

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 76**

[FRL-6455-5]

**Acid Rain Program—Nitrogen Oxides Emission Reduction Program, Rule Revision in Response to Court Remand****AGENCY:** Environmental Protection Agency.**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to revise the regulations for the Acid Rain Nitrogen Oxides Emission Reduction Program under title IV of the Clean Air Act (Act) in response to a remand by the U.S. Court of Appeals for the District of Columbia Circuit. In December 1996, EPA issued regulations setting nitrogen oxides (NO<sub>x</sub>) emission limits for specified types of existing, coal-fired boilers, including cell burner boilers, that are subject to such limits starting in 2000. In February 1998, the Court upheld the regulations except for one provision addressing what boilers qualify as cell burner boilers. The Court vacated and remanded that provision. EPA is revising the regulations, consistent with the Court's decision, to treat, as a cell burner boiler, any boiler subject to the limits starting in 2000, constructed as a cell burner boiler, and converted to the burner configuration of a wall-fired boiler. Under the regulations, a cell burner boiler must meet an annual average NO<sub>x</sub> emission limit of 0.68 lb/mmBtu. The NO<sub>x</sub> emission limits under title IV will reduce the serious, adverse effects of NO<sub>x</sub> emissions on human health, visibility, ecosystems, and materials.

**DATES:** Written comments on this proposed rule must be received by November 29, 1999.

**Public Hearing:** Anyone requesting a public hearing must submit a request, which must be received by EPA by no later than October 22, 1999.

**ADDRESSES:** Comments: Commenters must identify all written comments with the appropriate docket number (Docket No. A-95-28) and must submit them in duplicate to EPA Air Docket Section (6102), Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW, Washington, DC 20460.

**Docket:** Docket No. A-95-28, containing supporting information used in developing the direct final rule, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's

Air Docket Section at the above address. EPA may charge a reasonable fee for copying.

**FOR FURTHER INFORMATION CONTACT:**

Dwight C. Alpern, at (202) 564-9151, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; or the Acid Rain Hotline at (202) 564-9089.

**SUPPLEMENTARY INFORMATION:** We are proposing to revise the provision concerning cell burner boilers in the regulations for the Acid Rain Nitrogen Oxides Emission Reduction Program. In the "Rules and Regulations" section of today's **Federal Register**, we are adopting the revision as a direct final rule because we view the revision as noncontroversial and anticipate no adverse comment. We have explained our reasons for the revision in the preamble to the direct final rule. If we receive no timely, adverse comment, we will not take further action on this proposed rule. If we receive timely, adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

**List of Subjects in 40 CFR Part 76**

Environmental protection, Acid rain program, Air pollution control, Electric utilities, Nitrogen oxides.

Dated: October 5, 1999.

**Carol M. Browner,**

*Administrator.*

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 261**

[SW-FRL-6455-1]

**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:** The EPA ("the Agency" or "we" in this preamble) is proposing to grant a petition submitted by Rhodia, Incorporated Houston (Rhodia). Rhodia petitioned the Agency to exclude (or delist) filter-cake sludge generated at its Houston, Harris County, Texas, facility from the lists of hazardous wastes

contained in 40 CFR 261.24, 261.31, and 261.32 (hereinafter all sectional references are to 40 CFR unless otherwise indicated).

Rhodia submitted this petition under §§ 260.20 and 260.22(a). Section 260.20 allows any person to petition the Administrator to modify or revoke any provision of §§ 260 through 266, 268 and 273. Section 260.22(a) specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner.

If finalized, we would conclude that Rhodia's petitioned waste is nonhazardous with respect to the original listing criteria and that the waste process Rhodia uses will substantially reduce the likelihood of migration of hazardous constituents from this waste. We would also conclude that their process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

**DATES:** We will accept comments until November 29, 1999. We will stamp comments postmarked 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 November 1, 1999. The request must contain the information prescribed in § 260.20(d).

**ADDRESSES:** Please send three copies of your comments. Two copies should be sent to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD-O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A third copy should be sent to the Texas Natural Resources Conservation Commission (TNRCC), P.O. Box 13087, Austin, Texas, 78711-3087. Identify your comments at the top with this regulatory docket number: "F-99-TXDEL-Rhodia."

You should address requests for a hearing to the Acting Director, Robert Hanneschlager, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

**FOR FURTHER INFORMATION CONTACT:** James Harris at (214) 665-8302.

**SUPPLEMENTARY INFORMATION:**

The information in this section is organized as follows:

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- XIII. National Technology Transfer and Advancement Act

## I. Overview Information

### A. What Action is EPA Proposing?

The EPA is proposing:

(1) To grant Rhodia's petition to have its filter-cake sludge excluded, or delisted, from the definition of a hazardous waste, subject to certain verification and monitoring conditions; and

(2) To use a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency uses this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

### B. Why Is EPA Proposing To Approve This Delisting?

Rhodia's petition requests a delisting for listed hazardous wastes. Rhodia does

not believe that the petitioned waste meets the criteria for which EPA listed it. Rhodia 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 HSWA. See section 222 of HSWA, 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 §§ 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste were originally listed, EPA would have proposed to deny the petition.) The 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. The 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. The EPA believes that the petitioned waste does not meet these criteria. EPA's proposed decision to delist waste from Rhodia's facility is based on the information submitted in support of today's rule, *i.e.*, descriptions of the Sulfuric Acid Regeneration Unit (SARU) and the Advanced Water Treatment (AWT) system and analytical data from the Houston facility.

