the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, the Administrator certifies that this proposed disapproval action does not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4). Sections 202 and 205 of UMRA do not apply to the proposed disapproval because the proposed disapproval of the SIP submittal would not, in and of itself, constitute a Federal mandate because it would not impose an enforceable duty on any entity. In addition, the Act does not permit EPA to consider the types of analyses described in section 202 in determining whether a SIP submittal meets the CAA. Finally, section 203 does not apply to the proposed disapproval because it would affect only the District of Columbia, the State of Maryland and the Commonwealth of Virginia, which are not small governments. This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. 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 proposed 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. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive order.

This proposed rule to approve the District of Columbia's, and Virginia's 1-hour ozone attainment plan demonstration for the Washington area; and to approve Maryland's 1-hour ozone attainment plan demonstration for the Washington area, and in the alternative, to disapprove Maryland's 1-hour ozone attainment plan demonstration for the Washington area with a protective finding for the 2005 motor vehicle emissions budgets does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 31, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–2508 Filed 2–8–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7870–5]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: EPA is proposing to grant a petition submitted by Shell Oil Company in Deer Park, Texas (Shell) to exclude (or delist) a certain sludge waste generated by its Houston, TX Deer Park facility from the lists of hazardous wastes.

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

EPA bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude that Shell's petitioned waste is nonhazardous with respect to the original listing criteria. EPA would also conclude that Shell's waste concentrations are such that short-term and long-term threats from the petitioned waste to human health and the environment are minimized.

DATES: We will accept comments until March 11, 2005. EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by February 24, 2005. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send three copies of your comments. You should send two copies to the Section Chief of the Corrective Action/Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. You should send a third copy to Nicole Bealle, Waste Team Leader, Texas Commission on Environmental Quality, 5425 Polk Avenue, Suite A, Houston, TX 77023. Identify your comments at

the top with this regulatory docket number: ''F–04–TX–Shell.''

You should address requests for a hearing to Ben Banipal, Section Chief of the Corrective Action/Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

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

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

I. Overview Information

A. What Action Is EPA Proposing?

EPA is proposing to grant the petition submitted by Shell to have its North Pond F037 Sludge excluded or delisted from the definition of a hazardous waste, once it is disposed in a Subtitle D Landfill. This is a one-time exclusion for 15,000 cubic yards of sludge.

B. Why Is EPA Proposing To Approve This Delisting?

Shell's petition requests a delisting from the North Pond sludge derived from the treatment of F037 waste. Shell does not believe that the petitioned waste meets the criteria for which EPA listed it. Shell also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's proposed decision to delist waste from Shell's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Deer Park, TX facility.

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

If the petitioned waste is delisted, Shell must dispose of it in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste.

D. When Would the Proposed Delisting Exclusion Be Finalized?

RCRA section 3001(f) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion unless and until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1) at 42 U.S.C. 6930(b)(1), allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How Would This Action Affect States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude States who have received authorization from EPA to make their own delisting decisions.

We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law. Delisting petitions approved by the EPA Administrator or his delegate under 40 CFR 260.22 are effective in the State of Texas after the final rule has been published in the **Federal Register**.

II. Background

A. What Is the History of the Delisting Program?

EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final

regulations implementing section 3001 of RCRA. EPA has amended this list several times and published it in 40 CFR 261.31 and 261.32. EPA lists these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations or resulting from the operation of the mixture or derived-from rules generally is hazardous, a specific waste from an individual facility may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does it Require of a Petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude waste from the list of hazardous wastes. The facility petitions EPA because it does not consider the waste hazardous 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 the waste was listed. The criteria for which EPA lists a waste are in Part 261 and further explained in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. See Part 261 and the background documents for the listed waste.

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the waste.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in 40 CFR § 260.22(a) and in section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if a reasonable basis exists to conclude that these additional factors could cause the waste to be hazardous.

EPA must also consider as hazardous waste mixtures containing listed hazardous waste and waste derived from treating, storing, or disposing of listed hazardous waste. See § 261.3(a)(2)(iii and iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

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

A. What Waste Did Shell Petition EPA To Delist?

On December 30, 2003, Shell petitioned EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, F037 North Pond Sludge generated from its facility located in Deer Park, Texas. The F037 listing is for a petroleum refinery primary oil/water sludge. The sludge has collected in the bottom of the North Pond since the early 1970s and is between 2 to 5 feet deep. The sludge consists of solids settled from the process wastewater, gravel and road base that has settled from storm water flow to the pond. The waste falls under the classification of listed waste under § 261.3. Specifically, in its petition, Shell requested that EPA grant a one time exclusion for 15,000 cubic yards of the F037 North Pond Sludge.

B. How Did Shell Generate This Waste?

Shell generates hazardous and nonhazardous industrial solid wastes as a result of refinery and chemical processes, wastewater treatment, refinery/chemical plant feed, product storage and distribution. Hazardous and nonhazardous wastewaters from the refinery are treated at the North Effluent Treater (NET) along with storm water flow. One of the units in the NET is the North Pond. Past practices allowed dry weather flow of process wastewater to the North Pond resulting in the settled sludge being classified as an F037 listed waste. Dry weather flow to the North Pond was discontinued in September of 2001. The sludge has collected in the bottom of the North Pond since the early 1970s and is between 2 to 5 feet deep. The sludge consists of solids from the process wastewater, gravel and road base that has settled from storm water flow to the pond. The North Pond was built in the 1950s as a small rectangular pond. A companion pond, the South Pond, was built contiguous to the North Pond and hydraulically connected by a flume. The ponds were preceded by three Corrugated Plate Interceptors. These ponds were located hydraulically down gradient of the refinery and received the refinery process wastewater. In the mid to late 1970s, the North Pond was enlarged and reconfigured to an ''L'' shape. This project was done concurrently with construction of the North Effluent Treater (NET). The pond was enlarged to approximately 103,000 square feet in size and about 7.5 feet deep. The working volume of the pond was 5.97 million gallons. The pond was lined with a 3-foot compacted clay liner. Three large discharge pumps located on the northeast side of the pond pumped storm water and wastewater to the Storm Water Impoundment Basin (SWIB) at a rate of 50,000 gallons per minute each during high flow conditions. Between 1988 and 1990, the South Pond was clean closed by removing all the sludges and affected liner and decontaminating all the ancillary equipment. Sludge was removed from the North Pond during the 1977 enlargement project; however, the volume and characteristics of the sludge were not recorded. Since 1977, there have been no other sludge removal efforts. The water storing capacity of the pond has decreased over time with the current remaining capacity estimated at 2.5 to 3.0 million gallons.

C. What Information and Analyses Did Shell Submit To Support Its Petition?

To support its petition, Shell submitted:

(1) Historical information on past waste generation and management practices including analytical data from eleven samples collected in September 2003;

(2) Results of the total constituent list for 40 CFR Part 264 Appendix IX volatiles, semivolatiles, metals, pesticides, herbicides, dioxins and PCBs;

(3) Results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

(4) Analytical constituents of concern for F037;

(5) Results from total oil and grease analyses;

(6) Multiple pH testing for the petitioned waste.

D. What Were the Results of Shell's Analyses?

EPA believes that the Shell analytical characterization demonstrates that the North Pond Sludge is nonhazardous. Analytical data for the F037 North Pond Sludge samples were used in the Delisting Risk Assessment Software. The data summaries for detected constituents are presented in Table I. EPA has reviewed the sampling procedures used by Shell and has determined that they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations in the F037 North Pond Sludge. The data submitted in support of the petition show that constituents in Shell's waste are presently below health-based levels used in the delisting decision-making. EPA believes that Shell has successfully demonstrated that the F037 North Pond Sludge is nonhazardous.

TABLE I.—MAXIMUM TOTAL AND TCLP CONCENTRATIONS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATION LEVELS, NORTH POND F037 SLUDGE, SHELL OIL COMPANY, DEER PARK, TEXAS

Constituent	Maximum total constituent analysis (mg/kg)	Maximum TCLP constituent analysis (mg/L)	Maximum allowable delisting concentration level (mg/L)
Acenaphthene	4.80	0.0011	27.6
Acetophenone	<1.6	0.0013	46.0
Antimony	4.02	0.0275	0.332
Anthracene	1.2	0.0002	131
Arsenic	19.8	0.0326	0.0604
Barium	294	0.572	47.2
Benzene	4.30	0.026	0.436
Benz(a)anthracene	3.90	<0.0002	0.116
Benzo(a)pyrene	2.30	<0.0002	0.0116
Benzo(b)fluoranthene	1.40	<0.0002	0.123
Benzo(g,h,i)perylene	0.68	<0.0002	0.123
Benzo(k)fluoranthene	0.15	<0.0002	1.23
Beryllium	0.641	0.0009	5.04
Bis(2-ethylhexyl)phthalate	1.90	<0.01	9.2
Cadmium	2.98	0.00163	0.363
Chromium	332.0	0.0539	5.0
Chrysene	15.00	<0.0002	12.3
Cobalt	9.92	0.0252	.....
Copper	100	0.0445	6780
4,4′ DDD	0.0065	<0.00005	0.353
4,4′ DDE	0.0044	<0.00005	0.250
4,4′ DDT	0.0083	0.0015	0.218
Di-n-butyl phthalate	3.80	<0.01	48.4
Ethylbenzene	5.60	<0.100	46.0
Fluoranthene	3.60	<0.0002	18.4
Fluorene	20.00	0.0016	18.4
Indeno(1,2,3-cd)pyrene	1.40	<0.0002	0.123
Lead	127.00	0.0147	5.0
Mercury	6.57	0.00015	0.180
2-Methylnaphthalene	40.00	<0.01	.....
Naphthalene	33.00	0.13	9.2
Nickel	91.80	0.142	18.2
Phenanthrene	12.00	0.0018	131
Phenol	<8.0	0.300	276
Pyrene	17.00	<0.0002	13.8
Selenium	34.60	<0.05	1.40
Silver	0.409	<0.05	2.48
Styrene	1.1	<0.200	92.0
2,3,7,8-TCDD Equivalent	0.000332	0.00000000976	0.000000566
Thallium	<1.19	0.0000382	0.0852
Tin	6.55	0.00156	.....
Toluene	1.4	<0.100	92.0
Vanadium	53.9	0.0214	13.6
Xylenes, Total	5.8	0.044	920
Zinc	3650	2.15	181

Notes:
(A) 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.
(B) Based on DRAS modeling with a target risk of 10–5 and a target HI of 0.1. One-time sludge volume of 15,000 cy.

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

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. EPA determined that disposal in an unlined Subtitle D landfill is the most reasonable, worst-case disposal scenario for Shell's petitioned waste. EPA applied the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000) and 65 FR 75637

(December 4, 2000), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of Shell's petitioned waste on human health and the environment. A copy of this software can be found on the Internet at *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm.* In assessing potential risks to ground water, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and EPA health-based numbers. Using the maximum compliance-point concentrations and the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in ground water.

EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in an unlined landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.*, volatilization or wind-blown particulate from the landfill). As in the above ground water analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or ''delisting levels'').

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. EPA does control the type of unit where the waste is disposed.

EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, Shell had not disposed of the waste in a Subtitle D landfill, so no representative data exists. Although, ground water contamination does exists in the area of this pond, the sludges are not considered a source of ground water contamination. The ground water contamination and remediation is addressed in the compliance plan of the facility's RCRA permit.

EPA believes that the descriptions of Shell hazardous waste process and analytical characterization, which illustrate the presence of toxic constituents at lower concentrations in these waste streams, provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized.

The DRAS results which calculate the maximum allowable concentration of chemical constituents in the waste are presented in Table I. Based on the comparison of the DRAS results and maximum TCLP and Totals concentrations found in Table I, the petitioned waste should be delisted because no constituents of concern tested are likely to be present or formed as reaction products or by-products above the delisting levels.

F. What Did EPA Conclude About Shell's Analysis?

EPA concluded, after reviewing Shell's processes, that no other hazardous constituents of concern, other than those for which Shell tested, are likely to be present or formed as reaction products or by-products in the wastes. In addition, on the basis of explanations and analytical data provided by Shell, pursuant to § 260.22, EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22 and 261.23, respectively. Neither did it show the toxicity characteristic.

