

vicinity of Isle of Wight and Ocean City, MD.

(b) *Definitions.* As used in this section, *designated representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone must:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone number (757) 638-6641.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement Period:* This regulation will be in effect from October 22, 2009 through December 31, 2009.

Dated: October 22, 2009.

**M.S. Ogle,**

*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

[EPA-R05-RCRA-2009-0747; SW-FRL-8972-9]

### 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 sludges from conversion coating on aluminum

generated at the Sterling Heights Assembly Plant (SHAP), Sterling Heights, Michigan from the list of hazardous wastes. SHAP is owned by Old Carco LLC (formerly Chrysler LLC, formerly DaimlerChrysler) and operated by Chrysler Group LLC.

This 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.

**DATES:** This rule is effective on November 6, 2009.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-RCRA-2009-0747. The electronic docket contains all relevant documents created after this action was proposed as well as a selection of pertinent documents from the original paper docket for the proposed rule, Docket ID No. R5-MIECOS-01. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. All documents in the electronic docket are listed on the <http://www.regulations.gov> Web site. Publicly available materials from Docket ID No. EPA-R05-RCRA-2009-0747 are available either electronically through <http://www.regulations.gov> or in hard copy. Materials from the original paper docket, Docket ID No. R5-MIECOS-01, are also available in hard copy. You can view and copy materials from both dockets at the Records Center, 7th floor, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604. This facility is open from 8:30 am to 4:00 pm, Monday through Friday, excluding legal holidays. We recommend you telephone Todd Ramaly at (312) 353-9317 before visiting the Region 5 office.

#### FOR FURTHER INFORMATION CONTACT:

Todd Ramaly, Land and Chemicals Division, (Mail Code: LR-8J), EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604; telephone number: (312) 353-9317; fax number: (312) 353-4788; e-mail address: [ramaly.todd@epa.gov](mailto:ramaly.todd@epa.gov).

**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?
- C. What waste did SHAP petition to delist?
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- III. EPA's Evaluation of This Petition
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  - D. How does this action affect the states?
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## 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 United States Code (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 from the lists of hazardous wastes on a "generator specific" basis.

*C. What waste did SHAP petition to delist?*

SHAP petitioned to exclude wastewater treatment sludges resulting from a zinc phosphating conversion coating process on car and truck bodies, which have aluminum components. When treated, wastewater from conversion coating on aluminum results in a listed waste, F019. The wastewater from the phosphating process entering the wastewater treatment plant combines with wastewaters from other operations at the plant including cleaning and rinsing operations, electrocoating processes, vehicle leak testing, and floor scrubbing. Wastewaters include alkaline cleaners, surfactants, organic detergents, rinse conditioners from cleaning operations and overflows and rinse water from electrocoating. All sludge from the treatment of this wastewater is regulated as RCRA hazardous waste F019.

## II. The Expedited Process for Delisting

*A. Why was the expedited process developed for this waste?*

Automobile manufacturers are adding aluminum components to automobile and light truck bodies. When aluminum is conversion coated in a zinc phosphating process, the resulting wastewater treatment sludge must be managed as EPA hazardous waste F019. F019 wastes generated at other auto assembly plants using the same zinc phosphating and wastewater treatment processes have been shown 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 for EPA to be more efficient 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 that may be covered by an expedited delisting is 3,000 cubic yards. Delisting concentrations were also proposed for smaller quantities of 1,000 and 2,000 cubic yards per year.

## III. EPA's Evaluation of This Petition

*A. What information was submitted in support of this petition?*

SHAP submitted certification that its process was consistent with the process described in the MOU between Region 5 and MDEQ. See 67 FR 10341, March 7, 2002. One additional non-chromium sealer was identified by SHAP. Based on the provided Material Safety Data Sheet (MSDS), the additional sealer does not appear to add new hazardous constituents to the process. The facility also asserted that its waste does not meet the criteria for which F019 waste

was listed and there are no other factors that might cause the waste to be hazardous.