### C. How Will Rhodia Manage the Waste If It Is Delisted?

Rhodia currently disposes of the petitioned waste (filter-cake Sludge) generated at its facility in off-site, RCRA permitted TSD facilities which are not owned/operated by Rhodia. If the waste is delisted it will meet the criteria for disposal in a Subtitle D landfill.

### D. When Would EPA Finalize the Proposed Delisting?

The HSWA 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 until it addresses all timely public comments (including those at public hearings, if any) on today's proposal.

Section 3010(b) at 42 USCA 6930(b) of RCRA 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.

The 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 § 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 today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received authorization from EPA to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a RCRA 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 Rhodia transports the petitioned waste to or manages the waste in any State with delisting authorization, Rhodia must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

## II. Background

### A. What is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA. The EPA has amended this list several times and published it in §§ 261.31 and 261.32.

We list these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in §§ 261.11 (a)(2) or (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 generally is hazardous, a specific waste from an individual facility meeting the listing description 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 EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions the Agency because they do not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for the listed wastes. The criteria for which EPA lists a waste are in Part 261 and in the background documents for the listed wastes.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and 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 Part 261 and the background documents for the listed wastes.)

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the

hazardous waste characteristics even if EPA has "delisted" the wastes.

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

Besides considering the criteria in § 260.22(a), in 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous. (See 3010(b) of the Solid Waste Disposal Act.)

The EPA must also consider as hazardous wastes mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See §§ 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.

The "mixture" and "derived-from" rules are now final, after having been vacated, remanded, and reinstated. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to EPA on procedural grounds. See *Shell Oil Co. v. EPA*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues. See (57 FR 7628). These rules became final on October 30, 1992. See (57 FR 49278). Consult these references for more information about mixtures derived from wastes.

## II. EPA's Evaluation of the Waste Data

### A. What Waste Did Rhodia Petition EPA To Delist?

On November 4, 1997, Rhodia petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, a waste by-product (Filter-Cake Sludge) which falls under the classification of listed waste because of the "derived from" rule in RCRA 40 CFR 260.3(c)(2)(i). Specifically, in its petition, Rhodia, Incorporated, located in Houston, Texas, requested that EPA grant an exclusion for 1,200 cubic yards per year of filter-cake sludge resulting from its hazardous waste treatment process. The resulting waste is listed, in accordance with § 261.3(c)(2)(i) (i.e., the "derived from" rule).

### B. Who Is Rhodia, and What Process Does It Use?

Rhodia owns and operates a 46-acre facility which is primarily involved in the manufacture of sulfuric acid. Rhodia has been in operation since 1917, primarily producing various strengths and grades of sulfuric acid, sulfur dioxide, oleum, and sulfur trioxide. Rhodia generates sulfuric acid using a spray burning SARU. The recycling process requires the use of an industrial furnace. The furnace utilizes natural gas as the primary fuel. However, Rhodia also treats high and low British Thermal Unit (BTU) pumpable liquid hazardous waste in the furnace. Rhodia accepts hazardous waste from off-site generators for incineration in the sulfuric acid regeneration furnace. A weak acid blowdown stream generated from the wet gas scrubber, cooler, and electrostatic precipitator is treated at the AWT system. The petitioned waste is dewatered filter-cake sludge resulting from the AWT system. The waste by-product (filter-cake sludge) currently falls under the classification of listed waste according to RCRA 40 CFR 261.3(c)(2)(i) because of the "derived from" rule. The waste codes of the constituents of concern are EPA Hazardous Waste Nos. D001–D043, F001–F012, F019, F024, F025, F032, F034, F037–F039, K002–004, K006–K011, K013–K052, K060–K062, K064–K066, K069, K071, K073, K083–K088, K090–K091, K093–K118, K123–K126, K131–K133, K136, K141–K145, K147–K151, K156–K161, P001–P024, P026–P031, P033–P034, P036–P051, P054, P056–P060, P062–P078, P081–P082, P084–P085, P087–P089, P092–P116, P118–P123, P127–P128, P185, P188–P192, P194, P196–P199, P201–P205, U001–U012, U014–U039, U041–U053, U055–U064, U066–U099, U101–U103, U105–U138, U140–U174, U176–U194, U196–U197, U200–U211, U213–U223, U225–U228, U234–U240, U243–U244, U246–U249, U271, U277–U280, U328, U353, U359, U364–U367, U372–U373, U375–U379, U381–U396, U400–U404, U407, U409–U411.

### C. How Did Rhodia Sample and Analyze the Waste Data in This Petition?

Rhodia analyzed the samples for the complete list of constituents included in 40 CFR Part 264, Appendix IX and the additional parameters for waste common to the petrochemical, oil and gas industries. The analyses were performed using EPA-approved methods. The analytical parameters and methods are provided in Table I.