G. What Other Factors Did EPA Consider?

During the evaluation of Shell's petition, EPA also considered the potential impact of the petitioned waste via non-ground water routes (*i.e.*, air emissions and surface runoff). EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Shell'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 and the environment from airborne exposure to constituents from Shell's F037 North Pond Sludge. A description of EPA's assessment of the potential impact of Shell's waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for this proposed rule, F–04–TX–Shell. With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from Shell's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from Shell waste under the modeled disposal conditions.

EPA also considered the potential impact of the petitioned waste via a surface water route. EPA believes that containment structures at Class I Landfills can effectively control surface water runoff, as the Subtitle D regulations (*See* 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in this notice due to the aggressive acidic medium used for extraction in the TCLP. EPA believes that, in general, the F037 North Pond Sludge is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur.

Based on the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, EPA evaluated the potential impacts on surface water if Shell's waste were released from a Class I Landfill through runoff and erosion. See the RCRA public docket for this proposed rule for further information on the potential surface water impacts from runoff and erosion. The estimated levels

of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). EPA therefore concluded that Shell F037 North Pond Sludge is not a present or potential substantial hazard to human health and the environment via the surface water exposure pathway.

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

The descriptions of Shell's hazardous waste process and analytical characterization provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (*see* Table I). We believe the short-term and long-term threats posed to human health and the environment are minimized from the petitioned waste due to the low levels of hazardous constituents present in the waste.

It is EPA's position that we should grant Shell an exclusion for the F037 North Pond Sludge. The data submitted to EPA in support of the petition show Shell's F037 North Pond Sludge is nonhazardous.

We have reviewed the sampling procedures used by Shell and have determined they satisfy EPA criteria for collecting representative samples of variable constituent concentrations in the F037 North Pond Sludge. The data submitted in support of the petition show that constituents in Shell's waste are presently below the compliance point concentrations used in the delisting decision-making and would not pose a substantial hazard to the environment. EPA believes that Shell has successfully demonstrated that the F037 North Pond Sludge is nonhazardous.

EPA therefore proposes to grant an exclusion to Shell Oil Company, Deer Park, Texas, for the F037 North Pond Sludge described in its petition. EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the F037 North Pond Sludge.

If we finalize the proposed rule, EPA will no longer regulate the petitioned waste under Parts 262 through 268 and the permitting standards of Part 270.

IV. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, Shell, must comply with the requirements in 40 CFR Part 261, Appendix IX, Table 1. The text below gives the rationale and details of those requirements.

(1) Reopener

The purpose of Paragraph 1 is to require Shell to disclose new or different information related to a condition at the facility or disposal of the waste, if it is pertinent to the delisting. This provision will allow EPA to reevaluate the exclusion, if a source provides new or additional information to EPA. EPA will evaluate the information on which we based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented.

This provision expressly requires Shell to report differing site conditions or assumptions used in the petition (*i.e.*, if the wastes begin to leach at higher concentrations than predicted) within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

It is EPA's position that we have the authority under RCRA and the Administrative Procedure Act (APA), 5 U.S.C. § 551 (1978) *et seq.*, to reopen a delisting decision. We may reopen a delisting decision when we receive new information that calls into question the assumptions underlying the delisting.

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

(2) Notification Requirements

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

B. What Happens if Shell Violates the Terms and Conditions?

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

V. Public Comments

A. How Can I as an Interested Party Submit Comments?

EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to Section Chief of the Corrective Action/Waste Minimization Section, Multimedia Planning and Permitting Division (6PD-C), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to Nicole Bealle, Waste Team Leader, Texas Commission on Environmental Quality, 5425 Polk Avenue Suite A, Houston, TX 77023 Identify your comments at the top with this regulatory docket number: ''F–04–TX–Shell.''

You should submit requests for a hearing to Ben Banipal, Section Chief of the Corrective Action/Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), U. S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in EPA's Freedom of Information Act Review Room from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

Under Executive Order 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the

overall costs and economic impact of 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, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), 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 this delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 13045

The Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This proposed rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to have ''meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under Section 12(d) if the National Technology Transfer and Advancement Act, EPA is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, *etc.*) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that EPA to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, EPA has no need to consider the use of voluntary consensus standards in developing this final rule.

