

criteria for which EPA listed it as a hazardous waste. LBNL also believes no additional constituents or factors could cause the waste to be hazardous.

EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA also 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 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 to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. These factors included: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentrations of the constituents in the waste; (4) the tendency of the hazardous constituents to migrate and to bioaccumulate; (5) persistence of the constituents in the environment once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability. EPA believes the petitioned waste does not meet these factors or the listing criteria.

LBNL's DET petition requests a determination under 40 CFR 268.42(b) that the CCO technology used to perform the treatment of the original mixed waste is equivalent to combustion as defined in EPA's LDR Program.

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

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

C. What Are the Limits of This Exclusion?

This exclusion applies to the waste described in the petitions only if conditions contained herein are satisfied.

D. How Will LBNL Manage the Waste?

LBNL is currently storing the waste in its permitted mixed waste storage facility. When the delisting exclusion is finalized, LBNL will dispose the waste in an authorized low-level radioactive waste disposal facility.

E. When Is the Final Rule Effective?

This rule is effective August 7, 2003. The Hazardous and Solid Waste Amendments of 1984, amended section 3010 of RCRA, 42 USCA 6930(b)(1), allow rules to become effective in less than six months after the rule is published when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous waste. This reduction in existing requirements also provides a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 USCA 553(d).

F. How Does This Final Rule Affect States?

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

promulgated, may not apply in those authorized States, unless it is adopted by the State. If the petitioned waste is managed in any State with delisting authorization, LBNL must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude, or delist, from the RCRA list of hazardous waste, waste the generator believes should not be considered hazardous under RCRA.

B. What Regulations Allow Facilities to Delist a Waste?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

C. What Information Must the Generator Supply for a Delisting Petition?

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

D. What Is a Demonstration of Equivalent Treatment?

A demonstration of equivalent treatment petition is a request from a generator to EPA or another agency with jurisdiction to grant DETs, asking that EPA approve an alternative treatment method that can achieve a measure of performance equivalent to that achievable by the EPA-specified method in the LDR program.