To support its exclusion demonstration, SHAP collected six samples representing waste generated over six discreet one-week periods beginning March 7 and ending April 17, 2007. SHAP stored six 55-gallon drums of the sludge representative of each week the waste was generated and collected composite and grab samples from each of the drums on April 18, 2007. Each sample was analyzed for: (1) Total analyses of 69 constituents of concern; (2) Toxicity Characteristic Leaching Procedure (TCLP), SW-846 Method 1311, analyses of 69 constituents of concern; (3) oil and grease; and (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. In addition, a determination was made that the waste was not ignitable, corrosive or reactive (see 40 CFR 261.21–261.23). Although the expedited delisting project originally required analysis of 70 constituents, analysis of acrylamide required extreme methods to achieve a detection level at the level of concern and no acrylamide was detected in any sample analyzed by the original facilities participating in the expedited delisting project. Thus, the Agency decided it would not be appropriate to require analysis for acrylamide. Also, SHAP analyzed for total sulfide and total cyanide which supported the narrative determination of non-reactivity required in 40 CFR 261.23. With the exception of the minor changes described above, all sampling and analyses 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 maximum concentrations of constituents detected in any sample of the waste (in milligrams per kilogram—mg/kg) and in a TCLP or OWEP analysis of that waste (in milligrams per liter—mg/L) are summarized in the following table. The data submitted included the appropriate quality assurance and quality control (QA/QC) information validated by a third party.

Constituent detected	Maximum observed concentra- tion		Maximum allowable concentration		GW (µg/L)
	Total (mg/kg)	TCLP (mg/L)	Total (mg/kg)	TCLP* (mg/L)	
Volatile Organic Compounds					
Acetone .....	2.7 J	0.38 J	NA	171	3,750

Constituent detected	Maximum observed concentration		Maximum allowable concentration		GW (µg/L)
	Total (mg/kg)	TCLP (mg/L)	Total (mg/kg)	TCLP* (mg/L)	
Acetonitrile .....	<2.5	0.0012 J	NA	29.3	643
Benzene .....	0.14 J	0.0095	NA	<sup>1</sup> 0.057	2.5
Butanol .....	<25	0.15 J	NA	171	3,758
Chloroform .....	<0.5	0.002 J	5,080	0.0583	1.35
Ethylbenzene .....	0.3 J	0.0093	NA	31.9	700
Formaldehyde .....	37	1.8	535	63	1,380
methyl ethyl ketone .....	<2.5	0.021 J	NA	200	22,545
methyl isobutyl ketone .....	<2.5	0.023 J	NA	137	3,000
methylene chloride .....	0.56 J	0.0056	NA	0.216	5
Styrene .....	<0.5	0.0074	NA	4.56	100
Toluene .....	2.0	0.12	NA	45.6	1,000
Xylene .....	3.0	0.059	NA	456	10,000

## Semivolatile Organic Compounds

bis(2-ethylhexyl)phthalate .....	8.5 J	0.00072 J	NA	0.0671	1.47
butyl benzyl phthalate .....	<7.5	0.00023 J	NA	69.6	1,448
2,4-dinitrotoluene .....	<1.5	0.00002	NA	0.0049	0.107
di-n-octyl phthalate .....	3.3 J	<0.002	NA	0.0839	1.296
Hexachlorobenzene .....	<0.013	0.00002	1.12	0.0000724	0.00168
Hexachlorobutadiene .....	<1.5	0.00002	212	0.0072	0.167
Naphthalene .....	0.36 J	0.0041	NA	<sup>2</sup> 0.00822	245
2-methylphenol .....	<1.5	0.002	NA	85.5	1,870
4-methylphenol .....	<1.5	0.12 J	NA	8.55	187
Pentachlorophenol .....	<1.5	0.002	1,960	<sup>3</sup> 0.00607	0.071
Pyridine .....	<3.0	0.00098 J	NA	1.71	37.575
2,4,5-trichlorophenol .....	0.21 J	<0.001	NA	68.6	1,503
2,4,6-trichlorophenol .....	0.68 J	<0.001	NA	0.207	4.8

