

two categories of states: States having a dual system that includes Federal RCRA requirements and their own requirements, and states which have received authorization from the EPA to make their own delisting decisions.

The EPA allows states to impose its own non-RCRA regulatory requirements that are more stringent than the EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, the EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

The EPA has also authorized some states (for example, Louisiana, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states unless that state makes the rule part of its authorized program. If ACC transports the petitioned waste to or manages the waste in any state with delisting authorization, ACC must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the state.

## II. Background

### A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in §§ 261.31 and 261.32.

The EPA lists these wastes as hazardous because: (1) they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove

that the EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

### B. What Is a Delisting Petition, and What Does It Require of a Petitioner?

A delisting petition is a request from a facility to the EPA or an authorized state to exclude wastes from the list of hazardous wastes. The facility petitions the Agency because it does not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which the EPA lists a waste are in Part 261 and further explained in the background documents for the listed waste.

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 Section 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 we 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 ACC Petition the EPA To Delist?

On April 17, 2002, ACC petitioned the EPA to exclude from the list of hazardous waste contained in § 261.32, the dewatered sludge generated from its facility located in Corpus Christi, Texas. The waste, the EPA Hazardous Waste No. K006, falls under the classification of listed waste because of the "derived-from" rule in § 261.3. Specifically, in its petition, ACC requested that the EPA grant an exclusion for 1450 cubic yards per year of dewatered sludge resulting from its process of manufacturing chromic oxide. The resulting waste is listed, in accordance with the "derived-from" rule.

ACC's wastewater sludge contains approximately 11% solids. The petitioned waste is only the dewatered portion of the sludge, not the entire sludge (solids and wastewater) that is generated from the current wastewater treatment process. Currently, ACC discharges the wastewater sludge through Outfall 201, into an on-site storage tank. The discharge is permitted by Texas Commission on Environmental Quality (TCEQ) through a Texas Pollution Discharges Elimination System (TPDES) Permit No. 003490 (EPA NPDES Permit No. TX0004685).

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

The ACC facility is located in an industrial/commercial setting in the western portion of the City of Corpus Christi, Nueces County, Texas. ACC produces various grades of chromic oxide at their Corpus Christi, Texas facility. Chromic oxide is produced through the chemical reaction of sodium dichromate and ammonium sulfate. The produced chromic oxide is washed to create the desired purity of the final product. The sludge generated from this process is listed hazardous waste and identified as K006. 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.

### C. How Did ACC Sample and Analyze the Waste in This Petition?

To support its petition, ACC 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