| Item/description of charges<br><br>Column 1 | Rate ($) Montreal to or from Lake Ontario (5 locks)<br><br>Column 2 | Rate ($) Welland Canal—Lake Ontario to or from Lake Erie (8 locks)<br><br>Column 3 |
|---|---|---|
| 3. Minimum charge per vessel per lock transited for full or partial transit of the Seaway. | 25.00 | 25.00. |
| 4. A charge per pleasure craft per lock transited for full or partial transit of the Seaway, including applicable federal taxes [2]. | 25.00 [3] | 25.00. |
| 6. Under the New Business Initiative Program, for cargo accepted as New Business, a percentage rebate on the applicable cargo charges for the approved period. | 20% | 20%. |
| 7. Under the Volume Rebate Incentive program, a retroactive percentage rebate on cargo tolls on the incremental volume calculated based on the pre-approved maximum volume. | 10% | 10%. |

[1] Or under the US GRT for ships prescribed prior to 2002.
[2] The applicable charge at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) for pleasure craft is $30 U.S. or $30 Canadian per lock. The applicable charge under item 3 at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) will be collected in U.S. dollars. The other amounts are in Canadian dollars and are for the Canadian share of tolls. The collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 998a(a)).
[3] Pleasure craft rates-subject to change in subsequent years.

**§ 402.6 [Redesignated as § 402.8]**

■ 10. Section 402.6 is redesignated as § 402.8 and amended by revising the heading and paragraphs (a) and (b) to read as follows:

**§ 402.8 Post-clearance date operational surcharges.**

(a) Subject to paragraph (b) of this section, a vessel that reports for its final transit of the Seaway from a place set out in column 1 of § 402.11 within a period after the clearance date established by the Manager and the Corporation set out in column 2 of 402.11 shall pay operational surcharges in the amount set out in column 3 of 402.11, prorated on a per-lock basis.

(b) If surcharges are postponed for operational or climatic reasons, a vessel that reports for its final transit of the Seaway from a place set out in column 1 within a period after the clearance date established by the Manager and the Corporation set out in column 2 shall pay operational surcharges in the amount set out in column 3, prorated on a per-lock basis.

* * * * *

■ 11. A new § 402.6 is added to read as follows:

**§ 402.6 Volume Rebate Incentive program**

(a) To be eligible to the Volume Rebate Incentive program:

(1) A shipper/receiver in the Great lakes/St. Lawrence Seaway System must submit to the Manager for approval, before June 30th of every season, the commodity, as defined under the Manager's commodity classification, for which a Volume Rebate is sought, the origin or destination of the commodity, and a proof of the maximum volume of the commodity the shipper/receiver has shipped over the last 5 years from that origin or to that destination.

(2) The shipper/receiver must already move the commodity, as defined under the Manager's commodity classification, through the Seaway at a minimum of 100,000 tonnes per season for the past five navigation seasons.

(b) Once approved by the Manager, the maximum volume will become the basis on which to calculate the incremental volume.

(c) The Volume Rebate Incentive program is not accessible at the end of the navigation season without a pre-approved maximum volume within the set deadline.

(d) The same cargo volume can only be used by one shipper/receiver.

(e) For the Volume Rebate to be applicable, the total volume of the commodity shipped through the Seaway must also increase during the navigation season.

Issued at Washington, DC on March 2, 2009.

Saint Lawrence Seaway Development Corporation.

**Collister Johnson, Jr.,**

*Administrator.*

[FR Doc. E9–4918 Filed 3–11–09; 8:45 am]

**BILLING CODE 4910–61–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 261

**[EPA–R06–RCRA–2008–0418; SW–FRL–8776–4]**

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** Environmental Protection Agency (EPA) is granting a petition submitted by Bayer Material Science in Baytown, Texas to exclude (or delist) the toluene diisocyanate (TDI) residues generated from its facility located in Baytown, Texas from the lists of hazardous wastes. This final rule responds to the petition submitted by Bayer Material Science to delist K027 TDI residues generated from the facility's distillation units.

After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded the petitioned waste is not hazardous waste. This exclusion applies to 9,780 cubic yards per year of the K027 residues. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when it is disposed in a Subtitle D Landfill.

**DATES:** *Effective Date:* March 12, 2009.

**ADDRESSES:** The public docket for this final rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in EPA Freedom of Information Act review room on the 7th floor from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is EPA–R06–RCRA–2008–0418. 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:** Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C),

Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

For technical information concerning this notice, contact Michelle Peace, Environmental Protection Agency Region 6, 1445 Ross Avenue, (6PD–C), Dallas, Texas 75202, at (214) 665–7430, or *peace.michelle@epa.gov.*

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



## I. Overview Information

### *A. What action is EPA finalizing?*

After evaluating the petition, EPA proposed, on May 19, 2008, to exclude the TDI residues from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 70 FR 41358). EPA is finalizing the decision to grant Bayer Material Science's delisting petition to have its TDI residues managed and disposed as non-hazardous waste provided certain verification and monitoring conditions are met.

### *B. Why is EPA approving this action?*

Bayer Material Science's petition requests a delisting from the K027 waste listing under 40 CFR 260.20 and 260.22. Bayer Material Science does not believe that the petitioned waste meets the criteria for which EPA listed it. Bayer Material Science 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. 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 as originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's final decision to delist waste from Bayer Material Science's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Baytown, Texas facility.

### *C. What are the limits of this exclusion?*

This exclusion applies to the waste described in the petition only if the requirements described in 40 CFR Part 261, Appendix IX, Table 2 and the conditions contained herein are satisfied.

### *D. How will Bayer Material Science manage the waste, if it is delisted?*

The TDI residues from Bayer Material Science will be disposed of in a RCRA Subtitle D landfill.

### *E. When is the final delisting exclusion effective?*

This rule is effective March 12, 2009. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA, 42 U.S.C. 6930(b)(1), allows rules to become effective 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. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some states (for example, Louisiana, Oklahoma, Georgia, and 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 Bayer Material Science transports the petitioned waste to or manages the waste in any state with delisting authorization, Bayer Material Science must obtain delisting authorization from that state before it can manage the waste as non-hazardous 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, certain wastes the generator believes should not be considered hazardous under RCRA.

### *B. What regulations allow facilities to delist a waste?*

Under §§ 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 Bayer Material Science petition EPA to delist?*

On September 2, 2004, Bayer petitioned EPA to exclude from the lists of hazardous waste contained in § 261.32, toluene diisocyanate (TDI) residues generated from its facility located in Baytown, Texas. The waste falls under the classification of a listed waste under § 261.30. The waste is listed as K027 hazardous wastes. These are centrifuge and distillation residues from TDI production.

*B. How much waste did Bayer Material Science propose to delist?*

Specifically, in its petition, Bayer Material Science requested that EPA grant a conditional exclusion for 9,780 cubic yards per year of TDI residues resulting from the TDI production processes at its facility.

*C. How did Bayer Material Science sample and analyze the waste data in this petition?*

To support its petition, Bayer Material Science submitted:

- Analytical results of the toxicity characteristic leaching procedure (TCLP) and total constituent analysis for volatile and semivolatile organics, pesticides, herbicides, dioxins/furans, PCBs and metals for five TDI samples;
- Analytical results from multiple pH leaching of metals; and
- A description of the TDI production process.

**IV. Public Comments Received on the Proposed Exclusion**

*A. Who submitted comments on the proposed rule?*

There was one set of comments submitted regarding this petition. The commenter was an industry consultant in the field of hazardous waste recycling.

*B. What were the comments and what are EPA's responses to them?*

*Comment 1:* Is EPA aware of the fact that mishandling of TDI waste bottoms at a cement plant permitted to burn hazardous waste resulted in a major explosion and fire? Please see *http://www.ntsb.gov/Publictn/2001/HZM0101.pdf* for the DOT report on this incident.

*Response 1:* The EPA reviewer was not aware of the incident at the Essroc Cement Corporation in 1999. The DOT report identified has been reviewed. As a result, EPA will require Bayer to employ additional management requirements to ensure that the residues are offloaded safely and opportunities for chemical self-reaction and expansion are minimized.

*Comment 2:* Did EPA require the petitioner to analyze samples of the waste for phosgene? Is EPA aware of how difficult it is to completely remove this highly toxic compound from these bottoms?

*Response 2:* No, EPA did not require the samples to be analyzed for phosgene. Phosgene is not included in Appendix 9 of Part 264. EPA is aware that complete removal of phosgene is extremely difficult. However, Bayer does use a process to remove TDI, phosgene, and orthodichlorbenzene from the residuals. Review of compliance records did not indicate issues that would suggest unsafe handling of this highly toxic compound has occurred at the Bayer facility.

*Comment 3:* Is EPA aware of the fact that TDI bottoms are often water reactive, potentially generating heat and gas when in contact with water?

*Response 3:* Yes, EPA is aware that TDI is water reactive and has a potential to generate heat and gas when it contacts water. However, EPA believes that the amount of heat generated from the TDI residuals will be minimal due to the small amount of TDI remaining in the residuals. Bayer uses an additional reaction step to ensure that there is no free TDI remaining in the residues, which further alleviates the situation.

*Comment 4:* Did EPA require the petitioner to submit tests demonstrating that there was no TDI present in the waste? Is EPA aware of the toxicity and reactivity of TDI relative to this issue?

*Response 4:* The concentrations of leachable TDI in the waste samples analyzed were reported as non-detect at concentrations less than 0.039 mg/l. As a result of the comment made EPA has added TDI to the list of constituents, Bayer must monitor for and set the limit of TDI as 0.039 mg/l.

*Comment 5.* Did EPA require the petitioner to test the material for residual orthodichlorobenzene and evaluate the potential environmental problems from releasing such a solvent outside of hazardous waste regulations?

*Response 5:* Yes, the residuals were tested for orthodichlorobenzene. The potential for release was modeled using the DRAS software. The total constituent analysis detected this waste in concentration of 10 mg/kg; the leachable concentration was less than 0.001 mg/l. The delisting limit is 9.72 mg/l. This limit will be added to the list of constituents Bayer must monitor for the TDI residue prior to disposal.

*Comment 6.* Is EPA aware of the fact that TDI itself can dimerize leading to the release of $CO_2$ and potential build up of pressure in confined tanks, especially upon heating? Given the history of the very large explosion at the Essroc cement plant in Indiana that resulted from mishandling this hazardous waste the commenter believes that it is imperative that EPA make absolutely certain that the material proposed for delisting does not have any of the hazardous characteristics (not EPA definition hazardous—but real hazardous in a real world setting) that resulted in the massive explosion and fire at the Indiana plant.

*Response 6:* The disposal scenario for the Bayer TDI residue is not associated with combustion as detailed in the Essroc Cement incident because this TDI residue is only delisted if and when it meets the delisting limits and is disposed in a Subtitle D landfill. In light of the information presented by this commenter, EPA has required that prior to its disposal, Bayer handle the material safely to prevent its contact with water and to continue to minimize the possibility of significant amounts of free TDI in the residue. As stated above, Bayer employs an additional reaction step to ensure that free TDI, phosgene, and ortho-dichlorobenzene are minimized. Therefore, the Agency does not believe that the allowable concentrations of TDI remaining in the waste will pose a significant risk when disposed in a Subtitle D landfill.

## V. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this 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 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.

### Lists of Subjects in 40 CFR Part 261

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

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

Dated: January 20, 2009.