## Metals

Antimony .....	<20	0.0028 J	NA	0.494	6
Arsenic .....	<50	0.0051 J	7,740	0.00224	4.87
Barium .....	77	0.11 J	NA	100	2,000
Beryllium .....	0.074 J	0.0006 J	NA	0.998	40
Cadmium .....	1.6	0.0074 J	NA	0.36	5
Chromium .....	76	0.024 J	NA	3.71	100
Cobalt .....	3.5	0.0068 J	NA	54	2,248
Lead .....	5.1	<0.16	NA	5.0	15
Mercury .....	0.0091	<0.0009 J	6.34	0.2	2
Nickel .....	840	8.5	NA	67.8	750
Selenium .....	<20	0.0028 J	NA	1.0	50
Silver .....	2.5	<0.06	NA	5.0	187
Thallium .....	<20	0.0003 J	<sup>4</sup> 247	0.211	2
Tin .....	250 J	6.1	NA	540	22,476
Vanadium .....	1.8 J	<0.05	NA	50.6	263
Zinc .....	5,500	5.6	NA	673	11,220

\* Or OWEP as applicable.

&lt; Not detected at the specified concentration.

NA Not applicable.

J Estimated.

<sup>1</sup> Proposed maximum concentration (0.109 mg/L) adjusted for updated toxicity data.<sup>2</sup> Proposed maximum concentration (11.2 mg/L) adjusted for inhalation carcinogenicity.<sup>3</sup> Proposed maximum concentration (0.00307 mg/L) adjusted due to exposure time correction.<sup>4</sup> Maximum total (247 mg/kg) replacing proposed "NA" due to bioaccumulation factor entry.*B. How did EPA evaluate the information submitted?*

EPA compared the analytical results submitted by SHAP to the maximum allowable concentrations set forth in the proposed rule (67 FR 10341, March 7, 2002) or as updated below. The maximum allowable concentrations for constituents detected in the waste or a TCLP extract of the waste are summarized in the table above, along

with the highest observed concentration. The table also includes the maximum allowable concentrations in groundwater at a potential receptor well (in micrograms per liter—µg/L), as evaluated by the Delisting Risk Assessment Software (DRAS). These concentrations 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.

Some of the maximum allowable concentrations have been updated to reflect new toxicity data or in response

to a technical correction in the modeling. Specifically, the maximum allowable leachate concentration for benzene was adjusted from 0.109 mg/L to 0.057 mg/L because the cancer slope factor for oral exposure was increased from 0.029 kg-day/mg to 0.055 kg-day/mg. The maximum allowable leachate concentration for naphthalene was adjusted from 11.2 mg/L to 0.00822 mg/L due to adding an inhalation calculation for carcinogenicity. The maximum allowable leachate concentration for pentachlorophenol was adjusted from 0.00307 mg/L to 0.00607 to reflect a correction to exposure time in the dermal pathway for children. A maximum allowable total concentration of 247 mg/kg for thallium was added after the database was adjusted to include bioaccumulation and ingestion of thallium in fish.

EPA also used DRAS 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 wastewater treatment plant sludge at SHAP met both of these criteria based on maximum observed values using DRAS version 2, the version in use when the SHAP waste samples were collected. A new version of DRAS (version 3) has been released with current toxicity data and extensive modeling updates. Although EPA did not base the evaluation of SHAP waste on the new DRAS methodology, a screening of the maximum observed concentrations with the new DRAS version showed that the aggregate hazard index and cancer risks remain below target levels.

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

##### A. Who submitted comments on the proposed rule?

The EPA received public comments on the proposed rule 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 and suggested expanding the project and revising the listing.

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

(1) *Comment:* EPA should revise the F019 listing to specify that wastewater treatment sludges from zinc

phosphating operations are 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:* On June 4, 2008 (73 FR 31756), the Agency amended the F019 listing to exempt the wastewater treatment sludge generated from zinc phosphating, when zinc phosphating is used, in the automobile assembly process and provided the waste is disposed in a landfill unit subject to certain design criteria. The amendment has yet to be adopted by the State of Michigan. The SHAP facility will likely be able to comply with either the amended listing or the requirements of this delisting.

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

*EPA Response:* 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 risk assessment model currently used by the Agency does not predict the risks from exposure to waste that are managed through recycling. EPA's conditional delisting policy is that in order to reduce the uncertainty caused by potential unrestricted use or management of delisted waste, delistings apply only to wastes managed in the type of unit (e.g., "a landfill") modeled in the delisting risk assessment. The Agency has no documented information to indicate a market exists for recovering the metals in F019 waste from motor vehicle manufacturers. See 73 FR 31756, 31762 (June 4, 2008). The Agency notes that the exclusion is conditioned upon certain disposal, sampling, and volume requirements. While the conditional exclusion being promulgated today does not eliminate the possibility of legitimate reuse of the sludge, the final rule does not address such use.