TABLE I.—ANALYTICAL PARAMETERS AND METHODS

Parameter	Matrix	Method
GC/MS BNA, App IX List .....	Solid .....	SW846 Method 8270.
GC/MS VOA, App IX List .....	Solid .....	SW846 Method 8240.
Metals—App IX List .....	Solid .....	SW846 Methods 6010/7000 Series.
Herbicides—App IX List .....	Solid .....	SW846 Method 8150.
Pesticide/PCB, App IX List .....	Solid .....	SW846 Method 8080.
Organophosphorus Pesticides, App IX List .....	Solid .....	SW846 Method 8140.
Sulfide .....	Solid .....	EPA 376.1.
Cyanide, Total .....	Solid .....	SW846, Method 9010.
Dioxin/Furan—App IX List .....	Solid .....	SW846 Method 8280.
TCLP—40 CFR 261.24 List, and Nickel .....	Solid .....	SW846 Method 1311.
Neutral Leach Cyanide .....	Solid .....	SW846 Method 1311 (Modified).
Oil & Grease .....	Solid .....	EPA 413.1.
Reactive Cyanide .....	Solid .....	SW 846 Chapter 7.3.3.2.
Reactive Sulfide .....	Solid .....	SW846 Chapter 7.3.4.2.
Flash Point Closed Cup .....	Solid .....	SW846 Method 1010.
pH .....	Solid .....	SW846 Method 9045.

**Note:** Rhodia performed TCLP analyses for specific constituents detected in the total analyses for a given sample.

#### *D. What Were the Results of Rhodia's Analysis?*

The EPA believes that the descriptions of the Rhodia hazardous waste process and analytical characterization, in conjunction with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis to grant Rhodia's petition for an exclusion of the filter-cake sludge. The EPA believes the data submitted in support of the petition show Rhodia's process can render the filter-cake sludge non-hazardous. The EPA has reviewed the sampling procedures used by Rhodia and has determined they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations in the filter-cake sludge. The data submitted in support of the petition show that constituents in Rhodia's waste are presently below health-based levels used in the delisting decision-making. The EPA believes that Rhodia has successfully demonstrated that the filter-cake sludge is non-hazardous.

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

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. The EPA determined that disposal in a Subtitle D landfill/surface impoundment is the most reasonable, worst-case disposal scenario for Rhodia's petitioned waste, and that the major exposure route of concern would be ingestion of contaminated ground water. EPA applied a particular fate and transport model, EPA Composite Model for Landfills (EPACML), to predict the maximum

allowable concentrations of hazardous constituents that may release from the petitioned waste after disposal and determined the potential impact of the disposal of Rhodia's petitioned waste on human health and the environment. Specifically, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the health-based levels at an assumed risk of  $10^{-6}$  used in delisting decision-making for the hazardous constituents of concern.

The EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned waste in a landfill/surface impoundment, 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 scenario resulted in conservative values for the compliance-point concentrations and ensured that the waste, once removed from hazardous waste regulation, may not pose a significant threat to human health or the environment. 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.

The EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, EPA determined that it would be unnecessary to request ground water monitoring data. Rhodia currently disposes of its waste in an off-site RCRA landfill. This landfill did not begin accepting this petitioned waste generated by the Rhodia facility until 1991. This petitioned waste comprises a small fraction of the total waste managed in the unit. Therefore, EPA believes that any ground water monitoring data from the landfill would not be meaningful for an evaluation of the specific effect of this petitioned waste on ground water.

From the evaluation of Rhodia's delisting petition, EPA developed a list of constituents for the verification testing conditions. Proposed maximum allowable leachable concentrations for these constituents were derived by back-calculating from the delisting health-based levels through the proposed fate and transport model for a landfill management scenario. These concentrations (i.e., "delisting levels") are part of the proposed verification testing conditions of the exclusion.

Similar to other facilities seeking exclusions, Rhodia's exclusion (if granted) would be contingent upon the facility conducting analytical testing of representative samples of the petitioned waste at its Houston facility. This testing would be necessary to verify that the treatment system is operating as demonstrated in the petition submitted on November 4, 1997. Specifically, the verification testing requirements, demonstrate that the processing facility will generate nonhazardous waste (i.e., waste that meet EPA's verification testing conditions). The EPA believes

that the descriptions of the Rhodia, Inc. hazardous waste process and analytical characterization, in conjunction with the proposed verification testing requirements (as discussed later in this notice) 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. Thus, EPA should grant Rhodia's petition for a conditional exclusion of the filter-cake sludge.

The EPA Region 6 Delisting Program guidance document states that the appropriate fate and effect model will be used to determine the effect the petitioned waste could have on human health if it is not managed as a hazardous waste. Specifically, the model considers the maximum estimated waste volume and the maximum reported leachate concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) are then compared directly to the health-based levels used in delisting decision-making for hazardous constituents of concern. EPA Region 6 has selected the EPA Composite Model for Landfills (EPACML, **Federal Register** Vol. 56, No. 138, July 18, 1991, Page 32993) as the appropriate model for the delisting

program. This subsection presents an evaluation of the potential for ground water contamination for the petitioned waste using the EPACML model.

