

Dated: August 9, 2018.

Frank Brogan,

Assistant Secretary for Elementary and Secondary Education.

For reasons discussed in the preamble, and under the authority at 20 U.S.C. 3474, 20 U.S.C. 1221e-3, Public Law 109-270, and Public Law 114-95, the Secretary amends Chapter II of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

- 1. The authority citation for part 200 is revised to read as follows:

Authority: 20 U.S.C. 6301 through 6576, unless otherwise noted.

§ 200.7 [Removed and Reserved]

- 2. Remove and reserve § 200.7.

§ 200.12 [Removed and Reserved]

- 3. Remove the center heading “State Accountability System” and remove and reserve § 200.12.

§§ 200.13 through 200.22 [Removed and Reserved]

- 4. Remove the center heading “Adequate Yearly Progress (AYP)” and remove and reserve §§ 200.13 through 200.22.

§§ 200.27 and 200.28 [Removed and Reserved]

- 5. Remove and reserve §§ 200.27 and 200.28.

§§ 200.30 through 200.53 [Removed and Reserved]

- 6. Remove the center heading “LEA and School Improvement” and remove and reserve §§ 200.30 through 200.53.
- 7. Revise the center heading “Qualifications of Teachers and Paraprofessionals” to read “Qualifications of Paraprofessionals”.

§§ 200.55 through 200.57 [Removed and Reserved]

- 8. Remove and reserve § 200.57.

§§ 200.59 and 200.60 [Removed and Reserved]

- 9. Remove and reserve §§ 200.59 and 200.60.

§ 200.80 [Removed and Reserved]

- 10. Remove and reserve § 200.80.

§ 200.81 [Amended]

- 11. In § 200.81, remove and reserve paragraphs (d), (f), (g), and (h).

§ 200.89 [Amended]

- 12. In § 200.89, amend the section heading by removing the words “MEP allocations;” and by removing and reserving paragraph (a).

PART 237—[REMOVED AND RESERVED]

- 13. Remove and reserve part 237.

PART 299—GENERAL PROVISIONS

- 14. The authority citation for part 299 continues to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1), 6511(a), and 7373(b), unless otherwise noted.

Subpart B—[Removed and Reserved]

- 15. Remove and reserve subpart B, consisting of § 299.3.

[FR Doc. 2018-17480 Filed 8-21-18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA-R06-RCRA-2017-0556; FRL-9980-07—Region 6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting a petition submitted by Blanchard Refining Company LLC—(Blanchard) to exclude (or delist) the residual solids generated from the reclamation of oil bearing hazardous secondary materials (OBSMs) on-site at Blanchard’s Galveston Bay Refinery (GBR), located in Texas City, Texas from the lists of hazardous wastes. EPA used the Delisting Risk Assessment Software (DRAS) Version 3.0.35 in the evaluation of the impact of the petitioned waste on human health and the environment. The residual solids are listed as F037 (primary oil/water/solids separation sludge) when they are reclaimed from the OBSMs. After careful analysis and evaluation of comments submitted by the public, the EPA has concluded that the petitioned wastes are not hazardous waste when disposed of in Subtitle D landfills. This exclusion applies to the residuals solids generated at Blanchard’s Galveston Bay Refinery (GBR), located in Texas City, Texas facility. Accordingly, this final rule excludes the petitioned waste from

the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in Subtitle D landfills but imposes testing conditions to ensure that the future-generated wastes remain qualified for delisting.

DATES: Effective August 22, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-RCRA-2017-0556. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., 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 electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For technical information regarding the Blanchard Refinery petition, contact Michelle Peace at 214-665-7430 or by email at peace.michelle@epa.gov.

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

- I. Overview Information
 - A. What action is EPA finalizing?
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- III. EPA’s Evaluation of the Waste Data
 - A. What waste and how much did Blanchard petition EPA to delist?
 - B. How did Blanchard sample and analyze the waste data in this petition?
- IV. Public Comments Received on the proposed exclusion
 - A. Who submitted comments on the proposed rule?
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I. Overview Information

A. What action is EPA finalizing?

The EPA is finalizing:
(1) the decision to grant GBR’s petition to have its surface impoundment basin solids excluded, or delisted, from the definition of a hazardous waste, subject to certain continued verification and monitoring conditions; and

(2) to use the Delisting Risk Assessment Software to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency used this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

After evaluating the petition, EPA proposed rule, on October 31, 2017, to exclude GBR's residuals from the treatment of OBSM waste from the lists of hazardous wastes under §§ 261.31 and 261.32. The comments received on this rulemaking will be addressed as part of this decision.