(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 concentrations that 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 concentration 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 is 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 final rule 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:* A missing space or tab in the table caused the error. The maximum allowable concentrations proposed for 2,000 cubic yards of waste should have been 115 mg/kg total and 0.00234 mg/L TCLP.

## V. Final Rule Granting This Petition

### A. What decision is EPA finalizing?

Today the EPA is finalizing an exclusion to conditionally delist an annual volume of 3,000 cubic yards of wastewater treatment plant sludges generated at SHAP from conversion coating on aluminum.

On March 7, 2002, EPA proposed to exclude or delist this wastewater treatment sludge 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 this waste should be excluded from hazardous waste control. After EPA proposed the exclusion for SHAP in 2002, the Agency promulgated the Methods Innovation Rule (MIR) (70 FR 34538, June 14, 2005). The MIR reformed RCRA-related testing and monitoring by restricting requirements to use the methods found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," also known as "SW-846," to those situations where the method is the only one capable of measuring the property (*i.e.*, it is used to measure a method-defined parameter). In addition, the MIR revised several conditional delistings to specifically mention method-defined parameters incorporated by reference at § 260.11 consistent with the Office of Federal Register's revised format for incorporation by reference. Therefore, EPA is including a specific reference to SW-846 Methods 1311, 1330A, and 9071B (method-defined parameters) for the generation of the leachate extract in the quarterly verification testing requirement for the SHAP delisting. SW-846 Method 1311 must be used for generation of the leachate extract used in the testing of the delisting levels if oil and grease comprise less than 1% of the waste. SW-846 Method 1330A must be used for generation of the leaching extract if oil and grease comprise 1% or more of the waste. SW-846 Method 9071B must be used for determination of oil and grease. SW-846 Methods 1311, 1330A, and 9071B are incorporated by reference in 40 CFR 260.11.

### B. What are the terms of this exclusion?

SHAP must dispose of the waste in a lined Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial solid waste. SHAP must obtain and analyze on a quarterly basis a representative sample of the waste. SHAP must verify that the concentrations of the constituents of concern do not exceed the allowable concentrations set forth in this

exclusion. The list of constituents for verification is a subset of those initially tested for and is based on the concentrations detected relative to the allowable concentrations. Two of the constituents selected for verification required extraordinary analytical methods in order to achieve detection limits at or below the delisting concentrations. Hexachlorobenzene and pentachlorophenol are not expected to be significant components of the petitioned waste, and standard analysis for verification will suffice.

This exclusion applies only to a maximum annual volume of 3,000 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 November 6, 2009. 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).

### 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 that 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. 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. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (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 (OMB). 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.*) because it applies to a particular facility only. 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. Because this rule will affect only a particular facility, this final rule does not have federalism implications. It 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, "Federalism", (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

Similarly, because this rule will affect only a particular facility, this final rule does not have tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used DRAS, which considers health and safety risks to children, to calculate the maximum allowable concentrations for this rule. 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. 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, "Civil Justice Reform", (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.

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: October 5, 2009.

**Margaret M. Guerriero,**

*Director, Land and Chemicals Division.*

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

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

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

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

■ 2. In Table 1 of Appendix IX of part 261 the following wastestream is 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
* Chrysler Group LLC at the Old Carco LLC Sterling Heights Assembly Plant.	* Sterling Heights, Michigan.	* Wastewater treatment sludges, F019, that are generated at Old Carco LLC's Sterling Heights Assembly Plant, (SHAP), Sterling Heights, Michigan by Chrysler Group LLC at a maximum annual rate of 3,000 cubic yards per year. The sludges must be disposed of in a lined landfill with leachate collection which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludges in accordance with 40 CFR part 258. The exclusion becomes effective as of November 6, 2009.  1. <i>Delisting Levels:</i> The concentrations in a leachate extract of the waste measured in any sample must not exceed the following levels (mg/L): arsenic—0.22; nickel—67.8; benzene—0.057; hexachlorobenzene—0.0000724; naphthalene—0.00822; and pentachlorophenol—0.00607.  2. <i>Quarterly Verification Testing:</i> To verify that the waste does not exceed the specified delisting levels, Chrysler Group LLC or Old Carco LLC must collect and analyze one representative sample of the waste on a quarterly basis. Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. SW-846 Method 1311 must be used for generation of the leachate extract used in the testing of the delisting levels if oil and grease comprise less than 1% of the waste. SW-846 Method 1330A must be used for generation of the leaching extract if oil and grease comprise 1% or more of the waste. SW-846 Method 9071B must be used for determination of oil and grease. SW-846 Methods 1311, 1330A, and 9071B are incorporated by reference in 40 CFR 260.11.  3. <i>Changes in Operating Conditions:</i> Chrysler Group LLC or Old Carco LLC 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 change significantly. Chrysler Group LLC or Old Carco LLC 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.  4. <i>Data Submittals:</i> Chrysler Group LLC or Old Carco LLC must submit the data obtained through verification testing or as required by other conditions of this rule to both U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604 and MDEQ, Waste and Hazardous Materials Division, Hazardous Waste 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. Chrysler Group LLC or Old Carco LLC must compile, summarize and maintain on site for a minimum of five years records of operating conditions and analytical data. Chrysler Group LLC or Old Carco LLC must make these records available for inspection. A signed copy of the certification statement in 40 CFR 260.22(i)(12) must accompany all data.  5. <i>Reopener Language</i> —(a) If, anytime after disposal of the delisted waste Chrysler Group LLC or Old Carco LLC 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 Chrysler Group LLC or Old Carco LLC must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data.

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

Facility	Address	Waste description
		(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.
		(c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will inform Chrysler Group LLC or Old Carco LLC 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 Chrysler Group LLC or Old Carco LLC with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. Chrysler Group LLC or Old Carco LLC shall have 30 days from the date of the Regional Administrator's notice to present the information.
		(d) If after 30 days Chrysler Group LLC or Old Carco LLC 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.
		(e) Maximum Allowable Groundwater Concentrations (µg/L): arsenic—4.87; nickel—750; benzene—2.5; hexachlorobenzene—0.00168; naphthalene—245; and pentachlorophenol—0.071.

\* \* \* \* \*

[FR Doc. E9-26837 Filed 11-5-09; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 721****[EPA-HQ-OPPT-2008-0251; FRL-8438-5]****RIN 2070-AB27****Significant New Use Rules on Certain Chemical Substances; Technical Amendment****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; technical amendment.

**SUMMARY:** In the **Federal Register** of November 5, 2008 (73 FR 65743) (FRL-8371-3), EPA issued direct final significant new use rules (SNURs) for 56 chemical substances which were the subject of premanufacture notices (PMNs). For the chemical substance identified as Oxetane, 3,3'-[oxybis(methylene)] bis[3-ethyl- (PMN P-03-471; CAS No. 18934-00-4), the citation at § 721.10095(a)(2)(ii) incorrectly identified one of the hazard communication program requirements. This action corrects the final regulation.

**DATES:** This final rule is effective November 6, 2009.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPPT-2008-0251. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some

information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

*For technical information contact:* Abeer Hashem, Chemical Control

Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-1117; e-mail address: [hashem.abeer@epa.gov](mailto:hashem.abeer@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Does this Action Apply to Me?**

The Agency included in the direct final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

**II. What Does this Technical Amendment Do?**

In the **Federal Register** of November 5, 2008 (73 FR 65743), EPA issued a direct final SNUR for the chemical substance identified as Oxetane, 3,3'-[oxybis(methylene)] bis[3-ethyl- (PMN P-03-471; CAS No. 18934-00-4) in accordance with the procedures at § 721.160(c)(3)(i). For this substance, the citation at § 721.10095(a)(2)(ii) incorrectly identified one of the hazard communication program requirements. This technical amendment corrects the hazard communication requirement under § 721.72 from (g)(1)(v) to (g)(1)(vi).

**III. Why is this Technical Amendment Issued as a Final Rule?**

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable,