

Proposed Rules

Federal Register

Vol. 75, No. 213

Thursday, November 4, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA-R05-RCRA-2010-0843; SW-FRL-9221-2]

Hazardous Waste Management System; Proposed Exclusion for Identifying and Listing Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also, “the Agency” or “we” in this preamble) is proposing to grant a petition submitted by Owosso Graphic Arts Inc. (Owosso), in Owosso Michigan to exclude (or “delist”) up to 244 cubic yards of wastewater treatment sludge per year from the list of hazardous wastes.

The Agency has tentatively decided to grant the petition based on an evaluation of waste-specific information provided by Owosso. This proposed decision, if finalized, conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act.

We conclude that Owosso’s petitioned waste is nonhazardous with respect to the original listing criteria and that there are no other factors which would cause the waste to be hazardous when disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste.

DATES: Comments must be received on or before December 6, 2010. Requests for an informal hearing must reach EPA by November 19, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. [EPA-R05-RCRA-2010-0843] by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- **Mail:** to Christopher Lambesis, Environmental Protection Agency, Land and Chemicals Division, (Mail Code: LR-8J), EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604.

- **Hand Delivery:** to Christopher Lambesis, Land and Chemicals Division, EPA Region 5, 8th Floor, 77 West Jackson Boulevard, Chicago, IL 60604. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please contact Christopher Lambesis at (312) 886-3583.

Instructions: Direct your comments to Docket ID No. [EPA-R05-RCRA-2010-0843]. 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.

Any person may request an informal hearing on this proposed decision by filing a request with Bruce Sypniewski, Acting Director, Land and Chemicals Division, Environmental Protection Agency, 77 West Jackson Boulevard,

Chicago, Illinois 60604. The request must contain the information prescribed in 40 CFR 260.20(d).

Docket: All documents in the 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 form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Records Center, 7th floor, U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. We recommend you telephone Christopher Lambesis at (312) 886-3583 before visiting the Region 5 office. The public may copy material from the regulatory docket at 15 cents per page.

FOR FURTHER INFORMATION CONTACT: Christopher Lambesis, Land and Chemicals Division, (Mail Code: LR-8J), EPA Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604; telephone number: (312) 886-3583; fax number (312) 692-2195; e-mail address: lambesis.christopher@epa.gov.

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

- I. Overview Information
- II. Background
 - A. What is a listed waste?
 - B. What is a delisting petition?
 - 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 waste did Owosso petition EPA to delist?
 - B. How does Owosso generate the waste?
 - C. How did Owosso sample and analyze the waste?
 - D. What were the results of Owosso’s analysis of the waste?
 - E. How did EPA evaluate the risk of delisting this waste?
 - F. What did EPA conclude about Owosso’s waste?
- IV. Conditions for Exclusion
 - A. When would EPA finalize the proposed delisting exclusion?
 - B. How will Owosso manage the waste if it is delisted?

- C. What are the maximum allowable concentrations of hazardous constituents in the waste?
- D. How frequently must Owosso test the waste?
- E. What data must Owosso submit?
- F. What happens if Owosso's waste fails to meet the conditions of the exclusion?
- G. What must Owosso do if the process changes?

V. How would this action affect states?

VI. Statutory and Executive Order Reviews

I. Overview Information

The EPA is proposing to grant a petition submitted by Owosso Graphic Arts Incorporated (Owosso) located in Owosso, Michigan to exclude or delist an annual volume of 244 cubic yards of F006 wastewater treatment sludge from the lists of hazardous waste set forth in Title 40 of the Code of Federal Regulations (40 CFR) 261.31. Owosso claims that the petitioned waste does not meet the criteria for which EPA listed it, and that there are no additional constituents or factors which could cause the waste to be hazardous.

Based on our review described in section III, we agree with the petitioner that the waste is nonhazardous. We reviewed the description of the process which generates the waste and the analytical data submitted by Owosso. We believe that the petitioned waste does not meet the criteria for which the waste was listed, and that there are no other factors which might cause the waste to be hazardous.

II. Background

A. What is a listed waste?

The 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 Resource Conservation and Recovery Act (RCRA). The EPA has amended this list several times and published it in 40 CFR 261.31 and 261.32.

We list 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 (3).

B. What is a delisting petition?

Individual waste streams may vary depending on raw materials, industrial processes, and other factors. Thus, while a waste described in the regulations generally is hazardous, a specific waste from an individual

facility meeting the listing description may not be.

A procedure to exclude or delist a waste is provided in 40 CFR 260.20 and 260.22 which allows a person, or a facility, to submit a petition to the EPA or to an authorized state demonstrating that a specific waste from a particular generating facility is not hazardous.

In a delisting petition, the petitioner must show that a waste does not meet any of the criteria for listed wastes in 40 CFR 261.11 and that the waste does not exhibit any of the hazardous waste characteristics of ignitability, reactivity, corrosivity, or toxicity. The petitioner must present sufficient information for us to decide whether any factors in addition to those for which the waste was listed warrant retaining it as a hazardous waste. (See § 260.22, 42 United States Code—U.S.C.—6921(f) and the background documents for the listed wastes.)

If a delisting petition is granted, the generator remains obligated under RCRA to confirm that the waste remains nonhazardous.

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

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). We evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (3).

Besides considering the criteria in 40 CFR 260.22(a), 261.11(a)(2) and (3), 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 we listed the waste if these additional factors could cause the waste to be hazardous.

Our tentative decision to delist waste from Owosso's facility is based on our evaluation of the waste for factors or criteria which could cause the waste to be hazardous. These factors included: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the constituents to migrate and to bioaccumulate; (5) the persistence in the environment of any constituents once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

EPA must also consider as hazardous wastes mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. Mixture and derived-from wastes are also eligible for exclusion but remain hazardous until excluded.

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

A. What waste did Owosso petition EPA to delist?

In May 2005, Owosso petitioned EPA to exclude an annual volume of 244 cubic yards of F006 wastewater treatment sludges generated at its facility located in Owosso, Michigan from the list of hazardous wastes contained in 40 CFR 261.31. F006 is defined in § 261.31 as "Wastewater treatment sludges from electroplating operations * * *" Owosso claims that the petitioned waste does not meet the criteria for which F006 was listed (i.e., cadmium, hexavalent chromium, nickel and complexed cyanide) and that there are no other factors which would cause the waste to be hazardous.

B. How does Owosso generate the waste?

Owosso Graphic Arts conducts chemical etching of magnesium plates to produce photoengraved dies for the printing and foil stamping industries. Owosso Graphic Arts also etches other metals using ferric chloride to produce similar products. The magnesium etching process is physically separated from that of the other metals and share no common equipment, piping or waste handling procedures.

A desired pattern is applied to a magnesium plate in the form of a printed laminate sensitive to ultra-violet (UV) light. After UV exposure, the magnesium plate is exposed to a spray of developing agent in a self-contained unit that washes away areas of laminate where etching is to occur. The solvent trichloroethylene (TCE) was used as the developing agent until December 2007 when an aqueous solution (Hydro-Coat) containing inorganic sodium salt and a surfactant replaced TCE.

The aqueous developer was used until September 2008 when Owosso began using the solvent n-methyl 2-pyrrolidone (NMP) as the developing agent.

Nitric acid is used to etch the surface of magnesium plates to create the contoured die surface. The developed plate is cleaned with a mild (1–2 percent) nitric acid solution to remove the remaining protective coating from

the plate. The cleaning solution is discharged to a publicly owned treatment works (POTW) subject to the Clean Water Act.

The plate is placed in one of several self-contained etching units varying in size and equipped with reservoirs of nitric acid-based etching solution (nitric acid, water, Mag-O 20 detergent). The reservoir may contain between 200–400 liters of etching solution depending on the size of the etching unit. Each magnesium plate is weighed prior to entering the etching process and again once etching is completed. The difference between the initial weight and the post-etching weight is used to calculate the amount of magnesium residual remaining in the etching solution reservoir. The amount of metal residue introduced into the etching solution varies based on the size of the plate being etched and depth of the etching required by individual projects.

Operators of the system may adjust the strength of the acid between etching events to balance the acid content of the solution for optimal etching performance. Once the metal concentration becomes too great to provide optimal etching, the nitric acid solution is considered spent and is transferred to a wastewater treatment process for neutralization.

Wastewater treatment sludge is produced in a batch process in which spent etchant (nitric acid based etching solution described above) is pumped to a holding tank to await treatment. Transfer of approximately 500 gallons of spent etchant into the holding tank occurs on a daily basis.

