

33 CFR 117.458(b), the draw of the US 90 (Danziger) bridge, mile 3.1, shall open on signal; except that, from 8 p.m. to 7 a.m. the draw shall open on signal if at least four hours notice is given, and the draw need not be opened from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. This deviation allows the draw span of the bridge to remain closed-to-navigation for 12 consecutive hours between 7 a.m. and 7 p.m. on intermittent days from January 16, 2009 through January 30, 2009. Uncontrollable variables such as inclement weather make it difficult to predict the exact dates that work can be conducted. Thus, the exact dates for the closures cannot be firmly scheduled. Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System as soon as information pertaining to the exact closure dates becomes available. During the deviation period seven new aerial cables between the two bridge towers will be installed, the wiring for the roadway and navigation lighting will be replaced, and the guide rollers and span locks will be replaced. The closure periods are necessary for the guide rollers and span locks to be replaced. During the non-closure times of the deviation period the bridge will remain in the open position for vessel traffic. Navigation on the waterway consists mainly of tugs with tows. As a result of coordination between the Coast Guard and the waterway users, it has been determined that this closure will not have a significant effect on these vessels. The Coast Guard will inform these users through the Local Notice to Mariners. Vessels will be allowed to pass underneath the bridge in the closed-to-navigation position. There are alternate routes available to vessel traffic. The bridge will not be able to open for emergencies.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 14, 2009.

David M. Frank,

Bridge Administrator.

[FR Doc. E9-30931 Filed 12-29-09; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2009-1059]

Drawbridge Operation Regulation; Sacramento River, Knights Landing, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Knights Landing Drawbridge across the Sacramento River, mile 90.1, at Knights Landing, CA. The deviation is necessary to allow the bridge owner, California Department of Transportation, to paint portions of the drawbridge. This deviation allows the bridge owner to operate the double leaf bascule bridge in single leaf mode during the deviation period.

DATES: This deviation is effective from 7 a.m. on December 30, 2009 to 7 a.m. on February 6, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-1059 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-1059 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, telephone (510) 437-3516, e-mail David.H.Sulouff@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION: California Department of Transportation requested a temporary change to the operation of the Knights Landing Drawbridge, mile 90.1, Sacramento River, at Knights Landing, CA. The draw opens on signal if at least 12 hours notice is given as

required by 33 CFR 117.189(b). This deviation allows the bridge owner to operate the double leaf bascule bridge in single leaf mode while securing one leaf of the drawspan in the closed-to-navigation position from 7 a.m. on December 11, 2009 to 7 a.m. on February 6, 2010.

The Knights Landing Drawbridge provides 3 feet vertical clearance above the 100 year floodplain when closed and unlimited vertical clearance in the open-to-navigation position. The drawbridge provides 199 feet horizontal clearance between bridge piers. The horizontal clearance provided by the drawbridge during single leaf operation is reduced by approximately 100 feet between the tip of the closed bascule and the opposite pier face. The vertical clearance will be unaffected.

No alternative routes are available for navigation. This temporary deviation has been coordinated with all known waterway users. No objections were received concerning the temporary deviation.

Vessels that can safely transit the bridge, while in the closed-to-navigation position, may continue to do so at any time.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 14, 2009.

J.R. Castillo,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. E9-30918 Filed 12-29-09; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA-R05-RCRA-2009-0908; SW-FRL-9096-7]

Hazardous Waste Management System; Exclusion for Identifying and Listing Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA (also, "the Agency" or "we" in this preamble) is taking direct final action to grant a petition submitted by Professional Plating, Inc. (PPI), in Brillion, Wisconsin to exclude (or "delist") up to 140 cubic yards of sludge per year generated by its wastewater treatment plant from the list of hazardous wastes.

The Agency has decided to grant the petition based on an evaluation of waste-specific information provided by PPI. This decision conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

We conclude that PPI's petitioned waste is nonhazardous with respect to the original listing criteria and that there are no other factors which would cause the waste to be hazardous when disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste.

DATES: This rule is effective on March 1, 2010 without further notice, unless EPA receives adverse comment by January 29, 2010. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-RCRA-2009-0908 by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

- *Mail*: Todd Ramaly, Land and Chemicals Division, (Mail Code: LR-8J), EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604.