B. Why is EPA approving this delisting?

GBR's petition requests an exclusion from the F037 waste listing pursuant to 40 CFR 260.20 and 260.22. GBR does not believe that the petitioned waste meets the criteria for which EPA listed it. GBR 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) through (4) (hereinafter, all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (3). Based on this review, EPA agrees with the petitioner that the waste is non-hazardous 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 GBR is based on the information submitted in support of this rule, including descriptions of the wastes and

analytical data from the Texas City, Texas facility.

C. What are the limits of this exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in Table 1 of part 261, Appendix IX, and the conditions contained herein are satisfied. The exclusion applies to 20,000 cubic yards of residual solids.

D. How will Blanchard Refining manage the waste if it is delisted?

Storage containers with OBSM residual solids will be transported to an authorized solid waste landfill (e.g., RCRA Subtitle D landfill, commercial/ industrial solid waste landfill, etc.) for disposal.

E. When is the final delisting exclusion effective?

This rule is effective August 22, 2018. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How does this final rule 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 two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received our authorization to make their own delisting decisions.

Here are the details: We allow 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. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some States (for example, Louisiana, Georgia,

Illinois) 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 Blanchard transports the petitioned waste to or manages the waste in any State with delisting authorization, Blanchard must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What is a delisting?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude from the list of hazardous wastes, wastes the generator does not consider hazardous under RCRA.

B. What regulations allow facilities to delist a waste?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273 of Title 40 of the Code of Federal Regulations. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

C. What information must the generator supply?

Petitioners must provide sufficient information to EPA to allow the EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

III. EPA's Evaluation of the Waste Data

A. What waste and how much did Blanchard petition EPA to delist?

In June 2017, Blanchard petitioned EPA to exclude from the lists of hazardous wastes contained in §§ 261.31 and 261.32, residual solids (F037) generated during reclamation activities conducted at its GBR facility located in Texas City, Texas. The waste falls under the classification of listed

waste pursuant to §§ 261.31 and 261.32. Specifically, in its petition, Blanchard requested that EPA grant a conditional exclusion for the annual generation volume of 20,000 cubic yards of F037 residual solids.

The 40 CFR part 261 Appendix VII hazardous constituents which are the basis for listing can be found in Table 1.

TABLE 1—EPA WASTE CODES FOR OBSM RESIDUAL SOLIDS AND THE BASIS FOR LISTING

Waste code	Basis for listing
F037	Benzene, benzo(a)pyrene, chrysene, lead, chromium.

B. How did Blanchard sample and analyze the waste data in this petition?

To support its petition, Blanchard conducted individual sampling events on residual solids resulting from the reclamation of Blanchard's three (3) identified categories of OBSMs. Each separate sampling event consisted of four (4) composite samples taken during

a 24-hour period of representative operation. Each composite sample was comprised of individual grab samples (*i.e.*, a minimum of four), obtained during separate six (6) hour periods of the 24-hour sampling event. Compositing of samples and performance of quality control requirements were performed by Blanchard's selected analytical laboratory, TestAmerica Laboratories, Inc. ("TestAmerica"). Blanchard submitted: Historical information on waste generation and management practices; and analytical results from twelve samples for total and TCLP concentrations of constituents of concern (COC)s.

TABLE 2—ANALYTICAL RESULTS/MAXIMUM ALLOWABLE DELISTING CONCENTRATION RESIDUAL SOLIDS BLANCHARD REFINING COMPANY LLC, TEXAS CITY, TEXAS

