

rule which is located in the rules section of the **Federal Register**.

Dated: June 8, 2003.

**James B. Gulliford,**

*Regional Administrator, Region 7.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

[SW-FRL-7514-5]

#### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule and request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA, also the Agency or we in this preamble) is proposing to grant a petition submitted by the Southeastern Public Service Authority (SPSA) and Onyx Environmental Services (Onyx), to exclude (or delist) on a one-time basis certain solid wastes generated at the SPSA Power Plant in Portsmouth, Virginia, from the lists of hazardous waste. This waste is currently located at the SPSA Regional Landfill in Suffolk, Virginia.

The Agency has tentatively decided to grant the petition based on an evaluation of specific information provided by the petitioners. This tentative decision, if finalized, would conditionally exclude the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

The Agency is requesting comments on this proposed decision.

**DATES:** To make sure we consider your comments on this proposed exclusion, they must be postmarked by August 4, 2003. Comments received after the close of the comment period will be designated as late. EPA is not required to consider late comments.

Any person may request a hearing on this tentative decision to grant the petition by filing a request by July 3, 2003. The request must contain the information prescribed in 40 CFR 260.20(d).

**ADDRESSES:** Please send two copies of your comments to David M. Friedman, Technical Support Branch (3WC11), Waste and Chemicals Management Division, U.S. EPA Region III, 1650

Arch Street, Philadelphia, PA, 19103-2029.

Your request for a hearing should be addressed to James J. Burke, Director, Waste and Chemicals Management Division (3WC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029.

**FOR FURTHER INFORMATION CONTACT:** For technical information concerning this document, please contact David M. Friedman at the address above, at (215) 814-3395, or via e-mail at [friedman.davidm@epa.gov](mailto:friedman.davidm@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Docket

EPA has established an official docket for this action. The official docket consists of the petition submitted by SPSA/Onyx, the results of a risk assessment which evaluates the potential impact of the petitioned waste on human health and the environment, any public comments received, and other information related to this action. The official docket for this proposed rule is located at the offices of U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029, and is available for you to view from 8:30 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. Please call David M. Friedman at (215) 814-3395 for appointments. The public may copy material from the docket at \$0.15 per page.

##### Outline

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##### I. Background

###### *A. What Laws and Regulations Give EPA the Authority To Delist Waste?*

EPA published amended lists of hazardous wastes from non-specific and

specific sources on January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA. These lists have been amended several times, and are found at 40 CFR 261.31 and 261.32.

We list 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 40 CFR part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity), or (2) they meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

We also define residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes as hazardous wastes. (*See* 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively.)

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

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure which allows a person to demonstrate that a specific listed waste from a particular generating facility should not be regulated as a hazardous waste, and should, therefore, be delisted.

According to 40 CFR 260.22(a)(1), in order to have a waste excluded, a petitioner must first show that the waste generated at its facility does not meet any of the criteria for which the waste was listed. The criteria which we use to list wastes are found in 40 CFR 261.11. An explanation of how these criteria apply to a particular waste is contained in the background document for that listed waste.

In addition to the criteria that we considered when we originally listed the waste, we are also required by the provisions of 40 CFR 260.22(a)(2) to consider any other factors (including additional constituents), if there is a reasonable basis to believe that these factors could cause the waste to be hazardous.

In a delisting petition, the petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics defined in subpart C of 40 CFR part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity), and must present sufficient information for EPA to determine whether the waste contains any other constituents at hazardous levels.

A generator remains obligated under RCRA to confirm that its waste remains non-hazardous based on the hazardous waste characteristics defined in subpart C of 40 CFR part 261, even if EPA has delisted its waste.

#### *B. What Does SPSA/Onyx Request in Their Petition?*

On April 7, 2003, SPSA/Onyx petitioned EPA to exclude on a one-time basis a combustion ash generated at SPSA's waste-to-energy facility in Portsmouth, Virginia. The ash which is the subject of this petition is currently located at SPSA's Regional Landfill in Suffolk, Virginia. The total volume of the subject combustion ash at the SPSA Landfill was determined by SPSA/Onyx to be 1410 cubic yards.

