. 300h; and 42 U.S.C. 6901 *et seq.*

#### Subpart SS—Texas

■ 2. Section 147.2200 is amended by adding three sentences to the end of the introductory text and by adding paragraphs (a)(2), (b)(2), (c)(2), (d)(2), and (e)(2) to read as follows:

#### § 147.2200 State-administered program—Class I, III, IV, and V wells.

\* \* \* The UIC program for Class III brine mining wells in the State of Texas, except for those wells on Indian lands, is the program administered by the Railroad Commission of Texas. A program revision application for Class III brine mining wells was submitted by Texas and approved by EPA. Notice of that approval was published in the **Federal Register** on February 26, 2004; the effective date of this program is March 29, 2004.

(a) \* \* \*

(2) Texas Statutory and Regulatory Requirements Applicable to the Underground Injection Control Program for Class III Brine Mining Wells, March 2002.

(b) \* \* \*

(2) *Class III brine mining wells.* (i) Vernon's Texas Codes Annotated, Natural Resources Code, Chapters 91, 2001, and 331;

(ii) Vernon's Texas Codes Annotated, Government Code Title 10, Chapters 2001, 552, and 311.

(iii) General Rules of Practice and Procedure before the Railroad Commission of Texas.

(c) \* \* \*

(2) *Class III brine mining wells.* The Memorandum of Agreement between EPA Region VI and the Railroad Commission of Texas signed by the EPA Regional Administrator on October 23, 2001.

(d) \* \* \*

(2) *Class III brine mining wells.* State of Texas "Attorney General's Statement" for Class III Brine Mining Injection Wells, signed by the Attorney General of Texas, February 2, 1992 and the "Supplement to Attorney General's Statement of February 19, 1992," signed by the Attorney General of Texas, June 2, 1998.

(e) \* \* \*

(2) *Class III brine mining wells.* The Program Description and any other materials submitted as part of the revision application or as supplements thereto.

[FR Doc. 04-3223 Filed 2-25-04; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 261

[SW-FRL-7627-2]

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

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

**ACTION:** Final rule.

**SUMMARY:** The EPA (also, "the Agency" or "we" in this preamble) is granting a petition to exclude (or "delist") wastewater treatment plant sludge from conversion coating on aluminum generated by the DaimlerChrysler Corporation Jefferson North Assembly Plant (DCC-JNAP) in Detroit, Michigan from the list of hazardous wastes.

Today's action conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a lined Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste. The exclusion was proposed on March 7, 2002 as part of an expedited process to evaluate this waste under a pilot project developed with the Michigan Department of Environmental Quality (MDEQ). The rule also imposes testing conditions for waste generated in the future to ensure

that this waste continues to qualify for delisting.

**EFFECTIVE DATE:** This rule is effective on February 26, 2004.

**ADDRESSES:** The RCRA regulatory docket for this final rule, number R5-MIECOS-01, is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call Judy Kleiman at (312) 886-1482 for appointments. The public may copy material from the regulatory docket at \$0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For technical information concerning this document, contact Judy Kleiman at the address above or at (312) 886-1482.

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

- I. Background
  - A. What is a delisting petition?
  - B. What regulations allow a waste to be delisted?
- II. The Expedited Process for Delisting
  - A. Why was the expedited process developed for this waste?
  - B. What is the expedited process to delist F019?
- III. EPA's Evaluation of This Petition
  - A. What information was submitted in support of this petition?
  - B. How did EPA evaluate the information submitted?
- IV. Public Comments Received on the Proposed Expedited Process
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  - B. Comments received and responses from EPA
- V. Final Rule Granting these Petitions
  - A. What decision is EPA finalizing?
  - B. What are the terms of this exclusion?
  - C. When is the delisting effective?
  - D. How does this action affect the states?
- VI. Regulatory Impact

#### I. Background

##### A. What Is a Delisting Petition?

A delisting petition is a request from a generator to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in Title 40 Code of Federal Regulations (40 CFR 261.11) and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability,

reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See 40 CFR 260.22, 42 U.S.C. 6921(f) and the background documents for a listed waste.)