Constituent	Maximum total concentration (mg/kg)	Maximum TCLP concentration (mg/L)	Maximum TCLP delisting level (mg/L)
Acetone	0.185	0.226	520.0
Antimony	53.7	0.226	0.599
Anthracene	0.488	<0.0125	25.993
Arsenic	222.0	0.277	0.424
Barium	950.0	0.221	36.0
Benzene	1.25	<0.00280	0.077
Benzo (a) anthracene	0.512	<0.0106	0.070
Benzo(a) pyrene	0.0298	<0.0123	2.634
Benzo (b) flouranthene	0.286	<0.0125	22.43
Beryllium	8.61	0.235	1.764
Cadmium	0.441	<0.00280	0.217
Chromium	120.0	0.0550	3.06
Chrysene	0.272	<0.0103	7.006
Cobalt	242.0	0.818	0.902
Copper	639.0	<0.0813	21.527
Cyanide	99.4	<0.0702	3.08
Diethyl Phthalate	0.493	<0.0130	990
Flouranthrene	0.405	<0.0122	2.462
Flourene	0.420	<0.00710	4.91
Lead	963.0	<0.0219	0.984
2, methylphenol	1.31	<0.00710	28.952
3,4 methylphenol	2.18	<0.00675	28.952
Methylene Chloride	0.827	0.00756	0.0790
Methyl Naphthalene	0.365	<0.0129	0.727
Mercury	0.0403	0.000104	0.068
Naphthalene	0.874	<0.0110	0.0327
Nickel	29,000	<0.00800	13.5
Phenanthrene	2.16	<0.0112	10.626
Phenol	6.55	0.00813	173
Pyrene	1.76	<0.0150	4.446
Pyridine	0.197	<0.0108	0.5775
Selenium	13.5	0.0530	1.0
Silver	1.86	<0.0129	5.0
Toluene	0.670	<0.00275	15.1
Tin	13.8	<0.00590	387
Thallium	110.0	0.0220	0.0366
Vanadium	75, 400	0.215	4.6436
Zinc	1920.0	0.487	197

Notes: These levels represent the highest constituent concentration found in any one sample and does not necessarily represent the specific level found in one sample.

IV. Public Comments Received on the Proposed Exclusion

A. Who submitted comments on the proposed rule?

The EPA received fifteen anonymous public comments on the October 31, 2017, proposed rule via regulations.gov. There were ten comments which had no bearing on the delisting of hazardous waste for Blanchard Refining. Two comments: EPA-R06-RCRA-2017-0556-0003 and EPA-R06-RCRA-2017-0556-0005 were submitted in favor of the issuance of the petition. Comments and responses to the three adverse comments (EPA-R06-RCRA-2017-0556-0009) are addressed below.

B. Comments and Responses

General Comment: EPA Region 6 received ten comments through regulations.gov to which no responses are required. These comments are numbered: EPA-R06-RCRA-2017-0556-0002, EPA-R06-RCRA-2017-0556-0004, EPA-R06-RCRA-2017-0556-0006, EPA-R06-RCRA-2017-0556-0007, EPA-R06-RCRA-2017-0556-0009, EPA-R06-RCRA-2017-0556-0010, EPA-R06-RCRA-2017-0556-0011, EPA-R06-RCRA-2017-0556-0012, EPA-R06-RCRA-2017-0556-0013, and EPA-R06-RCRA-2017-0556-0015 in this rulemaking docket. These commenters expressed concerns regarding wildfires, wind turbines, climate change, car lithium batteries, and opinions on Lead leaching into drinking water which are not appropriately addressed as part of the Hazardous Waste delisting program. Some comments reflect differences in opinions or preferred outcomes, to which an agency response is not appropriate. The EPA acknowledges the submission of these comments but notes the comments are out of the scope of the current final action regarding the delisting of hazardous waste residuals generated at Blanchard Refining.

Comment 1 (EPA-R06-RCRA-2017-0556-0009): "I am writing in representation of the over 150,000 members of TinyTimmy.org. We are against delisting these Blanchard solid hazardous wastes because they do not meet the standards stated clearly by the EPA for such delisting activity. Many of their own test results show a much higher than acceptable levels of some of the most toxic chemicals known to man. This attempt to delist byproducts such as Appendix VII inorganic constituents of concern, lead and chromium, and Appendix VII organic constituents of concern benzene, benzo(a)pyrene and chrysene. The levels found by Blanchard's testing does not meet the

EPA criteria for delisting. Further, doing so violates human safety, groundwater, environment and worker health. We strongly urge the EPA to reconsider and follow its actual mission of protecting the health of both humans and the environment and stop giving out favors to the fossil fuel industry on our backs."

