

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the

National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings." This proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Nitrogen oxides, Nonattainment, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 23, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02-19320 Filed 7-30-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-7252-7]

Hazardous Waste Management System; Proposed Exclusion for Identifying and Listing Hazardous Waste and a Determination of Equivalent Treatment

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA, also, "the Agency" or "we" in this preamble) is proposing to grant two petitions submitted by the University of California—E.O. Lawrence Berkeley National Laboratory (LBNL). The first petition is to exclude (or

"delist") certain hazardous wastes from the lists of hazardous wastes. Today's proposed rule proposes to grant LBNL's petition to delist its F002, F003, and F005 waste, and requests public comment on the proposed decision. EPA reviewed all of the waste-specific information provided by LBNL and determined that the petitioned waste is nonhazardous with respect to the original listing criteria.

The Agency is also proposing to grant LBNL's second petition, which is for a determination of equivalent treatment (DET) for the catalytic chemical oxidation (CCO) technology that LBNL used to treat the original mixed waste.

EPA reviewed all of the specific CCO treatment information provided by LBNL and determined that the CCO treatment is equivalent to combustion. Today's proposed rule proposes to grant LBNL's DET petition for the CCO technology, and requests public comment on the proposed decision. If the proposed DET becomes final, the treatment residues generated from LBNL's use of the CCO technology will have met the applicable LDR technology standard for DOO1 waste. If the proposed delisting and DET become final, then the petitioned waste can be disposed at an authorized low-level radioactive waste facility.

DATES: Comments on this proposed rule will be accepted until September 16, 2002. We will stamp comments postmarked after the close of the comment period as "late." These "late" comments may not be considered in formulating final decisions.

Any person may request a hearing on this proposed rule by filing a written request by August 15, 2002. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send two copies of your comments to Rich Vaille, Associate Director, Waste Management Division (WST-1), U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

Any person may request a hearing on these proposed decisions by filing a written request with Jeff Scott, Director, Waste Management Division (WST-1) U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency Records Center, 75 Hawthorne Street, San Francisco, CA 94105, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The docket contains the petition, all information submitted

by the petitioner, and all information used by EPA to evaluate the petition. Call the EPA Region 9 RCRA Record Center at (415) 947-4596 for appointments. The public may copy material from the regulatory docket at \$0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800-424-9346. For technical information on specific aspects of these petitions, contact Cheryl Nelson at the address above or at 415-972-3291, e-mail address: nelson.cheryl@epa.gov.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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I. Overview Information

A. What Actions Is EPA Proposing To Approve?

First, EPA is proposing to grant LBNL's petition to have approximately 200 US gallons of residues from treatment of low-level mixed waste from the National Tritium Labeling Facility (NTLF), a research facility located within LBNL, excluded (delisted) from the definition of a hazardous waste. LBNL is a multi-program laboratory operated by University of California under contract with the Department of

Energy (DOE). The petitioned wastes are treatment residues generated through treatment of mixed waste. Mixed waste is defined as waste that contains hazardous waste subject to the requirements of the Resource Conservation and Recovery Act (RCRA) and source, special nuclear, or by-product material subject to the requirements of the Atomic Energy Act (AEA). See 42 U.S.C. 6903 (41), added by the Federal Facility Compliance Act of 1992. LBNL's petitioned waste contains tritium, a radioactive hydrogen isotope (^3H) manufactured for use as a tracer in biomedical research.

The petitioned wastes meet the definition of listed F002, F003, and F005 RCRA hazardous wastes because they are derived from treatment of mixed wastes that are listed for these waste codes. LBNL petitioned EPA to grant a one-time, generator-specific delisting for the treatment residues, because LBNL believes that its wastes do not meet the criteria for which these types of wastes were listed. The petition is for a one-time delisting because all of the petitioned waste has been generated, and will not be generated again.

Based on our review, the petitioned waste is essentially tritiated water with no detectable organic chemical constituents, and therefore we agree with the petitioner that the petitioned waste is nonhazardous with respect to the original listing criteria. Furthermore, EPA finds no additional constituents or factors which would cause the petitioned waste to be hazardous under RCRA. Our proposed decision to delist the waste is based upon our evaluation of the process which generates the waste, our first-hand observations of the process used to treat the waste, and our review of the analytical data submitted to support the 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 222 of Pub. L. 98-616 (HSWA), 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2) through (4). We compared and evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (3).