**Carl E. Edlund,**

*Director, Multimedia Planning and Permitting Division.*

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

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

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

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

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES

| Facility | Address | Waste description |
|---|---|---|
| * | * | * * * * * |
| Bayer Material Science LLC ..... | Baytown, TX ..... | Toluene Diisocyanate (TDI) Residue (EPA Hazardous Waste No. K027) generated at a maximum rate of 9,780 cubic yards per calendar year after March 12, 2009.<br>For the exclusion to be valid, Bayer must implement a verification testing program that meets the following Paragraphs:<br>(1) Delisting Levels:<br>All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph.<br>TDI Residue Leachable Concentrations (mg/l): Arsenic—0.10, Barium—36.0; Chloromethane—6.06; Chromium—2.27; Cobalt—13.6; Copper—25.9; Cyanide—3.08; Dichlorophenoxyacetic acid—1.08; Diethyl phthalate—1000.0; Endrin—0.02; Lead—0.702; Nickel—13.5; ortho-dichlorobenzene—9.72; Selenium—0.89; Tin—22.5; Vanadium—0.976; Zinc—197.0; 2,4-Toluenediamine—0.0459; Toluene Diisocyanate—0.039.<br>(2) Waste Holding and Handling:<br>(A) Bayer must manage the TDI residue in a manner to ensure that the residues are offloaded safely and opportunities for chemical self-reaction and expansion are minimized. The TDI residue must be handled to ensure that contact with water is minimized.<br>(B) Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) for the TDI residue has occurred for two consecutive quarterly sampling events and the reports have been approved by EPA. |

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

| Facility | Address | Waste description |
|---|---|---|
| | | (C) If constituent levels in any sample taken by Bayer exceed any of the delisting levels set in paragraph (1) for the TDI residue, Bayer must do the following:<br>(i) notify EPA in accordance with paragraph (6) and<br>(ii) manage and dispose the TDI residue as hazardous waste generated under Subtitle C of RCRA.<br>(3) Testing Requirements:<br>Upon this exclusion becoming final, Bayer must perform quarterly analytical testing by sampling and analyzing the TDI residue as follows:<br>(A) Quarterly Testing:<br>(i) Collect two representative composite samples of the TDI residue at quarterly intervals after EPA grants the final exclusion. The first composite samples may be taken at any time after EPA grants the final approval. Sampling should be performed in accordance with the sampling plan approved by EPA in support of the exclusion.<br>(ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) for the TDI residue must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements.<br>(iii) Within thirty (30) days after taking its first quarterly sample, Bayer will report its first quarterly analytical test data to EPA. If levels of constituents measured in the samples of the TDI residue do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, Bayer can manage and dispose the non-hazardous TDI residue according to all applicable solid waste regulations.<br>(B) Annual Testing:<br>(i) If Bayer completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), Bayer can begin annual testing as follows: Bayer must test two representative composite samples of the TDI residue for all constituents listed in paragraph (1) at least once per calendar year.<br>(ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the Bayer spent carbon are representative for all constituents listed in paragraph (1).<br>(iii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken.<br>(iv) The annual testing report must include the total amount of waste in cubic yards disposed during the calendar year.<br>(4) Changes in Operating Conditions:<br>If Bayer significantly changes the process described in its petition or starts any process that generates the waste that may or could affect the composition or type of waste generated (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing and it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA.<br>Bayer must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream.<br>(5) Data Submittals:<br>Bayer must submit the information described below. If Bayer fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). Bayer must:<br>(A) Submit the data obtained through paragraph 3 to the Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, Texas 75202, within the time specified. All supporting data can be submitted on CD–ROM or some comparable electronic media.<br>(B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years.<br>(C) Furnish these records and data when either EPA or the State of Texas requests them for inspection. |

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

| Facility | Address | Waste description |
|---|---|---|
| | | (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted. ''Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.<br>As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.<br>If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.''<br>(6) Reopener:<br>(A) If, anytime after disposal of the delisted waste Bayer 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 a level higher than the delisting level allowed by EPA in granting the petition, then the facility must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data.<br>(B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph 1, Bayer must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data.<br>(C) If Bayer fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, EPA will make a preliminary determination as to whether the reported information requires action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.<br>(D) If EPA determines that the reported information requires action, EPA will notify the facility in writing of the actions it 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 explaining why the proposed EPA action is not necessary. The facility shall have 10 days from the date of EPA's notice to present such information.<br>(E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), EPA will issue a final written determination describing the actions that are necessary to protect human health and/or the environment. Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise.<br>(7) Notification Requirements<br>Bayer 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.<br>(A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities.<br>(B) Update the one-time written notification if it ships the delisted waste into a different disposal facility.<br>(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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