

its petition. The EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the incinerator offgas treatment scrubber water.

If the EPA finalizes the proposed rule, the EPA will no longer regulate the petitioned waste under Parts 262 through 268 and the permitting standards of Part 270.

IV. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, OxyVinyls, must comply with the requirements in 40 CFR part 261, appendix IX, Table 1 as amended by this notice. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituents that OxyVinyls must test the incinerator offgas treatment scrubber water, below which these wastes would be considered non-hazardous.

The EPA selected the set of inorganic and organic constituents specified in Paragraph (1) of 40 CFR Part 261, Appendix IX, Table 1, based on information in the petition. The EPA compiled the inorganic and organic constituents list from the composition of the waste, descriptions of OxyVinyls' treatment process, 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 total concentration analysis of the waste.

(2) Waste Holding and Handling

The purpose of this paragraph is to ensure that OxyVinyls manages and disposes of any incinerator offgas treatment scrubber water that contains hazardous levels of inorganic and organic constituents according to Subtitle C of RCRA. Managing the incinerator offgas treatment scrubber water as a hazardous waste until initial verification testing is performed will protect against improper handling of hazardous material. If EPA determines that the data collected under this Paragraph do not support the data provided for in the petition, the exclusion will not cover the petitioned waste. The exclusion is effective upon publication in the **Federal Register** but the disposal at a non-Subtitle C surface impoundment cannot begin until the verification sampling is completed.

(3) Verification Testing Requirements

OxyVinyls must complete a rigorous verification testing program on the incinerator offgas treatment scrubber water to assure that the treated incinerator offgas treatment scrubber water 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 the incinerator offgas treatment scrubber water for specified indicator parameters as per Paragraph (1).

If the EPA determines that the data collected under this Paragraph do not support the data provided for the petition, the exclusion will not cover the generated wastes. If the data from the initial verification testing program demonstrate that the treatment process is effective, OxyVinyls may request quarterly testing. The EPA will notify OxyVinyls, in writing, if and when it may replace the testing conditions in paragraph(3)(A)with the testing conditions in (3)(B).

The second part of the verification testing program is the quarterly testing of representative samples of incinerator offgas treatment scrubber water for all constituents specified in Paragraph (1). The EPA believes that the concentrations of the constituents of concern in the incinerator offgas treatment scrubber water may vary over time. Consequently this program will ensure that OxyVinyls' treatment process can effectively handle any variation in constituent concentrations in the waste.

The proposed subsequent testing would verify that OxyVinyls operates an incinerator from which an aqueous stream is generated from treating and neutralizing gasses generated in the firebox during the incineration process as it did during the initial verification testing. It would also verify that the incinerator offgas treatment scrubber water does not exhibit unacceptable levels of toxic constituents.

The EPA is proposing to require OxyVinyls to analyze representative samples of the incinerator offgas treatment scrubber water quarterly during the first year of waste generation. OxyVinyls would begin quarterly sampling 60 days after the final exclusion as described in Paragraph (3)(B).

The EPA, per Paragraph 3(C), is proposing to end the subsequent testing

conditions after the first year if OxyVinyls has demonstrated that the waste consistently meets the delisting levels. To confirm that the characteristics of the waste do not change significantly over time, OxyVinyls must continue to analyze a representative sample of the waste on an annual basis. Annual testing requires analyzing the full list of components in Paragraph 1. If operating conditions change as described in Paragraph (4); OxyVinyls must reinstate all testing in Paragraph (1). It must prove through a new demonstration that its waste meets the conditions of the exclusion.

If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, OxyVinyls must notify the EPA according to the requirements in Paragraph 6. The facility must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

(4) Changes in Operating Conditions

Paragraph (4) would allow OxyVinyls the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment process. However, OxyVinyls must prove the effectiveness of the modified process and request approval from the EPA. OxyVinyls 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 OxyVinyls facility is properly treating the waste, OxyVinyls 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 OxyVinyls furnish these data upon request for inspection by any employee or representative of the EPA or the State of Texas.

If the proposed exclusion is made final, it will apply only to 919,990 cubic yards per year of incinerator offgas treatment scrubber water generated at the OxyVinyls facility after successful verification testing.

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

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

(b) If OxyVinyls uses any new manufacturing or production