We also evaluated the waste for other factors or criteria which could cause the petitioned waste to be hazardous under RCRA. These factors included: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentrations of the constituents in the waste; (4) the tendency of the hazardous constituents to migrate and to bioaccumulate; (5) persistence of the constituents in the

environment 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.

If our review had found that the petitioned waste remained hazardous based on the factors for which we originally listed the waste, we would have proposed to deny the petition. If this decision becomes final, the DOE would still retain authority over this waste because of the tritium, a low-level radioactive constituent.

Secondly, LBNL has petitioned EPA under 40 CFR 268.42(b) for a determination that the CCO technology used to perform the treatment of the original mixed waste is equivalent to combustion as defined in EPA's Land Disposal Restriction (LDR) Program for treatment of high-total organic carbon (TOC) subcategory D001 ignitable wastes. Because LBNL's original mixed waste is also a D001 ignitable waste, it must be treated via a combustion technology prior to disposal to meet the LDR treatment standard.

We are proposing to grant the DET because LBNL has adequately demonstrated that the CCO technology is equivalent to combustion for the treatment of organic wastes. This demonstration is based primarily on the following key factors: (1) The CCO achieves a destruction and removal efficiency of more than 99.999% at a temperature near or above 500°C; (2) the CCO system does not emit Hydrogen Chloride Vapor (HCl) or particulate matter; and (3) the CCO was operated in compliance with Federal, State and local hazardous waste and air emission regulations.

If the proposed DET becomes final, the treatment residues generated from LBNL's use of the CCO technology will have met the applicable LDR technology standard for D001 waste. The LDR treatment standards for F002, F003, and F005 wastes are numeric standards. The CCO technology treated the original mixed wastes to below these numeric standards.

B. How Will LBNL Manage the Waste if These Petitions are Approved?

If EPA's proposed decisions are made final, the petitioned waste will no longer be subject to regulation as a hazardous waste under Subtitle C of RCRA thereby allowing LBNL the option to dispose this low-level radioactive waste at a Nuclear Regulatory Commission (NRC), licensed or a DOE-authorized low-level radioactive waste disposal facility. Without these approvals, the petitioned waste would remain a mixed waste

subject to both RCRA regulations and DOE orders. Available treatment facilities for high activity tritium-containing mixed wastes are extremely limited and are not designed to capture the tritium during treatment. There are no available mixed waste disposal facilities for high-activity tritium-containing mixed wastes. LBNL and numerous other research facilities nationally are currently storing this type of mixed waste onsite pending more cost effective and environmentally acceptable treatment and disposal options.

C. When Would EPA Finalize These Proposed Actions?

HSWA specifically requires the EPA to provide notice and an opportunity for public comment before granting or denying a final exclusion. Thus, EPA will not make a final decision to grant an exclusion until it has addressed all timely public comments (including any at public hearings) on today's proposal.

While not required, EPA encourages public involvement in our decision making and is therefore also seeking comments on our proposed DET decision. Additionally, to clearly describe the regulatory approvals needed for LBNL to dispose of the petitioned waste offsite, it is necessary to describe both the delisting and the DET petitions.

Since this proposed rule would reduce the existing requirements for a person generating hazardous wastes, the regulated community does not need a six-month period to achieve compliance in accordance with section 3010 of RCRA as amended by HSWA. Therefore, the exclusion and the DET would become effective immediately upon finalization.

II. Background

A. What Laws and Regulations Give EPA the Authority to Delist Wastes?

On January 16, 1981, as part of its regulations implementing section 3001 of RCRA, EPA published a list of hazardous wastes from non-specific and specific sources. EPA has amended this list several times. See 40 CFR 261.31 and 261.32. EPA lists these wastes as hazardous because: (1) they exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

"Listed" wastes are often from specific industrial processes. Individual waste streams may vary, however, depending on raw materials, industrial

processes, and other factors. Thus, while a listed waste is generally hazardous, a specific waste from an individual facility meeting the listing description may not be.

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility¹ should not be regulated as a hazardous waste. Section 260.20 establishes general procedures for rulemaking petitions, and § 260.22 establishes the specific requirements for a petition to exclude a waste at a particular facility from the list of hazardous wastes in Part 261.

To have their wastes excluded, petitioners must first show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a)(1) and the background documents for the listed wastes. Second, the EPA 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. Accordingly, a petitioner must also demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous concentrations.

See 40 CFR 260.22(a)(2) and the background documents for the listed wastes. Although wastes which are "delisted" (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on hazardous waste characteristics (i.e., not exhibiting hazardous waste characteristics, including any promulgated subsequent to a delisting decision.)

In addition, mixtures containing listed hazardous wastes and residues from the treatment, storage, or disposal of listed hazardous wastes are also considered hazardous wastes. See 40 CFR 261.3(a)(2)(iii) and (c)(2)(i), referred

¹ Many industrial processes result in the production of hazardous waste, as well as useful products and services. A "generating facility" is a facility in which hazardous waste is produced, and a "generator" is a person who produces hazardous waste or causes hazardous waste to be produced at a particular place. See 40 CFR 260.10 for regulatory definitions of "generator," "facility," "person," and other terms related to hazardous waste, and 40 CFR part 262 for regulatory requirements for generators.

to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion but remain hazardous wastes unless and until they are excluded.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority under 40 CFR 260.20 and 260.22 to approve or deny petitions submitted by generators within their Regions (National Delegation of Authority 8-19) in States not yet authorized to administer a delisting program in lieu of the Federal program. California is not authorized to administer the delisting program and therefore EPA Region 9 has the authority to approve or deny delisting petitions in California.

B. What Is a Determination of Equivalent Treatment?

Under Section 3004(m) of RCRA, EPA is required to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized". EPA implements section 3004(m) by establishing land disposal restriction treatment standards based on the performance of best demonstrated available technology (BDAT). We have generally established two types of treatment standards: (1) a numerical, concentration-based treatment limit for each constituent of concern, or (2) a method of treatment that must be used to treat a particular constituent or constituent(s). In either case, the treatment standard is based on the BDAT.

Under the second approach where a technology is specified as the treatment standard, EPA allows facilities to submit petitions (or applications) demonstrating that an alternative treatment method can achieve a measure of performance equivalent to that achievable by the EPA-specified method. This demonstration of equivalency, known as a determination of equivalent treatment if approved, is typically both waste-specific and site-specific. Such approvals are based on: (1) Demonstrations of equivalence for an alternative method of treatment based on a statistical comparison of technologies, including a comparison of specific design and operating parameters; (2) the development of a concentration-based standard that utilizes a surrogate or indicator compound that guarantees effective treatment of the hazardous constituents; and (3) the development of a new

analytical method for quantifying the hazardous constituents.²

Thus, in determining whether a technology is equivalent to the specified technology, EPA carefully evaluates the treatment process, including examining the characteristics of the residuals that are generated, and compares the performance of this alternative treatment process to the specified method of treatment. We also look at any other potential adverse environmental impacts, including releases of hazardous constituents to air and water. See *Chemical Waste Management v. EPA*, 976 F.2d 2, 17 (D.C. Cir. 1992), explaining the relevance of assessing releases to media other than land in determining whether treatment is minimizing threats, as required by RCRA section 3004 (m).

The original mixed wastes generated by NTLF are regulated under RCRA as F002, F003, F005 and high-TOC D001 category wastes. The applicable LDR treatment standards for F002, F003, and F005 are numeric standards. LBNL treated NTLF mixed wastes with its CCO technology. The treatment residues do not contain any detectable chemical constituents above their respective LDR treatment standards.

The LDR treatment standard for high-TOC ignitable liquid (D001) is a technology standard based upon combustion (40 CFR 268.40). The combustion standard is defined as "high temperature destruction technologies, such as combustion in incinerators, boilers, or industrial furnaces operated in accordance with the applicable requirements. * * *" (40 CFR 268.42). While NTLF mixed wastes could be treated via incineration or boiling for energy recovery, the available incinerators or boilers that could treat these wastes would result in release of nearly all of the tritium in the mixed waste to the environment. LBNL developed an alternative technology, the CCO technology, that includes engineering controls designed to capture and retain tritium, so that the mixed waste can be managed in a manner that minimizes releases to the environment. EPA has determined that this CCO technology is equivalent to combustion. If the proposed DET becomes final, the treatment residues generated from LBNL's use of the CCO technology will have met the applicable LDR technology standard for D001 waste.

C. How Would These Actions Affect States?

This proposed rule, if promulgated, would be issued under the Federal (RCRA) delisting and demonstration of equivalent treatment programs. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally issued exclusion from taking effect in a state. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal and State programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws. Furthermore, some States are authorized to administer a delisting and/or demonstration of equivalent treatment program in lieu of the Federal program, i.e., to make their own decisions. Therefore, these proposed actions, if promulgated, would not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, LBNL must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

III. EPA's Evaluation of the Petitions

A. What Waste Did LBNL Describe in Their Petitions to EPA?

On June 30, 1999, LBNL petitioned EPA to exclude from the list of hazardous wastes at 40 CFR 261.31, an initial volume of approximately 105 US gallons and an approximate annual volume of 65 US gallons of CCO treatment residues generated at the NTLF and designated as F002, F003, and F005 listed mixed wastes. F002, F003, and F005 wastes are spent halogenated and non-halogenated solvent mixtures from non-specific sources. LBNL also included in this submittal a demonstration of equivalent treatment petition for this same waste as this waste is also high-TOC subcategory D001 ignitable wastes.

Since submitting the petitions, the NTLF has generated an additional approximately 95 gallons of treatment residues. There will be no additional treatment residues from the CCO process. Therefore, the total amount of waste LBNL has petitioned to delist and for which it has sought demonstration of equivalent treatment approval is a total fixed amount of 200 US gallons.

The EPA reviews a petitioner's estimated volume and, on occasion, has requested a petitioner to re-evaluate the

estimated waste generation rate. EPA accepts LBNL's estimate of the fixed volume of waste.

B. What Information and Analyses Did LBNL Submit To Support Their Petitions?

To support its delisting petition under 40 CFR 260.20(b) and 260.22(i), LBNL submitted: (1) a detailed description, including Material Safety Data Sheets, of the chemicals and processes used to generate and treat the wastes, (2) descriptions and schematic diagrams of the treatment system, (3) analyses for total constituent analyses for all organic compounds listed in Appendix VIII of 40 CFR Part 261 using an in-house Gas Chromatograph (GC) equipped with both a Flame Ionization Detector (FID) and a Mass Spectrometer (MS), and (4) total constituent analyses of surrogate nonradioactive samples by an independent commercial laboratory for industrial solvents, volatile organic compounds, and semi-volatile organic compounds using EPA Test Methods 8015 (Modified), 8260, and 8270, respectively.

In addition to the above, to support its DET petition under 40 CFR 268.42(b), LBNL submitted: (1) calculations demonstrating the destruction and removal efficiency for its CCO technology, (2) detailed information on the monitoring and inspection procedures for the CCO technology, and (3) information demonstrating compliance with local and state environmental regulations.

C. How Is the Petitioned Waste Generated?

The petitioned waste is the treatment residues from CCO (treatment) of the original mixed wastes. The original mixed waste was generated by NTLF, a noncommercial research organization designated by the DOE and the National Institutes of Health to conduct tritium labeling research and development. (NTLF began operating in 1982 and was managed by the University of California at LBNL. NTLF ceased conducting National Institutes of Health-funded research on December 31, 2001 and is now undergoing closure.) Treatment options for mixed waste are extremely limited and prohibitively expensive. The only approved treatment option under RCRA for NTLF's tritium-containing mixed waste is incineration or boiling for energy recovery, which result in the release of the tritium to the environment. LBNL and numerous other research facilities nationally are currently storing their tritium-containing mixed waste onsite pending more cost effective and environmentally

² See 40 CFR 268.42(b) and the preamble for the Third Scheduled Wastes; Final Rule (55 FR 22536, June 1, 1990) for more information

acceptable treatment and disposal options.

In 1996, LBNL began a study to evaluate the effectiveness of treating tritiated mixed waste using CCO technology. The concept of CCO is to destroy the hazardous portion of the mixed waste while capturing the radioactive portion for future recycling or proper disposal. As part of this study, LBNL constructed two CCO units at the NTLF (one for surrogate non-radioactive wastes and one for mixed wastes) and conducted a treatability study by treating both surrogate and mixed waste samples. The treatability study was conducted in accordance with the California State treatability study exclusion in Title 22 of the California Code of Regulations (CCR) Section 66261.4 (e) and (f).

The CCO technology involves high-temperature decomposition of organic chemicals in the presence of a catalyst. Treatment by the CCO generates mainly carbon dioxide gas and tritiated water. Many of the mixed waste samples prior to treatment contained low concentrations of acetonitrile and some contained low concentrations of chloroform. After treatment the tritiated water did not contain detectable concentrations of acetonitrile and chloroform. The tritiated water was generally acidic with a pH range from 2 to 3 but LBNL staff measured the pH of each batch of tritiated water and neutralized it to a pH of between 5 and 9. The tritiated water is considered RCRA hazardous waste F002, F003, and F005 because it is derived from a mixed waste (due to the "derived-from" rule discussed above).

The CCO process also generates bubbler water, which is water that is used in the process to ensure efficient capture of tritiated water from the gas after treatment. Following treatment, the bubbler water is stabilized to prevent release of tritium by mixing it with the silica gel, an inert substance, through which it was vented during the CCO process.

The wastes proposed for delisting are the tritiated water and the bubbler water mixed with CCO-process silica gel.

D. How Did LBNL Sample and Analyze the Waste for the Petitions?

LBNL developed the sampling and analysis plan for the petitioned wastes in consultation with EPA Region 9. LBNL operated two CCO units during the treatability study; one for mixed waste and one for non-radioactive waste surrogate samples³ that were identical

in chemical composition to the mixed waste samples.

Because there are no commercially available analytical laboratories with the ability to analyze high activity mixed wastes from NTLF (due to the level of radioactivity), all analytical testing for these mixed wastes was conducted in-house by LBNL and NTLF staff. As a quality control measure, non-radioactive surrogate waste samples were sent for analysis to an offsite commercial laboratory and results were compared to the in-house data.

The two CCO units were operated using a batch process. Prior to each batch, the mixed waste sample was analyzed in-house to identify each organic chemical constituent and its relative concentration. In many cases, these data were used to create an identical surrogate sample which was also then analyzed in-house prior to treatment. After treatment, the radioactive treatment residue was analyzed in-house to identify any remaining organic chemical constituents. LBNL analyzed the surrogate treatment residues (non-radioactive) in-house and sent splits of the same surrogate residues offsite to a commercial laboratory for analysis. LBNL treated and then analyzed a total of approximately 71 batches of mixed waste samples and 15 batches of surrogate samples. These samples represent 100% of all wastes treated by LBNL during the treatability study. Additionally, LBNL analyzed two bubbler water samples from two different batches of surrogate sample treatment in-house.

As part of the delisting petition, LBNL submitted seven sets of analytical data from mixed waste samples, six sets of data from surrogate waste samples, and two sets of data from the bubbler water. LBNL chose these sets of data as representative of the total data set. LBNL also made available to EPA all of the remaining analytical data from the treatability study. For the in-house testing data, LBNL provided the experimental data documentation from the operation of the CCO, and the test results (GC chromatograms).

LBNL's in-house testing method used direct liquid injection gas

chromatography to minimize the volume of the sample. The LBNL method used two detectors, an MS and an FID. Together, these detectors can detect all organic compounds in 40 CFR Part 261, Appendix VIII including those that were present in the original mixed waste and surrogate samples prior to treatment. LBNL also tested all samples for pH in-house using pH strips. LBNL did not test for inorganic or metal compounds because, based upon the processes and chemicals that LBNL used to produce these wastes, these compounds were not present in the original mixed waste or surrogate samples.

The surrogate samples that were sent to an off-site commercial analytical laboratory were analyzed by EPA Test Methods 8015 (modified) for Industrial Solvents and Method 8260 for Volatile Organic Compounds. Several samples were also tested by Method 8270 for Base Neutral and Acid Extractable Organic Compounds (semivolatile compounds).

E. What Were the Results of LBNL's Analysis?

There were no organic compounds above LBNL's quantitation limits in any of the treatment residues or in the bubbler water from the treatment of the original mixed wastes. LBNL's in-house testing procedures were able to achieve a quantitation limit in the range of 0.1 to 0.5 parts per million (ppm).

With the exception of chloroform in very low concentrations (up to 0.011 ppm) in a few samples, detectable organic compounds were not detected in any of the surrogate (non-radioactive) treatment residues. Because chloroform was not present in the original surrogate samples prior to treatment, the chloroform is a laboratory contaminant introduced by the offsite commercial laboratory.

