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

2. In Table 1 of Appendix IX of Part 261, it is proposed to add the following wastes in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under 40 CFR §§ 260.20 and 260.22

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
The Valero Refining Company—Tennessee, L.L.C.	Memphis, TN	Storm Water Basin sediment (EPA Hazardous Waste No. F037) generated one time at a volume of 2,700 cubic yards [insert publication date of the final rule] and disposed in a Subtitle D landfill. This is a one time exclusion and applies to 2,700 cubic yards of Storm Water Basin sediment. (1) Reopener. (A) If, anytime after disposal of the delisted waste, Valero 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 level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If Valero fails to submit the information described in paragraph (A) or if any other information is received from any source, the Division Director 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 Division Director determines that the reported information does require EPA action, the Division Director will notify the facility in writing of the actions the Division Director 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 as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (D) Following the receipt of information from the facility described in paragraph (C) or (if no information is presented under paragraph initial receipt of information described in paragraphs (A) or (B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (2) Notification Requirements: Valero 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. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification, if they ship the delisted waste to a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
*	*	* * * * *

[FR Doc. E9–16261 Filed 7–8–09; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2009–0108; SW FRL–8922–9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: EPA is proposing to grant a petition submitted by Occidental Chemical Corporation (OxyChem) to exclude (or delist) a certain solid waste generated by its Ingleside, Texas, facility from the lists of hazardous wastes. EPA used the Delisting Risk Assessment Software (DRAS) Version 3.0 in the evaluation of the impact of the petitioned waste on human health and the environment.

DATES: We will accept comments until August 10, 2009. We will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by July 24, 2009. The request must contain the information prescribed in 40 CFR 260.20(d) (hereinafter all CFR cites refer to 40 CFR unless otherwise stated).

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–RCRA–2009–0108 by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: jacques.wendy@epa.gov.*

3. *Mail:* Wendy Jacques, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–F, 1445 Ross Avenue, Dallas, TX 75202.

4. *Hand Delivery or Courier.* Deliver your comments to: Wendy Jacques, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–F, 1445 Ross Avenue, Dallas, TX 75202.

Instructions: Direct your comments to Docket ID No. EPA–R06–RCRA–2008–0456. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, RCRA Branch, 1445 Ross Avenue, Dallas, TX 75202. The hard copy RCRA regulatory docket for this proposed rule, EPA–R06–RCRA–2009–0108, is available for viewing from 8 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: For further technical information concerning this document or for appointments to view the docket or the OxyChem facility petition, contact Wendy Jacques, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–F, 1445 Ross Avenue, Dallas, TX 75202, by calling 214–665–7395 or by e-mail at *jacques.wendy@epa.gov*.

Your requests for a hearing must reach EPA by July 24, 2009. The request must contain the information described in § 260.20(d).

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

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude the petitioned waste from this facility is non-hazardous with respect to the original listing criteria and that the waste process used will substantially reduce the likelihood of migration of hazardous constituents from this waste. We would also conclude that the processes minimize short-term and long-term threats from the petitioned waste to human health and the environment.

The information in this section is organized as follows:

I. Overview Information

A. What action is EPA proposing?

EPA is proposing to grant the delisting petition submitted by OxyChem to have its wastewater treatment biosludge (K019, K020, F025, F001, F003, and F005 listed hazardous waste) excluded, or delisted, from the definition of a hazardous waste.

B. Why is EPA proposing to approve this delisting?

OxyChem's petition requests a delisting for the wastewater treatment biosludge derived from the treatment of hazardous wastewater listed as K019, K020, F025, F001, F003, and F005. OxyChem does not believe that the petitioned waste meets the criteria for which EPA listed it. OxyChem 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 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4). In making the initial 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 non-hazardous 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 was 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 proposed decision to delist waste from the facility is based on the information submitted in support of this rule, including descriptions of the waste and analytical data from the OxyChem, Ingleside, Texas facility.

C. How will OxyChem manage the waste, if it is delisted?

OxyChem will dispose of the wastewater treatment biosludge in a Subtitle D landfill.

