ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–8001–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Amendment

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Final rule; amendment.

SUMMARY: The EPA (also, ''the Agency'' or ''we'') is amending an existing exclusion to reflect changes in ownership and name for the Vulcan Materials Company (Vulcan), Port Edwards, Wisconsin. Today's amendment documents these changes.

DATES: This amendment is effective on November 25, 2005.

FOR FURTHER INFORMATION CONTACT: Todd Ramaly by phone at (312) 353–9317, by mail at 77 W. Jackson Blvd., Mail Code DW–8J, Chicago, Illinois 60604, or by e-mail at <*ramaly.todd@epa.gov*>.

SUPPLEMENTARY INFORMATION: In this document EPA is amending appendix IX to part 261 to reflect a change in the status of a particular exclusion. The petition process under 40 Code of Federal Regulations (40 CFR) 260.20 and 260.22 allows facilities to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste. Based on waste-specific information provided by the petitioner, EPA granted an exclusion for treated K071, brine purification muds, to Vulcan Materials Company, Port Edwards, Wisconsin (51 FR 41486, November 17, 1986).

On July 12, 2005, the Agency was notified by Vulcan that ownership of the facility in Port Edwards, Wisconsin had been transferred to ERCO Worldwide (USA) Inc. (ERCO). On July 18, 2005, ERCO certified it will meet all terms and conditions set forth in the delisting and will not change the characteristics of the waste or the K071 treatment process at the Port Edwards facility without prior Agency approval. Today's notice documents this change by updating appendix IX to incorporate this change in name.

These changes to appendix IX of part 261 are effective November 25, 2005. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of the Resource Conservation and Recovery Act (RCRA) to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. As described above, the facility has certified that it is prepared to comply. Therefore, a six-month delay in the effective date is not necessary in this case. This provides the basis for making this amendment effective immediately upon publication under the Administrative Procedures Act pursuant to 5 United States Code (U.S.C.) 5531(d).

List of Subjects in 40 CFR Part 261

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

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

Dated: November 15, 2005.

Margaret M. Guerriero,

Director, Waste, Pesticides and Toxics 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. Table 2 of Appendix IX of part 261 is amended by removing the ''Vulcan Materials Company'' entry and adding a new entry ''ERCO Worldwide (USA) Inc. (formerly Vulcan Materials Company)'' in alphabetical order by facility to read as follows:

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

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* *	*	* * * * *
ERCO Worldwide (USA) Inc. (formerly Vulcan Materials Company).	Port Edwards, Wisconsin.	Brine purification muds (EPA Hazardous Waste No. K071) generated from the mercury cell process in chlorine production, where separately purified brine is not used after November 17, 1986. To assure that mercury levels in this waste are maintained at acceptable levels, the following conditions apply to this exclusion: Each batch of treated brine clarifier muds and saturator insolubles must be tested (by the extraction procedure) prior to disposal and the leachate concentration of mercury must be less than or equal to 0.0129 ppm. If the waste does not meet this requirement, then it must be re-treated or disposed of as hazardous. This exclusion does not apply to wastes for which either of these conditions is not satisfied.
* *	*	* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–8001–8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA (also, ''the Agency'' or ''we'' in this preamble) is taking direct final action in granting a petition to exclude (or ''delist'') up to 3,000 cubic yards of wastewater treatment sludges generated annually from the chemical conversion coating of aluminum generated by the General Motors Corporation (GM) Janesville Truck Assembly Plant (JTAP) in

Janesville, Wisconsin from the list of hazardous wastes.

Today's action conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste. The rule also imposes testing conditions for waste generated in the future to ensure that this waste continues to qualify for delisting.

DATES: This rule is effective on January 24, 2006 without further notice unless we receive adverse comment by December 27, 2005. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Please send two copies of your comments to Todd Ramaly, Waste Management Branch (DW–8J), Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, Illinois 60604. We will stamp comments postmarked after December 27, 2005 as ''late.'' These ''late'' comments may not be considered in formulating a final decision.

