

of 40 CFR part 261, appendix IX, Table 2, based on information in the petition. We compiled the list from the composition of the waste, descriptions of ACC's 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 TCLP extract of the waste.

(2) Waste Holding and Handling

The purpose of this paragraph is to ensure that any dewatered sludge which might contain hazardous levels of constituents are managed and disposed of in accordance with Subtitle C of RCRA. Holding the petitioned waste until characterization is complete will protect against improper handling of hazardous material. If the EPA determines that the data collected under this Paragraph do not support the data provided in the petition, the exclusion will not cover the petitioned waste. The exclusion is effective when we sign it, but the disposal cannot begin until the verification sampling is completed. The dewatered sludge must pass paint filter test as described in EPA SW-846, Method 9095 before it is allowed to be shipped off-site. ACC must maintain a record of the date and the actual volume of the dewatered sludge removed from the tank according to the requirements in Paragraph (5).

(3) Verification Testing Requirements

ACC shall conduct verification testing each time it is ready to evacuate the tank sludge for disposal. Four (4) representative composite samples for verification shall be collected from the dewatered sludge. ACC shall analyze the verification samples according to the constituent list specified in Paragraph (1) of 40 CFR part 261, appendix IX, Table 2. The results from each event should be submitted to EPA within 10 days of receiving the results.

If 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. The EPA will notify ACC of the decision in writing within two weeks of receiving this information.

(4) Changes in Operating Conditions

Paragraph (4) would allow ACC the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment process. ACC must prove the effectiveness of the modified process by testing and request approval from the EPA. ACC must

manage wastes generated during the new process demonstration as hazardous waste until it receives a written approval from the EPA and the delisting levels specified in Paragraph (1) are satisfied.

If the proposed exclusion is made final, it will apply only to 1450 cubic yards of dewatered sludge, generated annually at the ACC's facility after successful verification testing.

ACC must manage waste volumes greater than 1450 cubic yards of petitioned waste as hazardous until the EPA grants a new exclusion.

When this new exclusion becomes final, ACC's management of the waste covered by this petition would be relieved from Subtitle C jurisdiction. ACC must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a state permit, license, or registration to manage municipal or industrial solid waste.

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

- (a) If it significantly alters the manufacturing process treatment system except as described in Paragraph (4)
- (b) If it uses any new manufacturing or production process(es), or significantly changes from the current process(es) described in its petition; or
- (c) If it makes any changes that could affect the composition or type of waste generated.

(5) Data Submittals

To provide appropriate documentation that ACC's facility is properly treating the waste, ACC must compile, summarize, and keep delisting records on-site for a minimum of five years. They must keep all analytical data obtained through Paragraph (3) including quality control information for five years. Paragraph (5) requires that ACC furnish these data when the EPA or the State of Texas request them for inspection.

(6) Reopener

The purpose of Paragraph (6) is to require ACC 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. ACC must also use this procedure if the verification sampling testing fails to meet the delisting 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 Agency. 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 ACC to report differing site conditions or assumptions used in the petition in addition to failure to meet the verification 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 we receive new information that calls into question the assumptions underlying the delisting.

The Agency believes a clear statement of its authority in delistings is merited in light of Agency experience. *See* Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading the Agency 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 ACC provide a one-time notification to any state regulatory agency through which or to which the delisted waste is being carried. ACC must provide this notification within 60 days of commencing this activity.

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

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