

37 CFR 202.3(b)(5). Using this provision, stock photography agencies have registered all the photographs added to their databases within a three-month period when they have obtained copyright assignments from the photographers.

The regulations governing registration of automated databases embodied in machine-readable copies (other than in a CD-ROM format) require deposits that are significantly different than the deposits required in connection with the other regulations for registration of photographs, discussed above. Section 202.20(c)(2)(vii)(D)(5) of the Office's regulations provides that the applications for database registrations need not be accompanied by a deposit of the entire work, but instead may include identifying material consisting of fifty representative pages or data records marked to show the new material added on one representative day, along with additional identifying information. The deposit accompanying a database registration application thus can consist of a fraction of the copyrightable material covered by the registration.

This is in stark contrast to the deposit requirements for registration of unpublished collections, for group registrations of published photographs, and for most other forms of copyright registration. Section 202.3(b)(10)(x), which governs the deposit for a group registration of photographs, provides that the deposit shall consist of "one copy of each photograph [to] be submitted in one of the formats set forth in Sec. 202.20(c)(2)(xx)." See also 37 CFR 202.20(c)(1)(i) ("in the case of unpublished works, [the deposit shall consist of] one complete copy or phonorecord," a provision that applies to registrations of unpublished collections as well as individual unpublished works).

There is no good reason why a registration should issue for a database consisting predominantly of photographs when the copyright claim extends to the individual photographs themselves unless each of those claimed photographs is actually included as part of the deposit. As the Office said when it announced its regulations on group registration of published photographs:

[T]he Office rejects the plea of at least one commenter to permit the use of descriptive identifying material in lieu of the actual images. Although the Office had previously expressed a willingness to consider such a proposal, the most recent notice of proposed rulemaking noted that "the Office is reluctant to implement a procedure that would permit the acceptance of deposits that do not meaningfully reveal the work for which

copyright protection is claimed." Deposit of the work being registered is one of the fundamental requirements of copyright registration, and it serves an important purpose. As the legislative history of the Copyright Act of 1976 recognizes, copies of registration deposits may be needed for identification of the copyrighted work in connection with litigation or for other purposes. The ability of litigants to obtain a certified copy of a registered work that was deposited with the Office prior to the existence of the controversy that led to a lawsuit serves an important evidentiary purpose in establishing the [identity] and content of the plaintiff's work.

Registration of Claims to Copyright, Group Registration of Photographs, 66 FR 37142, 37147 (July 17, 2001) (citations omitted). Moreover, the actual practice with respect to almost all registrations of predominantly photographic databases has in fact been to include all of the photographs in the deposit.

For these reasons, in the recently announced interim regulation establishing a pilot program for online applications for group registration of databases consisting predominantly of photographic authorship, the Office included a requirement that the deposit accompanying such an online application authorship must include the image of each claimed photograph in the database. Interim Rule, Registration of claims of copyright, 76 FR 4072–4076 January 24, 2011).

In order to conform to the prevailing practice and the Office's determination of what a reasonable deposit requirement should include, the Office proposes to apply that requirement to deposits accompanying paper applications for group registration of databases consisting predominantly of photographic authorship. The proposed amendment would provide that, for any registration (whether the application is made by paper application or online pursuant to the Interim Regulation) of an automated database consisting predominantly of photographs, the deposit shall include, in addition to the descriptive statement currently required under section 202.20(c)(2)(vii)(D)(5), all of the photographs included in the copyright claim being registered. Identifying material will not constitute a sufficient deposit. As noted above, this conforms with what has in fact been the prevailing practice. The Office also notes that it will, in the future, consider extending this requirement to other types of databases.

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend part 202 of 37 CFR, as follows:

List of Subjects in 37 CFR Part 202

Copyright.

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 407, 408, 702.

2. Amend § 202.20 as follows:

a. In paragraph (c)(2)(vii)(D)(5) introductory text by removing "electronically submitted" after "or in the case of";

b. In paragraph (c)(2)(vii)(D)(8) by removing "submitted electronically" after "case of an application"; and

c. In paragraph (c)(2)(xx) introductory text remove "registered with an application submitted electronically under § 202.3(b)(5)(ii)(A)" after "and for automated databases that consist predominantly of photographs".

Dated: January 24, 2011.

Maria Pallante,

Acting Register of Copyrights.

[FR Doc. 2011–1884 Filed 1–27–11; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[EPA–HQ–RCRA–2008–0808; FRL–9260–2]

RIN–2050–AE78

Regulation of Oil-Bearing Hazardous Secondary Materials From the Petroleum Refining Industry Processed in a Gasification System To Produce Synthesis Gas; Tentative Determination To Deny Petition for Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of action—tentative determination to deny petition for reconsideration.

SUMMARY: EPA is providing notice of, and soliciting written comments on, a tentative determination to deny an administrative petition submitted by the Sierra Club under RCRA section 7004. EPA issued an earlier notice denying this same petition in November 2008. However, the Agency at that time failed to comply with notice and comment provisions in its regulations. Accordingly, we are now giving the public the opportunity to provide comments on this tentative decision. This petition requests EPA to reconsider the final rule, "Regulation of Oil-Bearing

Hazardous Secondary Materials from the Petroleum Refining Industry Processed in a Gasification System to Produce Synthesis Gas,” published in the **Federal Register** on January 2, 2008. The EPA considered the petition, along with information contained in the rulemaking docket, and has tentatively decided to deny the petition. In a letter from EPA Assistant Administrator Mathy Stanislaus dated January 21, 2011, EPA provided the petitioner with its tentative decision to deny the petition for reconsideration. The letter explains EPA’s reasons for tentatively deciding to deny the petition. After evaluating all public comments, as well as any other information in the rulemaking record, EPA will publish either a final denial of the petition or issue a proposed rule to amend or repeal the regulation.

DATES: Submit comments on or before March 14, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-RCRA-2008-0808, by one of the following methods:

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

- *E-mail:* Comments may be sent by electronic mail (e-mail) to rcra-docket@epa.gov, Attention Docket ID No. EPA-HQ-RCRA-2008-0808. In contrast to EPA’s electronic public docket, EPA’s e-mail system is not an “anonymous access” system. If you send an e-mail comment directly to the Docket without going through EPA’s electronic public docket, EPA’s e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA’s e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket.

- *Fax:* Comments may be faxed to 202-566-0272; Attention Docket ID No. EPA-HQ-RCRA-2008-0808.

- *Mail:* Send your comments to the RCRA Docket (28221T), Attention Docket ID No. EPA-HQ-RCRA-2008-0808, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

- *Hand Delivery:* Deliver two copies of your comments to the RCRA Docket, Attention Docket ID No. EPA-HQ-RCRA-2008-0808, EPA, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-RCRA-2008-0808. 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. For additional information about EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Alan Carpien, U.S. Environmental Protection Agency, Office of General Counsel, Mail Code 2366A, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone (202) 564-5507; or carpien.alan@epa.gov.

SUPPLEMENTARY INFORMATION:

How can I get copies of this document and other related information?

This **Federal Register** notice, the petition for reconsideration and the letter providing a tentative determination for denial of the petition for reconsideration are available in a docket EPA has established for this action under Docket ID No. EPA-HQ-RCRA-2008-0808. All documents in the docket are listed on the <http://www.regulations.gov>

Web site. Although listed in the index, some information may not be publicly available, because, for example, it may be Confidential Business Information (CBI) or other information, the disclosure of which is restricted by statute. Certain material, such as copyrighted material, is not placed on the Internet and 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 RCRA Docket, EPA, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the RCRA Docket is (202) 566-0270. A reasonable fee may be charged for copying docket materials.

Appendix: Letter to Earthjustice Tentatively Denying the Request for a Petition for Reconsideration

Ms. Lisa Gollin Evans, Earthjustice, 21 Ocean Avenue, Marblehead, MA 01945.

Dear Ms. Evans:

This is in response to the petition for reconsideration you submitted, dated April 1, 2008, to the U.S. Environmental Protection Agency (EPA) under the Resource Conservation and Recovery Act (RCRA) § 7004(a), 42 U.S.C. 6974(a), on behalf of the Sierra Club and the Louisiana Environmental Action Network (LEAN). Sierra Club and LEAN request that EPA reconsider the final rule, “Regulation of Oil-Bearing Hazardous Secondary Materials from the Petroleum Refining Industry Processed in a Gasification System to Produce Synthesis Gas” (Gasification Rule). This final rule was published in the **Federal Register** on January 2, 2008 (73 FR 57, *et seq.*)

Your petition raises both procedural (notice and comment) and substantive grounds for seeking the agency’s reconsideration of the Gasification Rule. For the reasons stated below, EPA has made a tentative determination to deny the petition for reconsideration.¹ In accordance with the regulatory requirements of 40 CFR 260.20, EPA is providing notice of and soliciting written comments on this tentative determination to deny your petition for reconsideration in the **Federal Register**.

EPA notes that we issued a letter with essentially the same substantive response as stated in this letter in November 2008.²

¹ We would also note that section 7004(a) of RCRA provides that any person may petition the Administrator for the promulgation, amendment or repeal of any regulation under the Act. However, in your petition for reconsideration, you fail to state whether the Sierra Club and LEAN are requesting whether EPA amend or repeal the Gasification Rule.

² Letter to Lisa Gollin Evans, Earthjustice, from Susan Parker Bodine, EPA Assistant Administrator,

However, the Agency at that time failed to comply with notice and comment provisions in its regulations at 40 CFR 260.20.

Accordingly, we are now giving the public the opportunity to provide comments on this tentative decision. A notice is appearing in the **Federal Register** allowing the public to respond to this decision. The comment period will be 45 days from the date of publication of the **Federal Register** notice.

Notice and Comment Issues

Your petition states as grounds for reconsideration that the rule violates the notice and comment requirements of the Administrative Procedure Act (APA) set forth at 5 U.S.C. 553. Your basis for this assertion is that EPA “relied on” a proposal suggested in a 1998 **Federal Register** notice³ and “not on the 2002 proposed rule”⁴ to formulate the Gasification Rule. You suggest that, as a result, the final rule “is not a “logical outgrowth” of the agency’s proposed rule” (Petition at pg. 7) and, therefore, “the public was denied the opportunity for notice and comment in several critical areas.” (Petition at pg. 8)

The “critical areas” to which you refer are noted below.

(1) You assert that the Gasification Rule does not contain “chemical and physical specifications of the synthesis gas fuel product that is produced by gasifying the oil-bearing hazardous secondary materials.” (Petition at pg. 8–10) In support of this assertion, you refer to statements in the preamble to the March 2002 proposal for the Gasification Rule (67 FR 13684, *et seq.*) and one statement in the January 2, 2008, final rule. The statements in the March 2002 proposal discuss various reasons why EPA thought, at the time, there should be chemical and physical specifications for synthesis gas produced and also express concerns as to what concentrations of metals actually exist in synthesis gas.

(2) You assert that the Gasification Rule “fundamentally alters the definition of gasification and entirely removes proposed conditions pertaining to operation of the gasifier,” particularly requirements for slagging inorganic feed at temperatures above 2,000 degrees C. (Petition at pg. 10)

(3) You assert that the Gasification Rule is not a logical outgrowth of the proposed rule and that it is insufficiently protective of human health and the environment because it did not “require that co-products and residues generated by the gasification system meet the Universal Treatment Standards if these materials are applied to the land,” even though the agency had proposed such conditions in March 2002. (Petition at pg. 10–12)

dated November 14, 2008. This letter is available in the docket (docket item EPA–HQ–RCRA–2008–0808–0004).

³ Notice of Data Availability (NODA), 63 FR 38139 (July 15, 1998).

⁴ “Regulation of Hazardous Oil-Bearing Secondary Materials From the Petroleum Refining Industry and Other Hazardous Secondary Materials Processed in a Gasification System To Produce Synthesis Gas,” 67 FR 13684 (March 25, 2002).

Arbitrary and Capricious Issues

You also make several arguments as to why the Gasification Rule is arbitrary and capricious. Specifically, you argue that EPA’s decision not to impose the treatment requirements, for which you claim notice and comment was inadequate, was arbitrary and capricious based on certain details regarding particular chemicals. (Petition at pg. 12–13) In addition, you argue that EPA is arbitrary and capricious for relying on the Toxicity Characteristic Leaching Procedure (TCLP) to predict leaching characteristics of gasification residues. (Petition at pg. 15)

Finally, you also argue that EPA fails to regulate facilities that burn fuel made from hazardous wastes in contravention of RCRA section 3004(q), 42 U.S.C. 6924(q). (Petition at pg. 13–15) This argument presupposes that the material fed into the gasifier is a solid and hazardous waste as opposed to a non-waste material that is being recycled.

Response

EPA does not believe that you have presented the agency with any new information that would suggest or otherwise require that we reconsider the Gasification Rule, nor have you raised any issues that have not already been raised by the comments in the rulemaking process. We also believe that the Gasification Rule meets the APA notice and comment requirements and, therefore, disagree with your view that the agency did not provide adequate notice to the public and an opportunity to comment on the provisions of the final rule.

In particular, in August 1998, EPA decided not to include gasification in the petroleum refinery exclusion when it issued the final rule “Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Land Disposal Restrictions for Newly Identified Wastes; And CERCLA Hazardous Substance Designation and Reportable Quantities,” (“Petroleum Listing Rule”), 63 FR 42110, *et seq.* The rules, issued in 1998, which were limited to the petroleum refinery industry, only require that the materials reinserted into the petroleum refining process not be speculatively accumulated nor be placed on the land prior to reuse. In the March 2002 proposal, EPA made it very clear that it was proposing to put gasification “on the same regulatory footing (*i.e.*, excluded) as other hazardous secondary materials returned to a petroleum refining process” in the 1998 rule. In March 2002, EPA proposed a definition of gasification systems to ensure that the systems were not actually waste treatment systems, but true synthesis gas production facilities. This definition included certain operating conditions for the gasifiers, including a condition that the gasifier slag organic feed materials at temperatures above 2,000 degrees C. The proposal also suggested specifications as to various contaminants that the fuels produced contained, and specifications regarding residues. *See* 67 FR at 13693–96. These last three conditions are those to which you refer in your Petition for Reconsideration, as noted above.

Importantly, the March 2002 Gasification Proposal specifically provided notice that the

provisions of the 1998 NODA were still being considered. It is significant that your petition for reconsideration ignores this discussion in the March 2002 proposal. In particular, the March 2002 proposal discusses in detail that the agency had requested comment as to whether the exclusion from the definition of solid waste issued in 1998 should apply to the recycling of oil-bearing materials into gasification systems at petroleum refineries and that the gasification and petroleum industries favored this exclusion (63 FR 13685–86, footnote 2). We also noted that reinserting secondary materials into gasification systems “is analogous” to the August 1998 exclusion for reinsertion of other petroleum residuals into the refining process. *Id.* at 13686.

