electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

II. Prior Diazinon Tolerance Rulemaking

On May 21, 2008 (73 FR 29456) (FRL–8362–1), EPA proposed the revocation of the tolerance for residues of diazinon, O, O-diethyl O-[6-methyl-2-(1-methylethyl)-4-pyrimidinyl]phosphorothioate; (CAS Reg. No. 333–41–5), in or on the food commodity grape at 0.75 parts per million (ppm) in 40 CFR 180.153(a) because the use on grapes had been canceled. The proposal neither discussed nor took into account the fact that an existing stocks provision in the cancellations allowed continued use of existing diazinon stocks until December 2008. No comments were received in response to the proposal expressing objections to the revocation of the diazinon tolerance on grapes. EPA published a final rulemaking on September 10, 2008 (73 FR 52607) (FRL–8379–3) revoking the diazinon tolerance on grapes.

III. The California Grape and Tree Fruit League Objection

On November 10, 2008, the California Grape and Tree Fruit League filed an objection to the tolerance rulemaking pursuant to 21 U.S.C. 346a(g)(2)(A), objecting to the revocation of the diazinon tolerance on grapes. The basis of the California Grape and Tree Fruit League objection is that although the use on grapes has been canceled the tolerance is ''still necessary to allow for the orderly exhaustion of existing stocks.'' The California Grape and Tree Fruit League argued that a tolerance is therefore required for grapes treated with existing stocks of diazinon to allow the legally treated commodity to clear the channels of trade and preventing seizure of the treated grapes by the Food and Drug Administration.

IV. Order on Objection

Despite the fact that the California Grape and Tree Fruit League did not comment on this issue with respect to the proposed rule, because the proposal erroneously failed to take into account the existing stock provision, EPA in its discretion has considered the objection and found it to be sound. Accordingly, EPA, by this rule and order, and pursuant to section 408(g)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FFDCA), is amending the diazinon tolerance in 40 CFR 180.153(a) to add a tolerance for grape at at 0.75 ppm. The tolerance will remain in effect until September 10, 2010. The Agency anticipates this should allow a reasonable period of time for the depletion of existing diazinon stocks and the clearance of diazinon treated grapes from the channels of trade.

V. Conclusion

Therefore, pursuant to section 408(g)(2)(C) of FFDCA, a tolerance for the residues of diazinon, O, O-diethyl O-[6-methyl-2-(1-methylethyl)-4-pyrimidinyl]phosphorothioate; (CAS Reg. No. 333–41–5), in or on the food commodity grapes is added at 0.75 ppm until September 10, 2010.

VI. Statutory and Executive Order Reviews

EPA included the required statutory discussion in the September 10, 2008 final rule (72 FR 52610).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 2, 2009.

Debra Edwards,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.153, is amended by alphabetically adding the commodity to the table in paragraph (a) to read as follows:

§ 180.153 Diazinon; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * *	* *
Grape[2]	0.75
* * *	* *

* * * * *

[FR Doc. E9–8117 Filed 4–14–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA–R10–OW–2008–0745; FRL–8791–2]

Ocean Dumping; Designation of Ocean Dredged Material Disposal Site Offshore of the Rogue River, OR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On October 14, 2008, EPA published a proposed rule at 73 FR 60662 to designate an ocean dredged material disposal site located offshore of the Rogue River, Oregon, and simultaneously withdrew an earlier proposal. EPA observed a typographical error in the proposed rule as published. In proposed rule, FR Doc. EPA–R10–OW–2008–0745, on page 60670 in the issue of October 14, 2008, in the first column, the very first coordinate was published as 42°24′5.40″ N, but should have been published as 42°24′15.40″ N. The coordinate was published correctly on page 60664 in the first column as 42°24′15.40″ N. EPA received no comments on the proposed rule. EPA did receive one letter, dated November 12, 2008, from the Department of the Interior (DOI) stating that DOI had no comments. This action finalizes the designation of the Rogue River ocean dredged material disposal site, with the correct coordinates, pursuant to the Marine Protection, Research, and Sanctuaries Act, as amended (MPRSA), 33 U.S.C. 1401 to 1445. The new site is needed primarily to serve as a long-term location for the disposal of material dredged from the Rogue River navigation channel. The new site will also serve to provide a location for the disposal of dredged material for persons who have received a permit for such disposal. The newly designated site will be subject to ongoing monitoring and management as specified in this rule and in the Site Management and Monitoring Plan, which is also finalized as part of this action. The monitoring and management requirements will help to ensure continued protection of the marine environment.

DATES: *Effective Date:* This final rule will be effective May 15, 2009.

ADDRESSES: For more information on this final rule, Docket ID No. EPA–R10–OW–2008–0745, use one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for accessing the docket and materials related to the final rule.
- *E-mail: Freedman.Jonathan@epa.gov*
- *Mail:* Jonathan Freedman, US Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA–083), Aquatic Resources Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the US Environmental Protection Agency, Region 10, Library, 10th Floor, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101. For access to the documents at the Region 10 Library, contact the Region 10 Library Reference Desk at (206) 553–1289, between the hours of 9 a.m. to 11:30 a.m., and between the hours of 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays, for an appointment.

FOR FURTHER INFORMATION CONTACT: Jonathan Freedman, US Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA–083), Aquatic Resources Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, phone number: (206) 553–0266, e-mail: *freedman.jonathan@epa.gov*, or contact Jessica Winkler, US Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA–083), Aquatic Resources Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, phone number: (206) 553–7369, e-mail: *winkler.jessica@epa.gov*.

SUPPLEMENTARY INFORMATION:

1. Potentially Affected Persons

Persons potentially affected by this final action include those who seek or might seek permits or approval by EPA to dispose of dredged material into ocean waters pursuant to the Marine Protection, Research, and Sanctuaries Act, as amended (MPRSA), 33 U.S.C. sections 1401 to 1445. EPA's action is relevant to persons, including organizations and government bodies, seeking to dispose of dredged material in ocean waters offshore of the Rogue River, Oregon. Currently, the US Army Corps of Engineers (Corps) will be most impacted by this final action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal Government	US Army Corps of Engineers Civil Works Projects, and other Federal Agencies
Industry and General Public	Port Authorities, Marinas and Harbors, Shipyards and Marine Repair Facilities, Berth Owners
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular person, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

2. Background

a. History of Disposal Site Offshore of the Rogue River, Oregon

The final Rogue River ocean dredged material disposal site, or areas in the same vicinity, were used by the Corps beginning in 1962. When the MPRSA was enacted, the site became an ''interim'' site under the ocean dumping regulations, a status superseded by later statutory changes to the MPRSA. The site was selected for use by the Corps under Section 103 of the MPRSA. That authority allows the Corps to select a site for disposal when a site has not been designated. EPA concurred on that selection and in 2003 approved the Corps' request to continue to use the site through the end of the 2008 dredging season.

From 1986 through 2006, over 1.1 million cubic yards (cy) of dredged material were placed at the Rogue River site. A uniform placement strategy, rather than point dumping, was applied to the disposal of material at the site and regular bathymetric surveys were conducted. Data collected from those surveys showed that persistent mounding did not occur within the site or in the vicinity of the site. Over the long-term, site capacity appears to be unconstrained based on the historical and anticipated disposal volumes because material placed redistributes out of the site, feeding the littoral cell.

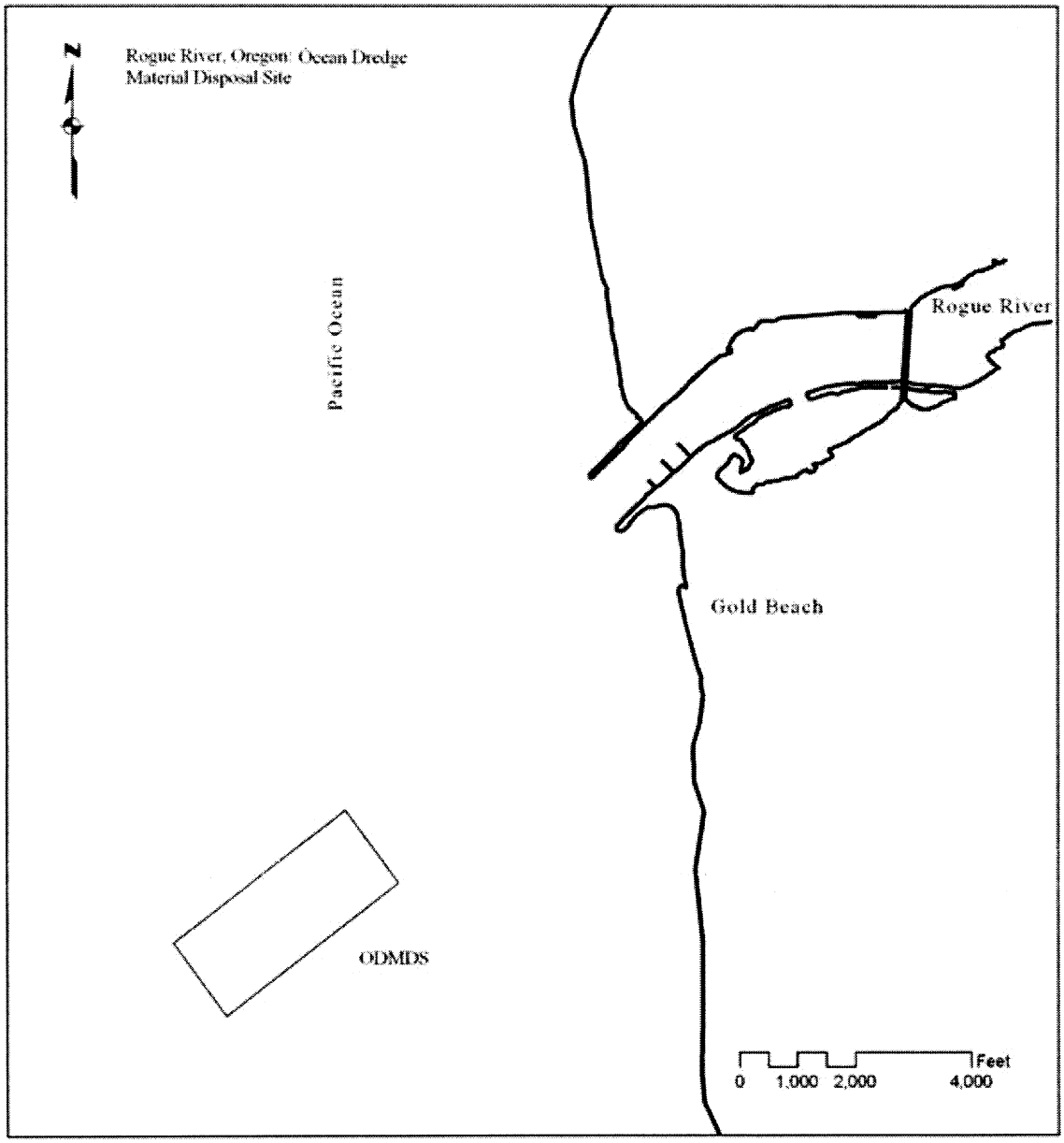

Figure 1. Diagram of the Final Rogue River Ocean Dredged Material Disposal Site.

b. Location and Configuration of Final Rogue River Ocean Dredged Material Disposal Site

Figure 1, above, shows the Rogue River ocean dredged material disposal site (Rogue River ODMDS or Site) EPA designates in this action. The Site's configuration is expected to allow dredged material disposed in shallower portions of the Site to naturally disperse into the littoral zone without creating mounding conditions that could contribute to adverse impacts to navigation. This final Site configuration will allow EPA to ensure that disposal of dredged material into the Site will be managed so that as much material as possible is retained in the active littoral drift area to augment shoreline building processes.

The coordinates for the Rogue River ODMDS as finalized in this action are, in North American Datum 83 (NAD 83):

42°24′15.40″ N, 124°26′52.39″ W
42°24′03.40″ N, 124°26′39.39″ W
42°23′39.40″ N, 124°27′17.40″ W
42°23′51.40″ N, 124°27′30.40″ W

The Site occupies approximately 116 acres. The Site's final dimensions are: 1,400-feet wide by 3,600-feet long, with Site depth ranging from approximately 50 to 90 feet. The Site generally lies on bottom contours sloping at a rate of 8/1000 feet to the west-southwest. The disposal area, placement area, and drop zone for the Site are identical.

c. Management and Monitoring of the Final Site

The final Rogue River ODMDS is expected to receive sediments dredged by the Corps to maintain the federally authorized navigation project at the Rogue River, Oregon, and dredged material from other persons who have obtained a permit for the disposal of dredged material at the Site. The ocean dumping regulations do not require a modification of any existing permits issued before this final action. All persons using the Site are required to follow the final Site Management and

Monitoring Plan (SMMP) for the Rogue River ODMDS which is available to the public as part of this action. The SMMP includes management and monitoring requirements to ensure that dredged materials disposed at the Site are suitable for disposal in the ocean. The final SMMP addresses the timing of disposal events to minimize interference with other uses of ocean waters in the vicinity of the Site.

d. MPRSA Criteria

EPA assessed this final action against the criteria of the MPRSA, with particular emphasis on the general and specific regulatory criteria of 40 CFR Part 228, and determined that the final site designation satisfies those criteria.

General Criteria (40 CFR 228.5)

(1) Sites must be selected to minimize interference with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation (40 CFR 228.5(a)).

EPA's assessment of information available at the time of this final rule included a review of the potential for interference with navigation, recreation, shellfisheries, aquatic resources, commercial fisheries, protected geologic features, and cultural and/or historically significant areas. While limited overlap was found to exist between disposal operations and salmon fishing, no observable conflicts were identified. No evidence was found to suggest that the final Site would cause interference with fisheries or with navigation in the Rogue River navigation channel. The final Site has been used over the past decades for dredged material disposal, most recently pursuant to Section 103 of the MPRSA, as a site selected by the Corps with EPA's concurrence. Mariners in this area are accustomed to Site use.

(2) Sites must be situated such that temporary perturbations to water quality or other environmental conditions during initial mixing caused by disposal operations would be reduced to normal ambient levels or undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery (40 CFR 228.5(b)).

Based on EPA's review of modeling, monitoring data and history of use, there is no indication that detectable contaminant concentrations or water quality effects would reach any beach, shoreline, or other area outside of the final Site. All dredged material proposed for disposal will be evaluated according to the ocean dumping regulations at 40 CFR 227.13 and guidance developed by EPA and the Corps. In general, dredged material which meets the criteria under 40 CFR 227.13(b) is deemed environmentally acceptable for ocean dumping without further testing. Dredged material which does not meet the criteria of 40 CFR 227.13(b), must be further tested as required by 40 CFR 227.13(c). Suitable material can be disposed of at the Site. Modeling work performed by the Corps at the Umpqua River, demonstrates that water column turbidity, a temporary perturbation during disposal, would dissipate for an anticipated 97% of coarser material within a few minutes of disposal. The remaining 3% of the material, which would be classified as fine-grained, would dissipate within a half hour. Over time, some of the suitable disposed material would be expected to migrate into the active littoral drift system.

(3) If Site designation studies show that any interim disposal sites do not meet the site selection criteria, use of such sites shall be terminated as soon as any alternate site can be designated (40 CFR 228.5(c)).

EPA's recent final rule at 73 FR 74983 (December 10, 2008) repealed obsolete regulations under the MPRSA regarding interim ocean dumping sites and interim ocean dumping criteria. EPA stated in the proposed rule that there are no interim sites near the Rogue Site, however, the category of ''interim site'' has since been removed from the ocean dumping criteria.

(4) The sizes of disposal sites will be limited in order to localize for identification and control of any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. Size, configuration, and location are to be determined as part of the disposal site evaluation (40 CFR 228.5(d)).

EPA sized the final Site to meet this criterion. The final Site tends to be moderately dispersive in the near-shore area and tends to be less dispersive farther from shore. The overall stability of the Site, as indicated by the lack of adverse mounding, is a significant component of the justification for the size of the Site. Data collected by the Corps through bathymetric monitoring show the spread and movement of material after placement. The data establish that material from the Site eventually disperses over the footprint of the site and with seasonal movement disperses into the littoral system. Monitoring of the final Site is required in the SMMP and effective monitoring of the Site is anticipated based on past practice and current ability to monitor the location and conduct surveillance.

(5) EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites where historical disposal has occurred (40 CFR 228.5(e)).

The final Site is located where historic disposal occurred with a history of minimal impact to the environment, and minimal impact to other uses and amenities. Locations off the continental shelf in the Pacific Ocean are generally inhabited by stable benthic and pelagic ecosystems on steeper gradients that are not well adapted to frequent disturbance events such as occur with the disposal of dredged material. Monitoring and surveillance of the final Site do not pose the challenges inherent in a site located beyond the edge of the continental shelf. Material disposed beyond the edge of the continental shelf would not be available to the littoral system.

Specific Criteria (40 CFR 228.6)

(1) Geographical Position, Depth of Water, Bottom Topography and Distance from Coast (40 CFR 228.6(a)(1)).

Based on the data available, the geographical position, including the depth of the final Site, bottom topography and distance from the coastline in the vicinity of the final Site, indicates that designation of the final Site will not cause adverse effects to the marine environment. EPA understands that the currents at the final Site and their influence on the movement of material in the area suggest there is a high likelihood that much of the material disposed at the Site will be transported to the littoral sediment circulation system. Limited onshore transport of material disposed of at the Site is not expected because of the nature of the prevailing currents and because wave transport in the vicinity of the Site trends alongshore. Net predicted material transport at the Site is southward in the summer months and northward during the remainder of the year. These transport mechanisms are expected to move material into the active littoral drift area. This movement is expected to allow for long-term disposal without creation of adverse mounding conditions.

(2) Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2)).

The final Site is not located in exclusive breeding, spawning, nursery or feeding areas for adult or juvenile phases of living resources. Modeling of the water column, which indicates that turbidity from a disposal event would

be expected to dissipate fairly rapidly, indicates that avoidance behavior by any species at the final Site would be short-term.

(3) Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)).

The final Site, although located in close proximity to the Rogue River navigation channel, is located a sufficient distance offshore to avoid adverse impacts to beaches and other amenity areas. Transportation of dredges or barges to and from the final Site to dispose of dredged material is expected to be coordinated so as to avoid disturbance of other activities near the Rogue River entrance channel.

