

## Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human

environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction because this rule involves a regulation establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under

## ADDRESSES.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 165.814—

■ a. Remove paragraph (b);

■ b. Redesignate paragraph (c) as (b); and

■ c. Add paragraph (a)(5)(vi) and revise redesignated paragraph (b)(2) to read as follows:

### § 165.814 Security Zone; Captain of the Port Houston-Galveston Zone.

(a) \* \* \*

(5) \* \* \*

(vi) The Freeport LNG Basin containing all waters shoreward of a line drawn between the eastern point at latitude 28°56′25″ N, 095°18′13″ W, and the western point at 28°56′28″ N, 095°18′31″ W, east towards the jetties.

(b) \* \* \*

(2) Other persons or vessels requiring entry into a zone described in this section must request express permission to enter from the Captain of the Port Houston-Galveston, or designated representative. The Captain of the Port Houston-Galveston’s designated representatives are any personnel granted authority by the Captain of the Port Houston-Galveston to receive, evaluate, and issue written security zone entry permits, or the designated on-scene U.S. Coast Guard patrol personnel described in paragraph (b)(4).

\* \* \* \* \*

Dated: December 28, 2009.

**M.E. Woodring,**

*Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.*

[FR Doc. 2010–5056 Filed 3–9–10; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

[EPA–R04–RCRA–2008–0900; FRL–9124–8]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** Environmental Protection Agency (EPA) is granting the petition submitted by The Valero Refining Company—Tennessee, LLC (Valero) to exclude or “delist” a certain sediment generated by its Memphis Refinery in Memphis, Tennessee from the lists of hazardous wastes. This final rule responds to a petition submitted by Valero to delist F037 waste. The F037 waste is sediment generated in the Storm Water Basin.

After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded the petitioned waste is not hazardous waste. The F037 exclusion is a one-time exclusion for 2,700 cubic yards of the F037 Storm Water Basin sediment. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

**DATES:** *Effective Date:* March 10, 2010.

**ADDRESSES:** The public docket for this final rule is available either electronically at <http://www.regulations.gov> or in hard copy at the RCRA and OPA Enforcement and Compliance Branch, RCRA Division, U.S. Environmental Protection Agency Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303 and is available for viewing through the EPA Freedom of Information Act (FOIA) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call the FOIA Officer at (404) 562–8028 for appointments. 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:**

Kristin Lippert, North Enforcement and Compliance Section, (Mail Code 4WD—RCRA), RCRA and OPA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303 or call (404) 562–8605 or via electronic mail at [lippert.kristin@epa.gov](mailto:lippert.kristin@epa.gov).

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

- I. Overview Information
  - A. What Action Is EPA Finalizing?
  - B. Why Is EPA Approving This Action?
  - C. What Are the Limits of This Exclusion?
  - D. How Will Valero Manage the Waste, When Delisted?
  - E. When Is the Final Delisting Exclusion Effective?
  - F. How Does This Final Rule Affect States?
- II. Background
  - A. What Is a Delisting?
  - B. What Regulations Allow Facilities To Delist a Waste?
  - C. What Information Must the Generator Supply?
- III. EPA's Evaluation of the Waste Information and Data
  - A. What Waste Did Valero Petition EPA To Delist?
  - B. How Much Waste Did Valero Propose To Delist?
  - C. How did Valero Sample and Analyze the Waste Data in This Petition?
- IV. Public Comments Received on the Proposed Exclusions
  - A. Who Submitted Comments on the Proposed Rules?
- V. Statutory and Executive Order Reviews

**I. Overview Information****A. What Action Is EPA Finalizing?**

After evaluating the petition for Valero, EPA proposed, on July 9, 2009, to exclude the waste from the lists of hazardous waste under § 261.31. EPA is finalizing the decision to grant Valero's delisting petition to have its F037 Storm Water Basin Sediment excluded, or delisted, from the definition of a hazardous waste, once it is disposed in a Subtitle D landfill.

**B. Why Is EPA Approving This Action?**

Valero's petition requests a delisting from the F037 waste listing under 40 CFR 260.20 and 260.22. Valero does not believe that the petitioned waste meets the criteria for which EPA listed it. Valero also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See

section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is nonhazardous 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 wastes to be hazardous. EPA considered whether the waste is acutely toxic, the concentrations of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's final decision to delist the waste from Valero's facility is based on the information submitted in support of this rule, including description of the waste and analytical data from the Memphis, Tennessee facility.

**C. What Are the Limits of This Exclusion?**

This exclusion applies to the waste described in Valero's petition only if the requirements described in 40 CFR part 261, Appendix IX, Table 1 and the conditions contained herein are satisfied.