- *Hand Delivery*: Todd Ramaly, Land and Chemicals Division, EPA Region 5, 8th Floor, 77 W. Jackson Blvd., Chicago, IL 60604. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please contact Todd Ramaly at (312) 353-9317.

Instructions: Direct your comments to Docket ID No. EPA-R05-RCRA-2009-0908. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://*

www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information may not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Records Center, EPA Region 5, 7th Floor, 77 W. Jackson Blvd., Chicago, IL 60604. The EPA Record Center is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. We recommend you telephone Todd Ramaly at (312) 353-9317 before visiting the EPA Record Center. The public may copy material from the regulatory docket at \$0.15 per page.

FOR FURTHER INFORMATION CONTACT: Todd Ramaly, Land and Chemicals Division, Mail Code LR-8J, Environmental Protection Agency, EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604; telephone number: (312) 353-9317; fax number: (312) 582-5190; e-mail address: *ramaly.todd@epa.gov*.

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

I. Overview Information

II. Background

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

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- How Does PPI Generate the Waste?
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- What Were the Results of PPI's Analysis of the Waste?
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E. What Happens If PPI Fails To Meet the Conditions of the Exclusion?

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V. How Would This Action Affect States?

VI. Statutory and Executive Order Reviews

I. Overview Information

The U.S. Environmental Protection Agency (EPA) is granting a petition submitted for the Professional Plating, Incorporated (PPI) facility located in Brillion, Wisconsin to exclude or delist an annual volume of 140 cubic yards of F019 wastewater treatment sludges from the lists of hazardous waste set forth in Title 40 of the Code of Federal Regulations (40 CFR) 261.32 and 261.33. PPI claims that the petitioned waste does not meet the criteria for which EPA listed it, and that there are no additional constituents or factors which could cause the waste to be hazardous.

Based on our review described in section III, we agree with the petitioner that the waste is nonhazardous. We reviewed the description of the process which generates the waste and the analytical data submitted by PPI. We believe that the petitioned waste does not meet the criteria for which the waste was listed, and that there are no other factors which might cause the waste to be hazardous.

II. Background

A. What Is a Listed Waste?

The 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 the Resource Conservation and Recovery Act (RCRA). The EPA has amended this list several times and published it in 40 CFR 261.31 and 261.32.

We list 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 (3).

B. What Is a Delisting Petition?

Individual waste streams may vary depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be.

A procedure to exclude or delist a waste is provided in 40 CFR 260.20 and 260.22 which allows a person, or a facility to submit a petition to the EPA or to an authorized State, demonstrating that a specific waste from a particular generating facility is not hazardous.

In a delisting petition, the petitioner must show that a waste does not meet any of the criteria for listed wastes in 40 CFR 261.11 and that the waste does not exhibit any of the hazardous waste characteristics of ignitability, reactivity, corrosivity, or toxicity. The petitioner must present sufficient information for us to decide whether any factors in addition to those for which the waste was listed warrant retaining it as a hazardous waste. (See § 260.22, 42 U.S.C. 6921(f) and the background documents for the listed wastes.)

If a delisting petition is granted, the generator remains obligated under RCRA to confirm that the waste remains nonhazardous.

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

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See sec. 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). We evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (3).

Besides considering the criteria in 40 CFR 260.22(a), §§ 261.11(a)(2) and (3), 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 these additional factors could cause the waste to be hazardous.

Our decision to delist waste from PPI's facility is based on our evaluation of the waste for factors or criteria which could cause the waste to be hazardous. These factors included: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the constituents to migrate and to bioaccumulate; (5) the persistence in the

environment of any constituents once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

EPA must also consider as hazardous wastes mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. Mixture and derived-from wastes are also eligible for exclusion but remain hazardous until excluded.

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

A. What Waste Did PPI Petition EPA To Delist?

On June 23, 2009, PPI petitioned EPA to exclude an annual volume of 140 cubic yards of F019 wastewater treatment sludges generated at its facility in Brillion, Wisconsin from the list of hazardous wastes contained in 40 CFR 261.31. F019 is defined in § 261.32 as "Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process." PPI claims that the petitioned waste does not meet the criteria for which F019 was listed and that there are no other factors which would cause the waste to be hazardous.

