Bonded product means mineral wool to which a hazardous air pollutant-based binder (containing such hazardous air pollutants as phenol or formaldehyde) has been applied.

CO means, for the purposes of this subpart, emissions of carbon monoxide that serve as a surrogate for emissions of carbonyl sulfide, a compound included on the list of hazardous air pollutants in section 112 of the Act.

Cupola means a large, water-cooled metal vessel to which is charged a mixture of fuel, rock and/or slag, and additives. As the fuel is burned, the charged mixture is heated to a molten state for later processing to form mineral wool.

Curing oven means a chamber in which heat is used to thermoset a binder on the mineral wool fiber used to make bonded products.

Fabric filter means an air pollution control device used to capture particulate matter by filtering gas streams through fabric bags. It also is known as a baghouse.

Formaldehyde means, for the purposes of this subpart, emissions of formaldehyde that, in addition to being a HAP itself, serve as a surrogate for organic compounds included on the list of hazardous air pollutants in section 112 of the Act, including but not limited to phenol.

Hazardous air pollutant means any air pollutant listed in or pursuant to section 112(b) of the Act.

I means the owner or operator of a mineral wool production facility.

Incinerator means an enclosed air pollution control device that uses controlled flame combustion to convert combustible materials to noncombustible gases.

Melt means raw materials, excluding coke, that are charged into the cupola, heated to a molten state, and discharged to the fiber forming and collection process.

Melt rate means the mass of molten material discharged from a single cupola over a specified time period.

Mineral wool means a fibrous glassy substance made from natural rock (such as basalt), blast furnace slag or other slag, or a mixture of rock and slag. It may be used as a thermal or acoustical insulation material or in the making of other products to provide structural strength, sound absorbency, fire resistance, or other required properties.

New source means any affected source the construction or reconstruction of which is commenced after May 8, 1997.

PM means, for the purposes of this subpart, emissions of particulate matter that serve as a surrogate for metals (in particulate or volatile form) on the list of hazardous air pollutants in section 112 of the Act, including but not limited to: antimony, arsenic, beryllium, cadmium, chromium, lead, manganese, nickel, and selenium.

You means the owner or operator of a mineral wool production facility.

[FR Doc. 2011–30998 Filed 11–30–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2010–0066; SW FRL–9490–8]

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

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting a petition submitted by ExxonMobil Refining and Supply Company—Beaumont Refinery (Beaumont Refinery) to exclude from hazardous waste control (or delist) a certain solid waste. This final rule responds to the petition submitted by Beaumont Refinery to delist to have centrifuge solids generated from treatment of Tank Bottoms from its Lower Park Tank Farm excluded, or delisted, from the definition of a hazardous waste. The centrifuge solids are derived from the management and treatment of several F- and K-waste codes. These waste codes are F037, F038, K048, K049, K051, K052, K169, and K170.

After careful analysis and evaluation of comments submitted by the public, the EPA has concluded that the petitioned wastes are not hazardous waste when disposed of in Subtitle D landfills. This exclusion applies to the centrifuge solids generated at Beaumont Refinery's Beaumont, Texas facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in Subtitle D landfills but imposes testing conditions to ensure that the future-generated wastes remain qualified for delisting.

DATES: *Effective Date:* December 1, 2011.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Freedom of Information Act review room on the 7th floor from 9 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–2010–0066''. 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: For general information, contact Ben Banipal, at (214) 665–7324. For technical information concerning this notice, contact Michelle Peace, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, (214) 665–7430.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

A. What action is EPA finalizing?

The EPA is finalizing:

(1) The decision to grant Beaumont Refinery's petition to have its centrifuge solids excluded, or delisted, from the definition of a hazardous waste, subject to certain continued verification and monitoring conditions; and

(2) To use the Delisting Risk Assessment Software to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency used this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed. After evaluating the petition, EPA proposed and issued a direct final rule, on October 1, 2010 to exclude the

Beaumont Refinery waste from the lists of hazardous wastes under §§ 261.31 and 261.32. The direct final rule received adverse comments and was subsequently withdrawn on November 16, 2010. This decision is based on the proposed rule issued on October 1, 2010. The comments received on this rulemaking will be addressed as part of this decision.

B. Why is EPA approving this delisting?

Beaumont Refinery's petition requests a delisting for the centrifuge solids listed as F037, F038, K048, K049, K051, K052, K169, and K170. Beaumont Refinery does not believe that the petitioned wastes meet the criteria for which EPA listed them. Beaumont Refinery also believes no additional constituents or factors could cause the wastes 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). 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 wastes do not meet the listing criteria and thus should not be a listed waste. EPA's decision to delist wastes from the facility is based on the information submitted in support of this rule, including descriptions of the waste and analytical data from the Beaumont Refinery, Beaumont, Texas facility.

C. What are the limits of this exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in Table 1 and 2 of part 261, Appendix IX and the conditions contained herein are satisfied. The one-time exclusion applies to 8,300 cubic yards of centrifuge solids waste resulting from the treatment of tank bottoms from five tanks in the Lower Park Tank Farm.

D. How will Beaumont Refinery manage the waste if it is delisted?

Beaumont Refinery will dispose of the storage containers of the centrifuge solids. The centrifuge solids will be transported and disposed of at a permitted municipal solid waste landfill or a commercial industrial waste landfill regulated by the Texas Commission on Environmental Quality (TCEQ).

E. When is the final delisting exclusion effective?

This rule is effective December 1, 2011. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How does this final rule affect 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 two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received our authorization to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. 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, we urge 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, Georgia, Illinois) to administer a 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. If Beaumont Refinery transports the petitioned waste to or manages the waste in any State with delisting authorization, Beaumont Refinery must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What is a delisting petition?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude from the list of hazardous wastes, wastes the generator does not consider hazardous under RCRA.

B. What regulations allow facilities to delist a waste?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 266, 268 and 273 of Title 40 of the Code of Federal Regulations. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator-specific'' basis from the hazardous waste lists.

C. What information must the generator supply?

Petitioners must provide sufficient information to EPA to allow the EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

III. EPA's Evaluation of the Waste Data

A. What waste did Beaumont Refinery petition EPA to delist?

Beaumont Refinery petitioned EPA on September 9, 2009, to exclude from the lists of hazardous wastes contained in §§ 261.31, and 261.32, from its centrifuge solids from the treatment of tank bottoms from five tanks in the Lower Park Tank Farm.

The waste stream was generated from the Beaumont Refinery facility located in Beaumont, Texas. The centrifuge solids are listed under EPA Hazardous Waste No. F037, F038, K048, K049, K051, K052, K169, and K170. Specifically, in its petition, Beaumont Refinery requested that EPA grant an one time exclusion for 8,300 cubic yards of the centrifuge solids.

The 40 CFR Part 261 Appendix VII hazardous constituents which are the basis for listing can be found in Table 1.

TABLE 1—EPA WASTE CODES FOR CENTRIFUGE SOLIDS AND THE BASIS FOR LISTING

Waste code	Basis for listing
F037	Benzene, benzo(a)pyrene, chrysene, lead, chromium.
F038	Benzene, benzo(a)pyrene, chrysene, lead, chromium.
K048	Hexavalent chromium, lead.
K049	Hexavalent chromium, lead.
K051	Hexavalent chromium, lead.
K052	Lead.
K169	Benzene.
K170	Benzo(a)pyrene, dibenzo(a,h)anthracene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, 3-methylcholanthrene, 7,12-dimethylbenzo(a)anthracene.

B. How much waste did Beaumont Refinery propose to delist?

Specifically, in its petition, Beaumont Refinery requested that EPA grant an one time exclusion for 8,300 cubic yards of the centrifuge solids.

C. How did Beaumont Refinery sample and analyze the waste data in this petition?

To support its petition, Beaumont Refinery submitted:

1. Analytical results of the toxicity characteristic leaching procedure (TCLP) analysis for volatile and semivolatile organics, and metals for ten samples and one duplicate of the centrifuge solids;

2. Analytical results of the total constituent analysis for volatile and semivolatile organics, and metals for three samples of the centrifuge solids;

3. Analytical results for Appendix IX volatile and semivolatile organics, pesticides, herbicides, dioxins/furans, PCBs, and metals for one sample of the centrifuge solids;

4. Analytical results for the EPA Region 6 TCLP analysis for Appendix IX metals for one sample of the centrifuge solids;

5. Analytical results for the oily waste extraction procedure (OWEP) for Beaumont Refinery metals for one sample of the centrifuge solids;

6. Analytical results for total reactive cyanides for three samples of the centrifuge solids;

7. Analytical results for total reactive sulfides for three samples of the centrifuge solids;

8. Analytical results for total oil and grease for ten samples of the centrifuge solids; and

9. Descriptions of the operations and waste generated from the centrifuging of tank bottoms at the Lower Park Tank Farm.

TABLE 2—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE CENTRIFUGE SOLIDS [1]

Constituent	Maximum total (mg/kg)	Maximum TCLP (mg/l)	Maximum allowable TCLP delisting level (mg/L)
Antimony	5.38	0.0224	1.87
Arsenic	26.9	0.0353	5.0
Acetone	< 0.5	0.65	9080
Acenaphthene	26	0.009	185
Anthracene	32	0.006	452
Beryllium	0.289	< 0.001	20.44
Butyl benzene phthalate	3.7	0.00026	698
Barium	823	1.94	100
Benzene	0.8	0.046	0.5
Bis(2-ethylhexyl)phthalate	< 0.5	0.0058	0.0522
Benzo(a) anthracene	72	< 0.001	1.22
Benzo(a) pyrene	67	< 0.001	461.44
Benzo(b) flouranthene	28	< 0.001	3916.8
Benzo(k) flouranthene	10	< 0.001	11.6
m,p cresol	6	0.16	200
Cadmium	0.837	< 0.001	1.0
Chromium	608	0.122	5.0
Cobalt	20.5	0.0735	3.64
Copper	302	< 0.001	417.3
o-cresol	1.5	0.0091	200
Chrysene	120	0.00014	122
2,4 Dimethyl phenol	9.8	0.066	198
Di-n-butyl phthalate	< 0.5	0.0012	429
7,12 dimethylbenz(a)anthracene	53	< 0.001	0.08176
Dibenz(a,h)anthracene	1.7	< 0.001	4.41
Ethylbenzene	< 0.5	0.073	189
Fluorene	54	0.0033	85.6

TABLE 2—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE CENTRIFUGE SOLIDS [1]—Continued

Constituent	Maximum total (mg/kg)	Maximum TCLP (mg/l)	Maximum allowable TCLP delisting level (mg/L)
Fluoranthrene	17	< 0.001	42.96
Lead	1290	1.44	5.0
Mercury	2.65	0.000065	0.2
Methyl Isobutyl ketone	< 0.5	0.02	807
2-Methylnaphthalene	570	< 0.001	12.70
Naphthalene	180	0.15	0.571
Nickel	195	0.556	231
Phenanthrene	170	0.0041	(*)
Phenol	< 0.5	0.0033	3030
Pyrene	100	0.0057	77.6
Selenium	20.6	< 0.001	1.0
Silver	0.194	< 0.001	5.0
Thallium	0.842	< 0.001	0.639
Tin	3.46	< 0.001	22.5
Toluene	0.5	0.032	263
Vanadium	< 0.5	0.138	57.5
Xylenes	3.3	0.16	167
Zinc	1160	8.41	3530

* Not applicable.
[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
< # Denotes that the constituent was below the detection limit.

IV. Public Comments Received on the Proposed Exclusion

A. Who submitted comments on the proposed rule?

The EPA received public comments on October of 2010, proposed rule from three interested parties, the Environmental Technology Council (ETC), and Heritage Environmental and one citizen. Heritage Environmental submitted comments objecting to the absence of the full administrative record not appearing electronically on the regulations.gov site on October 28, 2010. ETC submitted three rounds of comments dated October 28, 2010, February 7, 2011, and March 7, 2011. The comments and responses are addressed below. Some responses to the October 28, 2010 items are not included because the actual records were sent to the commenter for verification purposes and no further comment is warranted.

B. What comments were submitted on the Beaumont Refinery delisting petition?

Comment 1. These materials are listed hazardous wastes. The centrifuged solids fail to meet the treatment standards for placement in a fully permitted hazardous waste landfill that is designed to contain and manage toxic hazardous waste. It is completely inconsistent with EPA land disposal restrictions to grant even a variance to the LDR for these materials based on their exceeding the LDR treatment standards by a factor of 100 times greater concentration of the hazardous waste constituents. It is therefore unacceptable to delist these solids from hazardous waste regulation and allow their placement in a substantially less restrictive municipal solid waste landfill. The entire petition should be rejected.

Response 1. The Delisting Program and the LDR program serve different purposes. Different standards of compliance apply. ''A waste is eligible for delisting only if that waste as generated at a particular facility does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the waste may not contain any other Appendix VIII constituents that would cause the waste to be hazardous.'' RCRA § 3001(f) and 40 CFR 260.22.

The derived-from rule states that any solid waste generated from the treatment, storage, or disposal of a listed hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate, remains a hazardous waste unless and until delisted (§ 261.3(c)(2)(i)).

EPA's regulations establish two ways of identifying solid wastes as hazardous under RCRA. A waste may be considered hazardous if it exhibits certain hazardous properties (''characteristics'') or if it is included on a specific list of wastes EPA has determined are hazardous (''listing'' a waste as hazardous) because we found them to pose substantial present or potential hazards to human health or the environment. EPA's regulations in the Code of Federal Regulations (40 CFR) define four hazardous waste characteristic properties: Ignitability, corrosivity, reactivity, or toxicity (see 40 CFR 261.21–261.24).

In order to list wastes EPA conducts a more specific assessment of a particular waste or category of wastes. The Agency will ''list'' them if they meet criteria set out in 40 CFR 261.11.

As described in § 261.11, EPA may list a waste as hazardous if the waste:

—Exhibits any of the characteristics, *i.e.,* ignitability, corrosivity, reactivity, or toxicity (§ 261.11(a)(1));
—Is ''acutely'' hazardous (*e.g.,* if it is fatal to humans or animals at low doses, (§ 261.11(a)(2)); or
—It contains any of the toxic constituents listed in 40 CFR part 261, Appendix VIII and, after consideration of various factors described in the regulation, is capable of posing a ''substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed'' (§ 261.11(a)(3)).

EPA places a substance on the list of hazardous constituents in Appendix VIII if scientific studies have shown the substance has toxic effects on humans

or other life forms. Generally, listing of wastes is not driven by threshold limits except in the case of the toxicity characteristic determination. Several of the limits cited by the commenter are the TC limit for the constituents stated. If the waste is characteristic, then it can't be delisted. The delisting limit is constrained by the TC limit.

In 1984, Congress created EPA's Land Disposal Restrictions (LDR) program. The LDR program ensures that toxic constituents present in hazardous waste are properly treated before hazardous waste is land disposed. Since then, the LDR team has developed mandatory technology-based treatment standards that must be met before hazardous waste is placed in a landfill. These standards help minimize short and long-term threats to human health and the environment, which directly benefits local communities where hazardous waste landfills are located. The LDR Program does not determine if a waste is hazardous, it regulates how hazardous wastes are to be managed at the time of disposal.

We do believe that the concentrations specified as delisting levels do minimize short term and long term threats to human health and the environment. Whereas, some LDR treatment standards are based on the best demonstrated technology, the delisting exit levels are risk based standards. We have not stated that ExxonMobil's waste is not subject to the LDR standards, because the waste was not delisted at the point of generation, ExxonMobil may submit a variance to the treatment standards as described in 268.42(b) or 268.44 in order to ensure compliance with the LDR standards, but the Delisting decision may still be made. However, wastes destined for disposal in Subtitle C landfills are subject to the LDR limits. Wastes when delisted must comply with all applicable Subtitle D landfill requirements.

Comment 2. EPA has given specific guidance for the generation of sampling plans for the delisting of hazardous waste. This guidance is presented in the document SW846, Chapter 9, Sampling Plans. The variability of the waste must be established as part of a delisting petition. No such statistical analysis is presented for either the original wastes, or the centrifuged solids. The petitioner simply states without justification that the studied solids were thought to be representative of the highest concentration materials. However, no laboratory analysis data are presented to show the variability of the concentrations of the hazardous constituents in the subject waste materials. Also, EPA's own guidance states that the minimum number of samples required for a delisting petition shall ''in no case be less than four samples,'' even when the variability has been determined and the 90% upper confidence limit has been shown to be below the regulatory threshold for a specific analytical parameter. The petitioner consistently presents one to three sample data results, with no statistical analysis of the data. The entire petition should be rejected for failure to properly characterize both the original waste material and the centrifuged solids with a sampling plan that meets USEPA guidance for this type of delisting request.

Response 2. Eleven samples of waste were analyzed to support this delisting petition. In prediction of the worst case scenario, EPA selects the maximum waste concentration of the data provided for the waste. The Sampling and Analysis Plan for the Centrifuge Solids was reviewed and approved by EPA. The Sampling and Analysis of this material is acceptable for demonstration that the waste sampled is representative of the waste to be disposed.

Comment 3. Uncontrolled disposal of these materials could result in the creation of a Federal Superfund site. The constituent concentrations of carcinogenic PAH compounds at over 350 mg/kg PAH in the centrifuged solids exceed the cleanup standards for numerous Federal Superfund sites. It is unimaginable that EPA would grant permission for non-hazardous disposal of a toxic waste that would require a large scale remediation at a Superfund site. The purpose of RCRA is to prevent the creation of Superfund sites, not promote them. The entire petition should be denied so that additional Superfund sites are not created as a result of the uncontrolled non-hazardous disposal of these materials.

Response 3. Since the Risk Assessment Guidance for Superfund was published, the risk-based cleanup levels should be established from the toxicity of an individual compound of concerns (COC) in PAHs. The equations and exposure parameter inputs for carcinogen risk calculations are mainly in Part A & B of the Guidance. 10E–6 is the departure risk for a carcinogen with standardized exposure default values. The total risk in PAHs is the sum from the risk of each compound in PAHs. However, site-specific cleanup levels can be established by site-specific exposure parameter inputs through site-specific risk assessment.

Therefore, the cleanup levels are different from one chemical to another in PAHs. The screening levels of COCs with a risk level, 10E–6 are in Regional Screening Level Summary Table. The web address for the Table is *http://www.epa.gov/reg3hwmd/risk/human/rb-concentration_table/index.htm.*

Comment 4: A listed hazardous waste is prohibited from land disposal under RCRA, unless the hazardous waste is first treated to the level or by a method of treatment which substantially diminishes the toxicity of the waste or substantially reduces the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized. RCRA & 3004(d), (g) & (m). No other form or method of treatment is allowed by law, except treatment that complies with RCRA § 3004(m). In addition, no generator may ''*in any way dilute* a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment'' that achieves the mandatory treatment standards. 40 CFR § 268.3 (emphasis added).

For the F037, F038, K048, K049, K051, K052, K169 and K170 hazardous wastes generated from the slop oil tanks in the Beaumont Refiner Lower Park Tank Farm, the mandatory treatment standards require treatment to concentration-based levels for a plethora of regulated constituents ranging alphabetically from acenaphthene to xylenes. 40 CFR 268.40. These treatment levels are based on the best demonstrated available treatment achieved through high-temperature incineration.

Contrary to these basic principles and applicable law, EPA has proposed to delist and allow land disposal of the slop oil solids generated at the Beaumont tank farm at concentration levels greatly in excess of the mandatory treatment standards. In doing so, EPA attempts to perpetrate a sham by delisting the slop oil solids from ineffective treatment that is nothing more than prohibited dilution of the hazardous waste. In the preamble EPA claims that Exxon has petitioned to delist the ''centrifuge solids from the *treatment* of tank bottoms from the five tanks from the Lower Park Tank Farm.'' 75 Fed. Reg. at 60634 (emphasis added). Specifically, EPA asserts that Exxon's subcontractor will use ''a proprietary chemical (Superall 38), which *acts as a chemical agent for treating wastes* from oil-related clean-up activities that, when coupled with centrifuging, *reduces the volume and toxicity*'' of the slop oil tank wastes. *Id.* (emphasis added).

There is not a scintilla of evidence in the administrative record that Superall 38 effectively treats the slop oil waste to reduce toxicity, or that the product

functions in any way other than as a cleaning agent. The record does not contain any information supporting EPA's claim that Superall 38 is a chemical agent for effective treatment of the slop oil waste. Indeed, Superall Products LLP makes no such claims itself in its Web site advertisements for its product. Most importantly, the Superall cleaning agent clearly does not reduce ''the volume and toxicity'' of the waste to the mandatory treatment levels required by RCRA and the regulations.

Most importantly, the Superall product is mixed with large volumes of water for use as a cleaning agent. The slop oil waste is thereby diluted and hazardous constituents are transferred to the water so that the concentrations are reduced in the solids after centrifuging. This process of dilution and centrifuging is clearly not the mandatory treatment required by the regulations, and is in fact a way of diluting the restricted waste in express violation of the dilution prohibition in 40 CFR 268.3. The analytical data on the slop oil solids on which the entire DRAS modeling was based are useless, since there is no way of determining how much water and cleaning solution was mixed with the slop oil, and there are no restrictions in EPA's delisting on diluting the waste as much as necessary to ''pass'' the DRAS modeling. All the DRAS modeling proves is that hazardous waste can be diluted with water to reduce constituent concentrations, something that Congress specifically prohibited in the land disposal prohibitions of RCRA. The slop oil waste generated by Exxon in the Beaumont Refinery's Lower Park Tank Farm is listed as F037 and F038 because it contains petroleum refinery oil/water/solids separation sludges that are listed as hazardous wastes due to benzene, benzo(a)pyrene, chrysene, lead and chromium. 40 CFR Part 261, App. VII. In addition, the slop oil waste is listed as K048, K049, K051, K052, K169 and K170 because it contains dissolved air flotation (DAF) float, slop oil emulsion solids, API separator sludge, crude oil storage tank sediment, clarified slurry oil tank sediment and in-line filter separation solids that are listed as hazardous wastes due to hexavalent chromium, lead, benzene, benzo(a)pyrene, dibenz(a,h)anthracene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, 3-methylcholanthrene, and 7,12-dimethylbenz(a)anthracene. *Id.*

This slop oil waste indisputably meets the criteria for which the ingredient wastes were listed as hazardous wastes. There is no basis whatsoever in the Exxon delisting petition for determining that the slop oil waste is not a hazardous waste, or as generated can legitimately be delisted.

Now that EPA Region 6 has finally provided the administrative record for the Exxon delisting petition, it is apparent that the proposed delisting of the F- and K-listed slop oil tank bottoms would be arbitrary, capricious, and contrary to law. These slop oil wastes meet the criteria for listing as hazardous waste and undoubtedly contain high concentrations of Appendix VIII hazardous constituents, although the record contains scant information or analytical data on the actual waste. Instead, Exxon has applied for delisting of the waste solids after mixing with high volumes of water and centrifuging, which would clearly violate the delisting requirements of RCRA, the land disposal prohibitions, and the dilution prohibition in 40 CFR 268.3.

Response 4. The Delisting Program and the LDR program serve different purposes and because they serve different purposes, different standards of compliance apply. As the commenter states ''A waste is eligible for delisting only if that waste as generated at a particular facility does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the waste may not contain any other Appendix VIII constituents that would cause the waste to be hazardous. RCRA § 3001(f) and 40 CFR 260.22.''

The derived-from rule states that any solid waste generated from the treatment, storage, or disposal of a listed hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate, remains a hazardous waste unless and until delisted. (§ 261.3(c)(2)(i)).

EPA's regulations establish two ways of identifying solid wastes as hazardous under RCRA. A waste may be considered hazardous if it exhibits certain hazardous properties (''characteristics'') or if it is included on a specific list of wastes EPA has determined are hazardous (''listing'' a waste as hazardous) because we found them to pose substantial present or potential hazards to human health or the environment. EPA's regulations in the Code of Federal Regulations (40 CFR) define four hazardous waste characteristic properties: ignitability, corrosivity, reactivity, or toxicity (see 40 CFR 261.21–261.24).

In order to list wastes EPA conducts a more specific assessment of a particular waste or category of wastes. The Agency will ''list'' them if they meet criteria set out in 40 CFR 261.11. As described in § 261.11, EPA may list a waste as hazardous if the waste: exhibits any of the characteristics, *i.e.,* ignitability, corrosivity, reactivity, or toxicity (§ 261.11(a)(1)); is ''acutely'' hazardous (*e.g.,* if it is fatal to humans or animals at low doses, § 261.11(a)(2)); or it contains any of the toxic constituents listed in 40 CFR part 261, Appendix VIII and, after consideration of various factors described in the regulation, is capable of posing a ''substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed'' (§ 261.11(a)(3)).

EPA placed a substance on the list of hazardous constituents in Appendix VIII if scientific studies have shown the substance has toxic effects on humans or other life forms.

Generally, listing of wastes are not driven by threshold limits except in the case of the toxicity characteristic (TC) determination. Several of the limits cited by the commenter are the TC limit for the constituents stated. If the waste is characteristic, then it can't be delisted. The delisting limit is bound by the TC limit.

In 1984, Congress created EPA's Land Disposal Restrictions (LDR) program. The LDR program ensures that toxic constituents present in hazardous waste are properly treated before hazardous waste is land disposed. Since then, the LDR team has developed mandatory technology-based treatment standards that must be met before hazardous waste is placed in a landfill. These standards help minimize short and long-term threats to human health and the environment, which directly benefits local communities where hazardous waste landfills are located. The LDR Program does not determine if a waste is hazardous it is how hazardous wastes are to be managed at the time of disposal.

We do believe that the concentrations specified as delisting levels do minimize short term and long term threats to human health and the environment. Whereas, some LDR treatment standards are based on the best demonstrated technology, the delisting exit levels are risk based standards. We have not stated that Beaumont Refinery is not subject to the LDR standards, because the waste was not delisted at the point of generation, Beaumont Refinery may submit a variance to the treatment standards as described in § 268.42(b) or 268.44 in order to ensure compliance with the LDR standards, but the Delisting decision may still be made. However, wastes destined for disposal in Subtitle C landfills are subject to the LDR limits.

Therefore, wastes when delisted must comply with all applicable Subtitle D landfill requirements.

The primary function of Superall 38 is to facilitate recovery of as much oil (and associated COCs) as possible for subsequent reintroduction into the refinery process. And after introduction of this cleaning agent and centrifuging there was a reduction in volume of the residuals. The centrifuge solids, the petitioned waste, are separated from the liquid portion of the mixture. The recovered oil is returned to the process, and any remaining liquid portion is treated in the wastewater treatment system to standards which meet the facility's NPDES permit and the centrifuge solids will be disposed of in a Subtitle D Landfill when this exclusion is finalized. ExxonMobil's centrifuge residuals do indicate a reduction of hazardous waste concentrations. Thus, because the remaining liquid portion is taken out of the RCRA jurisdiction and put under Clean Water Act jurisdiction and the remaining RCRA waste is reduced, the EPA does not consider this process to constitute dilution under RCRA regulations. The EPA believes that the delisting concentrations met by this residuals to be delisted fall within the acceptable lifetime risk range of 10–4 to 10–6 and that for the non-carcinogenic constituents that an individual could be exposed to on a daily basis are without appreciable risk of deleterious effects during a lifetime.

V. 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 the DRAS program, which considers health and safety risks to infants and 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 this action under section 801 because this is a rule of particular applicability.

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: November 19, 2011.

Carl E. Edlund,

P.E., Director, Multimedia Planning and Permitting Division.

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

■ 2. In Tables 1 and 2 of Appendix IX to part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * *	*	* * *
ExxonMobil Refining and Supply Company—Beaumont Refinery.	Beaumont, TX	Centrifuge Solids (EPA Hazardous Waste Numbers F037, F038, K048, K049, K051, K052, K169, and K170.) generated at a maximum rate of 8,300 cubic yards after December 1, 2011.

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

Facility	Address	Waste description
		(1) Reopener. (A) If, anytime after disposal of the delisted waste Beaumont Refinery possesses or is otherwise made aware of any environmental data (including but not limited to leachate 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 testing data (and retest, if applicable) of the waste does not meet the delisting requirements in paragraph 1, Beaumont Refinery 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 Beaumont Refinery fails to submit the information described in paragraphs (1)(A) or (1)(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. (E) Following the receipt of information from the facility described in paragraph (1)(D) or (if no information is presented under paragraph (1)(D)) the initial receipt of information described in paragraphs (1)(A) or (1)(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. (2) *Notification Requirements:* Beaumont Refinery 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) Update one-time written notification, if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
* * * * * * *		

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* * *	*	* * *
ExxonMobil Refining and Supply Company—Beaumont Refinery.	Beaumont, TX	Centrifuge Solids (EPA Hazardous Waste Numbers F037, F038, K048, K049, K051, K052, K169, and K170.) generated at a maximum rate of 8,300 cubic yards after December 1, 2011. Beaumont Refinery must implement the requirements in Table 1. Wastes Excluded from Non-Specific Sources for the petition to be valid.
* * *	*	* * *

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–8207]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have