

capture and recovery of tritium and is far more effective in the capture of tritium than combustion in a permitted mixed waste incinerator. Therefore, we maintain that the CCO process provides a superior environmental outcome than destruction of the wastes by incineration.

LBNL did not “invent” catalytic chemical oxidation technology nor did they pioneer its use for destroying mixed waste; rather, they adopted this proven technology to their specific type of mixed waste. LBNL operated their CCO process in accordance with State of California regulations (22 CCR 66261.4) for conducting treatability studies, which are designed to insure that treatability studies are conducted in a safe manner. Pre-approval to operate any treatment unit in compliance with these regulations is not required. The regulations do, however, require that LBNL notify the State prior to conducting the study, obtain an EPA identification number, limit the volume of waste treated and the amount of time of treatment, meet certain management standards for both wastes and treatment residues, keep records, and submit annual reports to the State. Additionally, LBNL was also subject to any other applicable regulatory standards from other agencies such as the California State Air Resources Board and DOE. DTSC confirms that LBNL operated the CCO process in accordance with the applicable regulations for treatability studies.

(5) Several commenters asked for an independent peer review of LBNL’s treatability study and analytical data and asked how EPA could allow LBNL to choose and submit only 7 sets of analytical data to represent 71 treatment batches.

*EPA Responds:* EPA disagrees with the commenters that an independent peer review of the treatability study or the analytical data generated in support of the Delisting and DET Petition is necessary. As described below, EPA has full confidence that the procedures followed for generation and review of the data is sufficient to meet the regulatory requirements for Delisting and DET Petitions and are sufficient to support our final decision.

EPA performed both a completeness and technical review of LBNL’s Delisting Petition and concludes that LBNL satisfied all of the RCRA regulatory requirements for analytical testing in support of Delisting Petitions and that (1) No RCRA hazardous constituents are likely to be present above detection limits in the treatment residues or the bubbler water on silica gel generated by catalytic chemical oxidation treatment of the original mixed waste at LBNL, and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. See 40 CFR 261.21, 261.22, 261.23, and 261.24, respectively.

EPA’s Delisting regulations (40 CFR 260.22) require applicants to submit no less than four representative samples of analytical data in support of a petition. The burden of proof that the samples are representative of the overall petitioned waste is on the applicant. LBNL detailed how it determined that the seven sets of analytical data submitted are representative of the overall petitioned waste. The sworn affidavit submitted with the petition binds the petitioner to present truthful and accurate results under penalty of perjury. LBNL submitted a signed Certification of Accuracy and Responsibility required by 40 CFR 260.22(i)(12). EPA reviewed and approved LBNL’s rationale for the selection of representative samples. LBNL also made available to EPA all of the remaining analytical data from the treatability study.

#### V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a “regulatory action” subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in

section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

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

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

Dated: July 25, 2003.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

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

#### PART 261—IDENTIFICATION AND LISTING HAZARDOUS WASTE

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

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

■ 2. In Table 1, of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows: