

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for the EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See Part 261 and the background documents for the listed waste.)

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if the EPA has “delisted” the waste.

C. What Factors Must the EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in § 260.22(a) and § 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, the EPA must consider any factors (including additional constituents) other than those for which the EPA listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

The EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See §§ 261.3(a)(2)(iii and iv) and (c)(2)(i), called the “mixture” and “derived-from” rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

III. The EPA's Evaluation of the Waste Information and Data

A. What Waste Did OxyVinyls Petition the EPA To Delist?

On October 11, 2002, OxyVinyls petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, Incinerator Offgas Treatment Scrubber Water generated from its facility located in Deer Park, Texas. The waste falls under the classification of listed waste under § 261.3.

Specifically, in its petition, OxyVinyls requested that the EPA grant a standard exclusion for 919,990 cubic yards per year of the Incinerator Offgas Treatment Scrubber Water.

B. Who Is OxyVinyls and What Process Does It Use To Generate the Petitioned Waste?

The OxyVinyls facility is located at 1000 Tidal Road Deer Park, Texas in the Shell Chemical Manufacturing Complex. OxyVinyls produces ethylene dichloride (EDC) and vinyl chloride monomer (VCM). EDC is produced only for internal use to make VCM. The primary SIC code for the facility is 2869. There are also support facilities including vent incineration, VCM storage and shipping, EDC intermediate storage, cooling towers and refrigeration and compressors. OxyVinyls utilizes two permitted, onsite RCRA incinerators to burn process vent gases, intermediate wastes generated during the production of EDC and VCM (K019 and K020), epichlorohydrin heavy ends from Resolution Performance Products LLC (K017) and waste oil. There are three wastewater streams generated from treatment of the off-gases from each of the two RCRA permitted incinerators. These three streams are components of the Incinerator Offgas Treatment Scrubber Water; (1) Rockbox Wastewater, which is neutralized scrubber water from the HCl (hydrochloric acid) absorption column, (2) Caustic Scrubber/Dehumidifier column blowdown, and (3) Wet Electrostatic Precipitator (WESP) blowdown. The HCl absorption column is designed to remove HCl from the combustion offgases, while the Caustic Scrubber is designed to remove both residual HCl and chlorine from the offgases, and is located downstream of the HCl absorption column. The further downstream WESP units are designed to remove particulate matter, semi-volatile metals (SVM) and low volatile metals (LVM) from the combustion offgases, including arsenic, beryllium, chromium, cadmium and lead. Dioxins will also be removed by the WESP units. Catalytic oxidizers follow the WESP units and are designed to destroy trace amounts of dioxins, but they do not generate a wastewater stream. The concentrations of constituents from these three units will be accounted for during sampling and analysis of the Offgas Treatment Scrubber Water.

OxyVinyls classified two waste streams (Rockbox Residue and Incinerator Offgas Treatment Scrubber Water), generated from the treatment of the offgas from the incinerators, as hazardous based on the “derived from” rule in 40 CFR 261.3(c)(2)¹. The facility operates 24 hours per day, 7 days per

week, 365 days per year with the exception of periodic planned shutdowns for routine maintenance.

The Rockbox Residue was successfully delisted from hazardous waste classification by the EPA (64 FR 42033, August 3, 1999).

OxyVinyls is now petitioning the EPA for a standard exclusion of the Incinerator Offgas Treatment Scrubber Water from the K017, K019, and K020, waste listings.

C. How Did OxyVinyls Sample and Analyze the Data in the Petition?

To support its petition, OxyVinyls submitted:

- (1) historical information on past waste generation and management practices;
- (2) results of the total constituent list for 40 CFR Part 264 Appendix IX volatiles, semivolatiles, metals, pesticides, herbicides, dioxins and PCBs;
- (3) results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;
- (4) analytical constituents of concern for K017, K019 and K020
- (5) results from total oil and grease analyses
- (6) multiple pH testing for the petitioned waste.

D. What Were the results of OxyVinyls' Analyses?

The EPA believes that the descriptions of the OxyVinyls analytical characterization provide a reasonable basis to grant OxyVinyls' petition for an exclusion of the incinerator offgas treatment scrubber water. The EPA believes the data submitted in support of the petition show the incinerator offgas treatment scrubber water is non-hazardous. Analytical data for the incinerator offgas treatment scrubber water samples were used in the DRAS. The data summaries for detected constituents are presented in Table I. The EPA has reviewed the sampling procedures used by OxyVinyls and has determined they satisfy the EPA's criteria for collecting representative samples of the variations in constituent concentrations in the incinerator offgas treatment scrubber water. The data submitted in support of the petition show that constituents in OxyVinyls' waste are presently below health-based levels used in the delisting decision-making. The EPA believes that OxyVinyls has successfully

¹ The EPA has not independently determined that the waste is hazardous based on the “derived-from” rule. Waste characterization is the responsibility of

the generator of the waste. See 40 CFR 262.11. OxyVinyls made the characterization of the Incinerator Offgas Treatment Scrubber Water and

requested dedisting to resolve all ambiguity about the applicability of the “derived-from” rule to the waste.