

Therefore, this exclusion does not necessarily apply within those authorized States. If SPSA/Onyx transports the petitioned waste to, or manages the waste in, any State with delisting authorization, SPSA/Onyx must obtain delisting approval from that State before it can manage the waste as nonhazardous in that State.

## V. Public Comments Received on the Proposed Exclusion

### A. Who Submitted Comments on the Proposed Rule?

We received public comments on the June 18, 2003, proposed exclusion from one individual in Portsmouth, Virginia.

### B. Comments and Responses From EPA

*Comment:* The solvent rags were incorrectly classified as a spent solvent waste (F005), and, therefore, are not hazardous waste. In order to be a F005 listed waste, the spent solvent would have to contain any concentration of the solvents specified in the F005 listing, and contain at least 10 percent by volume of any of the solvents listed in F001, F002, F003, or F004. A solvent consisting of 100 percent methyl ethyl ketone would not be considered an F005 listed waste.

*Response:* The commenter incorrectly reads the spent solvent listings. On May 19, 1980, EPA promulgated the first phase of the hazardous waste regulations including the spent solvent listings (Hazardous waste nos. F001–F005) (See 40 CFR 261.31). These listings applied only to spent solvents resulting from the use of individual solvents that were technical grade or in pure form, and the still bottoms from the recovery of these spent solvents. EPA soon recognized that limiting the universe of the spent solvent listings to wastes resulting from the use of only single ingredient solvents created a regulatory loophole by allowing wastes resulting from the use of mixtures containing one or more of the listed solvents to remain unregulated. In the final rule published in the **Federal Register** on December 31, 1985 (50 FR 53315), EPA amended these listings to include spent solvents resulting from the use of solvent mixtures or blends which contained, before use, 10 percent or more total listed solvent by volume in addition to spent solvents resulting from the use of listed single ingredient solvents. Therefore, the current listings for spent solvents (such as the F005 listing) apply to the following three (3) categories: spent solvents resulting from the use of individual (single ingredient) listed solvents that are technical grade or in pure form, spent solvents resulting

from the use of solvent mixtures or blends which contain, before use, 10 percent or more total listed solvent by volume, and still bottoms from the recovery of any of these spent solvents.

*Comment:* The commenter noted that although lead and chromium were present in detectable concentrations in the total constituent analysis, they were not present above the reporting limit when the Toxicity Characteristic Leaching Procedure (TCLP) analysis was performed on this waste. The commenter theorized that the presence of iron in the combustion ash was masking the TCLP analysis for lead and chromium, and requested that EPA require that the ash be analyzed for total iron concentration.

*Response:* After careful consideration, we have decided not to ask SPSA/Onyx to collect additional samples for iron analysis. There are a number of factors that affect the leaching potential of inorganic constituents. Among them are the pH, redox conditions, liquid-to-solid ratio, and solubility. While the addition of iron in the form of fines, filings, or dust, may temporarily retard the leaching of lead, it does not provide long-term treatment. Therefore, EPA determined that this practice constitutes “impermissible dilution” when done for the purpose of achieving a treatment standard for lead under the land disposal restrictions regulations. (See 40 CFR 268.3(d)).

However, this is not the case at SPSA’s waste-to-energy facility where SPSA aggressively removes ferrous (and aluminum) metals from the waste stream. Large pieces of metal are manually removed from the waste stream both at SPSA’s transfer stations and on the tipping floor of the RDF Plant. Then, a system of magnets removes the small ferrous metal items from the waste stream prior to it being sent to the power plant for combustion, thereby significantly reducing levels of iron in the combustion ash. SPSA performs TCLP metals analysis on the ash generated by its waste-to-energy facility on a quarterly basis.

## VI. Administrative Assessments

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) (Pub. L. 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding today’s action under section 801 because this is a rule of particular applicability.

### List of Subjects in 40 CFR Part 261

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

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