Response 1 (EPA-R06-RCRA-2017-0556-0009). The Delisting Program requires extensive waste sampling and a risk assessment is performed to assess a wastes potential harm to human health and the environment. The program is designed to insure that the wastes which are deemed excluded will not be managed in a manner to harm human health or the environment. This waste will be managed in a Subtitle D industrial waste landfill as solid waste to prevent releases to groundwater and air pathways.

Comment 2 (EPA-R06-RCRA-2017-0556-0014). "I oppose the petition for delisting and believe delisting would pose a threat to the public."

Response 2 (EPA-R06-RCRA-2017-0556-0014). The Delisting Program requires extensive waste sampling and a risk assessment is performed to assess a wastes potential harm to human health and the environment. The program is designed to insure that the wastes which are deemed excluded will not be managed in a manner to harm human health or the environment. This waste will be managed in a Subtitle D industrial waste landfill as solid waste to prevent releases to groundwater and air pathways.

Comment 3 (EPA-R06-RCRA-2017-0556-0016). "I'd like to say thank you for opportunity to comment. My concern is regarding the delisting mandate of the Blanchard Refinery residual solid waste stream with chemicals that are classifiable as known carcinogenicity to human. The EPA is basing the ruling on the results from DRAS (Hazardous Waste Delisting Risk Assessment Software). Per the EPA, "the DRAS is a risk assessment tool and, therefore, can only provide risk analyses based on the information input into the program." Therefore, this software is not a dynamic simulation of the site's actual contaminates level but rather a "subjective" user input simulation.

Also, the criteria for demonstration of health-based levels is the Maximum Toxicity Characteristic Leaching Procedure (TCLP) delisting level. Does this limit cover worksite exposure limits? Will rate of evaporation affect the TCLP concentration? If so, will there be continuous monitoring at the site? For example, Cobalt meets the Maximum TCLP delisting level criteria

of 0.902 (mg/L); however, per a New Jersey Department of Health and Senior Services Hazardous Substance Fact Sheet, it does not meet the workplace exposure limits.¹

The average airborne permissible exposure limits (PEL) according to:

OSHA: The legal PEL is 0.1 mg/m³ (8-hour workshift)

NIOSH: The recommended PEL is 0.05 mg/m³ (10-hour workshift)

ACGIH: The legal PEL is 0.02 mg/m³ (8-hour workshift)

Based on these limits, the maximum TCLP is, using the most conservative case, 900% higher. Also, according to the same study, it is stated that cobalt maybe a carcinogen in humans and there may be no safe level of exposure of exposure to a carcinogen.

Within the delisted chemicals, I have identified multiple chemicals in addition to Cobalt that are classifiable as known carcinogenicity to human, such as benzene and toluene. Since a landfill is considered a worksite, the chemicals should be reconsidered or the PEL considered in the criteria for demonstration of health-based levels."

Response 3 (EPA-R06-RCRA-2017-0556-0016). The requirements of the Federal regulations defined in 40 CFR part 260.20, and 260.22, describe the process by which wastes may be removed from the list of hazardous waste. In addition to extensive quality assurance and quality control data for the samples taken, EPA performs a risk assessment using the Delisting Risk Assessment Software to ensure that our decision is protective of human health and the environment. The constituent concentrations found in the residual solids are below the concentrations that would pose harm to human health and the environment. A waste is eligible for delisting only if that waste, as generated at a particular facility, does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the waste may not contain any other Appendix VIII constituents that would cause the waste to be hazardous. RCRA § 3001(f) and 40 CFR 260.22. A delisting is only intended to address a specific waste stream generated at a specific site. Since individual waste streams may vary depending on raw materials, industrial processes, and other factors, it may be appropriate not to list a specific waste from a specific site. Therefore, while a waste described in the 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, 40 CFR

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. A risk assessment of the petitioned waste is completed and is a part of the decision factors in issuing an exclusion. Specific health examinations and worker protection are covered by the facility operating plans and overseen by OSHA. Worker safety during the management of this waste to avoid contact with this material are covered by the Health and Safety plans of the petitioner.

