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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–8012–4]

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

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a petition submitted by Saturn Corporation in Spring Hill, Tennessee (Saturn) to exclude (or ''delist'') a certain hazardous waste from the lists of hazardous wastes. Saturn generates the petitioned waste, the wastewater treatment plant (WWTP) sludge, by treating wastewater from Saturn's chemical conversion coating of aluminum. The waste so generated is a wastewater treatment sludge that meets the definition of F019. Saturn petitioned EPA to grant a ''generator-specific'' delisting because Saturn believes that its F019 waste does not meet the criteria for which this type of waste was listed. EPA reviewed all of the waste-specific information provided by Saturn, performed calculations, and determined that the waste could be disposed in a landfill without harming human health and the environment. This action responds to Saturn's petition to delist this waste on a generator-specific basis from the hazardous waste lists, and to public comments on the proposed rule. EPA took into account the public comments on the proposed rule before setting the final delisting levels. Final delisting levels in the waste leachate are based on the EPA, Region 6's Delisting Risk Assessment Software. In accordance with the conditions specified in this final rule, Saturn's petitioned waste is excluded from the requirements of hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA).

DATES: Effective December 23, 2005.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from this regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general and technical information concerning this final rule, please contact Kris Lippert, RCRA Enforcement and Compliance Branch (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8605, or call, toll free (800) 241–1754. Questions may also be e-mailed to Ms. Lippert at *Lippert.kristin@epa.gov.*

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background

A. What Is a Delisting Petition?

A delisting petition is a request made by a hazardous waste generator to exclude one or more of his/her wastes from the lists of RCRA-regulated hazardous wastes in §§ 261.31, 261.32, and 261.33 of Title 40 of the Code of Federal Regulations (40 CFR 261.31, 261.32, and 261.33). The regulatory requirements for a delisting petition are in 40 CFR 260.20 and 260.22. EPA, Region 6 has prepared a guidance manual, Region 6 Guidance Manual for the Petitioner, which is recommended by EPA Headquarters in Washington, DC and all EPA Regions, and can be down-loaded from Region 6's Web Site at the following URL address: *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dlistpdf.htm.*

B. What Laws and Regulations Give EPA the Authority To Delist Wastes?

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11(a)(2) or (a)(3). Discarded commercial chemical product wastes which meet the listing criteria are listed in § 261.33(e) and (f).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. Second, 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, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are ''delisted'' (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on the hazardous waste characteristics (i.e., characteristics which may be promulgated subsequent to a delisting decision.).

In addition, residues from the treatment, storage, or disposal of listed

hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively.

Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the ''mixture/derived-from'' rules and remanded them to the EPA on procedural grounds. Shell Oil Co. v. EPA, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278), and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. The mixture and derived-from rules are codified in 40 CFR 261.3 (b)(2) and (c)(2)(i). EPA plans to address waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated. On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with §§ 260.20 and 260.22 by generators within their Regions (National Delegation of Authority 8–19) in States not yet authorized to administer a delisting program in lieu of the Federal program. On March 11, 1996, the Regional Administrator of EPA, Region 4, redelegated delisting authority to the Director of the Waste Management Division (Regional Delegation of Authority 8–19).

C. What Is the History of This Rulemaking?

Saturn manufactures Saturn automobiles, and is seeking a delisting for the WWTP sludge generated from conversion coating on aluminum. The WWTP sludge does not meet a hazardous waste listing definition when steel-only automobile bodies are manufactured. However, the wastewater treatment sludge generated at automobile manufacturing plants where aluminum is used as a component of automobile bodies, meets the listing definition F019 in § 261.31.

Saturn petitioned EPA, Region 4, on December 13, 2004, to exclude this F019 waste on a generator-specific basis from the lists of hazardous wastes in 40 CFR part 261, subpart D.

The hazardous constituents of concern for which F019 was listed are hexavalent chromium and cyanide (complexed). Saturn petitioned the EPA to exclude its F019 waste because Saturn does not use either of these constituents in the manufacturing process. Therefore, Saturn does not believe that the waste meets the criteria of the listing. Saturn claims that its F019 waste will not be hazardous because the constituents of concern for which F019 is listed will be present only at low concentrations and will not leach out of the waste at significant concentrations. Saturn also believes that this waste will not be hazardous for any other reason (i.e., there will be no additional constituents or factors that 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 the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). As a result of the EPA's evaluation of Saturn's petition, the Agency is granting a delisting to Saturn with conditions described below, on December 23, 2005. Today's rulemaking addresses public comments received on the proposed rule and finalizes the proposed decision to grant Saturn's petition for delisting.

II. Summary of Delisting Petition Submitted by Saturn Corporation, Spring Hill, Tennessee (Saturn)

A. What Waste Did Saturn Petition EPA to Delist?

Saturn petitioned EPA, Region 4, on December 13, 2004, to exclude a maximum annual weight of 3,000 cubic yards of its F019 waste, on a generator-specific basis, from the lists of hazardous wastes in 40 CFR part 261, subpart D. Saturn manufactures Saturn automobiles, and is seeking a delisting for the WWTP sludge that will be generated by treating wastewater from Saturn's chemical conversion coating of aluminum.

B. What Information Did Saturn Submit To Support This Petition?

In support of its petition, also described in the proposed rule on August 31, 2005 (see 70 FR 51696–51705, August 31, 2005), Saturn has submitted laboratory analysis of its WWTP sludge. The laboratory analysis submitted includes the following: (1) Analysis performed on samples of its dewatered WWTP sludge taken and analyzed by EPA (2) analysis of the dewatered WWTP sludge performed by Saturn on split samples provided to the facility by EPA and (3) analysis of the dewatered WWTP sludge performed by Saturn on samples taken by the facility.

The analysis performed by Saturn on the split samples of the WWTP sludge provided to the facility by EPA was submitted for laboratory testing for the entire 40 CFR part 264 Appendix IX constituent list (including volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), metals, and PCBs) and hexavalent chromium, TCLP metals, cyanide, and total solids. Based on the laboratory data, data validation results, and Saturn's communications with the EPA, Saturn prepared a Sampling and Analysis Plan which was submitted to the EPA and approved.

In accordance with the approved Sampling and Analysis Plan and to support its petition, Saturn collected additional WWTP sludge samples for laboratory testing. The samples were collected from six roll-off containers representing waste generated at Saturn over a seven-week period. The samples were analyzed as follows: (1) Samples for VOC analyses (total and TCLP) were collected from six roll-off containers. The first sample was analyzed for the 40 CFR part 264 Appendix IX VOC constituent list (total and TCLP). VOCs (total and TCLP) detected in the first sample were tested in the samples collected from the second through the sixth roll-off containers. (2) Samples from the six roll-off containers were analyzed for total and TCLP bis(2-ethylhexyl)phthalate. (3) Samples from the six roll-off containers were analyzed for total and TCLP metals (antimony, arsenic, barium, beryllium, chromium, cobalt, copper, lead, mercury, nickel, thallium, tin, vanadium, and zinc) and for hexavalent chromium. (4) Samples from the six roll-off containers were analyzed for corrosivity, total and TCLP cyanide, ignitability, sulfide, oil and grease, and total solids. The Toxicity Characteristic Leaching Procedure (TCLP), SW–846 Method 1311, was used as the extraction procedure for testing the volatile and semi-volatile constituents of concerns. Leachable metals were tested using the Extraction Procedure for Oily Wastes (OWEP), SW–846 Method 1330A. The pH of each sample was measured using SW–846 Method 9045C, and a determination was made that the waste was not ignitable, corrosive, or reactive (see 40 CFR 261.21–261.23). Oil and grease was analyzed using SW–846 Method 9071B, total sulfide was tested using SW–846 Method 9034, and total cyanide was performed using Method SW–846 Method 9012A.