The used etchant is combined with sodium hydroxide and water to neutralize the spent etchant prior to discharge to the City of Owosso's POTW. The neutralization process requires a residence time of approximately 30 minutes for complete neutralization of the spent acid solution. The treated solution is allowed to settle

for 12 hours to allow solids to precipitate and settle to the bottom of the tank. The supernatant liquid is decanted for discharge to the POTW.

Dewatering of precipitate formed during wastewater treatment occurs in a filter press adjacent to the tank containment area. The filter press is emptied into three steel gondolas prior to being placed in a lined roll-off container.

C. How did Owosso sample and analyze the petitioned waste?

Owosso collected a sample of the waste in July 2004 for total oil and grease (SW–846 Method 9071B), volatiles (SW–846 Method 8260B), semi volatiles and pesticides (SW–846 Method 8270C), polychlorinated biphenyls—PCBs—(SW–846 Method 8082), and metals (SW–846 Method 6010B except for mercury—SW–846 Method 7471). Owosso sampled the sludge again in August 2004 for oil and grease (SW–846 Method 9071B). Owosso continued to characterize the waste based on a November 2004 Sampling and Analysis Plan. Due to the small waste stream size, EPA and Owosso agreed to conservatively estimate constituent leaching by dividing the total result by 20. This simulates the TCLP test with the assumption that all of the constituent in the total would leach. Owosso collected five composite samples of the waste between December 2004 and March 2005 and analyzed them for bromomethane and chloromethane (SW–846 Method 8260B), cyanide (SW–846 Method 9012A), sulfide (SW–846 Method 9034), antimony and arsenic (SW–846 Method 6020B), cadmium, chromium, copper, lead, nickel, and zinc (SW–846 Method 6010B). This subset of constituents was comprised of waste constituents detected in prior sampling events and the constituents for which the waste was listed.

EPA later asked for additional analysis for trichloroethylene (TCE) since Owosso's process includes TCE as a graphic image developer and may be expected in the waste. Accordingly, Owosso collected additional grab samples of the waste in November 2007 for full-scan total volatile analysis (SW–846 Methods 5035 & 8260B). TCE was detected, however, Owosso had replaced the TCE developer with the aqueous developing agent by this time. To confirm that concentrations of TCE in the waste were decreasing since TCE was no longer used and only residual TCE remained in the process, Owosso collected three additional grab samples for volatile analysis in April and May of 2008 (SW–846 Method 5035 & 8260B).

Owosso collected four composite samples of the sludge and one sample of the raw product NMP in March 2010. The samples were analyzed by a modified SW–846 8270 method for tentatively identifies compounds (TICs). The raw product NMP sample was used to determine the NMP retention time in order to aid in the analysis of the composite samples. The concentration of TICs with similar mass spectra and retention time to NMP were added to the overall concentration because they may be derivatives of NMP.

D. What were the results of Owosso's analysis of its waste?

The table below presents the maximum observed total concentrations for all detected constituents for which maximum allowable total and leachate concentrations were available. Leachate concentrations were estimated by dividing the total concentration by 20 (the dilution factor from the TCLP test). Total concentrations are expressed in milligrams per kilogram (mg/kg). Leachate concentrations are expressed in milligrams per liter (mg/L). Owosso submitted a signed statement certifying accuracy and responsibility of the results. See 40 CFR 260.22(i)(12).

Constituent detected	Maximum observed concentration		Maximum allowable concentration		GW (mg/L)
	Total ¹ (mg/kg)	TCLP ² (mg/L)	Total (mg/kg)	TCLP (mg/L)	
Volatile Organic Compounds					
bromomethane	3.8	0.19	172,000	none	0.026
chloromethane	1.9	0.095	none	178	0.39
n-methyl,2-pyrrolidone	15.79 E	0.79	none	734	1.65
trichloroethylene	1.1	0.055	975,000	⁴ 0.5	0.005
Metals					
antimony	47	2.4	none	3.15	0.006
arsenic	2.0	0.10	4,580	³ 0.25	³ 0.0005
cadmium	3.8	0.19	121,000	⁴ 1.0	0.005
chromium	35	1.8	⁵ 2,590	⁴ 5.0	0.1

Constituent detected	Maximum observed concentration		Maximum allowable concentration		GW (mg/L)
	Total ¹ (mg/kg)	TCLP ² (mg/L)	Total (mg/kg)	TCLP (mg/L)	
copper	1,020	51	none	700	1.3
cyanide	20	1.0	none	91	0.2
lead	24	1.2	none	⁴ 5.0	0.015
nickel	35	1.8	905,000	400	0.750
zinc	14,000	700	none	6,000	11.3

¹ Converted to dry weight basis.

² Estimated from the total concentration (Total/20).

³ Set at groundwater concentration corresponding to 1×10^{-5} excess cancer risk.

⁴ Based on the toxicity characteristic in 40 CFR 261 subpart C.

⁵ Based on assuming 100% hexavalent chromium.

E—Estimated (Constituent not present in calibration standard. Calculated using total peak area from reconstructed ion chromatogram w/re-sponse factor of 1. Concentration converted to dry weight and represents the sum of NMP and NMP-like TICs).

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

For this delisting determination, we assumed that the waste would be disposed in a Subtitle D landfill and we considered transport of waste constituents through ground water, surface water and air. We evaluated Owosso's petitioned waste using the Agency's Delisting Risk Assessment Software (DRAS) to predict the concentration of hazardous constituents that might be released from the petitioned waste and to determine if the waste would pose a threat. To predict the potential for release to groundwater from landfilled wastes and subsequent routes of exposure to a receptor, the DRAS uses dilution attenuation factors derived from EPA's Composite Model for leachate migration with Transformation Products. From a release to ground water, the DRAS considers routes of exposure to a human receptor of ingestion of contaminated ground water, inhalation from groundwater while showering and dermal contact from groundwater while bathing.

From a release to surface water by erosion of waste from an open landfill into storm water run-off, DRAS evaluates the exposure to a human receptor by fish ingestion and ingestion of drinking water. From a release of waste particles and volatile emissions to air from the surface of an open landfill, DRAS considers routes of exposure of inhalation of volatile constituents, inhalation of particles, and air deposition of particles on residential soil and subsequent ingestion of the contaminated soil by a child. The technical support document and the user's guide to DRAS are included in the docket.

At a target cancer risk of 1×10^{-6} and a target hazard quotient of 1.0, the DRAS program determined maximum allowable concentrations for each constituent in both the waste and the leachate at an annual waste volume of

244 cubic yards. However, since naturally occurring concentrations of arsenic are often higher than allowable concentrations set by the DRAS at a risk of 1×10^{-6} , EPA set the allowable concentration of leachable arsenic at a target cancer risk of 1×10^{-5} , which corresponds to a concentration at the point of exposure of approximately one twentieth of the existing Safe Drinking Water Act (SDWA) Maximum Contaminant Level (MCL). Arsenic is not expected to be a major constituent of concern in this waste.

We used the maximum estimated annual waste volume and the maximum reported total and estimated leachate concentrations as inputs to estimate the constituent concentrations in the ground water, soil, surface water or air. If, using an appropriate analytical method, a constituent was not detected in any sample, it was considered not to be present in the waste.

F. What did EPA conclude about Owosso's waste?

The maximum reported concentrations of the hazardous constituents found in this waste are presented in the table above. The table also presents the maximum allowable concentrations. The concentrations of all constituents in both the waste and the leachate are below the allowable concentrations. We, therefore, conclude that Owosso's wastewater treatment sludge is not a substantial or potential hazard to human health and the environment when disposed of in a Subtitle D landfill.

We, therefore, propose to grant an exclusion for this waste. If this exclusion is finalized, Owosso must dispose of this waste in a Subtitle D landfill permitted or licensed by a state, and will remain obligated to verify that the waste meets the allowable concentrations set forth here. Owosso must also continue to determine whether the waste is identified in

subpart C of 40 CFR pursuant to § 261.11(c).

IV. Conditions for Exclusion

A. When would EPA finalize the proposed delisting exclusion?

HSWA specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not make a final decision or grant an exclusion until it has addressed all timely public comments on today's proposal, including any at public hearings.

Since this rule would reduce the existing requirements for persons generating hazardous wastes, the regulated community does not need a six-month period to come into compliance in accordance with section 3010 of RCRA as amended by HSWA.