FOR FURTHER INFORMATION CONTACT: Todd Ramaly at (312) 353–9317. The RCRA regulatory docket for this final rule, number R5–GMJA–05, is located at the EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from the regulatory docket at $0.15 per page. Contact Todd Ramaly for appointments at the address or phone number above, or by email at *ramaly.todd@epa.gov*.

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

I. Background

A. What is a delisting petition?

A delisting petition is a request from a generator to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in Title 40 Code of Federal Regulations (40 CFR) 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See 40 CFR 260.22, 42 United States Code (U.S.C.) 6921(f) and the background documents for a listed waste.)

Generators remain obligated under RCRA to confirm that their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the wastes and to ensure that future generated wastes meet the conditions set.

B. What regulations allow a waste to be delisted?

Under 40 CFR 260.20, 260.22, and 42 U.S.C. 6921(f), facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273 of 40 CFR. 40 CFR 260.22 provides a generator the opportunity to petition the Administrator to exclude a waste from the lists of hazardous wastes on a ''generator specific'' basis.

II. GM's Petition To Delist Waste From Janesville Truck Assembly Plant

A. What waste did JTAP petition to delist?

GM petitioned to exclude from the list of hazardous wastes contained in 40 CFR 261.31 wastewater treatment sludges resulting from zinc phosphating (a chemical conversion coating process) on truck bodies which have aluminum components.

B. What information must the generator supply?

A generator must provide sufficient information to allow the EPA to determine that the waste does not meet any of the criteria for which it was listed as a hazardous waste, and that there are no other factors, including additional constituents, that could cause the waste to be hazardous. To support its petition, GM submitted descriptions and schematic diagrams of its manufacturing processes, historical accounts of waste generation, and the results of chemical analysis of the petitioned waste.

III. EPA's Evaluation

EPA considered the original listing criteria and evaluated additional factors required by the Hazardous and Solid Wastes Amendments of 1984 (HSWA) 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 hazardous constituents to migrate and to bioaccumulate; (5) its persistence in the environment 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.

Consistent with previous delistings, EPA identified plausible exposure routes (ground water, surface water, air) for hazardous constituents present in the petitioned waste based on improper management of a Subtitle D landfill. To evaluate the waste, we used the Delisting Risk Assessment Software program (DRAS), a Windows based software tool, to estimate the potential release of hazardous constituents from the waste and to predict the risk associated with those releases.

IV. Public Comments Received on the Proposed Exclusion

A. Who submitted comments on the proposed rule?

The EPA received public comments on the proposed rule from the Alliance of Automobile Manufacturers and GM. Both were generally supportive of the delisting decision with some additional specific comments.

B. Comments received and responses from EPA

(1) *Comment:* EPA should revise the F019 listing via federal rule change to specify that wastewater treatment sludge from chemical conversion coating processes on aluminum where hexavalent chromium and cyanide are not used should not be F019.

EPA Response: The Agency is now considering revising the F019 listing. EPA is examining the data collected as a result of this project, as well as past projects, as a basis for a possible revision to the F019 listing.

(2) *Comment:* Total constituent concentrations should not be used by EPA to set delisting levels for this waste because total concentrations do not indicate the waste's potential to leach and have no scientific correlation with environmental impacts.

EPA Response: EPA evaluates the potential environmental impact of plausible mismanagement of the waste in a solid waste landfill. EPA evaluates the potential off-site migration of waste particles and volatile organic compounds via air and surface water pathways as a result of inadequate cover and runoff control. EPA believes that inadequate daily cover and rainwater runoff control are plausible mismanagement scenarios for a solid waste landfill. Furthermore, since the source of this potential off-site migration is newly deposited waste at the surface of the landfill, total concentrations are appropriate inputs for fate and transport modeling.

(3) *Comment:* It is unclear why a requirement for total chromium has been included as it has not been a constituent requiring analysis for previously granted petitions for this waste.