**D. How Will Valero Manage the Waste, When Delisted?**

The delisted F037 Storm Water Basin Sediment will be disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial waste.

**E. When Is the Final Delisting Exclusion Effective?**

This rule is effective March 10, 2010. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA, 42 U.S.C. 6930(b)(1), allow rules to become effective in less than six months after the rule is published 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 waste. This reduction in existing requirements also provides 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 States which have received authorization from EPA to make their own delisting decisions.

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

EPA has also authorized some States (for example, Louisiana, Oklahoma, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States unless that State makes the rule part of its authorized program. If Valero transports the petitioned waste to or manages the waste in any State with delisting authorization, Valero must obtain delisting authorization from that State before it 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 or delist, from the RCRA list of hazardous waste, waste the generator believes should not be considered hazardous under RCRA.

**B. What Regulations Allow Facilities To Delist a Waste?**

Under 40 CFR 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste regulation 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 40 CFR parts 260 through 265 and 268. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

#### *C. What Information Must the Generator Supply?*

Petitioners must provide sufficient information to EPA to allow 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 and that such factors do not warrant retaining the waste as a hazardous waste.

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

#### *A. What Waste Did Valero Petition EPA To Delist?*

On July 25, 2008, Valero petitioned EPA to exclude from the lists of hazardous waste contained in § 261.31 and 261.32, F037 Storm Water Basin Sediment.

#### *B. How Much Waste Did Valero Propose To Delist?*

Valero requested that EPA grant a one-time exclusion for 2,700 cubic yards of the F037 Storm Water Basin Sediment.

#### *C. How did Valero Sample and Analyze the Waste Data in This Petition?*

To support its petition, Valero submitted: (1) Facility information on production processes and waste generation processes including analytical data from twelve (12) samples collected on August 7, 2007, in the Storm Water Basin; (2) Results of the total constituent list for 40 CFR Part 264 Appendix IX volatiles, semivolatiles, metals, pesticides, herbicides, dioxins and PCB for the sampling on August 7, 2007; (3) Results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals for the sampling on August 7, 2007; (4) Analytical constituents of concern for F037 for the sampling on August 7, 2007; (5) Results from total oil and grease analyses for the sampling on August 7, 2007; and (6) Summary of the July 2006 Sediment Data (Highest Results from Detections).

### **IV. Public Comments Received on the Proposed Exclusions**

#### *A. Who Submitted Comments on the Proposed Rules?*

No comments were received on the proposed rule for the F037 waste.

### **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). 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 final 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 final rule does not have Tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (59 FR 22951, 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 today's action under Section 801 because this is a rule of particular applicability.

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

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

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

Dated: March 1, 2010.

**G. Alan Farmer,**  
Director, RCRA Division, Region 4.

■ 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 Table 1 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
* The Valero Refining Company—Tennessee, LLC.	* Memphis, TN ....	* Storm Water Basin sediment (EPA Hazardous Waste No. F037) generated one-time at a volume of 2,700 cubic yards March 10, 2010 and disposed in Subtitle D landfill. This is a one-time exclusion and applies to 2,700 cubic yards of Storm Water Basin sediment. (1) Reopener. (A) If, anytime after disposal of the delisted waste, Valero 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 Valero fails to submit the information described in paragraph (A) 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 or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Division Director determines that the reported information does require EPA action, 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 the date of the Division Director's notice to present such information. (D) Following the receipt of information from the facility described in paragraph (C) or if no information is presented under paragraph initial receipt of information described in paragraphs (A) or (B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health 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: Valero 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 they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification, if they ship the delisted waste to 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.
*	*	*

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**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety  
Administration****49 CFR Part 541**

[Docket No. NHTSA-2009-0085]

**Final Theft Data; Motor Vehicle Theft  
Prevention Standard**

**AGENCY:** National Highway Traffic  
Safety Administration (NHTSA),  
Department of Transportation.

**ACTION:** Publication of final theft data.

**SUMMARY:** This document publishes the final data on thefts of model year (MY) 2007 passenger motor vehicles that occurred in calendar year (CY) 2007. The final 2007 theft data indicated a decrease in the vehicle theft rate experienced in CY/MY 2007. The final theft rate for MY 2007 passenger vehicles stolen in calendar year 2007 is 1.86 thefts per thousand vehicles, a decrease of ten percent from the rate of 2.08 thefts per thousand in 2006. Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data and publish the information for review and comment.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer

Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366-0846. Her fax number is (202) 493-2990.

**SUPPLEMENTARY INFORMATION:** NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541. The standard specifies performance requirements for inscribing and affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and