D. When would the proposed delisting exclusion be finalized?

RCRA section 3001(f) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion unless and until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1), at 42 USCA 6930(b)(1), allows rules to become effective in less than six months after EPA addresses public comments when the regulated facility does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How would this action affect the 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 the 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. Delisting petitions approved by EPA Administrator under 40 CFR 260.22 are effective in the State of Texas only after the final rule has been published in the **Federal Register**.

II. Background

A. What is the history of the delisting program?

EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. EPA has amended this list several times and published it in §§ 261.31 and 261.32. EPA lists these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

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

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What is a delisting petition, and what does it require of a petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions EPA because it does not believe the wastes should be hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which EPA lists a waste are in Part 261 and further explained in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. See Part 261 and the background documents for the listed waste.

Generators remain obligated under RCRA to confirm whether their waste remains non-hazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the waste.

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

Besides considering the criteria in § 260.22(a) and section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which EPA listed the waste, if a reasonable basis exists to determine that these additional factors could cause the waste to be hazardous.

EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See § 261.3(a)(2)(iii) and (iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

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

A. What waste did OxyChem petition EPA to delist?

OxyChem petitioned EPA on September 20, 2007, to exclude from the lists of hazardous waste contained in § 261.31, the wastewater treatment biosludge from its wastewater treatment plant.

The wastewater treatment biosludge is generated from the OxyChem facility located in Ingleside, Texas. The wastewater treatment biosludge is listed under EPA Hazardous Waste No. K019, K020, F025, F001, F003, and F005, because it is generated in the bioreactors that can, on occasion, treat incinerator offgas treatment water. Specifically, in its petition, OxyChem requested that EPA grant exclusion for 7,500 cubic yards per calendar year of K019, K020, F025, F001, F003, and F005 waste resulting from the treatment of waste waters from the manufacturing processes at its facility.

B. Who is OxyChem and what process do they use to generate the petition waste?

OxyChem produces ethylene dichloride (EDC), vinyl chloride monomer (VCM), chlorine, and caustic. The facility is comprised of the Chlor-Alkali plant which produces chlorine and caustic, and the EDC/VCM plant. Other processes with the VCM unit include vent incineration, wastewater treatment, VCM storage and loading (railcar and ship), EDC and intermediate storage and loading, cooling towers and refrigeration and compressors.

The manufacturing processes that contribute waste and vent gases to the incinerators are the VCM plant and the support plants (shop and rail loading, product storage tanks, RCRA tank and wastewater storage tanks). The former EDC unit in the Chlor-Alkali Plant once contributed waste streams, but was idled in 2002.

OxyChem intends to dispose of the delisted wastewater treatment biosludge at a Subtitle D Landfill. Treatment of the waste waters, which result from the manufacturing process, generates the wastewater treatment biosludge that is classified as K019, K020, F025, F001, F003, and F005 listed hazardous wastes pursuant to 40 CFR 261.31. The 40 CFR Part 261 Appendix VII hazardous constituents which are the basis for listing K019, K020, F025, F001, F003, and F005 hazardous wastes are: K019—ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-tricholoroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, and vinylidene chloride; K020—ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-tricholoroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, and vinylidene chloride; F025—chloromethane, dichloromethane, trichloromethane, carbon tetrachloride, chloroethylene, 1,1-dichloroethane, 1,2-dichloroethane, trans-1,2-dichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethylene, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, tetrachloroethylene, pentachloroethane, hexachloroethane, allyl chloride (3-cholopropene), dichloropropane, dichloroprene, 2-chloro-1,3-butadiene, hexachloro-1,3-butadiene, hexachlorocyclopentadiene, benzene, chlorobenzene, dichlorobenzene, 1,2,4-trichlorobenzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, and naphthalene; F001—tetrachloroethylene, methylene chloride trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; F003—N.A.; F005—toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, and 2-nitropropane.

C. What information did OxyChem submit to support this petition?

To support its petition, OxyChem submitted:

(1) Analytical results of the toxicity characteristic leaching procedure and total constituent analysis for volatile and semivolatile organics, pesticides, herbicides, dioxins/furans, PCBs and metals for four wasterwater treatment biosludge samples;

(2) Analytical results from multiple pH leaching of metals; and

(3) Description of the wastewater treatment process.

