

TABLE 5 TO SUBPART AAAAAAA OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART AAAAAAA—Continued

Citation	Subject	Applies to subpart AAAAAAA
§ 63.4	Prohibited Activities	Yes.
§ 63.5	Construction/Reconstruction	Yes.
§ 63.6(a)–(d)	Compliance With Standards and Maintenance Requirements	Yes.
§ 63.6(e)(1)(i)	Operation and Maintenance Requirements	No.
§ 63.6(e)(1)(ii)–(iii)	Operation and Maintenance Requirements	Yes.
§ 63.6(e)(2)	[Reserved]	
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan	No. Subpart AAAAAAA does not require startup, shutdown, and malfunction plans.
§ 63.6(f)(1)	Compliance with Nonopacity Emission Standards	No. The emission limits apply at all times.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance and Finding of Compliance.	Yes.
§ 63.6(h)	Opacity/Visible Emission (VE) Standards	No. Subpart AAAAAAA does not contain opacity or VE standards.
§ 63.6(i)	Compliance Extension	Yes.
§ 63.6(j)	Presidential Compliance Exemption	Yes.
§ 63.7	Performance Testing Requirements	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Yes.
§ 63.8(a)(2)	Performance Specifications	Yes, if CEMS used.
§ 63.8(a)(3)	[Reserved]	
§ 63.8(a)(4)	Monitoring with Flares	Yes.
§ 63.8(b)(1)	Monitoring	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance	Yes.
§ 63.8(c)(1)(i)	CMS maintenance	Yes.
§ 63.8(c)(1)(ii)	Spare Parts for CMS Malfunction	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements	No. Subpart AAAAAAA does not require startup, shutdown, and malfunction plans.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Yes.
§ 63.8(c)(4)	CMS Requirements	No; § 63.11563 specifies the CMS requirements.
§ 63.8(c)(5)	COMS Minimum Procedures	No. Subpart AAAAAAA does not contain opacity or VE standards.
§ 63.8(c)(6)	CMS Requirements	No; § 63.11563 specifies the CMS requirements.
§ 63.8(c)(7)–(8)	CMS Requirements	Yes.
§ 63.8(d)	CMS Quality Control	No; § 63.11563 specifies the CMS requirements.
§ 63.8(e)–(g)	CMS Performance Evaluation	Yes.
§ 63.9	Notification Requirements	Yes.
§ 63.10	Recordkeeping and Reporting Requirements	Yes.
§ 63.11	Control Device and Work Practice Requirements	Yes.
§ 63.12	State Authority and Delegations	Yes.
§ 63.13	Addresses of State Air Pollution Control Agencies and EPA Regional Offices.	Yes.
§ 63.14	Incorporations by Reference	Yes.
§ 63.15	Availability of Information and Confidentiality	Yes.
§ 63.16	Performance Track Provisions	No.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FDMS Docket No.: EPA–R04–RCRA–2008–0900; FRL–8922–2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: EPA is proposing to grant a petition submitted by The Valero

Refining Company—Tennessee, L.L.C. (Valero) to exclude or “delist” a certain sediment generated by its Memphis Refinery in Memphis, Tennessee from the lists of hazardous wastes. EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the potential impact of the petitioned waste on human health and the environment. EPA bases its proposed decision to grant the petition based on an evaluation of waste-specific information provided by Valero (the petitioner). This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

This exclusion would be valid only when the Storm Water Basin Sediment

is disposed of in a Subtitle D landfill that is permitted, licensed, or registered by a State to manage industrial solid waste.

If finalized, EPA would conclude that Valero’s petitioned waste is nonhazardous with respect to the original listing criteria and that there are no other factors that would cause the waste to be hazardous.

DATES: EPA will accept public comments on this proposed decision until August 10, 2009. EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Any person may request a hearing on this proposed decision by filing a request to EPA by July 24, 2009. The request must contain

the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-RCRA-2008-0900, by one of the following methods:

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

2. *E-mail*: lippert.kristin@epa.gov.

3. *Fax*: (404) 562-8566.

4. *Mail*: EPA-R04-RCRA-2008-0900, RCRA/OPA Enforcement and Compliance Branch, RCRA Division, U.S. Environmental Protection Agency Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

5. *Hand Delivery or Courier*: Kristin Lippert, RCRA/OPA Enforcement and Compliance Branch, RCRA Division, U.S. Environmental Protection Agency Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R04-RCRA-2008-0900. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of

special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, 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 either electronically in *http://www.regulations.gov* or in hard copy at the RCRA/OPA Enforcement and Compliance Branch, RCRA Division, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kristin Lippert, North Enforcement and Compliance Section, (Mail Code 4WD-RCRA), RCRA/OPA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303 or call (404) 562-8605 or via electronic mail at lippert.kristin@epa.gov.

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

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IV. EPA's Evaluation of Valero's Petition

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B. What did EPA conclude about this waste?

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A. With what conditions must Valero comply for its Storm Water Basin Sediment to be delisted?

B. What happens if Valero is unable to meet the terms and conditions of this delisting?

VI. Regulatory Impact

VII. Regulatory Flexibility Act

VIII. Paperwork Reduction Act

IX. Unfunded Mandates Reform Act

X. Executive Order 13045

XI. Executive Order 13084

XII. National Technology Transfer and Advancements Act

XIII. Executive Order 13132 Federalism

I. Overview Information

A. What action is EPA proposing?

Today EPA is proposing to grant the petition submitted by Valero to have its Storm Water Basin sediment generated at its Memphis Refinery in Tennessee excluded or delisted from the definition of a hazardous waste, contingent upon its disposal in a Subtitle D Landfill. This is a one-time exclusion for 2,700 cubic yards of sediment.

B. Why is EPA proposing to approve this delisting?

Valero's petition requests a delisting for the Storm Water Basin sediment from being considered a F037 waste. Valero believes that the Storm Water Basin sediment does not meet the original criteria for the hazardous waste listing. Valero 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 at 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)-(4). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess

whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's proposed decision to delist waste from Valero's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Memphis Refinery at the Tennessee facility.

C. What are the terms for disposal of Valero's Storm Water Basin Sediment pursuant to this exclusion?

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

D. When would the proposed delisting exclusion be finalized?

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

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

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

E. How would this action affect states?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be

affected. This would exclude States who have received authorization from EPA to make their own delisting decisions.

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

II. Background

A. What is the history of the delisting program?

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

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

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

B. What is a delisting petition, and what does it require of a petitioner?

A delisting petition is a request from a facility to the EPA or an authorized State to exclude waste from the list of hazardous wastes pursuant to RCRA. The facility petitions EPA because it does not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that the waste, generated at a particular facility, does not meet any of the criteria for which EPA listed the waste as set forth in 40 CFR 261.11 and the background documents for the listed waste. In addition, a petitioner must demonstrate pursuant to 40 CFR 260.22 that the waste does not exhibit any of the hazardous waste characteristics (ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste (see 40 CFR 260.22, 42 U.S.C. 6921(f), and the background documents for the listed waste).

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

C. What regulations allow a waste to be delisted?

Under 40 CFR 260.20, 260.22, and 42 U.S.C. 6921(f), a generator may petition the EPA to remove its waste from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provisions of 40 CFR parts 260 through 266, 268, and 273 of 40 CFR.

D. What factors must EPA consider in deciding whether to grant a delisting petition?

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

EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste (see 40 CFR 261.3(a)(2)(iii) and (iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively). These wastes are also eligible for exclusion and remain hazardous wastes until excluded (see 66 FR 27266, May 16, 2001).

III. Valero's Petition To Delist Its Waste

A. What waste did Valero petition EPA to delist?

On July 25, 2008, Valero petitioned EPA to exclude from the lists of

hazardous waste contained in 40 CFR 261.31 and 261.32, F037 Storm Water Basin sediment generated from its facility located in Memphis, Tennessee. The F037 listing is for a petroleum refinery primary oil/water/solids separation sludge. This sediment has collected in the bottom of the Storm Water Basin since 1993 and is between three (3) to four (4) feet deep. The sediment originates from storm water flows (*i.e.*, wet weather flows) and may have occurred from flows during non-storm events (*i.e.*, dry weather flows). This sediment waste stream is classified as hazardous waste due to “carry over” of waste codes resulting from the RCRA’s “mixture” and “derived-from” rules and/or a conservative interpretation for the assignment of hazardous waste code F037. The waste conservatively falls under the classification of listed waste under 40 CFR 261.3. Specifically, in its petition, Valero requested that EPA grant a one-time exclusion for 2,700 cubic yards of the F037 Storm Water Basin sediment.