The EPA considered the appropriateness of alternative waste management scenarios for Rhodia's filter-cake sludge. The EPA decided, based on the information provided in the petition, that disposal of the filter-cake in a municipal solid waste landfill is the most reasonable, worst-case scenario for the filter-cake sludge. The disposal of the filter-cake sludge in a surface impoundment would be the most reasonable worst-case scenario. Under a landfill/surface impoundment disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The EPA, therefore, evaluated Rhodia's petitioned waste using the modified EPA Composite Model for Landfills/Surface Impoundments (EPACML) which predicts the potential for ground water contamination from waste landfilled/ placed in a surface impoundment. See 56 *FR* 32993 (July 18, 1991), 56 *FR* 67197 (December 30, 1991) and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, predicts reasonable worst-case contaminant levels in ground water at a compliance point (*i.e.*, a receptor well serving as a drinking-

water supply). Specifically, the model estimated the dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from ground water recharge for a specific volume of waste.

For the evaluation of Rhodia's petitioned waste, EPA used the EPACML to evaluate the mobility of the hazardous constituents detected in the extract of samples of Rhodia's filter-cake sludge. Total analysis was also utilized for the filter-cake sludge. Typically, EPA uses the maximum annual waste volume to derive a petition-specific DAF. The maximum annual waste volume for Rhodia is 1,200 cubic yards per year. The DAFs are currently calculated assuming an ongoing process generates waste for 20 years.

Analytical data for the filter-cake sludge samples were used in the model. The data summaries for detected constituents are presented in Tables II, III, IV, and V.

The EPA's evaluation of the Filter-cake Sludge is based on the maximum reported Total and TCLP concentrations (See Table III). Consequently the compliance point concentrations are below current health based levels and Land Disposal Restrictions for Non-Wastewater (See Table V).

Based on the EPACML, the petitioned waste should be delisted because no constituents of concern exceed the delisting concentrations.

TABLE II.—ACETONE AND CHLOROFORM DATA SUMMARY <sup>1</sup>

Filter-cake samples (mg/kg)	Analytical parameter (VOCs)	
	Acetone	Chloroform
Appendix IX Reporting Limit <sup>2</sup>	0.010	0.05
FC970512-01	0.60	0.10
FC970512-01RE <sup>3</sup>	0.26	0.02
FC970513-02	0.30	0.10
FC970513-02RE <sup>3</sup>	0.28	0.04
FC970514-03	0.25	0.056
FC970514-03RE <sup>3</sup>	0.16	0.023
FC970515-04	<sup>4</sup> ND	ND
FC970515-04RE <sup>3</sup>	<sup>5</sup> NA	NA
FC970517-05	0.043	ND
FC970517-05RE <sup>3</sup>	NA	NA
FC970520-06	0.050	ND
FC970520-06RE <sup>3</sup>	NA	NA
FC970521-07	0.049	ND
FC970522-08	0.058	ND
FC970522-08RE <sup>3</sup>	0.17	ND
FC970522-08	ND	ND
FC970522-08RE <sup>3</sup>	0.13	ND

<sup>1</sup> This table only summarizes the analytical results for the volatile organic compounds that were detected by the laboratory against the Appendix IX reporting limits.

<sup>2</sup> The Appendix IX reporting limits for acetone are chloroform are referenced from 40 CFR 264, Appendix IX.

<sup>3</sup> RE—Replicate samples.

<sup>4</sup> ND—Not detected.

<sup>5</sup> NA—Not analyzed.

TABLE III.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS FILTER-CAKE SLUDGE <sup>1</sup>

Constituent	Total constituent analyses (mg/kg)	TCLP Leachate Concentration (mg/l)
Arsenic .....	830.00	ND
Barium .....	193.00	ND
Cadmium .....	3.50	ND
Chromium .....	852.00	ND
Cobalt .....	81.20	4.06
Copper .....	1500.00	75.00
Mercury .....	81.60	ND
Lead .....	861.00	ND
Nickel .....	1210.00	3.00
Selenium .....	36.30	ND
Silver .....	94.90	ND
Vanadium .....	92.10	4.61
Zinc .....	3130.00	156.50

<sup>1</sup> 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.

TABLE IV.—OIL AND GREASE RESULTS SUMMARY <sup>1</sup>

Filter-cake samples (mg/kg)	Analytical Parameter (specific) Oil and grease
Laboratory Reporting Limit <sup>2</sup> .....	3,520
FC970520-06 .....	3,660

<sup>1</sup> This table only summarizes the results for those special parameters that were detected above laboratory detection limits.

<sup>2</sup> Appendix IX reporting limits are not available for oil and grease. Therefore, the laboratory's detection limits were used for the comparison.

TABLE V.—EPACML: COMPARISON OF FILTER-CAKE SLUDGE CALCULATED COMPLIANCE-POINT CONCENTRATIONS AGAINST REGULATORY STANDARDS

Constituents	Compliance point concentrations (mg/l) <sup>1</sup>	Levels of concern (mg/l) <sup>2</sup>	LDR non-waste-water (mg/l)
Arsenic .....	0.001	0.05	5.00
Barium .....	0.006	2.00	21.00
Cadmium .....	0.001	0.005	0.11
Chromium .....	0.001	0.1	0.60
Mercury .....	<sup>3</sup> ND	0.002	0.025
Nickel .....	0.033	0.1	11.00
Lead .....	0.001	0.015	0.75
Selenium .....	<sup>3</sup> ND	0.05	5.70
Silver .....	0.001	0.2	0.14

<sup>1</sup> Using the maximum TCLP leachate concentration, based on a DAF of 90 for a maximum annual volume of 1,200 cubic yards.

