

rule which is located in the rules section of the **Federal Register**.

Dated: June 8, 2003.

**James B. Gulliford,**

*Regional Administrator, Region 7.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

[SW-FRL-7514-5]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule and request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA, also the Agency or we in this preamble) is proposing to grant a petition submitted by the Southeastern Public Service Authority (SPSA) and Onyx Environmental Services (Onyx), to exclude (or delist) on a one-time basis certain solid wastes generated at the SPSA Power Plant in Portsmouth, Virginia, from the lists of hazardous waste. This waste is currently located at the SPSA Regional Landfill in Suffolk, Virginia.

The Agency has tentatively decided to grant the petition based on an evaluation of specific information provided by the petitioners. This tentative 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).

The Agency is requesting comments on this proposed decision.

**DATES:** To make sure we consider your comments on this proposed exclusion, they must be postmarked by August 4, 2003. Comments received after the close of the comment period will be designated as late. EPA is not required to consider late comments.

Any person may request a hearing on this tentative decision to grant the petition by filing a request by July 3, 2003. The request must contain the information prescribed in 40 CFR 260.20(d).

**ADDRESSES:** Please send two copies of your comments to David M. Friedman, Technical Support Branch (3WC11), Waste and Chemicals Management Division, U.S. EPA Region III, 1650

Arch Street, Philadelphia, PA, 19103-2029.

Your request for a hearing should be addressed to James J. Burke, Director, Waste and Chemicals Management Division (3WC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029.

**FOR FURTHER INFORMATION CONTACT:** For technical information concerning this document, please contact David M. Friedman at the address above, at (215) 814-3395, or via e-mail at [friedman.davidm@epa.gov](mailto:friedman.davidm@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Docket

EPA has established an official docket for this action. The official docket consists of the petition submitted by SPSA/Onyx, the results of a risk assessment which evaluates the potential impact of the petitioned waste on human health and the environment, any public comments received, and other information related to this action. The official docket for this proposed rule is located at the offices of U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029, and is available for you to view from 8:30 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. Please call David M. Friedman at (215) 814-3395 for appointments. The public may copy material from the docket at \$0.15 per page.

##### Outline

The information in this preamble is organized as follows:

- I. Background
  - A. What laws and regulations give EPA the authority to delist waste?
  - B. What does SPSA/Onyx request in their petition?
- II. Waste-Specific Information
  - A. How was the waste generated?
  - B. What information did SPSA/Onyx submit to support their petition?
- III. EPA's Evaluation of the Petition
  - A. What method did EPA use to evaluate risk?
  - B. What other factors did EPA consider in its evaluation?
  - C. What conclusion did EPA reach?
- IV. Conditions for Exclusion
  - A. What conditions are associated with this exclusion?
  - B. What happens if SPSA or Onyx fails to meet the conditions of this exclusion?
- V. Effect on State Authorization
- VI. Effective Date
- VII. Administrative Requirements

##### I. Background

###### *A. What Laws and Regulations Give EPA the Authority To Delist Waste?*

EPA published amended lists of hazardous wastes from non-specific and

specific sources on January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA. These lists have been amended several times, and are found at 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of 40 CFR part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity), or (2) they meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

We also define residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes as hazardous wastes. (*See* 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively.)

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

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure which allows a person to demonstrate that a specific listed waste from a particular generating facility should not be regulated as a hazardous waste, and should, therefore, be delisted.

According to 40 CFR 260.22(a)(1), in order to have a waste excluded, a petitioner must first show that the waste generated at its facility does not meet any of the criteria for which the waste was listed. The criteria which we use to list wastes are found in 40 CFR 261.11. An explanation of how these criteria apply to a particular waste is contained in the background document for that listed waste.

In addition to the criteria that we considered when we originally listed the waste, we are also required by the provisions of 40 CFR 260.22(a)(2) to consider any other factors (including additional constituents), if there is a reasonable basis to believe that these factors could cause the waste to be hazardous.

In a delisting petition, the petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics defined in subpart C of 40 CFR part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity), and must present sufficient information for EPA to determine whether the waste contains any other constituents at hazardous levels.