V. 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 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. This action is considered an Executive Order 13771 deregulatory action. This final rule provides meaningful burden reduction by allowing the petitioner to manage an estimated 20,000 cubic yards of residual solids a year under RCRA Subtitle D management standards rather than the more stringent RCRA Subtitle C standards. This action will significantly reduce the costs associated with the on-site management, transportation and

disposal of this wastestream by shifting its management from RCRA Subtitle C hazardous waste management to RCRA Subtitle D nonhazardous waste management.

Similarly, because this rule will affect only a particular facility, this 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 this action under section 801 because this is a rule of particular applicability. Executive Order (E.O.) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The Agency’s risk assessment did not identify risks from management of this material in an authorized, solid waste landfill (e.g. RCRA Subtitle D landfill, commercial/industrial solid waste landfill, etc.). Therefore, EPA believes that any populations in proximity of the landfills used by this facility should not be adversely affected by common waste management practices for this delisted waste.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous Waste, Recycling, Reporting and record-keeping requirements.

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

Dated: July 31, 2018.

Wren Stenger,

Multimedia Division Director, Region 6.

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, 6924(y) and 6938.

■ 2. In Table 1 of Appendix IX to Part 261, add an entry for “Blanchard Refining Company LLC” in alphabetical order by facility to read as follows:

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

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* Blanchard Refining Com- pany LLC.	* Texas City, TX	<p>* Residual solids (EPA Hazardous Waste Numbers F037) generated at a maximum rate of as 20,000 cubic yards annually.</p> <p>For the exclusion to be valid, Blanchard must implement a verification testing program that meets the following Paragraphs:</p> <p>(1) All leachable concentrations for those constituents must not exceed the following levels measured as mg/L (ppm). The petitioner must use an acceptable leaching method, for example SW-846, Method 1311, to measure constituents in the residual solids leachate:</p> <p>(A) Inorganic Constituents of Concern: Antimony—0.5985; Arsenic—0.424; Barium—36; Beryllium—1.74; Chromium—3.06; Cobalt—0.902; Lead—0.984; Nickel—13.5; Selenium—1.0; Vanadium—4.64, Zinc—197. Mercury—0.068.</p> <p>(B) Organic Constituents of Concern: Acetone—520.0; Anthracene—25.993; Benzene—0.077; Benzo(a)pyrene—2.634, Chrysene—7.006; Methylene Chloride—0.0790; Phenanthrene—10.626; Phenol—173; Pyrene—4.446.</p> <p>(2) Waste Holding and Handling:</p> <p>(A) Blanchard must manage and dispose its residual solids as hazardous waste generated under Subtitle C of RCRA, until they have completed verification testing described in Paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied.</p> <p>(B) Levels of constituents measured in the samples of the residual solids that do not exceed the levels set forth in Paragraph (1) are nonhazardous. Blanchard can manage and dispose the nonhazardous residual solids according to all applicable solid waste regulations.</p> <p>(C) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), Blanchard must retreat or stabilize the residual solids represented by the sample exceeding the delisting levels, until it meets the levels in paragraph (1). Blanchard must repeat the analyses of the retreated residual solids.</p> <p>(3) Verification Testing Requirements: Blanchard must perform analytical testing by sampling and analyzing the Residual solids as follows:</p> <p>(i) Collect representative samples of the Residual solids for analysis of all constituents listed in paragraph (1) prior to disposal.</p> <p>(ii) The samples for verification testing shall be a representative sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the Blanchard residual solids are representative for all constituents listed in paragraph (1).</p> <p>Blanchard must perform sample collection and analyses, including quality control procedures, according to SW-846 methodologies.</p> <p>(A) Initial Verification Testing: After EPA grants the final exclusion, Blanchard must do the following:</p> <p>(i) Collect four (4) representative composite samples of the residual solids at weekly intervals after EPA grants the final exclusion. The first composite samples may be taken at any time after EPA grants the final approval. Sampling should be performed in accordance with the sampling plan approved by EPA in support of the exclusion.</p> <p>(ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) for the residual solids must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements.</p> <p>(iii) Within thirty (30) days after successfully completing its initial verification testing, Blanchard may report its analytical test data for its initial four (4) weekly composite samples to EPA. If levels of constituents measured in the samples of the residual solids do not exceed the levels set forth in paragraph (1) of this exclusion, Blanchard can manage and dispose the non-hazardous residual solids according to all applicable solid waste regulations.</p> <p>(B) Subsequent Verification Testing: If Blanchard completes initial verification testing requirements, specified in paragraph (3)(A), and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), Blanchard may begin subsequent verification testing as follows:</p> <p>(i) Blanchard must test representative composite samples of the residual solids for all constituents listed in paragraph (1) at least once per month.</p>