B. How Does PPI Generate the Waste?

The F019 is generated from the rinse waters and overflows of two zinc phosphating lines used for conversion coating aluminum parts. The aluminum parts are spray cleaned, immersion cleaned, and cleaned with a phosphoric acid prior to conversion coating. The rinse waters from these steps do not contribute to the petitioned waste. Rinse waters and overflows from the zinc phosphating step and the remaining steps in the treatment line are the only wastewaters contributing to the petitioned waste. Zinc phosphating includes several acids and nickel- and manganese-compounds. The parts are sealed with compounds containing fluorine, zirconium, and ammonium hydroxide. Lastly, epoxy-based and acrylic paint films are cathodically electrodeposited on the aluminum parts.

The combined rinse waters and overflows from these process steps go to an on-site wastewater treatment plant dedicated to the F019 wastewater. The pH of the wastewater is adjusted to 9.0 standard units with either sulfuric acid or sodium hydroxide. Coagulants

containing polymers, calcium chloride, and potassium chloride are added to assist in precipitating wastewater contaminants. A polyacrylamide anionic flocculant is added to gather the coagulum into clumps large enough to settle at the bottom of a clarifier. The clarified water is discharged to the sewer and the settled sludge is pumped to a sludge thickening tank and then through a plate and frame filter press.

Process vessels for both zinc phosphating lines (epoxy-coating and acrylic-coating) are periodically cleaned out with the resulting sludges also pressed by the plate and frame filter press dedicated to the F019 water treatment process.

C. How Did PPI Sample and Analyze the Waste?

Six sludge samples were collected each on a monthly basis from April through October 2008. Sludge accumulated in a roll-off box and was sampled representing sludge collected over a period of approximately 4 weeks each. Two sludge samples representing clean-out of the epoxy-coating line were collected on August 25 and on October 20, 2008 in order to characterize sludge generated from clean-out activities. Sludge generated from the clean-out of the acrylic-coating line was sampled on August 11, 2008. PPI collected one composite and one grab sample of sludge from each roll-off box during each sampling event. Composite samples consisted of four individual full-depth core grab samples mixed together to form one sample.

PPI analyzed all composite samples using the following methodology: (1) Total constituent analysis and Toxicity Characteristic Leaching Procedure (TCLP) for metals in Appendix IX of 40 CFR part 264, (*Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*—SW-846—Methods 6010B and 1311¹); (2) total constituent and TCLP analysis for sulfide (SW-846 Methods 9030A and 1311); (3) total constituent and TCLP analysis for cyanide (SW-846 Methods 9010 and 1311²); (4) total constituent and TCLP analysis for fluoride (SW-846 Methods 9056 and 1311); (5) flashpoint (SW-846 Method 1010); (6) pH (SW-846 Method 9040); and (7) oil & grease (SW-846 Method 9070).

PPI screened the first two of the six monthly composite samples and one each of the composite samples of clean-out sludges for: (1) Total constituent and

¹ Method 7471 was substituted for Method 6010 for mercury.

² Deionized water was used as the extraction fluid instead of the fluid specified in the method.

TCLP analysis for 120 semi-volatile organic compounds (SW-846 Methods 8270 and 1311); (2) total constituent and TCLP analysis for formaldehyde (SW-846 Methods 8315 and 1311); (3) total constituent and TCLP analysis for acrylamide (SW-846 Methods 8032 and 1311); (4) TCLP analysis for metals in Appendix IX of 40 CFR part 264, substituting the TCLP extraction fluid with deionized water in order to assess leachability under pH-neutral conditions (SW-846 Methods 6010B and 1311); and (5) TCLP analysis for metals in Appendix IX of 40 CFR part 264, substituting the TCLP extraction fluid with a buffered alkaline solution in order to assess leachability under alkaline conditions (SW-846 Methods 6010B and 1311). PPI analyzed two of the six monthly full-depth core grab samples and one each of the grab

samples of clean-out sludges for total constituent and TCLP analysis for volatile organic compounds (VOCs) (SW-846 Method 8260 and SW-846 Method 1311). This screening analysis was performed to check for unexpected organic compounds in the waste as well as identify pH-dependence of metals in leachate in the event landfill leachates with neutral or alkaline pH result in higher concentrations. Detections of organic compounds were insignificant and the remainder of the sludge samples were not analyzed for these parameters.

Metals of concern were generally preferentially leached by the acidic TCLP test. The exception, barium, leached more in some samples under alkaline conditions. However, detections of all metals, including barium, were so far below concentrations of concern that the

remainder of the samples were not tested at neutral and alkaline leaching conditions.

D. What Were the Results of PPI's Analysis of the Waste?

The table below presents the maximum observed total and leachate concentrations for all detected constituents for which maximum allowable total and/or TCLP concentration were available. Total concentrations are expressed in milligrams per kilogram (mg/kg). Leachate concentrations are expressed in milligrams per liter (mg/L). The table also includes the results of analysis for the constituents for which F019 was listed, chromium and cyanide. PPI submitted a signed statement certifying accuracy and responsibility of the results. See 40 CFR 260.22(i)(12).

Constituent detected	Maximum observed concentration		Maximum allowable concentration		GW (mg/L)
	Total (mg/kg)	TCLP (mg/L)	Total (mg/kg)	TCLP (mg/L)	
Volatile Organic Compounds					
acetone	0.33	^v 0.113	NA	26,300	3.38
acrolein	0.277	<0.5	6,850	NA	0.000504
benzene	0.00142 ¹	<0.05	224,000	¹ 0.05	0.00133
bromomethane	1.16	<0.05	247,000	NA	0.0262
butanol	0.510 ¹²	<25	NA	2,920	3.75
carbon disulfide	<12	^{iv} 0.0039	NA	2,850	3.17
chloromethane	0.05 ¹	<0.05	NA	306	0.393
ethylbenzene	<1.2	0.0034	NA	549	0.7
formaldehyde	86.1	<10.0	4,150	631	0.811
methyl ethyl ketone	0.0365 ¹	0.0820	NA	200	22.5
methylene chloride	<2.4	0.028	882,000	4.0	0.005
methyl isobutyl ketone	0.644	<0.5	NA	2,340	3.0
trimethylbenzene, 1,2,4-	0.000652 ¹	¹ 0.00530	NA	34.2	0.0448
xylenes	<2.4	¹ 0.0116	NA	484	0.617
Semivolatile Organic Compounds					
benzyl alcohol	27.7	0.036	NA	14,600	18.8
bis(2-ethylhexyl)phthalate	2.82	<0.02	NA	NA	0.00321
Metals					
barium	132	0.26	NA	¹ 100	2.0
boron	114	1.24	NA	6,570	7.5
chromium	153	<1.25	³ 22,700	¹⁵ 5.0	0.1
cobalt	333	<1.25	30,300	10.4	0.0113
copper	422	0.49	NA	1,180	1.3
lead	54.9	<1.25	NA	¹⁵ 5.0	0.015
manganese	15,100	25.2	NA	815	0.9
mercury	0.0182	<0.0002	98.1	¹ 0.2	0.00145
nickel	7,380	37.1	NA	638	0.75
strontium	10,200	^c 5.13	NA	19,700	22.5
zinc	89,400	30.2	NA	10,300	11.3
Miscellaneous Parameters					
cyanide	16.3	<0.05	NA	156	200
sulfide	85.1	NR	NA	NA	NA
fluoride	740	22.6	NA	1,980	2,250
pH (corrosivity)	5.9–8.11		2 < pH < 12.5		NA
flashpoint (ignitability)	> 200 °F		< 140 °F		NA

These levels represent the highest concentration of each constituent found in any sample and do not necessarily represent the concentrations found in a single sample.

¹—Based on the toxicity characteristic in 40 CFR 261 subpart C.

²—Includes both n-butanol and t-butanol.

³—Based on a mixture at a ratio of 1:6 hexavalent to trivalent chromium.

⁴—Present in blank.

NA—Maximum allowable not calculated or much higher than expected to be present.

<—Denotes that the constituent was not detected at the quantitation level.

†—Estimated value, below practicable quantitation limit.

⊖—Calibration check verification or quality control sample exceeded upper control limit.

NR—Analysis not run.

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

For this delisting determination, we assumed that the waste would be disposed in a Subtitle D landfill and we considered transport of waste constituents through ground water, surface water and air. We evaluated PPI's petitioned waste using the Agency's Delisting Risk Assessment Software (DRAS) to predict the concentration of hazardous constituents that might be released from the petitioned waste and to determine if the waste would pose a threat. To predict the potential for release to groundwater from landfilled wastes and subsequent routes of exposure to a receptor, the DRAS uses dilution attenuation factors (DAFs) derived from EPA's Composite Model for leachate migration with Transformation Products (CMTP). From a release to groundwater, the DRAS considers routes of exposure to a human receptor of ingestion of contaminated groundwater, inhalation from groundwater while showering and dermal contact from groundwater while bathing.

From a release to surface water by erosion of waste from an open landfill into storm water run-off, DRAS evaluates the exposure to a human receptor by fish ingestion and ingestion of drinking water. From a release of waste particles and volatile emissions to air from the surface of an open landfill, DRAS considers routes of exposure of inhalation of volatile constituents, inhalation of particles, and air deposition of particles on residential soil and subsequent ingestion of the contaminated soil by a child.

For a detailed description of the DRAS program and revisions see the Delisting Technical Support Document, DRAS version 3.0 Update Summary, and DRAS version 3.0 User's Guide available in the docket for today's action.

At a target cancer risk of 1×10^{-6} and a target hazard quotient of one, the DRAS program determined maximum allowable concentrations for each constituent in both the waste and the leachate at an annual waste volume of 140 cubic yards. We used the maximum estimated annual waste volume and the maximum reported total and leachate

concentrations as inputs for DRAS. If, using an appropriate analytical method, a constituent was not detected in any sample nor in the leachate of any sample, it was considered not to be present in the waste.

F. What Did EPA Conclude About PPI's Waste?

The maximum reported leachate concentrations and the maximum reported total concentrations of the hazardous constituents found in this waste are presented in the table above. The table also presents the maximum allowable concentrations. The concentrations of all constituents in both the waste and the leachate are below the allowable levels of concern calculated by the DRAS program at the target risk levels. We therefore conclude that PPI's wastewater treatment sludge is not a substantial or potential hazard to human health and the environment when disposed of in a Subtitle D landfill. Once the exclusion becomes effective, PPI must dispose of this waste in a Subtitle D landfill permitted or licensed by a State.

G. Why Is EPA Using a Direct Final Rule?

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. The exclusion applies to a very small waste stream generated at a single facility and rigorous chemical analysis of the waste indicated that concentrations of chemicals and elements in the waste were far below levels of concern. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. Any parties interested in commenting must do so at this time.

IV. Conditions for Exclusion

A. How Will PPI Manage the Waste If It Is Delisted?

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

B. What Are the Maximum Allowable Concentrations of Hazardous Constituents in the Waste?

The following parameters were selected for ongoing verification because of their prevalence in the waste relative to the maximum allowable concentrations. Concentrations measured in the TCLP (or OWEP, where appropriate) extract of the waste of these constituents must not exceed the following concentrations (mg/l): chromium—5, cobalt—10.4; manganese—815; and nickel—638.

C. How Frequently Must PPI Test the Waste?

PPI must analyze a representative sample of the wastewater treatment sludges on an annual basis to demonstrate that leachate concentrations do not exceed the levels of concern in Section IV.B. above. PPI must use methods with appropriate detection levels with appropriate quality control procedures. 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.

D. What Data Must PPI Submit?

PPI must submit the data obtained through annual verification testing to U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, upon the anniversary of the effective date of this exclusion. PPI must compile, summarize, and maintain on site records of operating conditions and analytical data. PPI must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

E. What Happens If PPI Fails To Meet the Conditions of the Exclusion?

If PPI violates the terms and conditions established in the exclusion,

the Agency may start procedures to withdraw the exclusion.

If any testing of the waste does not meet the maximum allowable concentrations described in section IV.B. above or other data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicates that any constituent is at a level in the leachate higher than the specified maximum allowable concentration, or is in groundwater at a concentration higher than the groundwater concentrations used in the risk evaluation, PPI must notify the Agency within 10 days of first possessing or being made aware of the data. Maximum allowable groundwater concentrations (mg/L) are as follows: chromium—0.1; cobalt—0.0113; manganese—0.9; and nickel—0.75.

The exclusion will be suspended and the waste managed as hazardous until PPI has received written approval from the Agency to continue the exclusion. PPI may provide sampling results which support the continuation of the delisting exclusion.

The EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. sec. 551 (1978) *et seq.* to reopen a delisting decision if we receive new information indicating that the conditions of this exclusion have been violated, or are otherwise not being met.

F. What Must PPI Do If the Process Changes?

If PPI significantly changes the manufacturing or treatment process or the chemicals used in the manufacturing or treatment process, PPI may not handle the wastewater treatment sludge generated from the new process under this exclusion until it has demonstrated to the EPA that the waste meets the levels set in section IV.B. and that no new hazardous constituents listed in Appendix VIII of 40 CFR part 261 have been introduced. PPI must manage wastes generated after the process change as hazardous waste until PPI has received written notice from EPA that the delisting is reinstated.

V. How Would This Action Affect the States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This exclusion may not be effective in States which have received our authorization to make their own delisting decisions.

EPA allows States to impose their own non-RCRA regulatory requirements that are more stringent than EPA's,

under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. We urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some States to administer a delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If PPI manages the waste in any State with delisting authorization, PPI must obtain delisting authorization from that State before it can manage the waste as nonhazardous in that 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

Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

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

Dated: November 9, 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. Table 1 of Appendix IX to Part 261 is amended by adding the following waste stream in alphabetical order by facility to read as follows:

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

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* Professional Plating, Incorporated.	* Brillion, Wisconsin	* Wastewater treatment sludges, F019, which are generated at the Professional Plating, Incorporated (PPI) Brillion facility at a maximum annual rate of 140 cubic yards per year. The sludge must be disposed of in a Subtitle D landfill which is licensed, permitted, or otherwise authorized by a State to accept the delisted wastewater treatment sludge. The exclusion becomes effective as of March 1, 2010. 1. <i>Delisting Levels:</i> The constituent concentrations measured in a leachate extract may not exceed the following levels (mg/L): chromium—5, cobalt—10.4; manganese—815; and nickel—638. 2. <i>Annual Verification Testing:</i> To verify that the waste does not exceed the specified delisting levels, PPI must collect and analyze, annually, one waste sample for the constituents in Section 1. using methods with appropriate detection levels and elements of quality control. 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> PPI must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process significantly change. PPI must handle wastes generated after the process change as hazardous until it has demonstrated that the wastes continue to meet the maximum allowable concentrations in Section 1. 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>Reopener Language—</i> (a) If, anytime after disposal of the delisted waste, PPI 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 concentration in the waste or waste leachate higher than the maximum allowable concentrations in Section 1. above or is in the groundwater at a concentration higher than the maximum allowable groundwater concentrations in Paragraph (e), then PPI must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (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 notify the facility 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 PPI with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. PPI shall have 30 days from the date of the Regional Administrator's notice to present the information. (d) If after 30 days PPI 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 (mg/L) are as follows: chromium—0.1; cobalt—0.0113; manganese—0.9; and nickel—0.75.
*	*	*

[FR Doc. E9-30994 Filed 12-29-09; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09-2594; MB Docket No. 09-196; RM-11578]

Television Broadcasting Services; High Point, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Community Television of North Carolina, LLC, the licensee of WGHP(TV), channel 8, High Point, North Carolina, requesting the substitution of channel 35 for channel 8 at High Point.

DATES: This rule is effective December 30, 2009.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 09-196, adopted December 14, 2009, and released December 15, 2009. The full

text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory

Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under North Carolina, is amended by adding channel 35 and removing channel 8 at High Point.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9-31017 Filed 12-29-09; 8:45 am]

BILLING CODE 6712-01-P