

information in the petition. The EPA compiled the inorganic and organic constituents list from the composition of the waste, descriptions of the treatment process used by Teris, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the TCLP extract and total concentrations of the waste.

(2) Waste Holding and Handling

The purpose of this paragraph is to ensure that Teris manages and disposes of any stabilized hazardous waste incinerator ash that might contain hazardous levels of inorganic and organic constituents according to Subtitle C of RCRA. Holding the stabilized hazardous waste incinerator ash until characterization is complete will protect against improper handling of hazardous material.

(3) Verification Testing Requirements

Teris must complete a rigorous verification testing program on the incinerator ash to assure that the stabilized incinerator ash does not exceed the maximum levels specified in Paragraph (1). If the EPA determines that the data collected under this Paragraph does not support the data provided for in the petition, the exclusion will not cover the tested waste. This verification program operates on two levels.

The first part of the verification testing program consists of testing every batch (*i.e.* roll-off) of incinerator ash for specified indicator parameters as per Paragraph (1). Levels of constituents measured in the samples of the stabilized hazardous waste incinerator ash that do not exceed the levels set forth in Paragraph (1) are nonhazardous. Teris can manage and dispose the stabilized nonhazardous incinerator ash according to all applicable solid waste regulations. If any roll-off fails to meet the specified limits, then Teris must retreat the batch (*i.e.*, reburn and/or restabilize) until the limits are met or they must dispose of the waste as hazardous. Organic indicators are those specified in the Waste Analysis Plan of Teris' RCRA permit to verify that the incinerator operated as demonstrated in the trial burn. Analysis for total and TCLP arsenic must be conducted.

The second part of the verification testing program is the quarterly testing of four representative composite samples of stabilized incinerator ash for all constituents specified in Paragraph (1). If Teris demonstrates for two consecutive quarters complete

attainment of all specified limits, then Teris may request approval of the EPA to reduce the frequency of testing to annually. If, after review of performance of the treatment system, the EPA finds that annual testing is adequately protective of human health and the environment, then the EPA may authorize Teris to reduce the quarterly comprehensive sampling frequency to an annual basis. If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, Teris must notify the EPA according to the requirements in Paragraph 6. The EPA will then take the appropriate actions necessary to protect human health and the environment per Paragraph 6. Teris must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

The exclusion is effective upon publication in the **Federal Register** but the disposal cannot begin until the verification sampling is completed. Disposal is also not authorized if Teris fails to perform the quarterly and yearly testing as specified herein. Should Teris fail to conduct the quarterly/yearly testing as specified herein, then disposal of stabilized incinerator ash as delisted waste may not occur in the following quarter(s)/year(s) until Teris obtains the written approval of the EPA.

(4) Changes in Operating Conditions

Paragraph (4) would allow Teris the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment processes. However, Teris must prove the effectiveness of the modified process and request approval from the EPA. Teris must manage wastes generated during the new process demonstration as hazardous waste until it has obtained written approval and Paragraph (3), is satisfied.

(5) Data Submittals

To provide appropriate documentation that Teris' facility is properly treating the incinerator ash, Teris must compile, summarize, and keep delisting records on-site for a minimum of five years. It should keep all analytical data obtained through Paragraph (3) including quality control information for five years. Paragraph (5) requires that Teris furnish these data upon request for inspection by any employee or representative of the EPA or the State of Arkansas.

If the proposed exclusion is made final, then it will apply only to 30,000 cubic yards per calendar year of stabilized hazardous waste incinerator

ash generated at the Teris facility after successful verification testing.

The EPA would require Teris to file a new delisting petition under any of the following circumstances:

(a) If Teris significantly alters the manufacturing process treatment system except as described in Paragraph (4).

(b) If Teris uses any new manufacturing or production process(es), or significantly change from the current process(es) described in its petition; or

(c) If Teris makes any changes that could affect the composition or type of waste generated.

Teris must manage waste volumes greater than 30,000 cubic yards per calendar year of stabilized hazardous waste incinerator ash as hazardous waste until the EPA grants a new exclusion. When this exclusion becomes final, the management by Teris of the stabilized incinerator ash covered by this petition would be relieved from Subtitle C jurisdiction. Teris must either (a) treat, store, or dispose of the waste in a State permitted on-site facility, or (b) Teris must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a State permit, license, or register to manage municipal or industrial solid waste.

(6) Reopener

The purpose of Paragraph 6 is to require Teris to disclose new or different information related to a condition at the facility or disposal of the waste if it is pertinent to the delisting. Teris must also use this procedure if the waste sample in the annual testing fails to meet the levels found in Paragraph 1. This provision will allow the EPA to reevaluate the exclusion if a source provides new or additional information to the EPA. The EPA will evaluate the information on which it based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause the EPA to deny the petition if presented.

This provision expressly requires Teris to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If the EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

The EPA believes that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978) *et seq.*, to reopen a