

PENNSYLVANIA—PM-10—Continued

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 261****[SW-FRL-7557-5]****Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion****AGENCY:** Environmental Protection Agency.**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA, also the Agency or we in this preamble) today is granting a petition submitted by the Southeastern Public Service Authority (SPSA) and Onyx Environmental Services (Onyx) to exclude (or delist), on a one-time basis, a combustion ash from the lists of hazardous wastes.

After careful analysis, we have concluded that the petitioned waste does not present an unacceptable risk when disposed of in a Subtitle D (nonhazardous waste) landfill. This exclusion applies to combustion ash previously generated at the SPSA Power Plant in Portsmouth, Virginia, which is currently located at the SPSA Regional Landfill in Suffolk, Virginia. Accordingly, this final rule conditionally excludes a specific volume of the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when the petitioned waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

EFFECTIVE DATE: September 11, 2003.

ADDRESSES: The official docket for this 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 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.

FOR FURTHER INFORMATION CONTACT: For 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.

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 action is kept in a paper format, and is maintained at the address in the **ADDRESSES** section at the beginning of this document.

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I. Overview Information

On June 18, 2003, we proposed to grant a petition submitted by SPSA/Onyx to exclude (or delist) from the definition of hazardous waste on a one-time basis, a combustion ash previously generated at the SPSA Power Plant in Portsmouth, Virginia, which is currently located at the SPSA Regional Landfill in Suffolk, Virginia. Today we are finalizing the decision to grant a

conditional exclusion as described in the June 18, 2003, proposed rule.

II. Background*A. What Is a Delisting Petition?*

A delisting petition is a formal request from a generator asking EPA to exclude a specific waste from the lists of hazardous waste contained in the RCRA regulations, because the generator believes that its waste should not be considered hazardous.

In order for a petition to succeed, a petitioner must first show that a 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, 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 us to determine whether any other factors (including additional constituents) warrant retaining the waste as a hazardous waste.

A generator remains obligated under RCRA to confirm that its waste remains non-hazardous based on the hazardous waste characteristics defined in subpart C of 40 CFR part 261, even if EPA has delisted its waste.

B. What Regulations Allow a Hazardous Waste Generator To Petition for a Delisting of Its Waste?

Under 40 CFR 260.20 and 260.22, a generator may petition EPA to remove its waste from hazardous waste regulation by excluding it from the lists of hazardous wastes contained in 40 CFR part 261, subpart D. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273 of Title 40 of the Code of Federal Regulations. 40 CFR 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.