On the basis of generator knowledge, LBNL did not test for inorganic constituents as no inorganic constituents were used in the processes that produced the original mixed waste.

All of the analytical results indicate that the treatment residues are water (with tritium in the radioactive samples) and therefore do not exhibit the hazardous waste characteristics of toxicity; reactivity; or ignitability. As discussed previously, LBNL measured the pH on all treatment residues. The pH ranged from 5 to 9 and therefore none of the residues exhibited the hazardous waste characteristic of corrosivity.

EPA does not generally validate submitted test data before proposing delisting decisions. The sworn affidavit

³ Joint EPA/NRC mixed waste testing guidance offers two strategies for helping to maintain

radiation exposures As Low As is Reasonably Achievable (ALARA) if testing is required for mixed waste. These strategies are the use of a sample size of less than 100 grams, as long as the resulting test is sufficiently sensitive to measure the constituents of interest at the regulatory levels, and the use of surrogate materials, as long as they are chemically identical to the mixed waste and faithfully represent the hazardous constituents in the waste mixture. (Joint NRC/EPA Guidance on Testing Requirements for Mixed Radioactive and Hazardous Waste. 62 FR 62080 (November 20, 1997)).

submitted with the petition binds the petitioner to present truthful and accurate results under penalty of perjury. LBNL submitted a signed Certification of Accuracy and Responsibility statement required by 40 CFR 260.22(i)(12).

F. How Did EPA Evaluate the Risk of Delisting the Petitioned Waste?

In order for EPA to delist a particular waste, the petitioner must demonstrate: (1) The waste does not meet any of the criteria under which the waste was listed, (2) the waste does not exhibit any of the hazardous waste characteristics defined in 40 CFR 261.21 through 261.24, and (3) there are no additional constituents in the waste other than those for which it was listed, that would cause the waste to be a hazardous waste (40 CFR 260.22(a)). For petitioned wastes that contain detectable chemical constituents, EPA generally makes this determination by gathering information to identify plausible routes of human or environmental exposure (i.e., groundwater, surface water, air) and using fate and transport models to predict the release of hazardous constituents from the petitioned waste once it is disposed. The transport model predicts potential exposures and impacts of the petitioned waste on human health and the environment. The model that EPA uses is a Windows-based software tool, the Delisting Risk Assessment Software (DRAS) Program. The DRAS program estimates the potential releases of waste constituents and predicts the risk associated with those releases using several EPA models including the EPACMTP (EPA's Composite Model for leachate migration with Transformation Products) fate and transport model for groundwater releases. For a detailed description of the DRAS program and the EPACMTP model, see 65 FR 58015, September 27, 2000.

For this petition, EPA believes that LBNL has met the three criteria listed in 40 CFR 260.22(a). For our review, it was not necessary to use the DRAS model because this waste does not contain any detectable concentrations of chemical constituents other than water and tritium (which is not an EPA RCRA regulated waste constituent subject to delisting).

G. What Other Factors Did EPA Consider in Its Evaluation of These Petitions?

We considered other agencies' regulatory controls that would apply to the petitioned waste. The waste proposed for delisting is tritiated water which is a low-level radioactive waste.

The waste was generated at a DOE facility and therefore is subject to DOE regulation. If delisted, the waste must be disposed in an NRC-licensed or DOE authorized low-level radioactive waste disposal facility. Because NRC/DOE low-level radioactive waste disposal facilities cannot accept RCRA hazardous waste, the waste must be delisted from RCRA before it can be disposed. If the waste is not delisted, then LBNL must continue to store the waste in their RCRA permitted storage facility (onsite) until such time as a viable disposal alternative is available for the waste.

We also considered the regulatory controls over the operation of the CCO unit. The waste proposed for delisting is treatment residues from catalytic chemical oxidation of mixed waste. LBNL operated the CCO unit under a California State RCRA treatability study exclusion (22 CCR 66261.4(e) and (f)) that provides a conditional exclusion from the hazardous waste regulations. This exclusion is designed to allow small volume studies of new technologies for treatment of hazardous wastes. Once a volume limit has been reached, facilities must obtain a RCRA hazardous waste treatment permit to continue using the treatment technology. The State of California Department of Toxic Substances Control (DTSC), who is the authorized RCRA regulatory authority with jurisdiction over this facility, conducted an extensive investigation of the CCO process and concluded that it was operated in compliance with the treatability study exclusion. LBNL has concluded its treatability study of the CCO process and is no longer using this technology, therefore, there will be no need to seek a permit in the future.

