

### *C. What Information Must the Generator Supply?*

A petitioner must provide sufficient information 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 that the waste is not hazardous for any other reason.

## **III. SPSA/Onyx's Delisting Petition**

### *A. What Waste Is the Subject of SPSA/Onyx's Petition?*

SPSA is the regional solid waste management agency for southeastern Virginia, where it operates a resource recovery facility consisting of a Refuse Derived Fuel (RDF) Plant and a Power Plant, and a disposal facility consisting of a Regional Landfill.

Onyx Environmental Services is a company that provides a wide range of environmental services to other companies. These services include hazardous and non-hazardous waste management.

On April 7, 2003, SPSA/Onyx petitioned EPA to exclude on a one-time basis a combustion ash generated at SPSA's waste-to-energy facility in Portsmouth, Virginia. The ash which is the subject of this petition is currently located at SPSA's Regional Landfill in Suffolk, Virginia. The total volume of the subject combustion ash at the Regional Landfill was determined by SPSA/Onyx to be 1410 cubic yards.

The ash was produced by the routine combustion of a batch of municipal and commercial solid waste which was processed in SPSA's RDF plant and burned in SPSA's Power Plant in Portsmouth, Virginia. Due to a shipping error, a small amount of this waste consisted of materials containing the spent non-halogenated solvent, methyl ethyl ketone (EPA Hazardous Waste Number F005). See the June 18, 2003, **Federal Register**, (68 FR 36528) for more details.

In the June 18, 2003 **Federal Register**, we described how a portion of the combustion ash had been used as daily cover in the Regional Landfill before SPSA was notified that the ash was subject to regulation as a hazardous waste. Furthermore, we stated that the area of the Landfill where the combustion ash was used as cover was cordoned off and that operations were suspended in this area. While this statement was true at the time that the petition was submitted, we have since been informed by SPSA that the Virginia Department of Environmental Quality has allowed operations to resume in this portion of the Landfill.

However, the area in which the subject combustion ash is located has been marked in case removal of the ash is required. The resumption of operations does not impact the results of EPA's evaluation of the risks associated with management of this waste.

### *B. What Information Did SPSA/Onyx Submit To Support This Petition?*

In order to support the petition, SPSA/Onyx submitted detailed information related to the shipments of materials received for destruction at SPSA's Power Plant and detailed analytical results from representative samples of the ash obtained by SPSA/Onyx on October 15, 2002, and January 28, 2003.

## **IV. EPA's Evaluation and Final Decision**

### *A. Why Is EPA Approving This Petition?*

SPSA/Onyx petitioned EPA to exclude or delist on a one-time basis, the 1410 cubic yards of combustion ash currently located at the SPSA Regional Landfill because SPSA/Onyx believes that the petitioned waste does not meet the criteria for which it was listed as a hazardous waste, nor does it exhibit any characteristic of a hazardous waste. SPSA/Onyx also believes that the waste does not contain other constituents in concentrations that would cause it to be hazardous.

Review of this petition included consideration of the original listing criteria, as well as factors (including additional constituents) other than those for which the waste was listed, as required by the Hazardous and Solid Waste Amendments (HSWA) of 1984 to RCRA. See, section 3001 of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(a)(1) and (2).

On June 18, 2003, we proposed to conditionally exclude SPSA/Onyx's combustion ash from the list of hazardous wastes in 40 CFR 261.31, and requested public comment on the proposed rule. For reasons stated in both the proposed rule and this document, we believe that SPSA/Onyx's combustion ash should be excluded from hazardous waste regulation.

### *B. What Limitations Are Associated With This Exclusion?*

This exclusion applies only to the estimated 1410 cubic yards of ash currently located at the SPSA Regional Landfill as described in SPSA/Onyx's petition. No ash other than the ash described in this petition could be managed as nonhazardous waste under this exclusion.

SPSA/Onyx state in their petition that the waste, if delisted, will remain at the

SPSA Regional Landfill. However, as a matter of policy, EPA does not specify a specific location for disposal of a delisted waste, only that it be disposed of in a Subtitle D landfill. In order to adequately track wastes that have been delisted, in the event that a decision is made to dispose of all or part of the ash off-site, we will require that SPSA/Onyx provide a one-time notification to any State regulatory agency to which or through which the delisted waste will be transported for disposal at least sixty (60) calendar days prior to commencing these activities.

### *C. When Is the Final Rule Effective?*

This rule is effective September 11, 2003. HSWA amended section 3010 of RCRA to allow 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 reduces, rather than increases, the existing requirements for persons generating hazardous wastes. For these same reasons, this rule can and will become effective immediately (that is, upon publication in the **Federal Register**) under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

### *D. How Does 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 directly affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States which have received EPA's authorization to make their own delisting decisions. We describe these two situations below.

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, or that prohibits a Federally-issued exclusion from taking effect in the State until the State approves the exclusion through a separate State administrative action. Because a dual system (that is, both Federal and State programs) may regulate a petitioner's waste, we urge petitioners to contact the applicable State regulatory authorities or agencies to establish the status of their waste under that State's program.

We have also authorized some States to administer a delisting program in place of the Federal program; that is, to make State delisting decisions.