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

Facility	Address	Waste description
		<p>(ii) The samples for the monthly testing shall be a representative composite sample according to appropriate methods.</p> <p>(iii) Within thirty (30) days after completing each monthly sampling, Blanchard will report its analytical test data to EPA.</p> <p>(C) Annual Verification Testing: If levels of constituents measured in the samples of the residual solids do not exceed the levels set forth in paragraph (1) of this exclusion for six (6) consecutive months of subsequent verification testing, Blanchard may begin annual testing as follows:</p> <p>(i) Blanchard must test representative composite samples of the residual solids for all constituents listed in paragraph (1) at least once per calendar year.</p> <p>(ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods.</p> <p>(iii) Within sixty (60) days after completing each annual sampling, Blanchard will report its analytical test data to EPA.</p> <p>(D) Termination of Organic Testing: Blanchard must continue testing as required under Paragraph (3)(B) for organic constituents in Paragraph (1)(B), until the analytical results submitted under Paragraph (3)(B) show a minimum of three (3) consecutive monthly samples below the delisting levels in Paragraph (1). Following receipt of approval from EPA in writing, Blanchard may terminate organic testing.</p> <p>(4) Changes in Operating Conditions: If Blanchard significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), they must notify EPA in writing. Blanchard may no longer handle the residual solids generated from the new process as nonhazardous until they have completed verification testing described in Paragraph (3)(A) and (B), as appropriate, documented that valid analyses show that paragraph (1) is satisfied, and received written approval from EPA.</p> <p>(5) Stabilization Operation: Blanchard may periodically elect to modify operating conditions to accommodate the addition of chemical stabilization reagents during indirect thermal desorption processing. In the event that Blanchard initiates the inclusion of stabilization during operation, they may no longer handle the residual solids generated from the modified process as nonhazardous until the residual solids meet the delisting levels set in Paragraph (1) under initial verification testing requirements set in paragraph (3)(A) and verify that the stabilization reagents do not add additional constituents to the residual solid leachate. Following completion of modified operation, Blanchard can resume normal operating conditions and testing requirements under Paragraph (3), which were in place prior to initiating stabilization during operation.</p> <p>(6) Data Submittals: Blanchard must submit the information described below. If Blanchard fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (7). Blanchard must:</p> <p>(A) Submit the data obtained through paragraph 3 to the Section Chief, 6MM-RP, Multimedia Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Suite 1200, Dallas, Texas 75202, within the time specified. All supporting data can be submitted on CD-ROM or comparable electronic media.</p> <p>(B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years.</p> <p>(C) Furnish these records and data when either EPA or the State of Texas requests them for inspection.</p> <p>(D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: “Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.</p>

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

Facility	Address	Waste description
		<p>If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."</p> <p>(7) Reopener:</p> <p>(A) If, any time after disposal of the delisted waste Blanchard possesses or is otherwise made aware of any environmental data (including but not limited to underflow water 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.</p> <p>(B) If either the verification testing (and retest, if applicable) of the waste does not meet the delisting requirements in paragraph 1, Blanchard must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.</p> <p>(C) If Blanchard fails to submit the information described in paragraphs (6), (7)(A) or (7)(B) 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 and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.</p> <p>(D) If the Division Director determines that the reported information requires action by EPA, 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 receipt of the Division Director's notice to present such information.</p> <p>(E) Following the receipt of information from the facility described in paragraph (7)(D) or (if no information is presented under paragraph (7)(D)) the initial receipt of information described in paragraphs (6), (7)(A) or (7)(B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise.</p> <p>(8) Notification Requirements:</p> <p>Blanchard 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.</p> <p>(A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities.</p> <p>(B) For onsite disposal, a notice should be submitted to the State to notify the State that disposal of the delisted materials has begun.</p> <p>(C) Update one-time written notification, if it ships the delisted waste into a different disposal facility.</p> <p>(D) Failure to provide this notification will result in a violation of the delisting exclusion and a possible revocation of the decision.</p>
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