H. What Did EPA Conclude About LBNL's Analysis?

After reviewing LBNL's petition, EPA concludes that: (1) No RCRA hazardous constituents are likely to be present above detection limits in the treatment residues or the bubbler water on silica gel generated by catalytic chemical oxidation treatment of the original mixed waste at LBNL, and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. See 40 CFR 261.21, 261.22, 261.23, and 261.24, respectively.

We conclude that the waste is delistable because the exposure threat to RCRA hazardous constituents is not existent, therefore achieving a de minimus risk level. Further, even though they are no longer subject to EPA regulatory control, the treatment residues maintain their low-level

radioactive waste status and must still be managed in accordance with DOE orders and NRC regulations. By removing EPA regulatory control over this waste, LBNL has the option to dispose the waste offsite at a DOE authorized or an NRC licensed disposal facility.

We also conclude that LBNL has adequately demonstrated that the CCO process is equivalent to combustion for the treatment of organic wastes. This demonstration is based primarily on the following key factors: (1) The CCO achieves a destruction and removal efficiency of more than 99.999% at a temperature near or above 500°C, (2) the CCO system does not emit HCl or particulate matter, and (3) the CCO was operated in compliance with Federal, State and local hazardous waste and air emission regulations.

I. What Is EPA's Final Evaluation of These Petitions?

We have reviewed the sampling procedures used by LBNL and have determined they satisfy EPA criteria for collecting representative samples of the petitioned waste. The descriptions of the treatment process and the analytical data, together with the NRC/DOE requirements that the petitioned waste be managed as low-level radioactive waste, provide a reasonable basis for EPA to grant both the delisting and the DET petitions. We believe the data submitted in support of the petitions show that the waste will not pose a threat when managed as a non-hazardous low-level radioactive waste and disposed of in an NRC-licensed or DOE-authorized low level radioactive waste disposal facility. We therefore propose to grant LBNL an exclusion and a DET for the waste generated by CCO treatment at LBNL.

If we finalize these proposed petitions, the Agency will no longer regulate the petitioned waste under 40 CFR parts 262 through 268 and the permitting standards of part 270.

IV. Conditions for Exclusion

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

A. What Conditions Are Associated With This Exclusion?

If the proposed exclusion is made final, it will apply only to 200 US gallons of petitioned waste at LBNL. This is a one-time exclusion for this waste. We would require LBNL to file a new delisting petition if it generates more than 200 US gallons of waste.

LBNL must manage waste volumes greater than 200 US gallons as mixed waste unless and until we grant a new exclusion. If this exclusion becomes final, LBNL's management of the wastes covered by this petition would no longer be within RCRA Subtitle C jurisdiction.

If delisted, the treatment residues would still be low-level radioactive waste subject to NRC regulations and DOE orders. DOE orders require that the petitioned waste be solidified to help prevent mobilization of the tritium. NRC regulations and DOE orders also require that the waste be transported to, and disposed by, NRC-licensed or DOE-authorized facilities. While EPA has no regulatory authority over disposal of radioactive-only wastes, we do have authority to prescribe that the delisted waste be managed and disposed in a manner consistent with our analysis of the acceptable risk for this waste. Our risk analysis is based upon the assumption that the waste, once delisted, remains a low-level radioactive waste subject to DOE Orders and NRC regulations. We therefore propose to condition the delisting upon LBNL properly managing and disposing the waste in accordance with applicable NRC regulations or DOE orders as applicable.

If LBNL discovers that a condition or assumption related to the characterization of this waste that was used in the evaluation of this petition is not as reported in the petition, they will be required to report any information relevant to that condition or assumption in writing to the Regional Administrator within 10 calendar days of discovering that condition.

The purpose of this condition is to require LBNL to disclose new or different information that may be pertinent to the delisting. This provision will allow us to reevaluate the exclusion based on this new information in order to determine if our original decision was correct.

If we discover such information from any source, we will act on it as appropriate. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate action deemed necessary to protect human health or the environment. EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 *et seq.* to reopen the delisting under the conditions described above.

