

copy to Wade Wheatley, Industrial Hazardous Waste Permits Division, Technical Evaluation Team, Texas Commission on Environmental Quality (TCEQ), P.O. Box 13087, Austin, Texas, 78711-3087. Identify your comments at the top with this regulatory docket number: "F-03-TXDEL-ACC" You may submit your comments electronically to [peace.michelle@epa.gov](mailto:peace.michelle@epa.gov).

You should address requests for a hearing to the Director, Carl Edlund, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

**FOR FURTHER INFORMATION CONTACT:** Michelle Peace (214) 665-7430.

**SUPPLEMENTARY INFORMATION:** The information in this section is organized as follows:

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### I. Overview Information

#### A. What Action Is the EPA Proposing?

The EPA is proposing to grant ACC's petition to have its dewatered sludge (chromic oxide) excluded, or delisted, from the definition of a hazardous waste, subject to certain verification and monitoring conditions.

#### B. Why Is the EPA Proposing To Approve This Delisting?

ACC's petition requests a delisting for a listed hazardous waste. ACC does not believe that the petitioned waste meets the criteria of K006 for which the EPA listed it. ACC also believes no additional constituents or factors could cause the waste to be hazardous. The EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)-(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, the EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the petition waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, the EPA would have proposed to deny the petition.) The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. The EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. The EPA's proposed decision to delist waste from ACC's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Corpus Christi, Texas facility.

#### C. How Will ACC Manage the Waste if It Is Delisted?

For the past 12 years, ACC's dewatered sludge (chromic oxide) has been transferred off-site for treatment/disposal at Texas Ecologists, Inc. a nondedicated, off-site, land-based hazardous waste unit in Robstown, Texas. The waste management method used for the wastewater sludge at Texas Ecologists, Inc. is landfilling. The most recent transfer of the petitioned waste to Texas Ecologists was October 17, 2000.

ACC originally proposed to dispose of the dewatered sludge in an on-site surface impoundment. However, because the DRAS model cannot accommodate ACC's site specific parameters for the surface impoundment scenario, accurate estimates of potential ground water risks could not be made. Therefore, ACC has determined that the delisted waste will be disposed of in a non-hazardous waste landfill. If the delisting exclusion is finalized, ACC will dispose of the petitioned waste, dewatered sludge, at a Subtitle D solid waste landfill.

#### D. When Would the EPA Finalize the Proposed Delisting?

RCRA section 3001(f) specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, the EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1) at 42 USCA 6930(b)(1), allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

The EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

#### E. How Would This Action Affect States?

Because the EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude