full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: May 4, 2017.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2017–10926 Filed 5–30–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2017–0153; FRL–9962–44–Region 6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: EPA is proposing to grant a petition submitted by ExxonMobil Oil Corporation Beaumont Refinery (ExxonMobil) to exclude (or delist) the secondary impoundment basin solids in Beaumont, Texas from the lists of hazardous wastes. EPA used the Delisting Risk Assessment Software (DRAS) Version 3.0.47 in the evaluation of the impact of the petitioned waste on human health and the environment.

DATES: We will accept comments until June 30, 2017. We will stamp comments received after the close of the comment period as late. These late comments may or may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by June 15, 2017. The request must contain the information prescribed in 40 CFR 260.20(d) (hereinafter all CFR cites refer to 40 CFR unless otherwise stated).

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–RCRA–2017–0153, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: For technical information regarding the ExxonMobil Beaumont Refinery petition, contact Michelle Peace at 214–665–7430 or by email at *peace.michelle@epa.gov.*

Your requests for a hearing must reach EPA by June 15, 2017. The request must contain the information described in § 260.20(d).

SUPPLEMENTARY INFORMATION: ExxonMobil submitted a petition under 40 CFR 260.20 and 260.22(a). Section 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273. Section 260.22(a) specifically provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator specific'' basis from the hazardous waste lists.

EPA bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This decision, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, EPA would conclude that ExxonMobil's petitioned waste is non-hazardous with respect to the original listing criteria. EPA would also conclude that ExxonMobil's process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

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VI. Statutory and Executive Order Reviews

I. Overview Information

A. What action is EPA proposing?

EPA is proposing to approve the delisting petition submitted by ExxonMobil to have the secondary impoundment basin (SIB) solids excluded, or delisted from the definition of a hazardous waste. The SIB solids are listed as F037 (primary oil/water/solids separation sludge); and F038 (secondary oil/water/solids separation sludge).

B. Why is EPA proposing to approve this delisting?

ExxonMobil's petition requests an exclusion from the F037 and F038 waste listings pursuant to 40 CFR 260.20 and 260.22. ExxonMobil does not believe that the petitioned waste meets the criteria for which EPA listed it. ExxonMobil 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 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, 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 was 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 generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's proposed decision to delist waste from ExxonMobil is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Beaumont, Texas facility.

C. How will ExxonMobil manage the waste if it is delisted?

If the SIB solids are delisted, contingent upon approval of the delisting petition, storage containers with SIB solids will be transported to an authorized, solid waste landfill (*e.g.* RCRA Subtitle D landfill, commercial/industrial solid waste landfill, etc.) for disposal.

D. When would the proposed delisting exclusion be finalized?

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

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

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

E. How would this action affect the states?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from EPA to make their own delisting decisions.

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

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

II. Background

A. What is the history of the delisting program?

EPA published an amended list 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. EPA has amended this list several times and published it in 40 CFR 261.31 and 261.32.

EPA lists these wastes as hazardous because: (1) The wastes typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity), (2) the wastes meet the criteria for listing contained in § 261.11(a)(2) or (a)(3), or (b) the wastes are mixed with or derived from the treatment, storage or disposal of such characteristic and listed wastes and which therefore become hazardous under § 261.3(a)(2)(iv) or (c)(2)(i), known as the ''mixture'' or ''derived-from'' rules, respectively.

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations or resulting from the operation of the mixture or derived-from rules generally is hazardous, a specific waste from an individual facility may not be hazardous.

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What is a delisting petition, and what does it require of a petitioner?

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

In a delisting petition, the petitioner must show that wastes generated at a

particular facility do not meet any of the criteria for which the waste was listed. The criteria for which EPA lists a waste are in part 261 and further explained in the background documents for the listed waste.

In addition, under 40 CFR 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See part 261 and the background documents for the listed waste.)

Generators remain obligated under RCRA to confirm whether their waste remains non-hazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the waste.

C. What factors must EPA consider in deciding whether to grant a delisting petition?

Besides considering the criteria in 40 CFR 260.22(a) and section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which EPA listed the waste, if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See § 261.3(a)(2)(iii and iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

III. EPA's Evaluation of the Waste Information and Data

A. What waste did ExxonMobil petition EPA to Delist?

In August 2016, ExxonMobil petitioned EPA to exclude from the lists of hazardous wastes contained in §§ 261.31 and 261.32, SIB solids (F037, F038) generated from its facility located in Beaumont, Texas. The waste falls under the classification of listed waste pursuant to §§ 261.31 and 261.32. Specifically, in its petition, ExxonMobil requested that EPA grant a one-time exclusion for 400,000 cubic yards of as generated wet SIB solids.

B. Who is ExxonMobil and what process does it use to generate the petitioned waste?

ExxonMobil Beaumont Refinery processes crude oil in the production of a number of petroleum products, including fuels and chemical feedstocks. The petitioned waste, SIB solids, originated from both historical and current operation of the wastewater treatment system at the refinery. To the extent possible, hydrocarbons present in refinery wastewaters have been recovered. However, historically more hydrocarbons passed through the ''oil recovery system'' and flowed into the SIB. Hydrocarbons in the wastewater can result from various sources (*e.g.* crude oil). Over time, more of the oily streams were routed to storage tanks from collection system piping and/or smaller tanks for interception and recovery instead of into the SIB. Recovered oil from the oil recovery system is stored in tanks prior to being reintroduced into the refining process. Historically, these oily flows occurred in conjunction with facility operations, were relatively routine in nature, and not directly associated with precipitation. As such, they were classified by EPA as ''dry weather'' flows. By contrast, wastewater directly associated with precipitation (*i.e.* storm water) is referred to as ''wet weather'' flows. The EPA listing criteria for F037 generally encompasses primary solids associated with dry-weather, oily flows, and the EPA listing criteria for F038 generally encompasses secondary solids associated with dry-weather, oily flows. During the early 1990s, ExxonMobil implemented a program to identify and mitigate dry weather flows to the SIB, and those flows have since been eliminated. Since the SIB historically received dry-weather, oily flows as specified in the November 2, 1990 **Federal Register** rule publication, the lower stratum of solids within the pond are believed to be classified as F037 when generated. Dry-weather, oily flows have since been eliminated from reaching the SIB. However, creating a definitive ''bright line'' in the solid stratum is not practical, so ExxonMobil assumes that solids removed from the SIB bear the F037 (primary oil/water/solids separation sludge) listing when generated. Although it is not believed that the F038 (secondary oil/water/solids separation sludge) listing would apply, ExxonMobil has conservatively elected to also include this listing as part of the delisting effort.

C. How did ExxonMobil sample and analyze the data in this petition?

To support its petition, ExxonMobil submitted:

(1) Historical information on waste generation and management practices; and

(2) Analytical results from thirty-nine samples for total and TCLP concentrations of compounds of concern (COC)s;

D. What were the results of ExxonMobil's analysis?

EPA believes that the descriptions of the ExxonMobil analytical characterization provide a reasonable basis to grant ExxonMobil's petition for an exclusion of the SIB solids. EPA believes the data submitted in support of the petition show the SIB solids are non-hazardous. Analytical data for the SIB solids samples were used in the DRAS to develop delisting levels. The data summaries for COCs are presented in Table I. EPA has reviewed the sampling procedures used by ExxonMobil and has determined that it satisfies EPA criteria for collecting representative samples of the variations in constituent concentrations in the SIB solids. In addition, the data submitted in support of the petition show that constituents in ExxonMobil's waste are presently below health-based levels used in the delisting decision-making. EPA believes that ExxonMobil has successfully demonstrated that the SIB solids are non-hazardous.

TABLE 1—ANALYTICAL RESULTS/MAXIMUM ALLOWABLE DELISTING CONCENTRATION

Secondary Impoundment Basin (SIB) Solids ExxonMobil Beaumont Refinery, Beaumont, Texas

Constituent	Maximum total concentration (mg/kg)	Maximum TCLP concentration (mg/L)	Maximum TCLP delisting level (mg/L)
Antimony	4.84	0.023	.109
Arsenic	33.6	0.077	.424
Barium	455	1.47	36

TABLE 1—ANALYTICAL RESULTS/MAXIMUM ALLOWABLE DELISTING CONCENTRATION—Continued

Secondary Impoundment Basin (SIB) Solids ExxonMobil Beaumont Refinery, Beaumont, Texas

Constituent	Maximum total concentration (mg/kg)	Maximum TCLP concentration (mg/L)	Maximum TCLP delisting level (mg/L)
Beryllium	1.38	<0.002	2.0
Cadmium	2.05	<0.002	0.09
Chromium	697	0.205	2.27
Cobalt	19.4	0.0371	0.214
Lead	400	0.656	0.702
Mercury	3.61	0.000049	0.068
Nickel	68.2	0.152	13.5
Selenium	28.7	0.0177	0.890
Silver	1.23	0.002	5.0
Vanadium	90.7	0.0815	3.77
Zinc	2470	5.43	197
2,4 Dimethylphenol	0.97	0.0018	11.3
2-Methylphenol	0<0.71	<.000033	28.9
3-Methylphenol	<0.64	0.002	28.9
4-Methylphenol	<0.64	0.00047	2.89
Acenaphthene	1.7	0.00091	10.6
Anthracene	2.9	0.00019	25.9
Benz(a)anthracene	7.2	0.000034	0.07
Benz(a)pyrene	5	<0.00003	26.3
Bis(2-ethylhexyl)phthalate	34	0.0002	106,000
Chrysene	19	0.000048	7.01
Di-n-butyl phthalate	0.66	0.0013	24.6
Fluoranthene	2.1	0.000078	2.46
Fluorene	4.9	0.0016	4.91
Indeno(1,2,3-cd)pyrene	2.6	<0.000051	73
Naphthalene	26	0.02	0.0327
Phenol	<0.71	0.00025	173
Pyrene	N/A	0.00019	4.45
Benzene	1.1	<0.004	0.077
Xylenes, total	53	0.18	9.56

Notes: These levels represent the highest constituent concentration found in any one sample and does not necessarily represent the specific level found in one sample.

E. How did EPA evaluate the risk of delisting the waste?

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (*i.e.* groundwater, surface water, air) for hazardous constituents present in the petitioned waste. EPA determined that disposal in a surface impoundment is the most reasonable, worst-case disposal scenario for ExxonMobil's petitioned waste. EPA applied the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000) and 65 FR 75637 (December 4, 2000), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of ExxonMobil's petitioned waste on human health and the environment. A copy of this software can be found on the world wide web at *http://www.epa.gov/reg5rcra/wptdiv/hazardous/delisting/dras-software.html.* In assessing potential risks to groundwater, EPA used the maximum waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the groundwater at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 1.0), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and EPA health-based numbers. Using the maximum compliance-point concentrations and EPA's Composite Model for Underflow water Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in groundwater.

EPA 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 surface impoundment, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.* volatilization from the impoundment). As in the above groundwater analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or ''delisting levels'').

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. EPA does control the type of unit where the waste is disposed. The waste must be disposed in the type of unit the fate and transport model evaluates.

The DRAS results which calculate the maximum allowable concentration of chemical constituents in the waste are presented in Table I. Based on the comparison of the DRAS and TCLP Analyses results found in Table I, the petitioned waste should be delisted because no constituents of concern tested are likely to be present or formed as reaction products or by-products in ExxonMobil waste.

F. What did EPA conclude about ExxonMobil's waste analysis?

EPA concluded, after reviewing ExxonMobil's processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by-products in the waste. In addition, on the basis of explanations and analytical data provided by ExxonMobil, pursuant to § 260.22, EPA concludes that the petitioned waste do not exhibit any of the characteristics of ignitability, corrosivity, reactivity or toxicity. See §§ 261.21, 261.22 and 261.23, respectively.

G. What other factors did EPA consider in its evaluation?

During the evaluation of ExxonMobil's petition, EPA also considered the potential impact of the petitioned waste via non-groundwater routes (*i.e.* air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from ExxonMobil's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from ExxonMobil's waste under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from ExxonMobil's waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from ExxonMobil's SIB solids.

H. What is EPA's evaluation of this delisting petition?

The descriptions of ExxonMobil's hazardous waste process and analytical characterization provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the leachable concentrations (see Table I). EPA believes that ExxonMobil's SIB solids will not impose any threat to human health and the environment.

Thus, EPA believes ExxonMobil should be granted an exclusion for the SIB solids. EPA believes the data submitted in support of the petition show ExxonMobil's SIB solids are non-hazardous. The data submitted in support of the petition show that constituents in ExxonMobil's waste are presently below the compliance point concentrations used in the delisting decision and would not pose a substantial hazard to the environment. EPA believes that ExxonMobil has successfully demonstrated that the SIB solids are non-hazardous.

EPA therefore, proposes to grant an exclusion to ExxonMobil in Beaumont, Texas, for the SIB solids described in its petition. EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the SIB solids.

If EPA finalizes the proposed rule, EPA will no longer regulate the petitioned waste under Parts 262 through 268 and the permitting standards of Part 270.

IV. Next Steps

A. With what conditions must the petitioner comply?

The petitioner, ExxonMobil, must comply with the requirements in 40 CFR part 261, appendix IX, Table 1. The text below gives the rationale and details of those requirements.

(1) *Delisting Levels:*

This paragraph provides the levels of constituents for which ExxonMobil must test the SIB solids, below which these wastes would be considered non-hazardous. EPA selected the set of inorganic and organic constituents specified in paragraph (1) of 40 CFR part 261, Appendix IX, Table 1, (the exclusion language) based on information in the petition. EPA compiled the inorganic and organic constituents list from the composition of the waste, descriptions of ExxonMobil's treatment process, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the TCLP concentrations.

(2) *Waste Holding and Handling:*

The purpose of this paragraph is to ensure that ExxonMobil manages and disposes of any SIB solids that contains hazardous levels of inorganic and organic constituents according to Subtitle C of RCRA. Managing the SIB solids as a hazardous waste until the verification testing is performed will protect against improper handling of hazardous material. If EPA determines that the data collected under this paragraph do not support the data provided for in the petition, the exclusion will not cover the petitioned waste. The exclusion is effective upon publication in the **Federal Register** but the disposal as non-hazardous cannot begin until the verification sampling is completed.

(3) *Verification Testing Requirements:*

ExxonMobil must complete a rigorous verification testing program on the SIB solids to assure that the solids do not exceed the maximum levels specified in paragraph (1) of the exclusion language. This verification program will occur as wastes are removed from the basin and scheduled for disposal. The volume of wastes removed from the basin may not exceed 400,000 cubic yards of as generated wet SIB solids material. Any as generated SIB solids waste in excess of 400,000 cubic yards must be disposed as hazardous waste if EPA determines that the data collected under this paragraph do not support the data provided for the petition, the exclusion will not cover the generated wastes. If the data from the verification testing program demonstrate that the SIB solids meet the delisting levels, ExxonMobil may commence disposing of the solids for a period of one year. EPA will notify ExxonMobil in writing, if and when it begins and ends disposal of the SIB solids.

(4) *Data Submittals:*

To provide appropriate documentation that ExxonMobil's SIB solids meet the delisting levels, ExxonMobil must compile, summarize, and keep delisting records on-site for a minimum of five years. It should keep all analytical data obtained through paragraph (3) of the exclusion language including quality control information for five years. Paragraph (4) of the exclusion language requires that ExxonMobil furnish these data upon request for inspection by any employee or representative of EPA or the State of Texas.

If the proposed exclusion is made final, it will apply only to 400,000 cubic yards of as generated wet SIB solids

generated at the ExxonMobil Beaumont Refinery after successful verification testing. EPA would require ExxonMobil to file a new delisting petition for waste generated in excess of the as generated wet 400,000 cubic yards and treat the solids as hazardous waste:

ExxonMobil must manage waste volumes greater than as generated wet 400,000 cubic yards of the SIB solids as hazardous until EPA grants a new exclusion.

When this exclusion becomes final, ExxonMobil's management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction, the SIB solids from ExxonMobil will be disposed of in an authorized, solid waste landfill (*e.g.* RCRA Subtitle D landfill, commercial/industrial solid waste landfill, etc.).

(5) *Reopener:*

The purpose of paragraph (6) of the exclusion language is to require ExxonMobil to disclose new or different information related to a condition at the facility or disposal of the waste, if it is pertinent to the delisting. ExxonMobil must also use this procedure, if the waste sample in the annual testing fails to meet the levels found in paragraph (1). This provision will allow EPA to reevaluate the exclusion, if a source provides new or additional information to EPA. EPA will evaluate the information on which EPA based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented. This provision expressly requires ExxonMobil to report differing site conditions or assumptions used in the petition, in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

EPA believes that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978) *et seq.,* to reopen a delisting decision. EPA may reopen a delisting decision when it receives new information that calls into question the assumptions underlying the delisting.

EPA believes a clear statement of its authority in delistings is merited, in light of EPA's experience. See Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations on a case-by-case basis. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. *See* APA section 553 (b).

(6) *Notification Requirements:*

In order to adequately track wastes that have been delisted, EPA is requiring that ExxonMobil provide a one-time notification to any state regulatory agency through which or to which the delisted waste is being carried. ExxonMobil must provide this notification sixty (60) days before commencing this activity.

B. What happens if ExxonMobil violates the terms and conditions?

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

V. Public Comments

A. How can I as an interested party submit comments?

EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to Kishor Fruitwala, Section Chief (6MM–RP), Multimedia Division, Environmental Protection Agency (EPA), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. Identify your comments at the top with this regulatory docket number: ''EPA–R6–RCRA–2017–0153, ExxonMobil Beaumont Refinery Secondary Impoundment Basin Solids delisting.'' You may submit your comments electronically to Michelle Peace at *peace.michelle@epa.gov.*

You should submit requests for a hearing to Kishor Fruitwala, Section Chief (6MM–RP), Multimedia Division, Environmental Protection Agency (EPA), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

B. How may I review the docket or obtain copies of the proposed exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. It is available for viewing in EPA Freedom of Information Act Review Room from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies. Docket materials may be available either electronically in *http://www.regulations.gov* and you may also request the electronic files of the docket which do not appear on regulations.gov.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore, is not a regulatory action subject to review by the Office of Management and Budget (OMB). 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.*) because it applies to a particular facility only. Because this rule is 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, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this proposed rule does not have federalism implications. It 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, ''Federalism'', (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

Similarly, because this rule will affect only a particular facility, this proposed rule does not have tribal implications, as specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks

addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used DRAS, which considers health and safety risks to children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. 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 note) do not apply. As required by section 3 of Executive Order 12988, ''Civil Justice Reform'', (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.

The Congressional Review Act, 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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) 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 has determined that this proposed 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. The Agency's risk assessment did not identify risks from management of this material in an authorized, solid waste landfill (*e.g.* RCRA Subtitle D landfill, commercial/industrial solid waste landfill, etc.). Therefore, EPA believes that any populations in proximity of the landfills used by this facility should not be adversely affected by common waste management practices for this delisted waste.