D. What were the results of OxyChem's analysis?

EPA believes that the descriptions of OxyChem's waste, and the analytical data submitted in support of the petition show that the wastewater treatment biosludge is non-hazardous. Analytical data from OxyChem's wastewater treatment biosludge samples were used in the Delisting Risk Assessment Software (DRAS). The data summaries for detected constituents are presented in Table 1. EPA has reviewed the sampling procedures used by OxyChem and has determined that they satisfy EPA's criteria for collecting representative samples of the variations in constituent concentrations in the wastewater treatment biosludge. The data submitted in support of the petition show that constituents in OxyChem's wastes are presently below health-based risk levels used in the delisting decision-making. EPA believes that OxyChem has successfully demonstrated that the wastewater treatment biosludge is non-hazardous.

TABLE 1—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE WASTEWATER TREATMENT BIOSLUDGE [1]

Constituent	Maximum total (mg/kg)	Maximum TCLP (mg/l)	Maximum allowable TCLP delisting level (mg/l)
Antimony	0.349	0.00263	0.111
Acetone	0.069	0.170	533
Arsenic	3.62	0.0265	0.178
Barium	27.7	0.204	36.9
Benzoic Acid	<0.170	0.0024	2370
Beryllium	0.0623	<0.0100	0.0799
Bis(2-ethylhexyl)phthalate	<0.170	0.0095	6.15
Cadmium	0.124	0.000616	0.0933
Chromium	10.4	0.0304	2.32
Cobalt	0.787	0.00744	14.00
Copper	44.1	0.274	26.5
Ethylbenzene	<0.005	0.048	11.1
Lead	2.70	0.00220	0.719
Mercury	0.00813	0.00005	0.0696
Methylene Chloride	0.0058	0.0058	0.0809
Naphthalene	<0.0066	0.00066	0.0335
Nickel	25.1	0.290	13.8
Phenanthrene	<0.0066	0.00028	2.72
Selenium	0.633	0.00770	0.912
Silver	0.0981	<0.0100	5.0

TABLE 1—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE WASTEWATER TREATMENT BIOSLUDGE [1]—Continued

Constituent	Maximum total (mg/kg)	Maximum TCLP (mg/l)	Maximum allowable TCLP delisting level (mg/l)
Silvex (2,4,5,-TP)	0.011	<0.0001	0.789
Tetrachlorodibenzo-p-dioxin (TCDD) 2,3,7,8-	3.86E–04	5.92E–08	4.30E–05 mg/kg
Thallium	0.0962	0.00203	0.0851
Tin	1.59	<0.0100	3.97E+07
Toluene	<0.005	0.001	15.5
Trichloroethane	0.0018	0.008	11900
Trichloroethylene	<0.005	0.012	0.0794
Vanadium	6.62	0.00586	1.00
Xylenes	<0.015	<0.001	9.79
Zinc	44.1	0.240	202

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
< # Denotes that the constituent was below the detection limit.

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

The worst case scenario for management of the wastewater treatment biosludge was modeled for disposal in a landfill. EPA used such information gathered to identify plausible exposure routes (*i.e.,* ground water, surface water, soil, air) for hazardous constituents present in the wastewater treatment biosludge. EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for OxyChem's wastewater treatment biosludge. EPA applied the DRAS described in 65 FR 58015 (September 27, 2000), 65 FR 75637 (December 4, 2000) and 73 FR 28768 (May 19, 2008), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of OxyChem's petitioned waste on human health and the environment. In assessing potential risks to ground water, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and Agency health-based numbers. Using the maximum compliance-point concentrations and EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in ground water.

EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensured that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health and/or the environment. The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.,* volatilization or wind-blown particulate from the landfill). As in the above ground water analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or ''delisting levels'').

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. EPA does control the type of unit where the waste is disposed.

EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, no representative data exists. Therefore, EPA has determined that it would be unnecessary to request ground water monitoring data.

EPA believes that the descriptions of OxyChem's wastewater treatment biosludge and analytical characterization which illustrate the presence of toxic constituents at lower concentrations in these waste streams provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized.

The DRAS results, which calculated the maximum allowable concentration of chemical constituents in the wastewater treatment biosludge are presented in Table 1. Based on the comparison of the DRAS results and maximum TCLP concentrations found in Table 1, the petitioned waste should be delisted because no constituents of concern are likely to be present or formed as reaction products or by products in OxyChem's waste.

F. What did EPA conclude about OxyChem's analysis?

EPA concluded, after reviewing OxyChem's processes that no other hazardous constituents of concern, other than those for which OxyChem tested, are likely to be present or formed as reaction products or by-products in OxyChem's wastes. In addition, on the basis of explanations and analytical data provided by OxyChem, pursuant to

§ 260.22, EPA concludes that the petitioned waste, wastewater treatment biosludge, does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. See §§ 261.21, 261.22, 261.23, and 261.24 respectively.

G. What other factors did EPA consider in its evaluation?

During the evaluation of this petition, in addition to the potential impacts to the ground water, EPA also considered the potential impact of the petitioned waste via non-ground water exposure routes (*i.e.,* air emissions and surface runoff) for the wastewater treatment biosludge. With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from the petitioned waste is unlikely. No appreciable air releases are likely from the wastewater treatment biosludge under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from the wastewater in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from the wastewater treatment biosludge.

H. What is EPA's evaluation of this delisting petition?

The descriptions by OxyChem of the hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for EPA to grant the petition. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable concentrations (See Table 1). EPA believes that the wastewater treatment biosludge generated by OxyChem contains hazardous constituents at levels which will present minimal short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes that it should grant to OxyChem an exclusion from the list of hazardous wastes for the wastewater treatment biosludge. EPA believes that the data submitted in support of the petition show the OxyChem's wastewater treatment biosludge to be non-hazardous.

EPA has reviewed the sampling procedures used by OxyChem and has determined they satisfy EPA's criteria for collecting representative samples of variable constituent concentrations in the wastewater treatment biosludge. The data submitted in support of the petition show that constituents in OxyChem's wastes are presently below the compliance-point concentrations used in the delisting decision-making process and would not pose a substantial hazard to the environment and the public. EPA believes that OxyChem has successfully demonstrated that the wastewater treatment biosludge is non-hazardous.

EPA, therefore, proposes to grant an exclusion to OxyChem for the wastewater treatment biosludge described in its September 2007 petition. EPA's decision to exclude this waste is based on analysis performed on samples taken of the wastewater treatment biosludge.

If EPA finalizes the proposed rule, EPA will no longer regulate 7,500 cubic yards/year of wastewater treatment biosludge from OxyChem's Ingleside facility under Parts 262 through 268 and the permitting standards of Part 270.

IV. Next Steps

A. With what conditions must the petitioner comply?

The petitioner, OxyChem, must comply with the requirements in 40 CFR Part 261, Appendix IX, Table 2 as amended by this notice. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituent concentrations for which OxyChem wastewater treatment biosludge, below which these wastes would be considered non-hazardous.

EPA selected the set of inorganic and organic constituents specified in paragraph (1) and listed in 40 CFR Part 261, Appendix IX, Table 2, based on information in the petition. EPA compiled the inorganic and organic constituents list from descriptions of the manufacturing process used by OxyChem, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the leachable concentrations of the wastewater treatment biosludge.

(2) Waste Holding and Handling

Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) has occurred for four consecutive weekly sampling events. For example, if OxyChem is issued a final exclusion in August, the four weekly samples can be collected in September. If EPA deems that the four representative composite samples meet all the indicator constituent delisting limits, classification of the waste as non-hazardous can begin in October. If constituent levels in any annual sample (and retest, if applicable) taken by OxyChem exceed any of the delisting levels set in paragraph (1), OxyChem must: (i) notify EPA in accordance with paragraph (6), and (ii) manage and dispose of the wastewater treatment biosludge as hazardous waste generated under Subtitle C of RCRA.

(3) Verification Testing Requirements

OxyChem must complete a verification testing program on the wastewater treatment biosludge to assure that the wastes do not exceed the maximum levels specified in paragraph (1). If EPA determines that the data collected under this paragraph does not support the data provided in the petition, the exclusion will not cover the tested waste. This verification program operates on two levels.

The initial part of the verification testing program consists of testing four composite samples from four consecutive weeks of wastewater treatment biosludge for specified indicator parameters as described in paragraph (1). Levels of constituents measured in the samples of the wastewater treatment biosludge that do not exceed the levels set forth in paragraph (1) can be considered non-hazardous after all four sets of sampling data meet the levels listed in paragraph (1).

The second part of the verification testing program is the annual testing of a representative composite sample of the wastewater treatment biosludge for all constituents specified in paragraph (1). If any delisting levels are not met in an annual test sample, then a second composite sample shall be collected within 10 days of becoming aware of the failure, and it must be analyzed expeditiously for the TCLP constituent(s) that exceeded Delisting Levels.

If the annual testing of the wastes, and the retest, do not meet the delisting levels in paragraph (1), OxyChem must notify EPA according to the requirements in paragraph (6). EPA will then take the appropriate actions necessary to protect human health and the environment as described in paragraph (6). OxyChem must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

The exclusion is effective upon publication in the **Federal Register** but the change in waste classification as ''non-hazardous'' cannot begin until the four weekly initial verification samples

comply with the levels specified in paragraph (1). The waste classification as ''non-hazardous'' is also not authorized, if OxyChem fails to perform the testing as specified herein. Should OxyChem conduct the yearly testing as specified herein, then disposal of wastewater treatment biosludge as delisted waste may not occur in the following year(s) until OxyChem obtains the written approval of EPA.

(4) Changes in Operating Conditions

Paragraph (4) would allow OxyChem the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment processes. However, OxyChem must prove the effectiveness of the modified process and request approval from EPA. OxyChem must manage wastes generated during the new process demonstration as hazardous waste through verification sampling within 30 days of start-up.

(5) Data Submittals

To provide appropriate documentation that the OxyChem facility is correctly managing the wastewater treatment biosludge, OxyChem must compile, summarize, and keep delisting records on-site for a minimum of five years. OxyChem must keep all analytical data obtained pursuant to paragraph (3), including quality control information, for five years. Paragraph (5) requires that OxyChem furnish these data upon request for inspection by any employee or representative of EPA or the State of Texas.

If the proposed exclusion is made final, then it will apply only to 7,500 cubic yards per calendar year of wastewater treatment biosludge generated at the OxyChem facility after successful initial verification testing.

EPA would require OxyChem to submit additional verification data under any of the following circumstances:

(a) If OxyChem significantly alters the waste treatment system except as described in paragraph (4).

(b) If OxyChem uses any new manufacturing or production process(es), or significantly changes the current process(es) described in its petition; or

(c) If OxyChem makes any changes that could significantly affect the composition or type of waste generated.

OxyChem 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. EPA will publish an amendment to the exclusion if the changes are acceptable.

OxyChem must manage waste volumes greater than 7,500 cubic yards of wastewater treatment biosludge as hazardous waste until EPA grants a revised exclusion. When this exclusion becomes final, the management by OxyChem of the wastewater treatment biosludge covered in this petition would be relieved from Subtitle C jurisdiction. OxyChem may not classify the waste as non-hazardous until the revised exclusion is finalized.

(6) Reopener

The purpose of paragraph (6) is to require OxyChem to disclose new or different information related to a condition at the facility or disposal of the waste, if it is pertinent to the delisting. OxyChem must also use this procedure if the waste sample (and retest, if applicable) in the annual testing fails to meet the levels found in paragraph (1). This provision will allow EPA to reevaluate the exclusion, if a source provides new or additional information to EPA. EPA will evaluate the information on which it based the decision to see if it is still correct or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented.

This provision expressly requires OxyChem to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

It is EPA's position that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978) *et seq.,* to reopen a delisting decision. EPA may reopen a delisting decision when it receives new information that calls into question the assumptions underlying the delisting.