EPA Response: Total chromium has been included as a constituent requiring analysis for previously granted petitions for this waste (See 69 FR 60557, October 12, 2004). Nevertheless, EPA reevaluated total chromium as a result of the comment and examined the results of the DRAS model version used in support of the proposal. Conservatively assuming that one seventh of the chromium is present as hexavalent chromium, a known human carcinogen by inhalation, the limiting pathway determining the allowable level is inhalation of waste particles emitted from the landfill surface. Two changes were made to the calculation as a result of the reevaluation. An estimate for particle emissions resulting from vehicles driving over the exposed waste contained assumptions that were discovered to be unreasonably conservative for this waste. The number of vehicles driven over the waste was conservatively based on a historical exclusion with a much higher annual waste volume. EPA used a survey of industrial subtitle D facilities and the annual volume of waste requested by GM to derive more appropriate assumptions. It was also discovered that the DRAS program was reducing the uptake of particles inhaled by the receptor to account for an absorption efficiency, when, according to Agency toxicologists, this factor is no longer needed when using the most recent reference values presented in EPA's Integrated Risk Information System (IRIS). A new allowable level for total chromium of 5,300 milligrams per kilogram (mg/kg) was derived using the updated methods, an increase from the proposed value of 3,200 mg/kg. The calculation of changes is documented in the *Docket Report Reevaluating the Proposed Delisting Level for Chromium.*

(4) *Comment:* Quarterly verification sampling is not justified. The sampling frequency should be reduced to annually.

EPA Response: Verification data submitted in conjunction with past delistings of this type of waste have shown significant variation on a quarterly basis over longer periods of time. Annual sampling would not detect such variations. Once enough verification data are collected to support a statistical analysis, a change in the frequency of verification sampling and/or sampling parameters may be considered.

V. Final Rule Granting This Petition

A. What decision is EPA finalizing?

Today the EPA is finalizing an exclusion for up to 3,000 cubic yards of wastewater treatment sludge generated annually at the GM JTAP facility in Janesville, Wisconsin.

GM petitioned EPA to exclude, or delist, the wastewater treatment sludge because GM believed that the petitioned waste does not meet the criteria for which it was listed and that there are no additional constituents or factors which could cause the waste to be hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by HSWA. See § 222 of HSWA, 42 United States Code (U.S.C.) 6921(f), and 40 CFR 260.22(d)(2)–(4).

On April 25, 2005 EPA proposed to exclude or delist the wastewater treatment sludge generated at GM's Janesville facility from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (see 70 FR 21165). EPA considered all comments received, and for reasons stated in both the proposal and this document, we believe that the wastewater treatment sludge from GM's Janesville facility should be excluded from hazardous waste control.

However, because the response to comments resulted in a change in the methodology used to evaluate the petitioned waste and a change in an allowable level under verification sampling, EPA is delaying the effectiveness of the rule to allow for the potential submission of adverse comments, even though the changes are considered noncontroversial and adverse comment is not anticipated. EPA believes the changes are not controversial because the change to the particulate inhalation exposure assessment is really a correction given the way data is developed in IRIS and the assumptions made to the particle emission scenario are more appropriate for this waste.

B. When is the delisting effective?

This rule is effective on January 24, 2006 without further notice unless we receive adverse comment by December 27, 2005. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. If adverse comments are received, they will be addressed as part of a future rulemaking.

HSWA amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, can be made effective on January 24, 2006 (unless we receive adverse comment) under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

C. What are the terms of this exclusion?

JTAP must dispose of the waste in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial solid waste. JTAP must obtain and analyze on a quarterly basis a representative sample of the waste in accordance with the waste analysis plan. JTAP must verify that the concentrations of the constituents of concern do not exceed the allowable levels set forth in this exclusion.

The list of constituents for verification is a subset of those initially tested for and is based on the occurrence of constituents at GM–JTAP and at the majority of auto-assembly facilities that already have exclusions granted for F019 (since GM–JTAP certified its process was consistent with the others). This exclusion applies only to a maximum annual volume of 3,000 cubic yards and is effective only if all conditions contained in this rule are satisfied.