Lists 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: May 2, 2017.

Wren Stenger,

Director, Multimedia Division, Region 6.

For the reasons set out 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, 6924(y) and 6938.

■ 2. In table 1 of appendix IX to part 261 add the entry ''ExxonMobil'' in alphabetical order 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
*	*	* * * * *
ExxonMobil	Beaumont, TX	Secondary Impoundment Basin Solids (SIB) (EPA Hazardous Waste Numbers F037 and F038) generated at a maximum rate of as generated wet 400,000 cubic yards. For the exclusion to be valid, ExxonMobil must implement a verification testing program for each of the waste streams that meets the following Paragraphs: (1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. Secondary Impoundment Basin Solids (SIB). Leachable Concentrations (mg/l): Antimony—0.109; Arsenic—0.424; Barium-36; Beryllium—2.0 Cadmium-0.09; Chromium-2.27; Cobalt-0.214; Lead-0.702; Mercury-0.068; Nickel-13.5; Selenium-0.890; Silver-5.0; Vanadium-3.77; Zinc-197; 2,4 Dimethylphenol-11.3; 2-Methylphenol-28.9; 3-Methylphenol-28.9; 4-Methylphenol-2.89; Acenaphthene-10.6; Anthracene-25.9; Benz(a)anthracene-0.07; Benz(a)pyrene-26.3; Bis(2-ethylhexyl) phthalate-106,000 Chrysene-7.01; Di-n-butyl phthalate-24.6; Fluoranthene-2.46; Fluorene-4.91 Indeno (1,2,3-cd) pyrene-73; Naphthalene-0.0327; Phenol—173; Pyrene-4.45; Benzene-0.077; Xylenes, total-9.56 (2) Waste Holding and Handling: (A) Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) for the SIB solids are verified. (B) If constituent levels in any sample and retest sample taken by ExxonMobil exceed any of the delisting levels set in paragraph (1) for the SIB solids, ExxonMobil must do the following: (i) notify EPA in accordance with paragraph (5) and (ii) manage and dispose the SIB solids as hazardous waste generated under Subtitle C of RCRA. (3) Testing Requirements:

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

Facility	Address	Waste description
		ExxonMobil must perform analytical testing by sampling and analyzing the SIB solids as follows: (i) Collect a representative sample of the SIB solids for analysis of all constituents listed in paragraph (1) prior to disposal. (ii) The samples for the annual testing shall be a representative sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B,1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the ExxonMobil SIB solids are representative for all constituents listed in paragraph (1). (4) Data Submittals: ExxonMobil must submit the information described below. If ExxonMobil fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph(6). ExxonMobil must: (A) Submit the data obtained through paragraph 3 to the Section Chief, 6MM–RP, Multimedia Division, U. S. Environmental Protection Agency Region 6, 1445 Ross Ave., Suite 1200, Dallas, Texas 75202, within the time specified. All supporting data can be submitted on CD–ROM or comparable electronic media. (B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when either EPA or the State of Texas requests them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: ''Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.'' (5) Reopener (A) If, anytime after disposal of the delisted waste ExxonMobil possesses or is otherwise made aware of any environmental data (including but not limited to underflow water data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If either the verification testing (and retest, if applicable) of the waste does not meet the delisting requirements in paragraph 1, ExxonMobil must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If ExxonMobil fails to submit the information described in paragraphs (5),(6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from receipt of the Division Director's notice to present such information.

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

Facility	Address	Waste description
		(E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (6) Notification Requirements: ExxonMobil must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) For onsite disposal, a notice should be submitted to the State to notify the State that disposal of the delisted materials has begun. (C) Update one-time written notification, if it ships the delisted waste into a different disposal facility. (D) Failure to provide this notification will result in a violation of the delisting exclusion and a possible revocation of the decision.
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