<sup>2</sup> See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," May 1996 located in the RCRA Public Docket for today's notice.

<sup>3</sup> ND = Not Detected.

#### F. What Did EPA Conclude About Rhodia's Analysis?

The EPA concluded, after reviewing Rhodia's processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by products in Rhodia's waste. In addition, on the basis of explanations and analytical data provided by Rhodia, pursuant to § 260.22, the EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

#### G. What Other Factors Did EPA Consider?

During the evaluation of Rhodia's petition, EPA also considered the potential impact of the petitioned waste via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from Rhodia's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from Rhodia's waste under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from

Rhodia'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 Rhodia's Filter-cake sludge. A description of EPA's assessment of the potential impact of Rhodia's waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for today's proposed rule.

The EPA also considered the potential impact of the petitioned waste via a surface water route. The EPA believes that containment structures at municipal solid waste 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 today's notice due to the aggressive acidic medium used for extraction in the TCLP. The EPA believes that, in general, leachate derived from the waste 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. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as ground water.

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 Rhodia's waste were released from a municipal solid waste landfill through runoff and erosion. See, the RCRA public docket for today's proposed rule. 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). The EPA, therefore, concluded that Rhodia's filter-cake Sludge is not a present or potential substantial hazard to human health and the environment via the surface water exposure pathway.

#### *H. What is EPA's Final Evaluation of This Delisting Petition?*

The descriptions of Rhodia's hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), 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 applicable treatment standards (see Table V). We conclude Rhodia's process will substantially reduce the likelihood of migration of hazardous constituents from the petitioned waste. Their process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes we should grant Rhodia an exclusion for the filter-cake sludge. The EPA believes the data submitted in support of the petition

show Rhodia's process can render the filter-cake sludge nonhazardous.

We have reviewed the sampling procedures used by Rhodia and have determined they satisfy EPA criteria for collecting representative samples of variable constituent concentrations in the filter-cake sludge. The data submitted in support of the petition show that constituents in Rhodia'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. The EPA believes that Rhodia has successfully demonstrated that the filter-cake sludge are nonhazardous.

The EPA therefore, proposes to grant a conditional exclusion to the Rhodia Corporation, in Houston, Texas, for the filter-cake sludge described in its petition. The EPA's decision to conditionally exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the filter-cake sludge.

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

#### **IV. Next Steps**

##### *A. With What Conditions Must the Petitioner Comply?*

The petitioner, Rhodia, must comply with the requirements in 40 CFR part 261, Appendix IX, Tables 1 and 2. The text below gives the rationale and details of those requirements.

##### **(1) Delisting Levels**

This paragraph provides the levels of constituents that Rhodia must test the leachate from the filter-cake sludge, below which these wastes would be considered nonhazardous.

The EPA selected the set of inorganic and organic constituents specified in Paragraph (1) because of information in the petition. We compiled the list from the composition of the waste, descriptions of Rhodia's treatment process, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making.

We established the proposed delisting levels by calculating the Maximum Allowable Leachate (MALs) concentrations from the Health-based levels (HBL) for the constituents of concern and the EPACML chemical-specific DAF of 90, that is,  $MAL = HBL \times DAF$ . We also limited the MALs so the concentrations would not exceed non

waste water concentrations in the Land Disposal Restriction treatment standards in 40 CFR part 268. These delisting levels correspond to the allowable levels measured in the TCLP extract of the waste.

##### **(2) Waste Holding and Handling**

The purpose of this paragraph is to ensure that any filter-cake sludge which might contain hazardous levels of inorganic and organic constituents are managed and disposed of in accordance with Subtitle C of RCRA. Holding the filter-cake sludge until characterization is complete will protect against improper handling of hazardous material. If EPA determines that the data collected under this condition do not support the data provided for the petition the exclusion will not cover the petitioned waste.

##### **(3) Verification Testing Requirements**

*(A) Initial Verification Testing.* If the EPA determines that the data from the initial verification period shows the treatment process is effective, Rhodia may request that EPA allow it to conduct verification testing quarterly. If EPA approves this request in writing, then Rhodia may begin verification testing quarterly.

The EPA believes that an initial period of 60 days is adequate for a facility to collect sufficient data to verify that the data provided for the filter-cake sludge in the 1998 petition, is representative.

We are requiring Rhodia to conduct a multiple pH analysis because in our experience more leaching can occur from disposed waste when the pH of the waste is extremely acidic or basic. The multiple pH test is similar to the TCLP, but the test uses different pH extraction fluids. Rhodia should design the analytical test to show that the petitioned waste when disposed of in an acidic and basic landfill environment would not leach concentrations above the levels of regulatory concern. The second condition should reflect how the petitioned waste will behave when it is disposed in a landfill environment similar to the pH of the waste. The EPA believes that evaluating the leachate generated from using extraction fluids over a range of pH's can simulate general disposal conditions and provide added assurance that the waste will remain nonhazardous when disposal conditions change. The petitioner must perform these analyses to confirm that the leachate concentrations do not exceed the concentrations in Paragraph 1 over a wide pH range. While the waste's pH does vary, the Agency believes that under the various pH

conditions the waste will remain stable, and thus will proceed with the promulgation of the proposed decision.

If we determine that the data collected under this Paragraph do not support the data provided for the petition, the exclusion will not cover the generated wastes. If the data from the initial verification period demonstrate that the treatment process is effective, Rhodia may request quarterly testing. EPA will notify Rhodia, in writing, if and when they may replace the testing conditions in paragraph (3)(A)(i) with the testing conditions in (3)(B).

(B) *Subsequent Verification Testing.* The EPA believes that the concentrations of the constituents of concern in the filter-cake sludge may vary over time. As a result, to ensure that Rhodia's treatment process can effectively handle any variation in constituent concentrations in the waste, we are proposing a subsequent verification testing condition.

The proposed subsequent testing would verify that Rhodia operates the AWT as it did during the initial verification testing. It would also verify that the filter-cake sludge does not exhibit unacceptable levels of toxic constituents. The EPA is proposing to require Rhodia to analyze representative samples of the filter-cake sludge quarterly during the first year of waste generation. Rhodia would begin annual sampling on the anniversary date of the final exclusion. They must also use the multiple pH extraction procedure for samples collected during the annual sampling.

#### (4) Changes in Operating Conditions

Paragraph (4) would allow Rhodia the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment process. However, Rhodia must prove the effectiveness of the modified process and request approval from the EPA. Rhodia must manage wastes generated during the new process demonstration as hazardous waste until they have obtained written approval and Paragraph (3) is satisfied.

#### (5) Data Submittals

To provide appropriate documentation that Rhodia's facility is properly treating the waste, Rhodia must compile, summarize, and keep delisting records on-site for a minimum of five years. They should keep all analytical data obtained through Paragraph (3) including quality control information for five years. Paragraph (5) requires that Rhodia furnish these data upon request for inspection by any

employee or representative of EPA or the State of Texas.

If the proposed exclusion is made final, it will apply only to 1,200 cubic yards of filter-cake sludge, generated annually at the Rhodia facility after successful verification testing.

We would require Rhodia to file a new delisting petition under any of the following circumstances:

- (a) If they significantly alter the thermal desorption treatment system except as described in Paragraph (4).
- (b) If they use any new manufacturing or production process(es), or significantly change from the current process(es) described in their petition; or
- (c) If they make any changes that could affect the composition or type of waste generated.

Rhodia must manage waste volumes greater than 1,200 cubic yards of filter-cake sludge as hazardous until we grant a new exclusion.

When this exclusion becomes final, Rhodia's management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction. Rhodia must either treat, store, or dispose of the waste in an on-site facility that has a State permit, license, or is registered to manage municipal or industrial solid waste. If not, Rhodia must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a State permit, license, or is registered to manage municipal or industrial solid waste.

#### (6) Reopener Language

The purpose of Paragraph 6 is to require Rhodia 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. Rhodia must also use this procedure, if the waste sample in the annual testing fails to meet the levels found in Paragraph 1. This provision will allow EPA to reevaluate the exclusion if a source provides new or additional information to the Agency. The 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 Rhodia to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions 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 § 268.6.

The EPA believes that we have the authority under RCRA and the Administrative Procedures Act, 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.

The Agency believes a clear statement of its authority in delistings is merited in light of Agency 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 the Agency 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 553 (b).

#### (7) Notification Requirements

In order to adequately track wastes that have been delisted, EPA is requiring that Rhodia provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. Rhodia must provide this notification within 60 days of commencing this activity.

#### B. What Happens if Rhodia Violates the Terms and Conditions?

If Rhodia violates the terms and conditions established in the exclusion, the Agency will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the Agency will continue to evaluate these events on a case-by-case basis. The Agency expects Rhodia to conduct the appropriate waste analysis and comply with the criteria explained above in Paragraphs 3,4,5 and 6 of the exclusion.

### V. Public Comments

#### A. How can I as an Interested Party Submit Comments?

The EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD-O), Environmental Protection Agency (EPA), 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas



78753. Identify your comments at the top with this regulatory docket number: "F-99-TXDEL-RHODIA."

You should submit requests for a hearing to Robert Hanneschlager, Acting Director, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

*B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?*

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9:00 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665-6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

## VI. Regulatory Impact

Under Executive Order 12866, 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 today's 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 a 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, I hereby certify 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 (Public Law 96-511, 44 U.S.C. 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, 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 EPA rules, under section 205 of the UMRA 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, it 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 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.

The EPA finds that today's 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 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

## XI. 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 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, the Agency 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 the Agency. 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.

## **XII. Executive Order 13084**

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects that 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 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.

## **XIII. National Technology Transfer and Advancement Act**

Under Section 12(d) of the National Technology Transfer and Advancement Act, the Agency 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 (e.g., 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 Agency to 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, the

Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

## **List of Subjects in 40 CFR Part 261**

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

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

Dated: September 29, 1999.