D. How does this action affect the states?

Today's exclusion is being issued under the Federal RCRA delisting program. Therefore, only states subject to Federal RCRA delisting provisions would be affected. This exclusion is not effective in states which have received authorization to make their own delisting decisions. Also, the exclusion may not be effective in states having a dual system that includes Federal RCRA requirements and their own requirements. EPA allows states to impose their own 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. Because a dual system (that is, both Federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the state regulatory authority to establish the status of their wastes under the state law. If a participating facility transports the petitioned waste to or manages the waste in any state with delisting authorization, it must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

VI. Regulatory Impact

Under Executive Order 12866 (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. 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, or communities of tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule 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 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

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 (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. 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.*).

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.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

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

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

Dated: November 16, 2005.

Margaret M. Guerriero,

Director, Waste, Pesticides and Toxics Division.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

■ 2. Table 1 of appendix IX of part 261 is amended by adding a new facility in alphabetical order 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
*	*	* * * * *
General Motors Corporation, Janesville Truck Assembly Plant.	Janesville, Wisconsin ..	Wastewater treatment sludge, F019, that is generated at the General Motors Corporation (GM) Janesville Truck Assembly Plant (JTAP) at a maximum annual rate of 3,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of January 24, 2006. 1. Delisting Levels: (A) The concentrations in a TCLP extract of the waste measured in any sample may not exceed the following levels (mg/L): antimony—0.49; arsenic—0.22; cadmium—0.36; chromium—3.7; lead—5; nickel—68; selenium—1; thallium—0.21; tin—540; zinc—670; p-cresol—8.5; and formaldehyde—43. (B) The total concentrations measured in any sample may not exceed the following levels (mg/kg): chromium—5,300; mercury—7; and formaldehyde—540. 2. Quarterly Verification Testing: To verify that the waste does not exceed the specified delisting levels, GM must collect and analyze one representative sample of JTAP's sludge on a quarterly basis.

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

Facility	Address	Waste description
		3. Changes in Operating Conditions: GM 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 at JTAP significantly change. GM must handle wastes generated at JTAP after the process change as hazardous until it has demonstrated that the waste continues to meet the delisting levels and that no new hazardous constituents listed in appendix VIII of part 261 have been introduced and GM has received written approval from EPA. 4. Data Submittals: GM must submit the data obtained through verification testing at JTAP or as required by other conditions of this rule to EPA Region 5, Waste Management Branch (DW–8J), 77 W. Jackson Blvd., Chicago, IL 60604. The quarterly verification data and certification of proper disposal must be submitted annually upon the anniversary of the effective date of this exclusion. GM must compile, summarize, and maintain at JTAP records of operating conditions and analytical data for a minimum of five years. GM 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). 5. Reopener Language—(a) If, anytime after disposal of the delisted waste, GM 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 at JTAP indicating that any constituent is at a level in the leachate higher than the specified delisting level, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration in paragraph (e), then GM 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 GM 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 GM with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. GM shall have 30 days from the date of the Regional Administrator's notice to present the information. (d) If after 30 days GM presents no further 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. (e) Maximum Allowable Groundwater Concentrations (mg/L):; antimony—0.006; arsenic—0.005; cadmium—0.005; chromium—0.1; lead—0.015; nickel—0.750; selenium—0.050; tin—23; zinc—11; p-Cresol—0.190; and formaldehyde—0.950.
*	*	* * * * *

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 403

[CMS–1428–F3]

RIN–0938–AM80

Medicare Program; Changes to the Hospital Inpatient Prospective Payment System and Fiscal Year 2005 Rates: Fire Safety Requirements for Religious Non-Medical Health Care Institutions: Correction To Reinstate Requirements for Written Fire Control Plans and Maintenance of Documentation

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

ACTION: Final rule; correcting amendment.

SUMMARY: In the August 11, 2004 issue of the **Federal Register** (69 FR 48916), we published the Hospital Inpatient Prospective Payment System final rule. This correcting amendment reinstates paragraphs (a)(2) and (a)(3) in 42 CFR 403.744 (Condition of participation: Life safety from fire), which were accidentally deleted by that rule. Those paragraphs relate to requirements for fire control plans and maintenance of documentation in religious non-medical health care institutions. The effective date was October 1, 2004.

EFFECTIVE DATE: This correcting amendment is effective November 25, 2005.

FOR FURTHER INFORMATION CONTACT: Janice Graham, (410) 786–8020; Danielle