The ash was produced by the routine combustion of a batch of municipal and commercial solid waste which was processed in SPSA's Refuse Derived Fuel (RDF) plant and burned in SPSA's Power Plant in Portsmouth, Virginia. A small amount of this waste consisted of materials containing the spent non-halogenated solvent, methyl ethyl ketone (EPA Hazardous Waste Number F005).

## **II. Waste-Specific Information**

#### *A. How Was the Waste Generated?*

In January, 2002, Logan Aluminum, Inc. (Logan) sent a routine shipment of fourteen drums of hazardous waste generated at the Logan plant in Russellville, Kentucky, to Onyx's facility in West Carrollton, Ohio. Logan manufactures aluminum sheet used in making beverage cans. Its process includes application of an FDA-approved, food-safe coating by passing sheet aluminum through rollers. The rollers are cleaned periodically by wiping them with cloth strips using virgin methyl ethyl ketone (MEK) as the cleaning agent. MEK is the only solvent used by Logan in this process.

The used wipes are collected in drums along with other materials including personal protective equipment, excess coating, paper, cardboard and packing materials. These wipes are classified by the Kentucky Department for Environmental Protection as spent solvent wastes.

Onyx Environmental Services is a company that provides a wide range of environmental services to other companies. These services include hazardous and non-hazardous waste management.

Logan has a contractual arrangement with Onyx for the transportation and disposal of hazardous and non-hazardous wastes. Every two months,

Logan ships its wastes to Onyx in 55-gallon drums.

On January 30, 2002, Onyx picked up a shipment of eighty-two drums from Logan. Fourteen of the drums contained MEK rags used in the roller cleaning process, and these drums were shipped with a Uniform Hazardous Waste Manifest. Sixty drums in this shipment contained only non-hazardous waste and eight others, which were not further involved in this incident, were also designated as hazardous. All the drums in this shipment were received at Onyx's West Carrollton facility on February 9, 2002.

In the petition, Onyx asserts that on February 16, 2002, the fourteen drums containing the used wipes were inadvertently included in a shipment of eighty-three drums sent under a non-hazardous waste manifest to Eagle Environmental Services, Inc.'s (Eagle) waste processing facility in Dorchester, South Carolina. Eagle operates a facility that processes non-hazardous industrial waste for recycling and disposal, and is permitted for such activities by the South Carolina Department of Health and Environmental Control.

Eagle emptied the fourteen drums containing the used wipes and processed their contents, along with approximately twenty-three drums of non-hazardous industrial waste, by shredding the combined material and mixing it with sawdust to absorb any free liquids that may have been present. On February 22, 2002, the processed material, totaling 47,380 pounds, was shipped in a single container under a non-hazardous waste manifest to SPSA's RDF plant in Portsmouth, Virginia. Here, this material was mixed with other non-hazardous solid waste and then burned in SPSA's Power Plant.

The ash resulting from combustion of this batch of RDF was delivered to the SPSA Regional Landfill in Suffolk, Virginia, on February 23, 2002. Following standard procedure, the ash was stockpiled there for use as daily cover in the Landfill.

According to Onyx, on February 26, 2002, it discovered its error and notified the Ohio Environmental Protection Agency and Eagle that the drums had been shipped to Eagle without the required hazardous waste manifest. On February 27, 2002, Eagle notified Chesapeake Waste Solutions, the waste broker that had arranged the shipment from Eagle to SPSA, and Chesapeake Waste Solutions notified SPSA. SPSA then notified the Virginia Department of Environmental Quality.

Approximately 510 tons (835 cubic yards) of this ash had been used as daily cover at the SPSA Regional Landfill

before SPSA received notification on February 27, 2002, that the ash was subject to regulation as a hazardous waste. The remaining ash (about 250 tons or 575 cubic yards) has been segregated and stored on a liner under a water- and wind-tight cover on an adjacent area of the Landfill. The area of the Landfill where the material was used as cover is cordoned off and operations remain suspended in this area.

#### *B. What Information Did SPSA/Onyx Submit To Support Their Petition?*

In order to support their petition, SPSA/Onyx submitted detailed descriptions of the chemicals used and the wastes generated by Logan, detailed information related to the material shipments received for destruction at SPSA's Power Plant during the period of time between receipt of the shipment of material from Eagle and notification of the shipping error, and validated analytical results from representative samples of the ash obtained by SPSA/Onyx on October 15, 2002 and January 28, 2003.

Because of the number and variety of waste streams that were processed at the SPSA waste-to-energy facility, we requested that SPSA/Onyx analyze the ash for the entire list of constituents found in Appendix IX to 40 CFR part 264.

On October 15, 2002, SPSA/Onyx collected eight samples and one duplicate sample from ash being stored in a segregated waste pile at the SPSA Regional Landfill. The ash that was used for daily cover in the Landfill was not sampled. The ash has been homogenized by several processes such as loading out at the power plant, transportation and stockpiling, and, therefore, the ash currently stored in the waste pile (which is lined with a geosynthetic liner and covered with a high-density polyethylene cap) was determined to be representative of that portion of the ash which was used as daily cover.

Total analysis was performed on all samples for the entire list of Appendix IX constituents, which include volatiles, semi-volatiles, pesticides, herbicides, PCBs, polychlorinated dibenzodioxins (PCDDs), polychlorinated dibenzofurans (PCDFs) metals, cyanide, and sulfide. Toxicity Characteristic Leaching Procedure (TCLP) leachate analysis was performed on all Appendix IX metals. TCLP leachate analysis was not performed on the organic constituents or cyanide, since allowable holding times were exceeded, and any results obtained from such samples may not be reliable. Holding time requirements

were met, however, for total constituent analysis of the organic constituents and cyanide. Therefore, in our evaluation of the organic constituents (except for the PCDDs and PCDFs) and cyanide, we have calculated the theoretical maximum leachate concentrations by applying the most conservative assumption.

Analyzing a waste for TCLP constituent concentrations involves application of the TCLP followed by analysis of the TCLP leachate for the constituents of concern. For a waste that is a physical solid (*i.e.*, a waste that does not contain a liquid phase), the maximum theoretical leachate concentration can be calculated by dividing the total concentration of the

constituent by twenty. This twenty-fold dilution is part of the TCLP protocol and represents the liquid to solid ratio employed in the test procedure.

If the TCLP were performed on the actual waste, the concentration of this constituent in the TCLP leachate could not exceed the calculated value derived from the procedure described above. The actual TCLP concentration, if determined, may be substantially less than the calculated value because the calculated value assumes that 100 percent of the constituent leaches from the waste.

PCDD and PCDF analysis of the samples collected during the October 15, 2002 sampling event were inadvertently analyzed by SPSA/Onyx's

laboratory using SW-846 Method 8280 rather than the specified method, SW-846 Method 8290. Method 8280 did not yield results that were sufficiently sensitive for this evaluation. On January 28, 2003, four additional composite ash samples were collected and analyzed for total and leachable PCDDs and PCDFs concentrations using Method 8290.

The maximum total constituent and maximum leachate concentrations for all detected inorganic constituents in SPSA/Onyx's waste samples are presented in Table 1.

The detection limits presented in Table 1 represent the lowest concentrations quantifiable by SPSA/Onyx using appropriate methods to analyze the waste.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS <sup>1</sup> IN ASH

Inorganic constituents	Total constituent concentration (mg/kg)	TCLP leachate concentration (mg/l)
Antimony .....	125	0.54
Arsenic .....	45.9	0.18
Barium .....	375	0.21
Beryllium .....	1.7	<0.005
Cadmium .....	34.9	0.11
Chromium .....	808	<0.5
Cobalt .....	27.3	<0.05
Copper .....	2830	1.8
Lead .....	1650	<0.5
Mercury .....	6.8	0.003
Nickel .....	449	0.065
Selenium .....	4.6	<0.25
Silver .....	9.5	<0.5
Thallium .....	1.2	<2.0
Tin .....	149	<0.1
Vanadium .....	29.6	0.012
Zinc .....	9810	8.5
Cyanide (total) .....	0.28	0.014 <sup>2</sup>

<sup>1</sup> These levels represent the highest concentration of each constituent found in any sample. These levels do not necessarily represent the specific levels found in any one sample.

<sup>2</sup> This value is the calculated theoretical maximum leachate concentration based on the maximum total constituent concentration.

< Denotes that the constituent was not detected at the concentration specified in the table.

The maximum total constituent and maximum leachate concentrations for all detected organic constituents in

SPSA/Onyx's waste samples are presented in Table 2.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS <sup>1</sup> IN ASH

Organic constituents	Total constituent concentration (mg/kg)	TCLP leachate concentration (mg/l)
Actone .....	0.058	0.0029 <sup>3</sup>
Aceonitrile .....	<0.31	<0.0155 <sup>3</sup>
Bis(2-ethylhexyl)phthlate .....	2.6	0.13 <sup>3</sup>
Butylbenzylphthalate .....	<2.0	<0.1 <sup>3</sup>
DDD .....	<0.0022	<0.00011 <sup>3</sup>
Endrin aldehyde .....	<0.0022	<0.00011 <sup>3</sup>
Heptachlor .....	<0.002	<0.0001 <sup>3</sup>
Methyl ethyl ketone (2-butanone) .....	<0.049	<0.00245 <sup>3</sup>
Methylene chloride .....	0.0082	0.00014 <sup>3</sup>

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS <sup>1</sup> IN ASH—Continued

Organic constituents	Total constituent concentration (mg/kg)	TCLP leachate concentration (mg/l)
2,3,7,8-TCDD <sup>2</sup>	0.0175	0.0000000017

<sup>1</sup> These levels represent the highest concentration of each constituent found in any sample. These levels do not necessarily represent the specific levels found in any one sample.

<sup>2</sup> For risk assessment of PCDDs and PCDFs compounds, toxicity values are expressed as 2,3,7,8-TCDD equivalents (TEQs).

<sup>3</sup> This value is the calculated theoretical maximum leachate concentration based on the maximum total constituent concentration.

< Denotes that the constituent was not detected at the concentration specified in the table.

EPA requires that petitioners submit signed certifications affirming the truthfulness, accuracy and completeness of the information in their delisting petitions (See 40 CFR 260.22(i)(12)). SPSA and Onyx each submitted signed certifications stating that all submitted information is true, accurate and complete.

### III. EPA's Evaluation of the Petition

#### A. What Method Did EPA Use To Evaluate Risk?

For this delisting determination, we used information gathered by SPSA/ Onyx to identify plausible exposure routes (*i.e.*, groundwater, surface water, and air) for hazardous constituents present in the petitioned waste. Because of its physical form, we determined that disposal in a RCRA Subtitle D landfill was the most reasonable, worst-case (least protective) disposal scenario for SPSA/Onyx's petitioned waste. We then used a fate and transport model to predict the release of hazardous constituents from the petitioned waste once it is disposed of, in order to evaluate the potential impact on human health and the environment. To perform this evaluation, we used a Windows-based software tool, the Delisting Risk Assessment Software Program (DRAS), to estimate the potential releases of waste constituents and to predict the risk associated with those releases. DRAS accomplishes this using several EPA models including the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport model for estimating groundwater releases. For a detailed description of the DRAS program and the EPACMTP model, See 65 FR 58015, September 27, 2000. Subsequent revisions to the DRAS program are described in 65 FR 75637 (December 4, 2000). The DRAS program is available on the World Wide Web at [http://www.epa.gov/earth1r6/6pd/rcra\\_c/pd-o/dras.htm](http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm). The technical support document for the DRAS program is also available on the World Wide Web at <http://www.epa.gov/>

[earth1r6/6pd/rcra\\_c/pd-o/dtsd.htm](http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dtsd.htm) as well as in the public docket for this proposed rule.

The Agency believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible groundwater contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of the RCRA Subtitle C program. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and insures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

In assessing potential risks to groundwater, we use the estimated waste volume and the maximum measured or calculated leachate concentrations as inputs to the DRAS program to estimate the constituent concentrations in the groundwater at a hypothetical receptor well downgradient from the disposal site. Using an established risk level, the DRAS program can back-calculate receptor well concentrations (referred to as a compliance-point concentration) using standard risk assessment algorithms and Agency health-based numbers.

For constituents which are not detected in leachate analysis, the DRAS requires that the detection limit be entered along with the other data. In these circumstances, the DRAS uses one-half the detection limit to calculate risk. We believe it is inappropriate to evaluate constituents which are not detected in any sample analyzed, if an appropriate analytical method was used.

Similarly, the DRAS also predicts possible risks associated with releases of waste constituents through surface pathways (*e.g.*, volatilization or wind-blown particulate from the landfill). As in the groundwater analyses, the DRAS uses the established acceptable risk level, the health-based data, and

standard risk assessment and exposure algorithms to perform this assessment.

In most cases, because a delisted waste is no longer subject to hazardous waste regulation, the Agency is generally unable to predict, and does not presently control, how a petitioner will manage a waste after it is excluded. Therefore, we believe that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model.

The back-calculation procedure contrasts with the method used to compute the cumulative risk for a one-time delisting petition. To determine cumulative risk, the calculations proceed in a forward direction. Beginning with the leachate and total waste concentrations for each constituent in the waste (source concentrations), the waste volume and exposure parameters are used to estimate the upper-bound excess lifetime cancer risks (risk) and noncarcinogenic hazards (hazard). The risk is said to be cumulative because risks and hazards are summed separately for receptors (resident adults and children) across all applicable waste constituents and exposure pathways to obtain an estimate of the total individual risk and hazard for each receptor. Risk is the probability that a receptor will develop cancer. Risk is estimated based on a unique set of exposure, model, and toxicity assumptions.

Hazard is defined as the potential for noncarcinogenic health effects as a result of exposure to constituents of concern, averaged over an exposure period of less than an entire lifetime. A hazard is not a probability but rather a measure (expressed as a ratio) of the magnitude of a receptor's potential exposure relative to a standard exposure level. The standard exposure level is calculated over an exposure period such that there is no likelihood of adverse health effects to potential receptors, including sensitive populations.

If a delisting evaluation is performed for a one-time exclusion, the DRAS computes the cumulative carcinogenic

risk by summing the carcinogenic risks for all waste constituents for a given exposure pathway and then summing the carcinogenic risks for each pathway analyzed in the delisting risk assessment. The DRAS also computes the cumulative noncarcinogenic risk by summing the Hazard Quotients for all waste constituents for a given exposure pathway to obtain exposure pathway-specific Hazard Indexes (HIs), and then summing the HIs associated with each exposure pathway analyzed. For a one-time exclusion, the results of the cumulative risk assessment may be used in lieu of the calculated delisting levels. Since this is a one-time delisting, we do not need to establish monitoring concentrations for each batch of waste that is subsequently managed under the exclusion. Therefore, we set the evaluation levels in the cumulative risk process at the established target risk range ( $1 \times 10^{-4}$  to  $1 \times 10^{-6}$  for carcinogenic waste constituents and a HI of 1.0 to 0.1 for noncarcinogenic waste constituents). Use of the cumulative risk analysis allows the risk associated with an individual waste constituent to extend to a less conservative risk level as long as the cumulative risk for the entire petitioned waste lies below or within EPA's target risk range.

For calculation of delisting levels for multi-year (batch) waste generation, EPA Region III generally defines acceptable risk levels as wastes with an excess cancer risk of no more than  $1 \times 10^{-6}$  and a hazard quotient of no more than 0.1 for individual constituents. For a one-time delisting, EPA Region III evaluates the cumulative cancer risk and cumulative hazard index of the petitioned waste. A cumulative cancer risk less than  $1 \times 10^{-4}$  and a cumulative hazard index less than or equal to 1 are considered to be protective of human health and will be considered acceptable for this type of delisting determination.

#### *B. What Other Factors Did EPA Consider in Its Evaluation?*

We also consider the applicability of groundwater monitoring data during the evaluation of delisting petitions where the petitioned waste is currently managed or was once managed in a land-based unit (e.g., a landfill or surface impoundment).

We use the results of groundwater monitoring data evaluations as a check on the reasonable worst case evaluations performed, in order to provide an additional level of confidence in our delisting decisions. Because groundwater monitoring data are descriptive of the impact of the

petitioned waste under actual conditions, and not reasonable worst case assumptions, we believe that evidence of groundwater contamination originating from a land-based waste management unit may be sufficient basis for petition denial.

In this case, SPSA/Onyx has not generated the subject ash until this recent incident (described earlier in this preamble) which resulted in a small amount of the ash being used as daily cover in the SPSA Regional Landfill. We have determined that it would not be helpful to request groundwater monitoring data since the small amount of ash used as daily cover would not have a detectable impact on the groundwater at this Regional Landfill.

#### *C. What Conclusion Did EPA Reach?*

EPA believes that the information provided by SPSA/Onyx provides a reasonable basis to grant SPSA/Onyx's petition. We, therefore, propose to grant SPSA/Onyx a one-time delisting for the 1410 cubic yards of petitioned ash currently located at the SPSA Regional Landfill. This includes both the ash which has been segregated in a waste pile at the site as well as the ash that has been used as cover material in the Landfill. The data submitted to support the petition and the Agency's evaluation show that the constituents in the SPSA/Onyx ash are below health-based levels used by the Agency for delisting decision-making, and that the ash does not exhibit any of the characteristics of a hazardous waste.

For this delisting determination, we used information gathered to identify plausible exposure routes (i.e., groundwater, surface water, air) for hazardous constituents present in the petitioned waste. We determined that disposal in a RCRA Subtitle D landfill is the most reasonable, worst-case disposal scenario for SPSA/Onyx's petitioned waste. We applied the DRAS described above to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal, and we determined the potential impact of the disposal of SPSA/Onyx's petitioned waste on human health and the environment.

The estimated total cumulative risk posed by the waste, as calculated using the DRAS, is  $4.1 \times 10^{-5}$ . We believe that this risk is acceptable both because the value is within the generally acceptable range of  $1 \times 10^{-4}$  to  $1 \times 10^{-6}$  and, as stated above, for a one-time delisting, EPA Region III considers a cumulative cancer risk less than  $1 \times 10^{-4}$  to be protective of human health.

The estimated cumulative hazard index for this waste is calculated by DRAS to be  $3.2 \times 10^{-1}$ . We likewise believe that this risk is acceptable both because the value is within the generally acceptable range of 1.0 to 0.1 and, for a one-time delisting, EPA Region III considers a cumulative hazard index less than or equal to 1 to be protective of human health.

We believe the data submitted in support of the petition show that the waste will not pose a threat when disposed of in a RCRA Subtitle D landfill. We, therefore, propose to grant SPSA/Onyx's request for a one-time delisting for the 1410 cubic yards of ash currently located at the SPSA Regional Landfill.

## **IV. Conditions for Exclusion**

#### *A. What Conditions Are Associated With This Exclusion?*

The proposed exclusion would apply only to the estimated 1410 cubic yards of ash currently located at the SPSA Regional Landfill as described in SPSA/Onyx's petition. No ash other than the ash described in this petition could be managed as nonhazardous waste under this exclusion.

If SPSA and/or Onyx discovers that a condition or assumption related to the characterization of this waste that was used in the evaluation of this petition is not as reported in the petition, SPSA and/or Onyx will be required to report any information relevant to that condition or assumption in writing to the Regional Administrator and the Virginia Department of Environmental Quality within 10 calendar days of discovering that condition.

The purpose of this condition is to require SPSA and/or Onyx to disclose new or different information that may be pertinent to the delisting. This provision will allow us to reevaluate the exclusion based on this new information in order to determine if our original decision was correct. If we discover such information from any source, we will act on it as appropriate. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate action deemed necessary to protect human health or the environment. EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 *et seq.* (1978), (APA), to reopen the delisting under the conditions described above.

SPSA/Onyx state in their petition that the waste, if delisted, will remain at the SPSA Regional Landfill. However, in order to adequately track wastes that have been delisted, in the event that a decision is made to dispose of all or part

of the ash off-site, we will require that SPSA/Onyx provide a one-time notification to any State regulatory agency to which or through which the delisted waste will be transported for disposal. SPSA/Onyx will be required to provide this notification at least 60 calendar days prior to commencing these activities. Failure to provide such notification will be a violation of the delisting, and may be grounds for revocation of the exclusion.

*B. What Happens if SPSA or Onyx Fails To Meet the Conditions of This Exclusion?*

If SPSA or Onyx violates the terms and conditions established in the exclusion, the Agency may start procedures to withdraw the exclusion, and may initiate enforcement actions.

**V. Effect on State Authorizations**

This proposed exclusion, if promulgated, would be issued under the Federal RCRA delisting program. States, however, may impose more stringent regulatory requirements than EPA pursuant to Section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (RCRA) or State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (i.e., to make their own delisting decisions). Therefore, this proposed exclusion, if promulgated, may not apply in those authorized States, unless it is adopted by the State. If the petitioned waste is managed in any State with delisting authorization, SPSA/Onyx must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

**VI. Effective Date**

EPA is today making a tentative decision to grant SPSA/Onyx's petition. This proposed rule, if made final, will become effective immediately upon such final publication. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow 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 a facility generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of RCRA Section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedures Act, 5 U.S.C. 553(d).