B. How is the petitioned waste generated?

Valero generates hazardous and nonhazardous industrial solid wastes as a result of refinery and chemical processes, wastewater treatment, refinery/chemical plant feed, product storage and distribution. The sediment in the Storm Water Basin originates

from storm water flow associated with the Memphis Refinery as well as Martin Luther King Jr. Park that is north of and upgradient to the refinery. Accounting for the existing sediment depth of three to four feet, the basin has a remaining capacity of roughly 600,000 gallons with overall dimensions of approximately 200 feet by 100 feet.

In addition to storm water (*i.e.*, wet weather flows) entering the Storm Water Basin, some flows during non-storm events (*i.e.*, dry weather flows) may have occurred from sources that could be viewed as “oily”. Therefore, the sediment could carry the EPA hazardous waste code of F037. In the absence of definitive information regarding these dry weather flows and their classification, Valero has elected to conservatively assume that sediment in the Storm Water Basin bears EPA hazardous waste code F037.

C. What information did Valero submit in support of its petition?

To support its petition, Valero submitted: (1) Facility information on production processes and waste generation processes including analytical data from twelve (12) samples collected on August 7, 2007, in the Storm Water Basin; (2) Results of the total constituent list for 40 CFR part 264 Appendix IX volatiles, semivolatiles, metals, pesticides, herbicides, dioxins and PCB for the sampling on August 7,

2007; (3) Results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals for the sampling on August 7, 2007; (4) Analytical constituents of concern for F037 for the sampling on August 7, 2007; (5) Results from total oil and grease analyses for the sampling on August 7, 2007; and (6) Summary of the July 2006 Sediment Data (Highest Results from Detections).

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

TABLE I—MAXIMUM TOTAL AND TCLP CONCENTRATIONS AND MAXIMUM

[Allowable Delisting Concentration Levels, Storm Water Basin F037 Sediment, Valero’s Memphis Refinery, Memphis, Tennessee]

Constituent	Maximum total constituent analysis (mg/kg)	Maximum TCLP constituent analysis (mg/L)	Maximum allowable delisting concentration level (mg/L)
Acenaphthene	0.464	<0.008	N/A
Antimony	7.86	0.309	1.13
Anthracene	0.833	<0.008	N/A
Arsenic	26	0.092	0.205
Barium	236	1.53	160
Benz(a)anthracene	5.79	<0.008	N/A
Benzo(a)pyrene	5.32	<0.008	0.00177
Benzo(b)fluoranthene	2.73	<0.008	0.016
Benzo(g,h,i)perylene	2.22 J	<0.008	N/A
Benzo(k)fluoranthene	3.26	<0.008	N/A
Beryllium	0.358	<0.01	9.12
Bis(2-ethylhexyl)phthalate	1.7 J	0.406	2.5
Cadmium	0.908	<0.005	1.23
Chromium ⁺⁶	34.0	<0.01	3.82
Chromium	N/A	<0.01	8,440
Chrysene	11.2	<0.008	3.04
Chloroform	0.0182	0.0182	5.33
Cobalt	11.0	0.069	N/A
Copper	45.5	N/A	23,100
Cyanide	<1	N/A	29.6
Dibenz(a,h)anthracene	1.2 J	<0.008	0.000833
Hepta-dioxins (totals)	6.12E-04	N/A	N/A
Hexa-dioxins (totals)	1.3E-04	N/A	N/A
Penta-dioxins (totals)	2.8E-05	N/A	N/A

TABLE I—MAXIMUM TOTAL AND TCLP CONCENTRATIONS AND MAXIMUM—Continued
 [Allowable Delisting Concentration Levels, Storm Water Basin F037 Sediment, Valero's Memphis Refinery, Memphis, Tennessee]