In order to adequately track wastes that have been delisted, we will require that LBNL provide a one-time notification to any State regulatory agency to which or through which the delisted waste will be transported for

disposal. LBNL will be required to provide this notification at least 60 calendar days prior to commencing these activities. Failure to provide such notification will be a violation of the delisting, and may be grounds for revocation of the exclusion or enforcement.

B. What Happens if LBNL Fails to Meet the Conditions of the Exclusion?

If LBNL violates the terms and conditions established in the exclusion, the Agency may start procedures to suspend or revoke the exclusion, and/or initiate enforcement actions.

V. Effect on State Authorizations

This proposed exclusion, if promulgated, would be issued under the Federal RCRA delisting program. States, however, may impose more stringent regulatory requirements than EPA pursuant to Section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (RCRA) or State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (i.e., to make their own delisting decisions). Therefore, this proposed exclusion, if promulgated, may not apply in those authorized States, unless it is adopted by the State. If the petitioned waste is managed in any State with delisting authorization, LBNL must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

VI. Effective Date

EPA is today proposing to grant LBNL's petition. This proposed rule, if made final, will become effective immediately upon such final publication. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for a facility generating hazardous wastes. EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective

immediately, upon final publication, under the APA, 5 U.S.C. 553(d).

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a "regulatory action" subject to review by the Office of Management and Budget. Because this action is a rule 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, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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: July 11, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

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

PART 261—IDENTIFICATION AND LISTING HAZARDOUS WASTE

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

alphabetical order by facility to read as follows:

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

2. In Table 1, of Appendix IX of Part 261 add the following waste stream in

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
<p style="text-align: center;">*</p> <p>Lawrence Berkeley National Laboratory.</p>	<p style="text-align: center;">*</p> <p>Berkeley, California</p>	<p style="text-align: center;">*</p> <p>Treated ignitable and spent halogenated and non-halogenated solvent mixed waste (D001, F002, F003, and F005), and bubbler water on silica gel generated during treatment at the National Tritium Labeling Facility (NTLF) of the Lawrence Berkeley National Laboratory (LBNL). This is a one-time exclusion for 200 US gallons of treatment residues that will be disposed of in a Nuclear Regulatory Commission (NRC) licensed or Department of Energy (DOE) approved low-level radioactive waste disposal facility, after [publication date of the final rule in the FEDERAL REGISTER]. (1) Waste Management: The treated waste residue and bubbler water on silica gel must be managed in accordance with DOE or NRC requirements prior to and during disposal. (2) Reopener Language: (A) If, anytime after disposal of the delisted waste, LBNL 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 organic constituent from the waste is detected in the leachate or the groundwater, then LBNL 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 (2)(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 LBNL NTLF 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 LBNL with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. LBNL shall have 30 days from the date of the Regional Administrator's notice to present the information. (D) If after 30 days LBNL 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. (3) Notification Requirements: LBNL must do the following before transporting the delisted waste off-site: (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if LBNL ships the delisted waste to a different disposal facility. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the exclusion.</p>
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[FR Doc. 02–19325 Filed 7–30–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2002–12391]

NHTSA Vehicle Safety Rulemaking Priorities: 2002–2005

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments; correction.

SUMMARY: This document corrects the docket number for a request for comments on NHTSA's vehicle safety rulemaking priorities published on Thursday, July 25, 2002 (67 FR 48599).

FOR FURTHER INFORMATION CONTACT: Lawrence L. Hershman, Office of Safety Performance Standards, NPS–33, National Highway Traffic Safety Administration, Room 5104, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–4929. Email: lhershman@nhtsa.dot.gov.

SUPPLEMENTARY INFORMATION: The notice that is the subject of this correction was published to announce the availability for review and comment of a planning document that describes NHTSA's proposed vehicle safety rulemaking priorities through 2005. The plan includes those rulemaking actions of highest priority for the period 2002 to

2005, based primarily on the greatest potential protection of lives and prevention of injury that fall within the immediate four-year time frame. The plan was posted on NHTSA's website on July 25, 2002. Comments will be evaluated and incorporated, as appropriate, into planned agency activities. The agency intends to update the plan periodically. Comments that cannot be accommodated in the current plan will be reviewed and considered in the context of future updates.

As published, the notice contained an incorrect docket number. The correct docket number is NHTSA–2002–12391. Comments should be addressed to that docket number.