Composite and grab samples of dewatered WWTP sludge were collected

in accordance with the approved Sampling and Analysis Plan on August 19, 2004 and submitted for laboratory testing.

Upon receipt of the laboratory testing results, the data was validated by a third party. The maximum values of constituents detected in any sample of the WWTP sludge or in a TCLP extract of the WWTP sludge are summarized in Table 1.

TABLE 1.—MAXIMUM TOTAL AND TCLP CONCENTRATIONS IN THE DEWATERED WWTP SLUDGE AND CORRESPONDING DELISTING LIMITS

Constituent	Maximum concentration observed[1]		Maximum allowable delisting level (3,000 cubic yards)		Maximum allowable groundwater concentration (μg/l)
	Total (mg/kg)	TCLP (mg/l)	Total (mg/kg)	TCLP (mg/l)	
VOLATILE ORGANIC COMPOUNDS					
Acetone	< 7.5	1.7	141,000,000	171	3,750
SEMI-VOLATILE ORGANIC COMPOUNDS					
Bis(2-ethylhexyl)phthalate	< 25	< 0.0050	51,400	0.146	1.50
METALS					
Antimony	56	< 0.05 J	374,000	0.494	6.0
Arsenic	< 50	< 0.02	312,000	0.224	5.0
Barium	94	< 0.35	10,400,000	100	2,000
Beryllium	3.1	< 0.029	16,200	0.998	4.0
Chromium	1,310 J	< 0.16	10,300,000	5.0	100
Chromium (hexavalent)	< 4.2	NT	3,320	3.71	NA
Cobalt	3.6	< 0.038	84,400,000	NA	2,250
Copper	91	0.25	56,300,000	21,800	1,300
Lead	108	< 0.19	500,000	5.0	15.0
Mercury	0.47	< 0.0006	1.82	0.195	2.00
Nickel	4,400	24.2 J	2,430,000	67.8	750
Thallium	< 20	< 0.026	2,140	0.211	2.00
Tin	< 100	3.18	844,000,000	NA	22,500
Vanadium	9.9 J	< 0.27	9,850,000	50.6	263
Zinc	17,200	5.72	17,200,000	673	11,300
Cyanide	0.52	< 0.05	1,180,000	8.63	200

[1] These levels represent the highest concentration of each constituent found in any one sample and do not necessarily represent the specific levels found in one sample.
< Not detected at the specified concentration.
NA Not applicable.
NT Not tested.
J Estimated Concentration.

III. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

For reasons stated in both the proposal and this final rule, EPA believes that Saturn's petitioned waste should be excluded from hazardous waste control. EPA, therefore, is granting a final generator-specific exclusion to Saturn, of Spring Hill, Tennessee, for a maximum annual generation rate of 3,000 cubic yards of the waste described in its petition as EPA Hazardous Waste Number F019. This waste is required to undergo verification testing before being considered as excluded from Subtitle C regulation. Requirements for waste to be land disposed have been included in this exclusion. The exclusion applies only to the waste as described in Saturn's petition, dated December 2004.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of the delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation. See 40 CFR part 260, appendix I. Nonhazardous waste management is subject to all applicable Federal, state, and local regulations.

B. What Are the Terms of This Exclusion?

In the rule proposed on August 31, 2005 (see 70 FR 51696–51705, August 31, 2005), delisting levels were calculated using the Delisting Risk Assessment Software program (DRAS), a Windows-based software tool. The DRAS estimated the potential release of hazardous constituents from the petitioned waste and predicted the risk associated with those releases. The DRAS uses EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) to predict the potential for release of hazardous constituents to groundwater from landfilled wastes and subsequent potential routes of exposure to a receptor. In the DRAS model, the EPA used the maximum estimated waste volume and maximum reported total and leachate concentrations in the groundwater, soil, surface water or air. The DRAS program back calculated a maximum allowable concentration level that would not exceed protective levels in both the waste and the leachate for each constituent at the annual waste volume of 3,000 cubic yards.

The maximum allowable levels for constituents detected in the WWTP sludge or the leachate from the sludge are summarized in Table 1, above. Table 1 also includes the maximum allowable levels in groundwater at a potential receptor well, as evaluated by the DRAS.

In conclusion, Saturn must dispose of the WWTP sludge in a lined Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial waste. 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. Specifically, concentrations measured in the TCLP (or OWEP, where appropriate) extract of Saturn's WWTP sludge must not exceed the following levels (mg/l): antimony—0.494; arsenic—0.224; total chromium—3.71; lead—5.0; nickel—68; thallium—0.211; and zinc—673.

If Saturn violates the terms and conditions established in the exclusion, the EPA will initiate procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the EPA will evaluate the need for enforcement activities on a case-by-case basis.

C. When Is the Delisting Effective?

This rule is effective on December 23, 2005. The Hazardous and Solid Waste Amendments of 1984 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. That is the case here, because this rule reduces the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final publication.

These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the States?

The final exclusion being granted today is issued under the Federal RCRA delisting program. States, however, are allowed to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, i.e., to make their own delisting decisions. Therefore, this exclusion does not apply in those authorized States. If the petitioned waste will be transported to and managed in any State with delisting authorization, Saturn must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

EPA received public comments on the proposed rule published in 70 FR 51696–51705, August 31, 2005, from Saturn Corporation, Spring Hill, Tennessee (Saturn), the petitioner, and Alliance of Automobile Manufacturers, Washington, DC.

B. Comments and Responses From EPA

Comment: Saturn stated that it supports EPA's efforts to delist the WWTP sludge generated at its Spring Hill, Tennessee facility. In addition to its support, Saturn also highlighted a few minor typing errors as well as a few minor wording changes for clarification concerning the quarterly verification sampling in Table 1 of Appendix IX to part 261 as well as the submittals of the quarterly and annual sampling verification testing in Table 1 of Appendix IX to Part 261.

Response: EPA incorporated Saturn's suggested minor typing errors and clarifications into today's final rule.

Comment: Alliance of Automobile Manufacturers state that it is also in support of EPA in granting this delisting petition and that it believes that the F019 listing itself should be revised to exclude wastewater treatment sludges from automotive industry conversion coating on aluminum when hexavalent chromium and cyanides are not used in the process.

Response: Today's final rule is site-specific and waste-specific; it applies only to Saturn's plant in Spring Hill, Tennessee, and only to the petitioned waste. A revision of the F019 listing would require a separate rule-making. EPA understands the Alliance's concern about the need to revise the F019 listing, but is unable to address this concern at this time.

V. Regulatory Impact

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a ''regulatory action'' subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a 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 the rule will affect only one 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 13084 (63 FR 27655, May 10, 1998). 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(c) 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. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. 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.).

VI. Congressional Review Act

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 Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

VII. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

List of Subjects in 40 CFR Part 261

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

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

Dated: December 1, 2005.

Beverly H. Banister,

Acting Director, Waste Management 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 1 of Appendix IX, part 261 add the following wastestream in alphabetical order by facility to read as follows:

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

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * * * *
Saturn Corporation	Spring Hill, Tennessee	Dewatered wastewater treatment plant (WWTP) sludge (EPA Hazardous Waste No. F019) generated at a maximum rate of 3,000 cubic yards per calendar year. The sludge must be disposed in a lined, Subtitle D landfill with leachate collection that is licensed, permitted, or otherwise authorized to accept the delisted WWTP sludge in accordance with 40 CFR part 258. The exclusion becomes effective on December 23, 2005. For the exclusion to be valid, Saturn must implement a verification testing program that meets the following conditions: 1. Delisting Levels: The constituent concentrations in an extract of the waste must not exceed the following maximum allowable concentrations in mg/l: antimony—0.494; arsenic—0.224; total chromium—3.71; lead—5.0; nickel—68; thallium—0.211; and zinc—673. Sample collection and analyses, including quality control procedures, must be performed using 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 representative samples of Saturn's sludge meet the delisting levels in this condition. 2. Waste Holding and Handling: (a) Saturn must accumulate the hazardous waste dewatered WWTP sludge in accordance with the applicable regulations of 40 CFR 262.34 and continue to dispose of the dewatered WWTP sludge as hazardous waste until the results of the first quarterly verification testing are available. (b) After the first quarterly verification sampling event described in Condition (3) has been completed and the laboratory data demonstrates that no constituent is present in the sample at a level which exceeds the delisting levels set in Condition (1), Saturn can manage and dispose of the dewatered WWTP sludge as nonhazardous according to all applicable solid waste regulations. (c) If constituent levels in any sample taken by Saturn exceed any of the delisting levels set in Condition (1), Saturn must do the following: (i) Notify EPA in accordance with Condition (7) and (ii) Manage and dispose the dewatered WWTP sludge as hazardous waste generated under Subtitle C of RCRA.

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

Facility	Address	Waste description
		3. Quarterly Testing Requirements: Upon this exclusion becoming final, Saturn may perform quarterly analytical testing by sampling and analyzing the dewatered WWTP sludge as follows: (i) Collect one representative composite sample (consisting of four grab samples) of the hazardous waste dewatered WWTP sludge at any time after EPA grants the final delisting. In addition, collect the second, third, and fourth quarterly samples at approximately ninety (90)-day intervals after EPA grants the final exclusion. (ii) Analyze the samples for all constituents listed in Condition (1). Any roll-offs from which the composite sample is taken exceeding the delisting levels listed in Condition (1) must be disposed as hazardous waste in a Subtitle C landfill. (iii) Within forty-five (45) days after taking its first quarterly sample, Saturn will report its first quarterly analytical test data to EPA and will include the certification statement required in condition (6). If levels of constituents measured in the sample of the dewatered WWTP sludge do not exceed the levels set forth in Condition (1) of this exclusion, Saturn can manage and dispose the nonhazardous dewatered WWTP sludge according to all applicable solid waste regulations. 4. Annual Verification Testing: (i) If Saturn completes the quarterly testing specified in Condition (3) above, and no sample contains a constituent with a level which exceeds the limits set forth in Condition (1), Saturn may begin annual verification testing on an annual basis. Saturn must collect and analyze one sample of the WWTP sludge on an annual basis as follows: Saturn must test one representative composite sample of the dewatered WWTP sludge for all constituents listed in Condition (1) at least once per calendar year. (ii) The sample collected for annual verification testing shall be a representative composite sample consisting of four grab samples that will be collected in accordance with the appropriate methods described in Condition (1). (iii) The sample for the annual testing for the second and subsequent annual testing events shall be collected within the same calendar month as the first annual verification sample. Saturn will report the results of the annual verification testing to EPA on an annual basis and will include the certification statement required by Condition (6). 5. Changes in Operating Conditions: Saturn must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are implemented. EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify Saturn in writing that Saturn's sludge must be managed as hazardous waste F019 until Saturn has demonstrated that the wastes meet the delisting levels set forth in Condition (1) and any levels established by EPA for the additional constituents of concern, and Saturn has received written approval from EPA. If EPA determines that the changes do not result in additional constituents of concern, EPA will notify Saturn, in writing, that Saturn must verify that Saturn's sludge continues to meet Condition (1) delisting levels. 6. Data Submittals: Saturn must submit data obtained through verification testing at Saturn or as required by other conditions of this rule to: Chief, North Section, RCRA Enforcement and Compliance Branch, Waste Management Division, U.S. Environmental Protection Agency Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303. If Saturn fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA, at its discretion, will consider this sufficient basis to re-open the exclusion as described in Condition (7). Saturn must: (A) Submit the data obtained through Condition (3) within the time specified. The quarterly verification data must be submitted to EPA in accordance with Condition (3). The annual verification data and certification statement of proper disposal must be submitted to EPA annually upon the anniversary of the effective date of this exclusion. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). (B) Compile, Summarize, and Maintain Records: Saturn must compile, summarize, and maintain at Saturn records of operating conditions and analytical data records of analytical data from Condition (3), summarized, and maintained on-site for a minimum of five years. Saturn must furnish these records and data when either the EPA or the State of Tennessee requests them for inspection. (C) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for getting the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for sending false information, including the possibility of fine and imprisonment." 7. Reopener.

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

Facility	Address	Waste description
		(A) If, at any time after disposal of the delisted waste, Saturn possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted WWTP sludge at Saturn indicating that any constituent is at a level in the leachate higher than the specified delisting level or TCLP regulatory level, then Saturn must report the data, in writing, to the Regional Administrator within ten (10) days of first possessing or being made aware of that data. (B) Based upon the information described in Paragraph (A) and any other information received from any source, the EPA Regional Administrator will make a preliminary determination as to whether the reported information requires EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require EPA action, the Regional Administrator will notify Saturn in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notification shall include a statement of the proposed action and a statement providing Saturn with an opportunity to present information as to why the proposed EPA action is not necessary. Saturn shall have ten (10) days from the date of the Regional Administrator's notice to present the information. (D) Following the receipt of information from Saturn, or if Saturn presents no further information after 10 days, the Regional Administrator will issue a final written determination describing the EPA 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. 8. Notification Requirements: Before transporting the delisted waste, Saturn must provide a one-time written notification to any State Regulatory Agency to which or through which it will transport the delisted WWTP sludge for disposal. The notification will be updated if Saturn transports the delisted WWTP sludge to a different disposal facility. Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 50

RIN 0906–AA69

Simplification of the Grant Appeals Process

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS) is amending regulations to remove the Health Resources and Services Administration (HRSA) from the list of agencies which require grantees to utilize an informal appeals procedure for grant related disputes subject to the departmental appeal procedures. In doing so, HRSA will simplify the appeals procedure for aggrieved HRSA grantees by permitting them direct access to the Departmental Grant Appeals Board.

DATES: This final rule is effective 30 days after December 23, 2005.

FOR FURTHER INFORMATION CONTACT: Gail Lipton, Director, Division of Grants Policy, HRSA, Room 11A–55, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: When HHS first established its Departmental Grant Appeals Board (now the Departmental Appeals Board), there was no provision for the Department's subordinate agencies to first review the disputed actions of officials prior to appeal at the Departmental level. However, it quickly became apparent that a number of disputes could, and would, be resolved quickly by informal means if the grantees' complaints were surfaced to management levels within the HHS subordinate agencies. As a result, the regulations at 45 CFR part 16 were revised to permit subordinate agencies to interpose an ''informal'' level of appeal prior to submission of an appeal to the Departmental Appeals Board. Various agencies in the Public Health Service (which has since been reorganized) instituted an intermediate informal review process as is currently described in 42 CFR part 50, subpart D. The intermediate level of appeal provided these agencies with an opportunity to relatively quickly and economically reverse erroneous Federal decisions, or to reassure grantees that a decision adverse to them was indeed an ''agency'' decision. At the time these regulations were instituted, this informal process was of significant benefit to both grantees and the subordinate agencies. Based on the lessons learned from this process and other means, HRSA instituted a policy of reviewing carefully the adverse determinations of their employees prior to permitting them to be issued so as to avoid erroneous determinations which would be subject to reversal upon appeal at the informal level. HRSA believes that it has reached the point where the adverse determinations being issued in recent years generally represent its best judgment.

HHS therefore believes that, for these agencies and their grantees, this informal process is no longer of benefit, and the cost in time and expense to the grantee is no longer warranted. Consequently, HHS proposed amending 42 CFR part 50, subpart D, to remove HRSA from the list of agencies to which the regulations apply. As a result, under this proposal, grantees wishing to