Generators remain obligated under RCRA to confirm that their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the wastes and to ensure that future generated wastes meet the conditions set.

#### *B. What Regulations Allow a Waste To Be Delisted?*

Under 40 CFR 260.20, 260.22, and 42 U.S.C. 6921(f), facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. 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 40 CFR. 40 CFR 260.22 provides a generator the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists.

## **II. The Expedited Process for Delisting**

#### *A. Why Was the Expedited Process Developed for This Waste?*

Automobile manufacturers are adding aluminum to automobiles, which may result in increased fuel economy. However, when aluminum is conversion coated in the automobile assembly process, the resulting wastewater treatment sludge must be managed as EPA hazardous waste F019. A number of automotive assembly plants use a similar manufacturing process which generates a similar F019 waste likely to be nonhazardous. This similarity of manufacturing processes and the resultant wastes provides an opportunity for the automobile industry to be more efficient in submitting delisting petitions and EPA in evaluating them. Efficiency may be gained and time saved by using a standardized approach for gathering, submitting and evaluating data. Therefore, EPA, in conjunction with MDEQ, developed a pilot project to expedite the delisting process. This approach to making delisting determinations for this group of facilities is efficient while still being consistent with current laws and

regulations and protective of human health and the environment.

By removing regulatory controls under RCRA, EPA is facilitating the use of aluminum in cars. EPA believes that incorporating aluminum in cars will be advantageous to the environment since lighter cars are capable of achieving better fuel economy.

#### *B. What Is the Expedited Process To Delist F019?*

The expedited process to delist F019 is an approach developed through a Memorandum of Understanding (MOU) with MDEQ for gathering and evaluating data in support of multiple petitions from automobile assembly plants. The expedited delisting process is applicable to wastes generated by automobile and light truck assembly plants in the State of Michigan which use a similar manufacturing process and generate similar F019 waste.

Based on available historical data and other information, the expedited process identified 70 constituents which might be of concern in the waste and provides that the F019 sludge generated by automobile assembly plants may be delisted if the levels of the 70 constituents do not exceed the allowable levels established for each constituent in this rulemaking. The maximum annual quantity of waste generated by any single facility which may be covered by an expedited delisting is 3,000 cubic yards, but delisting levels were also proposed for smaller quantities of 1,000 and 2,000 cubic yards.

## **III. EPA's Evaluation of This Petition**

#### *A. What Information Was Submitted in Support of This Petition?*

DCC-JNAP submitted certification that its process was the same as the process described in the MOU with MDEQ. See 67 FR 10341, March 7, 2002. The facility also submitted an assertion that its waste does not meet the criteria for which F019 waste was listed and there are no other factors which might cause the waste to be hazardous.

In the proposed rulemaking, EPA set forth different demonstration and verification sampling depending upon whether or not the facility was already generating F019 (67 FR 10341, March 7, 2002). At the time of the proposed delisting, DCC-JNAP was not yet generating F019 because it was not using aluminum in car production. However, by the time it conducted demonstration sampling, DCC-JNAP

had begun generating F019, although production of cars with aluminum was less than 50 units per day. Therefore, the demonstration sampling submitted by DCC-JNAP and the verification sampling required in today's rule parallels demonstration and verification sampling for facilities already generating F019. At the time of the demonstration sampling, DCC-JNAP was already incorporating aluminum parts and thus generating F019, but was producing less than 50 cars per day with aluminum. Although not required in today's rule, EPA has requested DCC-JNAP to notify the Agency when production of aluminum containing cars reaches 500 units per day.