Constituent	Maximum total constituent analysis (mg/kg)	Maximum TCLP constituent analysis (mg/L)	Maximum allowable delisting concentration level (mg/L)
Tetra-dioxins (totals)	1.16E-05	N/A	N/A
Ethylbenzene	1.56	0.0133	N/A
Fluoranthene	1.52	<0.008	3.53
Fluorene	1.01	<0.008	12.2
Hepta-furans	2.08E-04	N/A	N/A
Hexa-furans	1.83E-04	N/A	N/A
Penta-furans (totals)	2.05E-04	N/A	N/A
Tetra-furans (totals)	4.01E-05	N/A	N/A
1,2,3,4,6,7,8-HpCDD	0.242E-03 B	N/A	N/A
1,2,3,4,6,7,8-HpCDF	6.67E-05	N/A	N/A
1,2,3,4,7,8,9-HpCDF	2.11E-05	N/A	N/A
1,2,3,4,7,8-HxCDD	5.38E-06	N/A	N/A
1,2,3,6,7,8-HxCDD	1.16E-05	N/A	N/A
1,2,3,7,8,9-HxCDD	1.39E-05	N/A	N/A
1,2,3,4,7,8-HxCDF	1.62E-05	N/A	N/A
1,2,3,6,7,8-HxCDF	8.55E-06	N/A	N/A
1,2,3,7,8,9-HxCDF	0.577E-06 J	N/A	N/A
2,3,4,6,7,8-HxCDF	6.1E-06	N/A	N/A
Indeno(1,2,3-cd)pyrene	0.749	<0.008	N/A
Lead	46.8	0.015	1,640
Mercury	1.04	<0.001	0.178
2-Methylnaphthalene	5.89	<0.008	N/A
Naphthalene	1.36	<0.008	N/A
Nickel	57.9	0.248	61.9
OCDD	4.34E-03 EB	N/A	N/A
OCDF	1.45E-04	N/A	N/A
1,2,3,7,8-PeCDD	3.44E-06 J	N/A	N/A
1,2,3,7,8-PeCDF	3.25E-06 JK	N/A	N/A
2,3,4,7,8-PeCDF	4.63E-06	N/A	N/A
Phenanthrene	4.24	<0.008	N/A
n-propylbenzene	1.04	<0.01	N/A
Pyrene	7.40	<0.008	2.71
Selenium	<5.0	<0.05	4.77
Silver	<2.5	<0.005	8.41
Sulfide	736	N/A	N/A
2,3,7,8-TCDD	0.847E-06 J	N/A	4.48E-08
2,3,7,8-TCDF	3.69E-06 C	N/A	N/A
Thallium	<2	N/A	0.29
Tin	6.16	N/A	N/A
1,3,5-Trimethylbenzene	8.10	0.0282	N/A
Vanadium	94.6	0.391	46.3
Xylenes, Total	8.99	0.0737	N/A
Zinc	742	2.34	615

Notes:

(A) These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

(B) Based on DRAS modeling with a target risk of 10-5 and a target HI of 0.1. One-time sediment volume of 2,700 cy.

IV. EPA's Evaluation of Valero's Petition

A. How did EPA evaluate the information submitted?

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. EPA determined that disposal in an unlined Subtitle D landfill is the most reasonable, worst-case disposal scenario for Valero's petitioned waste. EPA applied the

Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000) and 65 FR 75637 (December 4, 2000) to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of Valero's petitioned waste on human health and the environment. A copy of this software can be found on the Internet at http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm. In assessing potential risks to ground water, EPA

used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10-5 and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and EPA health-based numbers. Using the

maximum compliance-point concentrations and the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in ground water.

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

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

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

EPA believes that the descriptions of Valero hazardous waste process and analytical characterization, which illustrate the presence of toxic constituents at lower concentrations in these waste streams, provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that

short-term and long-term threats to human health and the environment are minimized.

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

B. What did EPA conclude about this waste?

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

It is EPA's position that we should grant Valero an exclusion for the F037 Storm Water Basin sediment. The data submitted to EPA in support of the petition show Valero's F037 Storm Water Basin sediment is nonhazardous.

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

EPA therefore proposes to grant an exclusion to Valero Memphis Refinery Memphis, Tennessee, for the F037 Storm Water Basin sediment described in its petition. EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the F037 Storm Water Basin sediment.

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

EPA concluded, after reviewing Valero's processes, that no other hazardous constituents of concern, other than those for which Valero tested, are likely to be present or formed as reaction products or by-products in the wastes. In addition, on the basis of explanations and analytical data provided by Valero, pursuant to 40 CFR 260.22, EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22 and 261.23, respectively. Neither did it show the toxicity characteristic.

C. What other factors did EPA consider in its evaluation?

During the evaluation of Valero's petition, EPA also considered the potential impact of the petitioned waste via non-ground water routes (i.e., air emissions and surface runoff). EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Valero's waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from Valero's F037 Storm Water Basin sediment. With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from Valero's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from Valero's waste under the modeled disposal conditions. EPA also considered the potential impact of the petitioned waste via a surface water route. EPA believes that containment structures at Class I Landfills can effectively control surface water runoff, as the Subtitle D regulations (See 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in this notice due to the aggressive acidic medium used for extraction in the TCLP. EPA believes that, in general, the F037 Storm Water Basin sediment is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur.

Based on the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, EPA evaluated the

potential impacts on surface water if Valero's waste were released from a Class I Landfill through runoff and erosion. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). EPA therefore concluded that Valero's F037 Storm Water Basin sediment is not a present or potential substantial hazard to human health and the environment via the surface water exposure pathway.

