

review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 26, 2010.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(347)(i)(A)(2) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(347) \* \* \*  
(i) \* \* \*  
(A) \* \* \*

(2) Rule 4352, "Solid Fuel Fired Boilers, Steam Generators and Process Heaters," amended on May 18, 2006.

\* \* \* \* \*

[FR Doc. 2010-24686 Filed 9-30-10; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 261

[EPA-R06-RCRA-2010-0066; SW FRL-9208-7]

#### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Direct Final Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is proposing to grant a petition submitted by ExxonMobil Refining and Supply Company—Beaumont Refinery (Beaumont Refinery) to exclude (or delist) a certain solid waste generated by its Beaumont, Texas, facility from the lists of hazardous wastes. EPA used the Delisting Risk

Assessment Software (DRAS) Version 3.0 in the evaluation of the impact of the petitioned waste on human health and the environment.

**DATES:** This rule is effective on November 30, 2010. Comments must be received by November 1, 2010. Your requests for a hearing must reach EPA by October 18, 2010. The request must contain the information described in § 260.20(d).

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-RCRA-2010-0066 by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail:* [peace.michelle@epa.gov](mailto:peace.michelle@epa.gov).

3. *Mail:* Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD-C, 1445 Ross Avenue, Dallas, TX 75202.

4. *Hand Delivery or Courier.* Deliver your comments to: Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD-C, 1445 Ross Avenue, Dallas, TX 75202.

*Requests for a hearing should be made to:* Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD-C), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-RCRA-2010-0066. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and

made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, RCRA Branch, 1445 Ross Avenue, Dallas, TX 75202. The hard copy RCRA regulatory docket for this proposed rule, EPA-R06-RCRA-2010-0066, is available for viewing from 8 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays. 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. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** For further technical information concerning this document or for appointments to view the docket or the Beaumont Refinery petition, contact Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD-C, 1445 Ross Avenue, Dallas, TX 75202, by calling (214) 665-7430 or by e-mail at [peace.michelle@epa.gov](mailto:peace.michelle@epa.gov).

**SUPPLEMENTARY INFORMATION:** Beaumont Refinery 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.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed 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, we would conclude the petitioned waste from this facility is non-hazardous with respect to the original listing criteria and that the waste process used will substantially reduce the likelihood of migration of hazardous constituents from this waste. We would also conclude that the processes minimize short-term and long-term threats from the petitioned waste to human health and the environment.

## Table of Contents

- I. Overview Information
  - A. What action is EPA approving?
  - B. Why is EPA approving this delisting?
  - C. How will Beaumont Refinery manage the wastes, if it is delisted?
  - D. When would the delisting exclusion be finalized?
  - E. How would this action affect States?
- II. Background
  - A. What is the history of the delisting program?
  - B. What is a delisting petition, and what does it require of a petitioner?
  - C. What factors must EPA consider in deciding whether to grant a delisting petition?
- III. EPA’s Evaluation of the Waste Information and Data
  - A. What wastes did Beaumont Refinery petition EPA to delist?
  - B. Who is Beaumont Refinery and what process do they use to generate the petitioned wastes?
  - C. What information did Beaumont Refinery submit to support this petition?
  - D. What were the results of Beaumont Refinery’s analysis?
  - E. How did EPA evaluate the risk of delisting this waste?
  - F. What did EPA conclude about Beaumont Refinery’s analysis?
  - G. What other factors did EPA consider in its evaluation?
  - H. What is EPA’s evaluation of this delisting petition?
- IV. Next Steps
  - A. With what conditions must the petitioner comply?
  - B. What happens, if Beaumont Refinery violates the terms and conditions?
- V. Final Action
- VI. Statutory and Executive Order Reviews

## I. Overview Information

### A. What action is EPA approving?

EPA is approving the delisting petition submitted by Beaumont

Refinery 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.

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

Beaumont Refinery will dispose of the storage containers with 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).

### D. When would the delisting exclusion be finalized?

RCRA section 3001(f) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion unless and 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 after EPA addresses public comments 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 the 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. Delisting petitions approved by EPA Administrator under 40 CFR 260.22 are effective in the State of Texas only after the final rule has been published in the **Federal Register**.

## II. Background

### A. What is the history of the delisting program?

EPA published an amended list of hazardous wastes from nonspecific 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 §§ 261.31 and 261.32. EPA lists these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

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

For this reason, §§ 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 believe the wastes should be 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 § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics 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 § 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 to determine 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 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 from 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 a one time exclusion for 8,300 cubic yards of the centrifuge solids.

### B. Who is Beaumont Refinery and what process do they use to generate the petitioned waste?

Beaumont Refinery is a petroleum refinery located at 1795 Burt Street in Beaumont, Jefferson County, Texas. The Beaumont Texas Facility is situated on approximately 1,200 acres of land. The refinery began operations at the current location in 1903 as Magnolia Petroleum Company. The facility is operated on a continuous basis with production occurring 24 hours per day, 7 days per week, and 365 days per year and produces approximately seven

petroleum products from crude oil, the primary raw material. Significant production processes/units at the Beaumont Refinery include crude units, saturated gas plant, fluid catalytic cracker, hydrocracker, diesel hydrotreater, coker, jet fuel treaters, cogeneration, isomerization, continuous catalytic reformers, alkylation, sulfur recovery plants, and wastewater treatment. Tanks 758, 763, 765, 766 and 771 in the Beaumont Refinery's Lower Park Tank Farm were constructed during the early days of the facility, and as the tanks aged, the service gradually changed from product storage to slop oil storage. The slop oil system at a refinery entails collecting materials that have some degree of recoverable hydrocarbon (e.g., crude oil, API separator sludge, DAF float, etc.) but also have materials that are not readily recoverable (e.g., solids, scale, sediment, etc.). Candidate oily streams are routed to slop oil storage tanks from collection system piping and/or from smaller tanks prior to being reprocessed within the refinery to recovery oil. To initiate the Lower Park Tank Farm cleanout project, the Beaumont Refinery determined that the five tanks were in slop oil service beginning in the 1960's. Since the tank bottoms in the five tanks are historical, the Beaumont Refinery has elected to conservatively assume that the solids from the tanks may bear K- and F-waste codes associated with petroleum refining. Tank 758 was selected as the first tank to clean and sample since it is expected to have the highest concentrations of chemicals and hazardous constituents. The Beaumont Refinery's subcontractor Suprall Products LLP has developed a proprietary chemical (Suprall 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 historical tank bottoms from the refinery's Lower Park Tank Farm. The primary function of Suprall 38 is to facilitate recovery of as much oil and associated constituents of concern as possible for reintroduction into the refinery process. The proprietary mixture does not contain RCRA Part 261 Appendix VIII or Part 264 Appendix IX constituents. Historical tank bottoms in Tank 758 served as the worst-case representation of the five tanks and the biggest challenge for performance of the Suprall 38 treatment process and passing delisting criteria.

The Beaumont Refinery intends to dispose of the delisted centrifuge solids at an authorized municipal solid waste or commercial industrial solid waste

landfill. Treatment of historical tank bottoms from Tanks 758, 763, 765, 766 and 771 in the Beaumont Refinery's Lower Park Tank Farm generate centrifuge solids that are classified as F037, F038, K048, K049, K051, K052, K169 and K170 listed hazardous wastes pursuant to 40 CFR 261.31 and 261.32. The 40 CFR part 261 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.

*C. What information did Beaumont Refinery submit to support 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;

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

*D. What were the results of Beaumont Refinery's analysis?*

EPA believes that the descriptions of Beaumont Refinery's waste, and the analytical data submitted in support of the petition show that the centrifuge solids are non-hazardous. Analytical data from Beaumont Refinery's centrifuge solid samples were used in the Delisting Risk Assessment Software (DRAS). The data summaries for detected constituents are presented in Table 2. EPA has reviewed the sampling procedures used by Beaumont Refinery and has determined that they satisfy EPA's criteria for collecting representative samples of the variations in constituent concentrations in the Centrifuge solids. The data submitted in support of the petition show that constituents in Beaumont Refinery's wastes are presently below health-based risk levels used in the delisting decision-making. EPA believes that Beaumont Refinery has successfully demonstrated that the Centrifuge solids are non-hazardous.

TABLE 2—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE CENTRIFUGE SOLIDS<sup>1</sup>

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) fluoranthene .....	28	< 0.001	3916.8
Benzo(k) fluoranthene .....	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
Fluoranthrene .....	17	< 0.001	42.96
Lead .....	1290	1.44	5.0

TABLE 2—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE CENTRIFUGE SOLIDS<sup>1</sup>—Continued

Constituent	Maximum total (mg/kg)	Maximum TCLP (mg/l)	Maximum allowable TCLP delisting level (mg/L)
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	Not applicable
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

<sup>1</sup> 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.

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

The worst case scenario for management of the centrifuge solids was modeled for disposal in a landfill. EPA used such information gathered to identify plausible exposure routes (*i.e.*, ground water, surface water, soil, air) for hazardous constituents present in the Centrifuge solids. EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for Beaumont Refinery's centrifuge solids. EPA applied the DRAS described in 65 FR 58015 (September 27, 2000), 65 FR 75637 (December 4, 2000) and 73 FR 28768 (May 19, 2008), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned wastes after disposal and determined the potential impact of the disposal of Beaumont Refinery's petitioned wastes on human health and the environment. In assessing potential risks to ground water, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water 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 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and Agency health-based numbers. Using the maximum compliance-point

concentrations and EPA Composite Model for Leachate 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 ground water.

EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill for the centrifuge solids. 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 ensured that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health and/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 or wind-blown particulate from the landfill). As in the above ground water 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.

EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, the disposal will occur in an offsite Landfill, so no ground water monitoring data for disposal of this waste stream in the landfill is available.

EPA believes that the descriptions of Beaumont Refinery's Centrifuge solids and analytical characterizations of these wastes illustrate the presence of toxic constituents at lower concentrations in these waste streams. Therefore, it is reasonable to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized.

The DRAS results, which calculated the maximum allowable concentration of chemical constituents in the Centrifuge solids are presented in Table 2. Based on the comparison of the DRAS results and maximum TCLP concentrations found in Table 2, the

petitioned wastes should be delisted because no constituents of concern are likely to be present or formed as reaction products or byproducts in Beaumont Refinery's wastes as long as they are disposed of in a Subtitle D Landfill.

*F. What did EPA conclude about Beaumont Refinery's analysis?*

EPA concluded, after reviewing Beaumont Refinery's processes that no other hazardous constituents of concern, other than those for which Beaumont Refinery tested, are likely to be present or formed as reaction products or byproducts in Beaumont Refinery's wastes. In addition, on the basis of explanations and analytical data provided by Beaumont Refinery, pursuant to § 260.22, EPA concludes that the petitioned wastes: Centrifuge solids do not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. See §§ 261.21, 261.22, 261.23, and 261.24 respectively.

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

During the evaluation of this petition, in addition to the potential impacts to the ground water, EPA also considered the potential impact of the petitioned waste via non-ground water exposure routes (*i.e.*, air emissions and surface runoff) for the Centrifuge solids. With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from the petitioned waste is unlikely. No appreciable air releases are likely from the centrifuge solids under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from the solids 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 the centrifuge solids.

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

The descriptions by Beaumont Refinery of the hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for EPA to grant the petition. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable concentrations (See Table 2). EPA believes that the Centrifuge solids

generated by Beaumont Refinery contain hazardous constituents at levels which will present minimal short-term and long-term threats from the petitioned wastes to human health and the environment.

Thus, EPA believes that it should grant to Beaumont Refinery an exclusion from the list of hazardous wastes for the Centrifuge solids. EPA believes that the data submitted in support of the petition show the Beaumont Refinery's Centrifuge solids to be non-hazardous.

EPA has reviewed the sampling procedures used by Beaumont Refinery and has determined they satisfy EPA's criteria for collecting representative samples of variable constituent concentrations in the Centrifuge solids. The data submitted in support of the petition show that constituents in Beaumont Refinery's wastes are presently below the compliance-point concentrations used in the delisting decision-making process and would not pose a substantial hazard to the environment and the public. EPA believes that Beaumont Refinery has successfully demonstrated that the Centrifuge solids are non-hazardous.

EPA, therefore, proposes to grant an exclusion to Beaumont Refinery for the Centrifuge solids described in its September 2009 petition. EPA's decision to exclude these wastes is based on analysis performed on samples taken of the Centrifuge solids.

If EPA finalizes the rule, EPA will no longer regulate 8,300 cubic yards of centrifuge solids from Beaumont Refinery's Beaumont facility 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, Beaumont Refinery, must comply with the requirements in 40 CFR Part 261, Appendix IX, Tables 1 and 2 as amended by this notice. The text below gives the rationale and details of those requirements.

(1) Data Submittals

To provide appropriate documentation that the Beaumont Refinery facility is correctly managing the Centrifuge solids, Beaumont Refinery must compile, summarize, and keep delisting records on-site for a minimum of five years. Beaumont Refinery must keep all delisting records for five years. Paragraph (1) requires that Beaumont Refinery furnish these data upon request for inspection by any employee or representative of EPA or the State of Texas.

If the exclusion is made final, then it will apply only to 8,300 cubic yards of centrifuge solids generated at the Beaumont Refinery facility after successful initial verification testing.

EPA would require Beaumont Refinery to submit additional verification data under any of the following circumstances:

(a) Beaumont Refinery must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream. EPA will publish an amendment to the exclusion if the changes are acceptable.

Beaumont Refinery must manage waste volumes greater than 8,300 cubic yards of centrifuge solids as hazardous waste until EPA grants a revised exclusion. When this exclusion becomes final, the management by Beaumont Refinery of the Centrifuge solids covered in this petition would be relieved from Subtitle C jurisdiction. Beaumont Refinery may not classify the waste as non-hazardous until the revised exclusion is finalized.