**VII. Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a "regulatory action" subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 40 CFR Part 261**

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

**Authority:** Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: June 10, 2003.

**Donald S. Welsh,**  
*Regional Administrator, Region III.*

For the reasons set forth in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

**PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

1. The authority citation for Part 261 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

**Appendix IX of Part 261—[Amended]**

2. Table 1 of Appendix IX of Part 261 is amended to add the following waste stream in alphabetical order by facility to read as follows:

**Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.**

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* Southeastern Public Service Authority (SPSA) and Onyx Environmental Services (Onyx).	* Suffolk, Virginia .....	* Combustion ash generated from the burning of the spent solvent methyl ethyl ketone (Hazardous Waste Number F005) and disposed of in a Subtitle D landfill. This is a one-time exclusion for 1410 cubic yards of ash and is effective after (insert publication date of the final rule).

(1) *Reopener language*

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
*	*	*
*	*	*
*		

(a) If SPSA and/or Onyx discovers that any condition or assumption related to the characterization of the excluded waste which was used in the evaluation of the petition or that was predicted through modeling is not as reported in the petition, then SPSA and/or Onyx must report any information relevant to that condition or assumption, in writing, to the Regional Administrator and the Virginia Department of Environmental Quality within 10 calendar days of discovering that information. (b) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Regional Administrator will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate action deemed necessary to protect human health or the environment.

(2) Notification Requirements

In the event that the delisted waste is transported off-site for disposal, SPSA/ Onyx must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported at least 60 calendar days prior to the commencement of such activities. Failure to provide such notification will be deemed to be a violation of this exclusion and may result in revocation of the decision and other enforcement action.

[FR Doc. 03–15361 Filed 6–17–03; 8:45 am]  
BILLING CODE 6560–50–P

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 571**

[Vehicle Compatibility, Docket No. NHTSA–2003–14623; Rollover Mitigation, Docket No. NHTSA–2003–14622]

**Vehicle Compatibility and Rollover Mitigation Integrated Project Team (IPT) Plans**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.  
**ACTION:** Notice of availability of documents.

**SUMMARY:** This notice announces the availability of NHTSA’s first two of four high priority safety reports describing the agency’s current and planned activities to address vehicle compatibility and rollover mitigation. The reports are available from the Docket Management System, U.S. Department of Transportation, at <http://dms.dot.gov> or on NHTSA’s Web site at <http://www.nhtsa.dot.gov/people/ipreports.html>. While the documents are final, the agency is offering the public the opportunity to comment on the agency’s planned activities. The comments will be considered for future agency efforts.

**DATES:** Comments must be received no later than August 4, 2003.

**ADDRESSES:** You may submit comments identified by Vehicle Compatibility DOT DMS Docket Number [NHTSA–2003–14623] and/or Rollover Mitigation DOT DMS Docket Number [NHTSA–2003–14622] by any of the following methods:

- *Web Site:* <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

*Instructions:* All submissions must include the agency name and docket number. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:**

*Vehicle Compatibility*—Roger A. Saul, National Highway Traffic Safety Administration, Room 5307, 400 Seventh Street, SW., Washington, DC

20590, Telephone: 202–366–1740, or Dee Y. Williams, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–0498.

*Rollover Mitigation*—Jim Simons, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590, Telephone: 202–366–2555, or Dee Y. Williams, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–0498.

**SUPPLEMENTARY INFORMATION:**

**Vehicle Compatibility**

Since the 1970s, vehicle compatibility has been a concern to NHTSA. Recent sales and registrations of LTVs have steadily increased as a percentage of the passenger vehicle fleet, with LTVs representing 50 percent of new vehicle sales in 2001 and 37 percent of vehicle registrations. Consequently, this has led to an increased number of fatalities to car occupants who are struck by LTVs. This increase in passenger car fatalities has occurred even while the overall fatalities for the U.S. fleet has stabilized or decreased over the past several years. Therefore, NHTSA has made vehicle compatibility one of the agency’s highest priorities. Initiatives the agency plans to pursue in improving vehicle compatibility include:

1. Vehicle Strategies
  - a. Partner Protection
  - b. Self Protection
  - c. Lighting/Glare