In the Gasification Rule, EPA scaled back on its plans for a more “ambitious” exclusion and returned largely to its original views regarding exclusions for hazardous secondary materials returned to the petroleum refining system. *See* 73 FR 58–59. The final rule retained the conditions for speculative accumulation and land placement, and added a definition of “gasifier” to ensure that the gasification was indeed recycling of a product and not waste treatment. The final rule, however, as you noted, did not contain the slagging requirement in the definition, nor the fuel specifications or the residue requirements. These changes were the result of the agency’s deliberations on each condition that took into account all of the comments received. The preamble to the final rule discussed in detail the fact that EPA received comments ranging from demands for full hazardous waste regulation to those arguing that the agency should not be regulating gasification at all since it was an integral part of the petroleum refining process and did not constitute waste management. *See* 73 FR at 59. Among the comments were those that “expressed concern with one or more of the proposed conditions” and, even if they disagreed with imposing any conditions, provided “comments on the specific conditions proposed.”⁵ *Id.*

The variety and nature of comments submitted demonstrates that EPA had a record upon which to make a decision that was based on a wide range of opinions and information. Indeed, it is plain that EPA’s proposal succeeded in obtaining opinions and views from a wide range of interests and allowed the agency to consider the form of the final rule carefully. In fact, as noted above, EPA decided on a far less ambitious final rule for a number of reasons. We understand that you may disagree with EPA’s conclusions, but we believe that the regulatory choices made by the agency are reasonable based on the rulemaking record. In the absence of any new information, it would not be useful for the agency to revisit

⁵ Your reference to an inadequacy of notice and comment with respect to the synthesis gas specification (Petition at pg. 9) is taken out of context. You claim that we only received comments on the sufficiency of the specification but, in fact, EPA received a range of comments some of which claimed the specification was too lenient, but others argued against establishing any specification. *See* 73 FR at 64.

evidence and arguments it has already carefully considered. In our view, the notice and comment issues you have raised are actually discussions of the merits of the agency's decision with which you disagree. See 73 FR 61–67.⁶ In fact, you do not point to any information which EPA lacks to make its decision.

Finally, EPA disagrees with your legal argument that the final rule does not comport with RCRA section 3004(q). (Petition at pg. 13–15) Because EPA is providing an exclusion from the definition of solid waste for the hazardous secondary materials fed to gasifiers subject to this rule, EPA does not implicate the provisions of section 3004(q) of RCRA, 42 U.S.C. 6924(q), which requires that the hazardous secondary material first be a solid waste.

As previously stated, a notice will be published in the **Federal Register** announcing the agency's tentative decision to deny your petition for reconsideration and will provide the public a 45 day period to comment. After considering any comments received, the agency will make a final decision on the merits of your petition.

If you should have any questions, you may contact Alan Carpien, EPA's Office of General Counsel at (202) 564–5507.

Sincerely,

Mathy Stanislaus
Assistant Administrator, Office of Solid Waste and Emergency Response

Dated: January 19, 2011.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 2011–1906 Filed 1–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2010–1052; SW–FRL–9259–3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to grant a petition submitted by Gulf West Landfill, TX, LP. (Gulf West) to exclude (or delist) the landfill leachate generated by Gulf West in Anahuac, Texas 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: We will accept comments until February 28, 2011. We will stamp comments received after the close of the comment period as late. These late comments may or may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by February 14, 2011. The request must contain the information prescribed in 40 CFR 260.20(d) (hereinafter all CFR cites refer to 40 CFR unless otherwise stated).

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–RCRA–2010–1052 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.

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.

Instructions: Direct your comments to Docket ID No. EPA–R06–RCRA–2010–1052. 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 may be available either electronically in <http://www.regulations.gov> or in electronic or 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–2010–1052, 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 fifteen cents 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 technical information regarding the Republic Services, Inc./BFI Gulf West Landfill petition, contact Michelle Peace at 214–665–7430 or by e-mail at peace.michelle@epa.gov.

Your requests for a hearing must reach EPA by February 14, 2011. The request must contain the information described in § 260.20(d).

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

EPA bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This decision, if finalized, would conditionally exclude

⁶ We also disagree with your assertion that the Agency improperly relied on the use of the Toxicity Characteristic Leaching Procedure (TCLP). The TCLP is a duly promulgated regulation of EPA and has not been challenged within the appropriate statutory time period for challenging regulations. EPA's use of the TCLP in this regulation is entirely appropriate.