**Robert Hanneschlager,**

*Acting Director, Multimedia Planning and Permitting Division, Region 6*

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 Tables 1, 2, and 3 of Appendix IX of part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

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

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility and address	Waste description
* * Rhodia, Houston, Texas	* * * <p>Filter-cake Sludge, (at a maximum generation of 1,200 cubic yards per calendar year) generated by Rhodia using the SARU and AWT treatment process to treat the filter-cake sludge (EPA Hazardous Waste Nos. D001–D43, F001–F012, F019, F024, F025, F032, F034, F037–F039) generated at Rhodia.</p> <p>Rhodia must implement a testing program that meets the following conditions for the exclusion to be valid:</p> <p>(1) <i>Delisting Levels:</i></p> <p>All concentrations for the following constituents must not exceed the following levels (mg/l). For the filter-cake constituents must be measured in the waste leachate by the method specified in 40 CFR Part 261.24.</p> <p>(A) Filter-cake Sludge</p> <p>(i) Inorganic Constituents: Antimony—1.15; Arsenic—1.40; Barium—21.00; Beryllium—1.22; Cadmium—0.11; Cobalt—189.00; Copper—90.00; Chromium—0.60; Lead—0.75; Mercury—0.025; Nickel—9.00; Selenium—4.50; Silver—0.14; Thallium—0.20; Vanadium—1.60; Zinc—4.30</p> <p>(ii) Organic Constituents: Chlorobenzene-Non Detect; Carbon Tetrachloride-Non Detect; Acetone—360; Chloroform—0.9</p> <p>(2) <i>Waste Holding and Handling:</i></p> <p>Rhodia must store in accordance with its RCRA permit, or continue to dispose of as hazardous waste all Filter-cake Sludge until the verification testing described in Condition (3)(A), as appropriate, is completed and valid analyses demonstrate that condition (3) is satisfied. If the levels of constituents measured in the samples of the Filter-cake Sludge do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations.</p> <p>(3) <i>Verification Testing Requirements:</i></p> <p>Rhodia must perform sample collection and analyses, including quality control procedures, according to SW-846 methodologies. If EPA judges the process to be effective under the operating conditions used during the initial verification testing, Rhodia may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Rhodia must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B).</p>

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility and address	Waste description
	<p>(A) <i>Initial Verification Testing:</i></p> <p>(i) At quarterly intervals for one year after the final exclusion is granted, Rhodia must collect and analyze composites of the filter-cake sludge. TCLP must be run on all waste and constituents for which total concentrations have been identified including constituents listed in Paragraph 1. Rhodia must conduct a multiple pH leaching procedure on samples collected during the quarterly intervals. Rhodia must perform the TCLP procedure using distilled water and three different pH extraction fluids to simulate disposal under three conditions. Simulate an acidic landfill environment, basic landfill environment and a landfill environment similar to the pH of the waste. Rhodia must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 90 days after the generation of the waste.</p> <p>(B) <i>Subsequent Verification Testing:</i></p> <p>Following termination of the quarterly testing, Rhodia must continue to test a representative composite sample for all constituents listed in Condition (1) on an annual basis (no later than twelve months after the final exclusion).</p> <p>(4) <i>Changes in Operating Conditions:</i></p> <p>If Rhodia significantly changes the process which generate(s) the waste(s) and which may or could affect the composition or type waste(s) generated as established under Condition (1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process), or its NPDES permit is changed, revoked or not reissued, Rhodia must notify the EPA in writing and may no longer handle the waste generated from the new process or no longer discharge as nonhazardous until the waste meet the delisting levels set in Condition (1) and it has received written approval to do so from EPA.</p> <p>(5) <i>Data Submittals:</i></p> <p>Rhodia must submit the information described below. If Rhodia fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. Rhodia must:</p> <p>(A) Submit the data obtained through Paragraph 3 to Mr. William Gallagher, Chief, Region 6 Delisting Program, EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733, Mail Code, (6PD-O) within the time specified.</p> <p>(B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years.</p> <p>(C) Furnish these records and data when EPA or the State of Texas request them for inspection.</p> <p>(D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted:</p> <p>Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. § 1001 and 42 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.</p> <p>As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.</p> <p>If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.</p> <p>(6) <i>Reopener Language:</i></p> <p>(A) If, anytime after disposal of the delisted waste, Rhodia possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater 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 Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data.</p> <p>(B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, Rhodia must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data.</p> <p>(C) If Rhodia fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate 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.</p>

Facility and address	Waste description
	<p>(D) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate 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 Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information.</p> <p>(E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Regional Administrator or his delegate 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 or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise.</p> <p>(7) <i>Notification Requirements:</i></p> <p>Rhodia must do following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision.</p> <p>(A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities.</p> <p>(B) Update the one-time written notification if they ship the delisted waste into a different disposal facility.</p>

Facility and address	Waste description
Rhodia, Houston, Texas	Filter-cake Sludge, (at a maximum generation of 1,200 cubic yards per calendar year) generated by Rhodia using the SARU and AWT treatment process to treat the filter-cake sludge (EPA Hazardous Waste Nos. K002–004, K006–K011, K013–K052, K060–K062, K064–K066, K069, K071, K073, K083–K088, K090–K091, K093–K118, K123–K126, K131–K133, K136, K141–K145, K147–K151, K156–K161) generated at Rhodia. Rhodia must implement the testing program described in Table 1. Waste Excluded From Non-Specific Sources for the petition to be valid.