(4) Types and Quantities of Wastes Final to be Disposed of, and Final Methods of Release, including Methods of Packing the Waste, if any (40 CFR 228.6(a)(4)).

Dredged material characterized by chemical and biological testing and found suitable for disposal into ocean waters will be the only material allowed to be disposed of at the final Site. No material defined as ''waste'' under the MPRSA will be allowed to be disposed of at the final Site. The dredged material expected to be disposed of at the Site will be predominantly marine sand, far removed from known sources of contamination.

With respect to final methods of releasing material at the final Site, material will be released just below the surface from dredges while the dredges are under power and slowly transiting the final Site. This method of release is expected to spread material at the Site to minimize mounding and to minimize impacts to the benthic community and other species in, or near, the Site at the time of a disposal event.

(5) Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5)).

Monitoring and surveillance at the final Site are expected to be feasible and easily performed from small surface research vessels. The final Site is accessible for bathymetric and side-scan sonar surveys. At a minimum, annual bathymetric surveys will be conducted at the final Site to confirm that no unacceptable mounding is taking place within the Site or its immediate vicinity. Routine monitoring is expected to concentrate on examining how the distribution of material in the near-shore portions of the Site augment littoral processes and how distribution of material in the deeper portions of the Site avoid or minimize mounding.

(6) Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if any (40 CFR 228.6(a)(6)).

Dispersal, horizontal transport and vertical mixing characteristics of the area at and in the vicinity of the final Site are complex. This complexity is partly a result of rocky reefs to the north of the final Site which appear to influence mass transport, and in part the complexity can be attributed to prevailing wave-induced motion and currents moving towards the north during much of the year. Wave-induced motion appears to cause near-constant mobilization of bottom sediment. The overall regional mass transport trend suggests that net littoral transport of material is to the north from the final Site. That overall littoral transport appears to be balanced by offshore transport from the mouth of the Rogue River to the north of the final Site such that there is shoreline accretion to the north and relative equilibrium of the shoreline to the south.

(7) Existence and Effects of Current and Previous Discharges and Dumping in the Area (including Cumulative Effects) (40 CFR 228.6(a)(7)).

The approximate annual loading volume of dredged material placed at the final Site is expected to equal 54,000 cubic yards (cy) of material. This average was calculated by averaging seasonal material placement over disposal seasons from the time the site became a selected site. Annual monitoring of the Site is required in the final SMMP for the Site. The final SMMP includes requirements for managing the Site to address mounding issues if mounding occurs.

(8) Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8)).

Disposals at the final Site will be managed through the SMMP to minimize interference with other legitimate uses of the ocean through careful timing and staggering of disposals in the near-shore and deeper portions of the final Site.

(9) The Existing Water Quality and Ecology of the Sites as Determined by Available Data or Trend Assessment of Baseline Surveys (40 CFR 228.6(a)(9)).

EPA did not identify any adverse water quality impacts or adverse impacts to overall ecology from the historic use of the final Site.

(10) Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10)).

Nuisance species, considered as any undesirable organism not previously existing at a location, have not been observed at, or in the vicinity of, the final Site. The final SMMP includes specific biological monitoring requirements, which would act to identify any nuisance species, and management requirements, which would allow EPA to direct special studies and/or operational changes to address nuisance species.

(11) Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11)).

The final Site is located about two nautical miles south-southeast of the Rogue Reef complex, an ecologically unique feature among a system of neritic reefs off the Oregon coast. Dredged material disposed at the final Site is generally expected to settle to the seafloor quickly. Naturally occurring littoral transport, which would not be expected to adversely affect aquatic communities in the reef areas, is anticipated on a small scale. No significant cultural features were identified at, or in the vicinity of, the final Site. As discussed below, EPA coordinated with Oregon's State Historic Preservation Officer and with Tribes in the vicinity of the final Site to identify any cultural features. None were identified. No shipwrecks were observed or documented within the final Site or its immediate vicinity.

e. National Environmental Policy Act (NEPA); Magnuson-Stevens Act (MSA); Marine Mammal Protection Act (MMPA); Coastal Zone Management Act (CZMA); Endangered Species Act (ESA); National Historic Preservation Act (NHPA)

(1) NEPA

Section 102 of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 to 4370f, requires Federal agencies to prepare an Environmental Impact Statement (EIS) for major federal actions significantly affecting the quality of the human environment. EPA's NEPA regulations are found at 40 CFR Part 6. NEPA does not apply to EPA designations of ocean disposal sites because the courts have exempted EPA's actions under the MPRSA from the procedural requirements of NEPA through application of the functional equivalence doctrine. EPA has, by policy, determined that the preparation of non-EIS NEPA documents for certain EPA regulatory actions, including actions under the MPRSA, is appropriate. EPA's ''Notice of Policy and Procedures for Voluntary Preparation of NEPA Documents,'' (Voluntary NEPA Policy), 63 FR 58045,

(October 29, 1998), sets out both the policy and procedures EPA uses when preparing such environmental review documents. EPA's 2007 revisions to 40 CFR Part 6 provided the framework EPA used to prepare the voluntary NEPA documents for this final action.

EPA's primary voluntary NEPA document for designating the final Site is the *Rogue River, Oregon Ocean Dredged Material Disposal Site Evaluation Study and Environmental Assessment, 2009* (EA), jointly prepared by EPA and the Corps. The final EA and its Technical Appendices, are part of the docket for this final action, and provide the threshold environmental review for the Site designation. The information from the final EA is used extensively, above, in the discussion of the ocean dumping criteria.

(2) MSA and MMPA

In the spring of 2008, EPA initiated consultation with the National Marine Fisheries Service (NMFS) concerning essential fish habitat and protected marine mammals. EPA prepared an essential fish habitat (EFH) assessment pursuant to section 305(b) of the Magnuson-Stevens Act, as amended (MSA), 16 U.S.C. 1801 to 1891d. NMFS reviewed EPA's EFH assessment and ESA Biological Assessment for purposes of the Marine Mammal Protection Act of 1972, as amended (MMPA), 16 U.S.C. 1361 to 1389.

With respect to marine mammals, NMFS found that all potential adverse effects to ESA-listed marine mammals are discountable or insignificant. Those findings are documented in Appendix A. Marine Mammal Determinations of the Biological Opinion issued by NMFS to EPA on March 19, 2009. With respect to EFH, NMFS found that disposal of dredge material, an indirect effect of EPA's action to designate the Rogue River ODMDS, will not alter the habitat value of the designated EFH at and in the vicinity of the Site. NMFS also concluded that impacts to forage base would be highly localized and any potential decrease in forage abundance is considered insignificant to the total food resources available to EFH management species. Finally, NMFS concluded that the safe passage of the EFH managed species will not be functionally changed by EPA's Site designation and the subsequent disposal of dredged material. Those findings are documented in the Magnuson-Stevens Fishery Conservation and Management Act section of the NMFS Biological Opinion. NMFS included a ''conservation recommendation'' to study fish behavior and interactions with disposed material at the Site. EPA will respond in a separate written response to NMFS' recommendation.

(3) CZMA

EPA initiated consultation with the state of Oregon on coastal zone management issues in summer of 2008. EPA prepared a consistency determination for the Oregon Ocean and Coastal Management Program (OCMP) to meet the requirements of the Coastal Zone Management Act, as amended, (CZMA), 16 U.S.C. 1451 to 1465, and submitted that determination formally to the Oregon Department of Land Conservation and Development (DLCD) in November. DLCD publicly noticed EPA's consistency determination and took comments on the action until January 2, 2009. DLCD received one comment from the Oregon Department of Fish and Wildlife (ODFW) expressing support for the designation of the Rogue River Site and supporting ocean disposal of dredged material as the best alternative. ODFW also characterized disposal of material in the littoral zone as a beneficial use. ODFW did express concern with the relationship of the Site to rocky terrain and with the potential impacts of uniform disposal.

DLCD concurred on EPA's determination of consistency with one condition. The condition calls for the SMMP to assure that monitoring measures for the Rogue River Site are reasonably likely to identify significant unanticipated adverse effects on renewable marine resources, biological diversity of marine life and the functional integrity of the marine ecosystem at the site, and further asks that the SMMP include adaptive management measures to avoid significant impairment of the Site and significant decreases in abundance of commercial or recreational caught species from direct or indirect effects on important or essential habitat at the Site. DLCD responded to the concerns expressed by ODFW by including the condition, above, in its consistency concurrence. DLCD also recommended that EPA and ODFW coordinate on issues that might involve adjustments in Site management to avoid unanticipated adverse effects on important habitat and renewable marine resources. The final SMMP in this final designation provides the assurance and adaptive management measures requested.

(4) ESA

EPA initiated informal consultation in the spring of 2008 with NMFS and the U.S. Fish and Wildlife Service pursuant to section 7(a)(2) of the ESA on EPA's action to designate the Rogue River ODMDS. EPA prepared a Biological Assessment to assess the potential effects of the Site designation on aquatic and wildlife species. EPA found that its action would not be likely to adversely affect (NLAA) aquatic or wildlife species listed as endangered or threatened pursuant to the Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 to 1544, or the critical habitat of such species. EPA found that site designation does not have a direct impact on any of the identified ESA species but also found that indirect impacts associated with reasonably foreseeable future disposal activities had to be considered.

The US Fish and Wildlife Service (USFWS) concurred with EPA's finding that EPA's action to designate the final Rogue River ODMDS would not likely adversely affect listed species or critical habitat. Consultation with the USFWS for this final action was completed on July 29, 2008.

The National Marine Fisheries Service (NMFS) did not concur on EPA's NLAA finding and subsequently prepared a Biological Opinion (BO), issued March 19, 2009. NMFS concluded that EPA's site designation is not likely to jeopardize the continued existence of Southern Oregon/Northern California Coasts (SONCC) coho salmon or southern Distinct Population Segment (DPS) green sturgeon and is not likely to destroy or adversely modify SONCC coho salmon designated critical habitat or proposed southern DPS green sturgeon habitat. However, NMFS found that the indirect effects of the Site designation related to the exposure fish could experience from the disposal of dredged material could have consequences for listed fish. Based on NMFS' estimate of ensuing indirect effects of the Site designation, NMFS estimated that injury and death of as many as 476 yearling SONCC coho salmon and a smaller number of small sub-adult southern DPS green sturgeon could occur. For Steller sea lions, blue whales, fin whales, humpback whales, and Southern Resident Killer whales, NMFS concurred in the BO with EPA's determination of ''may affect, not likely to adversely affect.'' For four species of sea turtles, sperm whales, and sei whales, assessed by EPA in its determination of NLAA, NMFS found no effect because NMFS did not anticipate the species would be present in the action area.

NMFS acknowledged in the BO that EPA's action, the Site designation, does not authorize and will not itself result in disposal of dredged material. NMFS stated that it does not anticipate any take will be caused by the Site designation and adoption of the SMMP.

Consequently, NMFS did not include an incidental take statement in the BO. Rather, NMFS stated that any further analysis of the effects of disposal of dredged material at the disposal site and issuance of an incidental take statement with reasonable and prudent measures and non-discretionary terms and conditions to minimize take would be prepared when a disposal permit is requested by the action agency. NMFS did include one discretionary conservation recommendation in the BO seeking a study of fish interactions with disposed material. Such recommendations are purely advisory in nature. While EPA appreciates that such a study might be beneficial to the scientific knowledge base, EPA believes that such a study would be most helpful if carried out by NMFS, the expert Federal agency on fish behavior.

(5) NHPA

EPA initiated consultation with the State of Oregon's Historic Preservation Officer (SHPO) to address the National Historic Preservation Act, as amended (NHPA), 16 U.S.C. 470 to 470a–2. The NHPA requires Federal agencies to take into account the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in the National Register. EPA determined that no historic properties were affected, or would be affected, by the final designation of the Site. EPA did not find any historic properties within the geographic area of the final Site. This determination was based on an extensive review of the National Register of Historic Districts in Oregon, the Oregon National Register list and an assessment of cultural resources near the final Site. Side scan sonar of the final Site did not reveal the presence of any shipwrecks or other cultural or historic properties. The SHPO responded to EPA's determination on September 11, 2008, without objection and clarified on October 13, 2008 that the Site designation did not require further archeological investigation to proceed.

f. Action

EPA designates the Rogue River ODMDS as an EPA-approved dredged material ocean disposal Site in this action. The monitoring and management requirements that will apply to this site are described in the final SMMP. EPA received no comments on the proposed rule other than one letter, dated November 12, 2008, from the Department of the Interior (DOI) stating that DOI had no comments. It should be emphasized that an ocean disposal site designation does not constitute or imply Corps or EPA approval of open water disposal of dredged material from any specific project. Before disposal of dredged material at the site may commence by any person, EPA and the Corps must evaluate the proposal according to the ocean dumping regulatory criteria (40 CFR part 227) and authorize disposal. EPA independently evaluates proposed dumping in accordance with those criteria pursuant to 40 CFR part 225. EPA has the right to disapprove of the actual disposal of dredged material if EPA determines that environmental requirements under the MPRSA have not been met.

3. Statutory and Executive Order Reviews

This final rule designating the Rogue River ODMDS pursuant to Section 102 of the MPRSA complies with applicable executive orders and statutory provisions as follows:

(1) Executive Order 12866

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether the regulatory action is ''significant,'' and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA determined that this final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

(2) Paperwork Reduction Act

This final action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this final rule does not establish or modify any information or recordkeeping requirements for the regulated community.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing, and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR are listed in 40 CFR Part 9.

(3) Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA determined that this final action will not have a significant economic impact on small entities because the final rule only has the effect of regulating the location of a site to be used for the disposal of dredged material in ocean waters. After considering the economic impacts of this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

(4) Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title

II of the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1531 to 1538, for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local, or tribal government or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities. Those entities are already subject to existing permitting requirements for the disposal of dredged material in ocean waters.

(5) Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that 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 various levels of government.'' This rule does not have federalism implications. It does 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 various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

(6) Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This final rule does not have tribal implications, as specified in Executive Order 13175 because the designation of this dredged material disposal Site will not have a direct effect on Indian Tribes, on the relationship between the federal government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule. Although Executive Order 13175 does not apply to this final rule, EPA consulted with tribal officials in the development of this rule, particularly as it relates to potential impacts to historic or cultural resources.

(7) Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. The final action concerns the designation of an ocean disposal Site for dredged material and provides a designated location to use for ocean disposal of dredged material pursuant to section 102 (c) of the MPRSA.

(8) Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

(9) National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The final action includes environmental monitoring and measurement as described in EPA's final SMMP. EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the final Site once designated. The Agency will allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the monitoring and measurement criteria discussed in the final SMMP.

(10) Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order (EO) 12898 (59 FR 7629) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. EPA assessed the overall protectiveness of designating the final disposal Site against the criteria established pursuant to the MPRSA to ensure that any adverse impact on the environment will be mitigated to the greatest extent practicable.

(11) Congressional Review Act

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective thirty days from the date of publication in the **Federal Register**.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: This action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401, 1411, 1412.

Dated: April 3, 2009.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

■ For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as set forth below:

PART 228—[AMENDED]

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. Sections 1412 and 1418

■ 2. Section 228.15 is amended by adding paragraph (n)(6) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(n) * * *

(6) Rogue River, OR—Dredged Material Site

(i) *Location:* 42° 24′15.40″ N, 124° 26′52.39″ W; 42° 24′03.40″ N, 124° 26′39.39″ W; 42° 23′39.40″ N, 124° 27′17.40″ W; 42° 23′51.40″ N, 124° 27′30.40″ W (NAD 83)

(ii) *Size:* Approximately 1.1 kilometers long and 0.4 kilometers wide

(iii) *Depth:* Ranges from approximately 15 to 27 meters

(iv) *Primary Use:* Dredged material

(v) *Period of Use:* Continuing Use

(vi) *Restrictions:* (A) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13, from the Rogue River navigation channel and adjacent areas;

(B) Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP);

(C) Monitoring, as specified in the SMMP, is required.

* * * * *

[FR Doc. E9–8660 Filed 4–14–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2008–0456; SW–FRL–8787–9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is granting a petition submitted by BAE Systems, Inc. (BAE) to exclude (or delist) the waste filter cake from its waste water treatment plant generated by BAE Sealy, Texas from the lists of hazardous wastes. This final rule responds to the petition submitted by BAE to delist F019 waste filter cake generated from the facility's waste water treatment plant. After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded the petitioned waste is not hazardous waste. This exclusion applies to 1,200 cubic yards per year of the F019 waste filter cake. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when it is disposed in a Subtitle D Landfill.

DATES: *Effective Date*: April 15, 2009.

ADDRESSES: The public docket for this final rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in EPA Freedom of Information Act review room on the 7th floor from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is EPA–R06–RCRA–2008–0456. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. For technical information concerning this notice, contact Wendy Jacques, Environmental Protection Agency Region 6, 1445 Ross Avenue, (6PD–F), Dallas, Texas 75202, at (214) 665–7395, or *jacques.wendy@epa.gov.*

SUPPLEMENTARY INFORMATION:

The information in this section is organized as follows:

I. Overview Information
- A. What action is EPA finalizing?
- B. Why is EPA approving this action?
- C. What are the limits of this exclusion?
- D. How will BAE manage the waste if it is delisted?
- E. When is the final delisting exclusion effective?
- F. How does this final rule affect states?

II. Background
- A. What is a delisting?
- B. What regulations allow facilities to delist a waste?
- C. What information must the generator supply?

III. EPA's Evaluation of the Waste Information and Data
- A. What waste did BAE petition EPA to delist?
- B. How much waste did BAE propose to delist?
- C. How did BAE sample and analyze the waste data in this petition?

IV. Public Comments Received on the Proposed Exclusion
- A. Who submitted comments on the proposed rule?

V. Statutory and Executive Order Reviews

I. Overview Information

A. What action is EPA finalizing?

After evaluating the petition, EPA proposed, on September 23, 2008, to exclude the waste filter cake from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 73 FR 54760). EPA is finalizing the decision to grant BAE's delisting petition to have its waste filter cake managed and disposed as non-hazardous waste provided certain verification and monitoring conditions are met.

B. Why is EPA approving this action?

BAE's petition requests a delisting from the F019 waste listing under 40 CFR 260.20 and 260.22. BAE does not believe that the petitioned waste meets the criteria for which EPA listed it. BAE also believes no additional constituents or factors could cause the waste to be hazardous. 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. 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 final delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste as originally listed, EPA would have proposed to deny the petition. 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. 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