(2) Reopener

The purpose of paragraph (2) is to require Beaumont Refinery 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. 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 it based the decision to see if it is still correct or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented.

This provision expressly requires Beaumont Refinery 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.

It is EPA's position 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 delisting is merited in light of EPA's experience. See the **Federal**

**Register** notice regarding Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations into the environment than the concentrations predicted when conducting the TCLP, 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)(3)(B).

*B. What happens, if Beaumont Refinery violates the terms and conditions?*

If Beaumont Refinery 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 Beaumont Refinery to conduct the appropriate waste analysis and comply with the criteria explained above in paragraph (1) of the exclusion.

#### V. Final Action

EPA is approving the delisting petition for the centrifuge solids generated at Beaumont Refinery's Beaumont—Texas facility.

EPA is publishing this rule without prior proposal because we view this as a non-controversial exclusion and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the petition if relevant adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, *see* the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We would address all public comments in a subsequent final rule based on the proposed rule. Please note that if we receive adverse comment on a paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### 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 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: September 20, 2010.

**Bill Luthans,**

*Acting Director, Multimedia Planning and Permitting Division.*

■ 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, and 6938.

■ 2. In Tables 1 and 2 of Appendix IX of 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 November 30, 2010 and disposed of in a Subtitle D Landfill. (1) Reopener V (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) <i>Notification Requirements:</i> 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.



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

Facility	Address	Waste description
		(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 November 30, 2010 and disposed of in a Subtitle D Landfill. Beaumont Refinery must implement the requirements in Table 1. Wastes Excluded from Non-Specific Sources for the petition to be valid.
*	*	*

\* \* \* \* \*

[FR Doc. 2010–24571 Filed 9–30–10; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, 415, 424, 440, 441, 482, 485, and 489

[CMS–1498–F, and CMS–1498–IFC; CMS–1406–F]

RIN 0938–AP80; RIN 0938–AP33

### Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System Changes and FY 2011 Rates; Provider Agreements and Supplier Approvals; and Hospital Conditions of Participation for Rehabilitation and Respiratory Care Services; Medicaid Program: Accreditation for Providers of Inpatient Psychiatric Services; Corrections

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correction of final rules and interim final rule with comment period.

**SUMMARY:** This document corrects technical and typographical errors in the final rules and interim final rule with comment period entitled “Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute

Care Hospitals and the Long-Term Care Hospital Prospective Payment System Changes and FY 2011 Rates; Provider Agreements and Supplier Approvals; and Hospital Conditions of Participation for Rehabilitation and Respiratory Care Services; Medicaid Program: Accreditation for Providers of Inpatient Psychiatric Services” that appeared in the August 16, 2010 **Federal Register**.

**DATES:** *Effective Date:* This correction notice is effective October 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Tzv Hefter, (410) 786–4487.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

In FR Doc. 2010–19092 of August 16, 2010 (75 FR 50042), there were a number of technical errors that are identified and corrected in the Correction of Errors section below. The provisions in this correction notice are effective as if they had been included in the document entitled “Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System Changes and FY 2011 Rates; Provider Agreements and Supplier Approvals; and Hospital Conditions of Participation for Rehabilitation and Respiratory Care Services; Medicaid Program: Accreditation for Providers of Inpatient Psychiatric Services” (hereinafter referred to as the fiscal year (FY) 2011 IPPS/LTCH PPS final rule) that appeared in August 16, 2010 **Federal Register**. Accordingly, the corrections are effective October 1, 2010.

#### II. Summary of Errors

The following is a summary of the errors identified in the FY 2011 IPPS/LTCH PPS final rule and corrected in section III. of this notice:

##### A. Summary of Errors in the Preamble

On page 50099, we are correcting errors in the present on admission (POA) indicator “Y” percentage for two previously considered hospital acquired conditions (HACs) that are listed in Chart H “POA Status of Previously Considered ‘Candidate’ HAC Conditions—October 2008 Through September 2009.”

On page 50161, we are correcting a website reference error in the first footnote to the table regarding the Frontier States identified for the FY 2011 wage index floor adjustment.

On page 50224, in our discussion of the data submission and reporting requirements for the Reporting Hospital Quality Data for Annual Payment Update (RHQDAPU) program, we inadvertently indicated that the Central Line Associated Blood Stream Infection (CLABSI) measure would be part of the measure set for the FY 2012 payment determination rather than the FY 2013 payment determination. We had previously, on page 50202, finalized the CLABSI measure for the FY 2013 payment determination and the information on page 50224 should have reflected this policy.

##### B. Summary of Errors in the Addendum

On page 50432, in the table “Comparison of FY 2010 Standardized Amounts to the FY 2011 Standardized