To support its exclusion demonstration, DCC-JNAP collected six samples representing waste generated over six weeks. Each sample was analyzed for: (1) Total analyses of the 70 constituents of concern; (2) Toxicity Characteristic Leaching Procedure (TCLP), SW-846 Method 1311, analyses of the 70 constituents of concern; (3) oil and grease; (4) leachable metals using the Extraction Procedure for Oily Wastes (OWEP), SW-846 Method 1330A, in lieu of Method 1311 if a sample contained more than 1% oil and grease; and (5) total constituent analyses for sulfide and cyanide; In addition, the pH of each sample was measured and a determination was made that the waste was not ignitable, corrosive or reactive (see 40 CFR 261.21–261.23). All sampling and analysis were done in accordance with the sampling and analysis plan which is an appendix to the MOU and is available in the docket for this rule. The data submitted included the appropriate QA/QC information as required in the sampling and analysis plan and was validated by a third party.

A few minor changes in the sampling approach were made prior to the sampling. Instead of sampling from six different roll-off boxes, which would have required multiple sampling events or long-term storage of full roll-off boxes, DCC-JNAP collected representative amounts of sludge each week from February 17, 2003 through March 30, 2003. The sludge for each week was placed in a separate drum. On March 31, 2003, composite and grab samples were collected from each drum.

The maximum values of constituents detected in any sample of the waste water treatment plant sludge and in a TCLP extract of that sludge are summarized in the following table.

Constituent	Maximum concentration observed		Maximum allowable delisting level (2,000 cubic yards)		Maximum allowable groundwater concentration (µg/L)
	Total (mg/kg)	TCLP (mg/L)	Total (mg/kg)	TCLP (mg/L)	
acetone .....	<7.5	2.6	NA	228	3,750
ethylbenzene .....	<0.5	0.012	NA	42.6	700
formaldehyde .....	6.2	0.31	689	84.2	1,380
methyl ethyl ketone .....	<2.5	0.11	NA	200	22,600
methylene chloride .....	<2.5	0.051	NA	0.288	5
n-butyl alcohol .....	<2.5	0.31	NA	228	3,750
toluene .....	3.8	0.3	NA	60.8	1,000
xylene .....	1.9	0.057	NA	608	10,000
<b>Semivolatile Organic Compounds</b>					
bis(2-ethylhexyl) phthalate .....	8.3	<0.005	NA	0.0896	1.47
o-cresol .....	<1.5	0.003 J	NA	114	1,875
p-cresol .....	<1.5	0.17	NA	11.4	188
di-n-octyl phthalate .....	2.6	<0.002	NA	0.112	1.3
naphthalene .....	0.10 J	0.0005 J	NA	15	246
<b>Metals</b>					
antimony .....	0.67	<0.05	NA	0.659	6.0
arsenic .....	0.25	<0.02	8,140	0.3	4.87
barium .....	527	0.73	NA	100	2,000
cadmium .....	2.7	<0.022	NA	0.48	5.0
chromium .....	50	<0.11	NA	4.95	100
cobalt .....	3.0	<0.028	NA	72.1	2,250
lead .....	30 J	<0.14	NA	5	15
nickel .....	3,790	38	NA	90.5	750
thallium .....	0.87	<0.02	NA	0.282	2.0
tin .....	4,420	58.4	NA	721	22,500
zinc .....	14,700	3.84	NA	898	11,300
<b>Miscellaneous</b>					
corrosivity (pH) .....	6.81 to 7.30		2 < x < 12.5		NS
Oil & grease .....	43,700		NS		NS
sulfide .....	404	NA	See 40 CFR 261.23		NS

J the numerical value is an estimated quantity

< not detected at the specified concentration

NS not specified

NA not analyzed

B constituent detected in method blank at a concentration greater than 10% of the reported value

These levels represent the highest constituent concentration found in any one sample and do not necessarily represent the specific levels found in one sample.

#### B. How Did EPA Evaluate the Information Submitted?

EPA compared the analytical results submitted by DCC-JNAP to the maximum allowable levels calculated by the DRAS and set forth in the proposed rule (67 FR 10341, March 7, 2002). The maximum allowable levels for constituents detected in the waste or the waste leachate are summarized in the table above, along with the observed levels. All constituents compared favorably to the allowable levels.

The table also includes the maximum allowable levels in groundwater at a potential receptor well, as evaluated by the Delisting Risk Assessment Software (DRAS). These levels are the more conservative of either the Safe Drinking Water Act Maximum Contaminant Level (MCL) or the health-based value calculated by DRAS based on the target

cancer risk level of  $10^{-6}$ . For arsenic, the target cancer risk was set at  $10^{-4}$  in consideration of the MCL and the potential for natural occurrence. The maximum allowable groundwater concentration and delisting level for arsenic correspond to a drinking water concentration less than one half the current MCL of 10 µg/L.

EPA also used the DRAS program to estimate the aggregate cancer risk and hazard index for constituents detected in the waste. The aggregate cancer risk is the cumulative total of all individual constituent cancer risks. The hazard index is a similar cumulative total of non-cancer effects. The target aggregate cancer risk is  $1 \times 10^{-5}$  and the target hazard index is one. The waste water treatment plant sludge at DCC-JNAP met both of these criteria.

#### IV. Public Comments Received on the Proposed Exclusion

##### A. Who Submitted Comments on the Proposed Rule?

The EPA received public comments on the proposed notice published on March 7, 2002 from Alliance of Automobile Manufacturers, Honda of America Mfg., Inc., Alcoa Inc., and The Aluminum Association. All commenters were supportive of the proposal, suggesting expanding the project and/or revising the listing.

##### B. Comments Received and Responses From EPA

(1) *Comment:* EPA should revise the F019 listing to specify that wastewater treatment sludge from zinc phosphating operations is not within the scope of the listing. Data gathered as a result of the

Expedited Delisting Project together with the available historical data, should provide enough data to fully characterize this waste and to justify a revision of the listing.

*EPA Response:* The Agency is now considering revising the F019 listing. EPA is examining the data collected as a result of this project, as well as past data, as a basis for a possible revision to the F019 listing.

(2) *Comment:* EPA should issue an interpretive rule clarifying that zinc phosphating operations are outside the scope of the F019 listing.

*EPA Response:* An interpretive rule presents administrative and technical difficulties. A revision to the listing will require a rulemaking process. See response to comment (1) above.

(3) *Comment:* Automobile assembly facilities outside of Michigan would like to take advantage of the precedent set by this expedited delisting project to delist F019 generated by similar operations in other states and regions.

*EPA Response:* The Agency believes that the expedited delisting procedures and requirements set forth in this proposal are appropriate for similar automotive assembly facilities outside the State of Michigan, subject to the discretion of the regulatory agency (State or region).

(4) *Comment:* Alternatives to landfilling like recycling should be allowed within the petition process.

*EPA Response:* The Agency does not delist wastes which are recycled because the model used to estimate risk is based only on disposal of waste in a Subtitle D landfill. The risk which might result from any other scenario is not evaluated by the delisting program. However, the Agency encourages safe recycling, and variances and exclusions from the definition of solid and hazardous wastes are available for wastes which are recycled.

(5) *Comment:* Analytical methods should be specified in the pre-approved common sampling plan instead of requiring each participant to submit a site-specific list of methods.

*EPA Response:* Allowing the petitioner to choose an analytical method which meets the data quality objectives specific to the delisting petition provides flexibility. Data quality objectives will vary depending on the allowable levels which are a function of the volume of petitioned waste. The Agency believes that the flexibility of performance-based methods results in better data.

(6) *Comment:* Detection limits should not be required prior to sampling since they cannot be adequately predicted without a way to estimate matrix effects.

*EPA Response:* Although matrix effects cannot be assessed in advance of laboratory analysis, a laboratory should be able to provide estimated detection levels and reporting levels which are lower than, or at least equal to, the allowable delisting level for each constituent.

(7) *Comment:* Since the process generating the sludge is extremely stable, verification sampling should be conducted on an annual, instead of quarterly, basis. The requirement that any process change be promptly reported and the exclusion suspended until EPA gives written approval that the delisting can continue is an adequate safeguard justifying the decrease in sample event frequency.

*EPA Response:* Verification data submitted in conjunction with past delistings of this waste have shown significant variation on a quarterly basis over longer periods of time. Annual sampling would not detect such variations. Once enough verification data are collected to support a statistical analysis, a change in the frequency of verification sampling and/or sampling parameters may be considered.

(8) *Comment:* The final **Federal Register** should make it clear that assembly plants that manufacture light trucks are also eligible for the project.

*EPA Response:* Today's notice specifically defines eligible facilities as inclusive of manufacturers of light trucks.

(9) *Comment:* The table of maximum allowable levels in the March 7, 2002 proposed rule contains errors in the columns for vinyl chloride.

*EPA Response:* The error was caused by a missing space or tab in the table. Although vinyl chloride was not detected in the waste at DCC-JNAP, the maximum allowable concentrations proposed for 1,000 cubic yards of waste should have been a total of 178 milligrams per kilogram (mg/kg) and 0.00384 milligrams per liter (mg/L) in the TCLP. For 2,000 cubic yards of waste, 115 mg/kg total and 0.00234 mg/L TCLP were proposed. For 3,000 cubic yards of waste, 89.4 mg/kg total and 0.00175 mg/L TCLP were proposed.

## V. Final Rule Granting These Petitions

### A. What Decision Is EPA Finalizing?

Today the EPA is finalizing exclusions to conditionally delist 2,000 cubic yards annually of wastewater treatment plant sludge from conversion coating on aluminum generated at the DCC-JNAP.

On March 7, 2002, EPA proposed to exclude or delist these wastewater treatment sludges from the list of

hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (67 FR 10341). EPA considered all comments received, and we believe that these wastes should be excluded from hazardous waste control.

### B. What Are the Terms of This Exclusion?

DCC-JNAP must dispose of the waste in a lined Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste. DCC-JNAP must verify on a quarterly basis that the concentrations of the constituents of concern do not exceed the allowable levels set forth in this exclusion. In addition, the sum of the hazard quotients for nickel and either thallium or cadmium may not exceed one.<sup>1</sup> All facilities participating in the expedited delisting project had significant amounts of nickel in the leachate, and nickel combines with thallium and with cadmium targeting the liver and kidneys, respectively.

DCC-JNAP must obtain and analyze a representative sample of the waste according to the current waste analysis plan modified to include the improved methodologies discussed in section III. A.

The list of constituents for verification is a subset of those initially tested for and is based on the occurrence of constituents at the majority of facilities participating in the expedited process to delist F019 and the concentrations relative to the allowable levels.

This exclusion applies only to a maximum annual volume of 2,000 cubic yards and is effective only if all conditions contained in this rule are satisfied.

### C. When Is the Delisting Effective?

This rule is effective [insert date of 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. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

<sup>1</sup> The proportion of the hazard quotient which may be attributed to a constituent can be represented by the ratio of the TCLP concentration of that constituent to its allowable delisting level. The sum of the hazard quotients for two constituents may thus be represented by the sum of these ratios.

### D. How Does This Action Affect the States?

Today's exclusion is being issued under the federal RCRA delisting program. Therefore, only states subject to federal RCRA delisting provisions would be affected. This exclusion is not effective in states which have received authorization to make their own delisting decisions. Also, the exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements. EPA allows states to impose their own 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. Because a dual system (that is, both federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

EPA has 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 apply in those authorized states. If a participating facility transports the petitioned waste to or manages the waste in any state with delisting authorization, it must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

### VI. Regulatory Impact

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget. Because this rule is 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, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of 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 note) 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.*).

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

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, and Reporting and recordkeeping requirements.