V. Conditions

A. With what conditions must Valero comply for its Storm Water Basin Sediment to be delisted?

The petitioner, Valero, must comply with the requirements in 40 CFR part 261, Appendix IX, Table 1. The text below gives the rationale and details of those requirements. (1) Reopener: The purpose of Paragraph 1 is to require Valero to disclose new or different information related to a condition at the facility or disposal of the waste, if it is pertinent to the delisting. This provision will allow EPA to reevaluate the exclusion, if a source provides new or additional information to EPA. EPA will evaluate the information on which we based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented.

This provision expressly requires Valero to report differing site conditions or assumptions used in the petition (*i.e.*, if the wastes begin to leach at higher concentrations than predicted) within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at 40 CFR 268.6.

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

EPA believes a clear statement of its authority in delistings is merited in light of EPA experience. See Reynolds Metals Company at 62 FR 37694 and 62 FR 63458, where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading EPA to repeal the delisting.

If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations case by case. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. See APA Sec. 553 (b). (2) Notification Requirements: In order to adequately track wastes that have been delisted, EPA is requiring that Valero provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. Valero must provide this notification within 60 days of commencing this activity.

B. What happens if Valero is unable to meet the terms and conditions of this delisting?

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

VI. Regulatory Impact

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

Under Section 3009 of RCRA, EPA allows States to impose their own non-RCRA regulatory requirements that are more stringent than EPA's. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the State. EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

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

Under Executive Order 12866, the EPA must conduct an "assessment of the potential costs and benefits" for all

"significant" regulatory actions. The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

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

VII. Regulatory Flexibility Act

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

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

VIII. Paperwork Reduction Act

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

IX. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, the EPA generally must prepare a written statement for rules with Federal

mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year.

When such a statement is required for the EPA rules, under Section 205 of the UMRA the EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must develop under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector.

EPA finds that this delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA Section 203.

X. Executive Order 13045

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

significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

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

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

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

XII. National Technology Transfer and Advancement Act

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

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

XIII. Executive Order 13132 Federalism

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

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

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

List of Subjects in 40 CFR Part 261

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

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

Dated: January 21, 2009.

G. Alan Farmer,
Director, RCRA Division, Region 4.

Editorial Note: This document was received in the Office of the Federal Register on July 6, 2009.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

2. In Table 1 of Appendix IX of Part 261, it is proposed to add the following wastes in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under 40 CFR §§ 260.20 and 260.22

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
The Valero Refining Company—Tennessee, L.L.C.	Memphis, TN	Storm Water Basin sediment (EPA Hazardous Waste No. F037) generated one time at a volume of 2,700 cubic yards [insert publication date of the final rule] and disposed in a Subtitle D landfill. This is a one time exclusion and applies to 2,700 cubic yards of Storm Water Basin sediment. (1) Reopener. (A) If, anytime after disposal of the delisted waste, Valero possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If Valero fails to submit the information described in paragraph (A) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Division Director determines that the reported information does require EPA action, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (D) Following the receipt of information from the facility described in paragraph (C) or (if no information is presented under paragraph initial receipt of information described in paragraphs (A) or (B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (2) Notification Requirements: Valero must do the following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification, if they ship the delisted waste to a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.

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BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA-R06-RCRA-2009-0108; SW FRL-8922-9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: EPA is proposing to grant a petition submitted by Occidental Chemical Corporation (OxyChem) to exclude (or delist) a certain solid waste generated by its Ingleside, Texas, facility from the lists of hazardous wastes. EPA

used the Delisting Risk Assessment Software (DRAS) Version 3.0 in the evaluation of the impact of the petitioned waste on human health and the environment.

DATES: We will accept comments until August 10, 2009. We will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by July 24, 2009. The request must contain the information prescribed in 40 CFR 260.20(d) (hereinafter all CFR cites refer to 40 CFR unless otherwise stated).

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-RCRA-2009-0108 by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. *E-mail:* jacques.wendy@epa.gov.

3. *Mail:* Wendy Jacques, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD-F, 1445 Ross Avenue, Dallas, TX 75202.

4. *Hand Delivery or Courier.* Deliver your comments to: Wendy Jacques, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD-F, 1445 Ross Avenue, Dallas, TX 75202.

Instructions: Direct your comments to Docket ID No. EPA-R06-RCRA-2008-0456. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.