

process(es), or significantly change from the current process(es) described in its petition; or

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

OxyVinyls must manage waste volumes greater than 919,990 cubic yards per year of incinerator offgas treatment scrubber water as hazardous until the EPA grants a new exclusion.

When this exclusion becomes final, OxyVinyls' management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction. OxyVinyls must either treat, store, or dispose of the waste in an on-site facility. If not, OxyVinyls 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 OxyVinyls 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. OxyVinyls 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 OxyVinyls 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 delisting decision. The EPA may reopen a delisting decision when new information is received that calls into question the assumptions underlying the delisting.

The EPA believes a clear statement of its authority in delistings is merited in light of the EPA's experience. See Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the

delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading the EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, the EPA will continue to address these situations case by case. Where necessary, the EPA will make a good cause finding to justify emergency rulemaking. See APA section 553(b).

(7) Notification Requirements

In order to adequately track wastes that have been delisted, the EPA is requiring that OxyVinyls provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. OxyVinyls must provide this notification within 60 days of commencing this activity.

B. What Happens if OxyVinyls Violates the Terms and Conditions?

If OxyVinyls violates the terms and conditions established in the exclusion, the EPA will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the EPA will evaluate the need for enforcement activities on a case-by-case basis. The EPA expects OxyVinyls to conduct the appropriate waste analysis and comply with the criteria explained above in Condition 1 of the exclusion.

V. Public Comments

A. How May I as an Interested Party Submit Comments?

The EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to the Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD-C), Environmental Protection Agency (EPA), 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to Nicole Bealle, Waste Team Leader, Texas Commission on Environmental Quality, 5425 Polk Avenue Suite A, Houston, TX 77023. Identify your comments at the top with this regulatory docket number: "F-02-TX-OxyVinyls." You may submit your comments electronically to James Harris at harris.jamesa@epa.gov.

You should submit requests for a hearing to Steven Gilrein, Associate Director of RCRA, Multimedia Planning and Permitting Division (6PD), U. S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665-6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

Under Executive Order 12866, the EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of the EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from the EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on a small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of the EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have