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

Dated: February 12, 2004.

**William H. Harris,**

*Acting Director, Waste, Pesticides and Toxics Division.*

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

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

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

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

■ 2. In Table 1 of Appendix IX of Part 261 the following wastestreams are added 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
*	*	*
DaimlerChrysler Corporation.	Jefferson North Assembly Plant, Detroit, Michigan.	Waste water treatment plant sludge, F019, that is generated by DaimlerChrysler Corporation at the Jefferson North Assembly Plant (DCC-JNAP) at a maximum annual rate of 2,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date).

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

Facility	Address	Waste description
		<p>1. <i>Delisting Levels</i>: (A) The concentrations in a TCLP extract of the waste measured in any sample may not exceed the following levels (mg/L): Antimony—0.659; Arsenic—0.3; Cadmium—0.48; Chromium—4.95; Lead—5; Nickel—90.5; Selenium—1; Thallium—0.282; Tin—721; Zinc—898; Acetone—228; p-Cresol—11.4; Formaldehyde—84.2; and Methylene chloride—0.288. (B) The total concentrations measured in any sample may not exceed the following levels (mg/kg): Mercury—8.92; and Formaldehyde—689. (C) The sum of the ratios of the TCLP concentrations to the delisting levels for nickel and either thallium or cadmium shall not exceed 1.0.</p> <p>2. <i>Quarterly Verification Testing</i>: To verify that the waste does not exceed the specified delisting levels, DCC–JNAP must collect and analyze one representative sample of the waste on a quarterly basis.</p> <p>3. <i>Changes in Operating Conditions</i>: DCC–JNAP must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process significantly change. DCC–JNAP must handle wastes generated after the process change as hazardous until it has demonstrated that the wastes continue to meet the delisting levels and that no new hazardous constituents listed in appendix VIII of part 261 have been introduced and it has received written approval from EPA.</p> <p>4. <i>Data Submittals</i>: DCC–JNAP must submit the data obtained through verification testing or as required by other conditions of this rule to both U.S. EPA Region 5, Waste Management Branch (DW–8J), 77 W. Jackson Blvd., Chicago, IL 60604 and MDEQ, Waste Management Division, Hazardous Waste Program Section, at P.O. Box 30241, Lansing, Michigan 48909. The quarterly verification data and certification of proper disposal must be submitted annually upon the anniversary of the effective date of this exclusion. The facility must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. The facility must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).</p> <p>5. <i>Reopener Language</i>—(a) If, anytime after disposal of the delisted waste, DCC–JNAP possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent is at a level in the leachate higher than the specified delisting level, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration in paragraph (e), then DCC–JNAP must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data.</p> <p>(b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.</p> <p>(c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify DCC–JNAP in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing DCC–JNAP with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. DCC–JNAP shall have 30 days from the date of the Regional Administrator's notice to present the information.</p> <p>(d) If after 30 days the facility presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.</p> <p>(e) <i>Maximum Allowable Groundwater Concentrations</i> (µg/L): Antimony—6; Arsenic—4.87; Cadmium—5; Chromium—100; Lead—15; Nickel—750; Selenium—50; Thallium—2; Tin—22,500; Zinc—11,300; acetone—3,750; p-Cresol—188; Formaldehyde—1,380; and Methylene chloride—5.</p>

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**FEDERAL COMMUNICATIONS  
COMMISSION****47 CFR Part 73**

[DA 04–373, MB Docket No. 03–221, RM–10796]

**Television Broadcast Service; Tupelo, MS****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of KB Prime Media and United Television, Inc., substitutes channel 49+ for channel 35+ at Tupelo, Mississippi. See 68 FR 62046, October 31, 2002. TV channel 49+ can be allotted to Tupelo, Mississippi, in compliance with Sections 73.610 and 73.698 at coordinates 33–55–37 N. and 88–33–36 W. With this action, this proceeding is terminated.