B. How will Owosso manage the waste if it is delisted?

If the petitioned waste is delisted, Owosso must dispose of it in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste.

C. What are the maximum allowable concentrations of hazardous constituents in the waste?

Concentrations measured in the TCLP (or Oily Waste Extraction Procedure, where appropriate) extract of the waste of the following constituents must not exceed the following (mg/l): Antimony—3.15; arsenic—0.25; cadmium—1; chromium—5; lead—5; and zinc—6,000.

D. How frequently must Owosso test the waste?

Owosso must analyze a representative sample of the wastewater treatment sludges on an annual basis to demonstrate that the constituents of concern in the petitioned waste do not exceed the concentrations of concern in section IV.C above. Owosso must use

methods with sufficient analytical sensitivity and appropriate quality control procedures. SW-846 Method 1311 must be used for generation of the leachate extract used in the testing of the delisting levels if oil and grease comprise less than one percent of the waste. SW-846 Method 1330A must be used for generation of the leaching extract if oil and grease comprise 1 percent or more of the waste. SW-846 Method 9071B must be used for determination of oil and grease. SW-846 Methods 1311, 1330A, and 9071B are incorporated by reference in 40 CFR 260.11. A total analysis of the waste (accounting for any filterable liquids and the dilution factor inherent in the TCLP method) may be used to estimate the TCLP concentration as provided for in section 1.2 of Method 1311.

E. What data must Owosso submit?

Owosso must submit the data obtained through annual verification testing to U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604, upon the anniversary of the effective date of this exclusion. Owosso must compile, summarize, and maintain on site records of operating conditions and analytical data. Owosso must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

F. What happens if Owosso fails to meet the conditions of the exclusion?

If Owosso violates the terms and conditions established in the exclusion, the Agency may start procedures to withdraw the exclusion.

If the verification testing of the waste does not meet the delisting concentrations described in section IV.C above or other data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicates that any constituent is at a concentration in the leachate higher than the specified delisting concentration, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration (in the table in Section III.D.), Owosso must notify the Agency within 10 days of first possessing or being made aware of the data. The exclusion will be suspended and the waste managed as hazardous until Owosso has received written approval from the Agency to continue the exclusion. Owosso may provide sampling results which support the continuation of the delisting exclusion.

The EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978) *et*

seq. to reopen a delisting decision if we receive new information indicating that the conditions of this exclusion have been violated, or are otherwise not being met.

G. What must Owosso do if the process changes?

If Owosso significantly changes the manufacturing or treatment process or the chemicals used in the manufacturing or treatment process, Owosso may not handle the wastewater treatment sludge generated from the new process under this exclusion until it has demonstrated to the EPA that the waste meets the concentrations set in section IV.C and that no new hazardous constituents listed in Appendix VIII of 40 CFR part 261 have been introduced. Owosso must manage wastes generated after the process change as hazardous waste until Owosso has received written notice from EPA that the delisting is reinstated.

V. How would this action affect the states?

Because EPA is issuing today's exclusion under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. This exclusion may not be effective in states which have received our authorization 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. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. 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 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 Owosso manages the waste in any state with delisting authorization, Owosso must obtain delisting authorization from that state before it can manage the waste as nonhazardous in that state.

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 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" (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used DRAS, which considers health and safety risks to children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, "Civil Justice Reform", (61 FR 4729, February 7, 1996), in issuing this rule,

EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

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

Dated: October 26, 2010.

Bruce F. Sypniewski,
Acting Director, Land and Chemicals Division.

For the reasons set out in the preamble, EPA proposes to amend 40 CFR part 261 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 to part 261 add the following waste stream in alphabetical order by facility to read as follows:

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

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
<div><div>*</div><div>Owosso Graphic Arts ..</div></div>	<div><div>*</div><div>Owosso, Michigan</div></div>	<div><div>*</div><div>Wastewater treatment sludges, F006, generated at Owosso Graphic Arts (Owosso) facility in Owosso, Michigan at a maximum annual rate of 244 cubic yards per year. The sludge must be disposed of in a Subtitle D landfill which is licensed, permitted, or otherwise authorized by a state to accept the delisted wastewater treatment sludge. The exclusion becomes effective as of [insert final publication date].</div><div>1. <i>Delisting Levels:</i> (A) The constituent concentrations measured in a leachate extract may not exceed the following concentrations (mg/L): antimony—3.15; arsenic—0.25; cadmium—1; chromium—5; lead—5; and zinc—6,000. (B) Maximum allowable groundwater concentrations (mg/L) are as follows: antimony—0.006; arsenic—0.0005; cadmium—0.005; chromium—0.1; lead—0.015; and zinc—11.3.</div><div>2. <i>Annual Verification Testing:</i> To verify that the waste does not exceed the specified delisting concentrations, Owosso must collect and analyze one waste sample on an annual basis using methods with appropriate detection concentrations and elements of quality control. SW-846 Method 1311 must be used for generation of the leachate extract used in the testing of the delisting levels if oil and grease comprise less than 1 percent of the waste. SW-846 Method 1330A must be used for generation of the leaching extract if oil and grease comprise 1 percent or more of the waste. SW-846 Method 9071B must be used for determination of oil and grease. SW-846 Methods 1311, 1330A, and 9071B are incorporated by reference in 40 CFR 260.11. A total analysis of the waste (accounting for any filterable liquids and the dilution factor inherent in the TCLP method) may be used to estimate the TCLP concentration as provided for in section 1.2 of Method 1311.</div><div>3. <i>Changes in Operating Conditions:</i> Owosso must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process significantly change. Owosso must handle wastes generated after the process change as hazardous until it has: Demonstrated that the wastes continue to meet the delisting concentrations in section 1.; demonstrated that no new hazardous constituents listed in appendix VIII of part 261 have been introduced; and it has received written approval from EPA.</div><div>4. <i>Data Submittals:</i> Owosso must submit the data obtained through verification testing or as required by other conditions of this rule to U.S. EPA Region 5, RCRA Delisting Program (LR-8J), 77 W. Jackson Boulevard, Chicago, IL 60604. The annual verification data and certification of proper disposal must be submitted upon the anniversary of the effective date of this exclusion. Owosso must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. Owosso must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).</div></div>

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

Facility	Address	Waste description
		<p>5. <i>Reopener Language</i>—(A) If, anytime after disposal of the delisted waste, Owosso possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent is at a concentration in the leachate higher than the specified delisting concentration, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration in paragraph (1), then Owosso must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency 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 Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify Owosso in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Owosso with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. Owosso shall have 30 days from the date of the Regional Administrator's notice to present the information. (D) If after 30 days Owosso presents no further information or after a review of any submitted information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.</p>
*	*	*

* * * *

[FR Doc. 2010-27886 Filed 11-3-10; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R2-ES-2009-0060; MO 92210-0-0008]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List *Cirsium wrightii* (Wright's Marsh Thistle) as Endangered or Threatened**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 12-month finding on a petition to list *Cirsium wrightii* (Wright's marsh thistle) as endangered or threatened and to designate critical habitat under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, we find that listing *C. wrightii* as endangered or threatened throughout its range is warranted. Currently, however, listing of *C. wrightii* is precluded by higher priority actions to amend the Lists of Endangered and Threatened

Wildlife and Plants. Upon publication of this 12-month petition finding, we will add *C. wrightii* to our candidate species list. We will develop a proposed rule to list *C. wrightii* as our priorities allow. We will make any determination on critical habitat during development of the proposed rule. In the interim period, we will address the status of the candidate taxon through our annual Candidate Notice of Review.

DATES: The finding announced in this document was made on November 4, 2010.

ADDRESSES: This finding is available on the Internet at <http://www.regulations.gov> at Docket Number FWS-R2-ES-2009-0060. Supporting this finding is available for public inspection, by appointment, during normal business hours by contacting the U.S. Fish and Wildlife Service, New Mexico Ecological Services Office, 2105 Osuna NE, Albuquerque, NM 87113. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Wally "J" Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **ADDRESSES**); by telephone at 505-346-4781; or by facsimile at 505-346-2542. If you use a telecommunications device for the deaf (TDD), please call the

Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:**Background**

Section 4(b)(3)(B) of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the List of Endangered and Threatened Wildlife that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these findings in the **Federal Register**.

Previous Federal Actions

On October 15, 2008, we received a petition from the WildEarth Guardians, dated October 9, 2008, requesting that