XIII. Executive Order 13132 Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. Policies that have federalism implications is defined in the Executive Order to include regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

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

Dated: January 28, 2005.

Carl E. Edlund,

Director, Multimedia Planning and Permitting Division, Region 6.

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 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

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

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Shell Oil Company	Deer Park, TX	North Pond Sludge (EPA Hazardous Waste No. F037) generated one time at a volume of 15,000 cubic yards [insert publication date of the final rule] and disposed in a Subtitle D landfill. This is a one time exclusion and applies to 15,000 cubic yards of North Pond Sludge. (1) Reopener. (A) If, anytime after disposal of the delisted waste, Shell possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If Shell fails to submit the information described in paragraph (A) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA 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. (C) If the Division Director determines that the reported information does require EPA action, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (D) Following the receipt of information from the facility described in paragraph (C) or (if no information is presented under paragraph (C) the initial receipt of information described in paragraphs (A) or (B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (2) Notification Requirements: Shell must do the following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification, if they ship the delisted waste to a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.

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

Facility	Address			Waste description		
*	*	*	*	*	*	*

[FR Doc. 05–2454 Filed 2–8–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7870–3]

South Carolina: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: South Carolina has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to South Carolina. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by March 11, 2005.

ADDRESSES: Send written comments to Thornell Cheeks, South Carolina Authorization Coordinator, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–3104; (404) 562–8479. You may also e-mail your comments to *Cheeks.Thornell@epa.gov* or submit your comments at *www.regulation.gov*. You can examine copies of the materials submitted by South Carolina during normal business hours at the following locations: EPA Region 4 Library, Atlanta Federal Center, Library, 61 Forsyth Street, SW., Atlanta, Georgia 30303; (404) 562–8190; or South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, (803) 896–4174.

FOR FURTHER INFORMATION CONTACT: Thornell Cheeks, South Carolina Authorization Coordinator, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, GA 30303–3104; (404) 562–8479.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: January 18, 2004.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. 05–2456 Filed 2–8–05; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI80

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Northern Aplomado Falcons in New Mexico and Arizona and Availability of Draft Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability; notice of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reintroduce northern aplomado falcons (*Falco femoralis septentrionalis*) (falcon) into their historic habitat in southern New Mexico and Arizona with the purpose of establishing a viable resident population. If this proposed rule is finalized, we may release captive-raised falcons as early as the summer of 2005 and release up to 150 additional falcons annually in the summer and/or fall for 10 or more years thereafter until a self-sustaining population is established. We propose to designate this reintroduced population as a nonessential experimental population (NEP) according to section 10(j) of the Endangered Species Act of 1973 (Act), as amended. The geographic boundary of the proposed NEP includes all of New Mexico and Arizona. A draft environmental assessment (EA) has been prepared on this proposed action and is available for comment (see **ADDRESSES** section below).

This proposed action is part of a series of reintroductions and other recovery actions that the Service, Federal and State agencies, and other partners are conducting throughout the species' historical range. This proposed rule provides a plan for establishing the NEP and provides for limited allowable legal taking of the northern aplomado falcon within the defined NEP area.

DATES: We will consider all comments on this proposed rule received from interested parties by April 11, 2005. We will also hold one public hearing on this proposed rule; we have scheduled the hearing for March 15, 2005 at 7 p.m. (see **ADDRESSES** section of this proposed rule for the location).

ADDRESSES: You may submit comments and other information by any of the following methods (please *see* ''Public Comments Solicited'' section below for additional guidance):

- Mail or Hand Delivery: Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna Road NE., Albuquerque, New Mexico 87113.
- Fax: (505) 346–2542
- E-mail: *R2FWE_AL@fws.gov*.

You may obtain copies of the proposed rule and the draft EA from the above address or by calling (505) 346–2525. The proposed rule and draft EA are also available from our Web site at *http://ifw2es.fws.gov/Library/*.

The complete file for this proposed rule will be available for public inspection, by appointment, during normal business hours at the New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, New Mexico 87113.

The public hearing will be held March 15, 2005, at the Corbett Center Student Union, New Mexico State University, Las Cruces, New Mexico, 88003. The Corbett Center Student