Facility and address	Waste description
Rhodia, Houston, Texas	Filter-cake Sludge, (at a maximum generation of 1,200 cubic yards per calendar year) generated by Rhodia using the SARU and AWT treatment process to treat the filter-cake sludge (EPA Hazardous Waste Nos. P001–P024, P026–P031, P033–P034, P036–P051, P054, P056–P060, P062–P078, P081–P082, P084–P085, P087–P089, P092–P116, P118–P123, P127–P128, P185, P188–P192, P194, P196–P199, P201–P205, U001–U012, U014–U039, U041–U053, U055–U064, U066–U099, U101–U103, U105–U138, U140–U174, U176–U194, U196–U197, U200–U211, U213–U223, U225–U228, U234–U240, U243–U244, U246–U249, U271, U277–U280, U328, U353, U359, U364–U367, U372–U373, U375–U379, U381–U396, U400–U404, U407, U409–U411) generated at Rhodia. Rhodia must implement the testing program described in Table 1. Waste Excluded From Non-Specific Sources for the petition to be valid.

[FR Doc. 99-26663 Filed 10-14-99; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 71

[OST Docket No. OST-99-5843]

RIN 2105-AC80

#### Relocation of Standard Time Zone Boundary in the State of Kentucky

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** In response to a petition by the Wayne County, Kentucky, Fiscal Court, the Department of Transportation (DOT) proposed to move Wayne County, Kentucky, from the Central Time Zone to the Eastern Time Zone. Originally, DOT had planned to issue a decision at the beginning of October 1999, so that if a change were adopted it would be effective on October 31, 1999, which is the ending date for daylight saving time. Because this is a very close and controversial proceeding raising novel legal issues, we will not meet our planned timetable. We will issue a decision as soon as possible. The purpose of this notice is to inform the community that now the earliest date that the proposed change might take effect is October 29, 2000.

**FOR FURTHER INFORMATION CONTACT:** Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9315.

Issued in Washington, DC on October 8, 1999.

**Rosalind Knapp,**

*Acting General Counsel.*

[FR Doc. 99-26945 Filed 10-14-99; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AE30

#### Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Critical Habitat for the Tidewater Goby

AGENCY: Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of public hearing and reopening of comment period.

**SUMMARY:** We, the Fish and Wildlife Service, pursuant to the Endangered Species Act of 1973, as amended (Act), provide notice of a public hearing and reopening of the comment period on the proposed rule to designate critical habitat for the tidewater goby *Eucyclogobius newberryi*, an endangered species. The comment period is reopened to accommodate public hearing requests received from the Agua Hedionda Lagoon Foundation, the Bristol Cove Boat and Ski Club, the Bristol Cove Property Owners Association, Carlsbad Aquafarm Incorporated, Cabrillo Power I LLC, and the Hubbs Sea World Institute. Thus, we have scheduled a public hearing to be held in Carlsbad, California (see **DATES** and **ADDRESSES**). The reopening of the comment period will also allow further opportunity for all interested parties to submit comments on the proposal which is available (see **ADDRESSES**). We are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed designation.

**DATES:** The public hearing will be held on Thursday, November 4, from 1:00 p.m. to 3:00 p.m., and from 6:00 p.m. to 8:00 p.m. in Carlsbad, California. The comment period closes November 30, 1999.

**ADDRESSES:** The public hearing will be held at La Costa Resort, Conference Center Theater, La Costa Del Mar Road, Carlsbad, California. Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California, 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Glen Knowles, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section) at (760) 491-9440.

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 3, 1999, the service published a rule proposing critical habitat for the tidewater goby *Eucyclogobius newberryi* in the **Federal Register** (64 FR 42250), a species now classified as endangered throughout its entire range. The original comment

period closed on October 4, 1999. Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. In response to a request for a public hearing from the Agua Hedionda Lagoon Foundation, Bristol Cove Boat and Ski Club, the Bristol Cove Property Owner's Association, Carlsbad Aquafarm Incorporated, Cabrillo Power I LLC, and the Hubbs Sea World Institute a public hearing will be held in Carlsbad, California on November 4, 1999, at the La Costa Resort, Conference Center Theater (see **ADDRESSES**). Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are no limits to the length of written comments or materials presented at the hearing or mailed to us. Written comments carry the same weight as oral comments. The comment period now closes on November 30, 1999. Written comments should be submitted to us at the hearing, or mailed to the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

The tidewater goby is a small, grayish brown fish approximately 2 inches long which lives for about one year. It occurs in lagoons, tidal bays, and brackish tributaries along the California coastline. This fish is threatened by habitat loss and degradation, predation by non-native species, and extreme weather and streamflow conditions. Comments from the public regarding the accuracy of this proposed rule are sought, especially regarding:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of tidewater goby habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and

(5) Economic and other values associated with designating critical habitat for the tidewater goby, such as those derived from non-consumptive