EPA believes a clear statement of its authority in delisting is merited in light of EPA's experience. See the **Federal Register** notice regarding Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations into the environment than the concentrations predicted when conducting the TCLP, leading EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations on a case-by-case basis. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. See APA 553(b)(3)(B).

B. What happens if OxyChem violates the terms and conditions?

If OxyChem violates the terms and conditions established in the exclusion, EPA will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, EPA will evaluate the need for enforcement activities on a case-by-case basis. EPA expects OxyChem to conduct the appropriate waste analysis and comply with the criteria explained above in paragraph (1) of the exclusion.

V. Public Comments

A. How may I as an interested party submit comments?

EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to the Chief, Corrective Action and Waste Minimization Section, Multimedia Permitting and Planning Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to the Industrial Hazardous Waste Permits Division, Technical Evaluation Team, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, TX 78711–3087. Identify your comments at the top with this regulatory docket number: EPA–R06–RCRA–2009–0108. You may submit your comments electronically to Wendy Jacques at *jacques.wendy@epa.gov.*

B. How may I review the docket or obtain copies of the proposed exclusion?

You may review the RCRA regulatory docket for this proposed rule at the U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, TX 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages and at fifteen cents per page for additional copies.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this rule is not of general applicability and

therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this proposed 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 proposed 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 this 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: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f)

Dated: June 10, 2009.

Troy C. Hill,

Acting Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed 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. 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
*	*	* * * * *
OxyChem Corporation	Ingleside, TX	Wastewater treatment biosludge (EPA Hazardous Waste Number K019, K020, F025, F001, F003, F005) generated at a maximum rate of 7,500 cubic yards per calendar year after [publication date of the final rule]. For the exclusion to be valid, OxyChem must implement a verification testing program that meets the following paragraphs: (1)(A) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. Wastewater treatment biosludge Leachable Concentrations (mg/l): Antimony—0.111; Acetone—533; Arsenic—0.178; Barium—36.9; Bis(2-ethylhexyl)phthalate—6.15; Chromium—2.32; Copper—26.5; Ethylbenzene—11.1; Methylene Chloride—0.0809; Naphthalene—0.0355; Nickel—13.8; Phenanthrene—2.72; Toluene—15.5; Trichloroethane—11900; Trichloroethylene—0.0794; Vanadium—1.00; Zinc—202. (B) Total Concentration Limits in mg/Kg: Tetrachlorodibenzo-p-dioxin (TCDD) 2,3,7,8 Equivalent—4.3E–05. (2) Waste Holding and Handling:

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) Waste classification as non-hazardous can not begin until compliance with the limits set in paragraph (1) for wastewater treatment biosludge has occurred for four consecutive weekly sampling events. (B) If constituent levels in any annual sample and retest sample taken by OxyChem exceed any of the delisting levels set in paragraph (1) for the wastewater treatment biosludge, OxyChem must do the following: (i) Notify EPA in accordance with paragraph (6) and (ii) Manage and dispose the wastewater treatment biosludge as hazardous waste generated under Subtitle C of RCRA. (3) Testing Requirements: Upon this exclusion becoming final, OxyChem must perform analytical testing by sampling and analyzing the wastewater treatment biosludge as follows: (A) Initial Verification Testing: (i) Collect four representative composite samples of the wastewater treatment biosludge at weekly intervals after EPA grants the final exclusion. The first composite sample may be taken at any time after EPA grants the final approval. Sampling must be performed in accordance with the sampling plan approved by EPA in support of the exclusion. (ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) indicates that the wastewater treatment biosludge must continue to be disposed as hazardous waste in accordance with the applicable hazardous waste requirements until such time that four consecutive weekly samples indicate compliance with delisting levels listed in paragraph (1). (iii) Within sixty (60) days after taking its last weekly sample, OxyChem will report its analytical test data to EPA. If levels of constituents measured in the samples of the wastewater treatment biosludge do not exceed the levels set forth in paragraph (1) of this exclusion for four consecutive weeks, OxyChem can manage and dispose the non-hazardous wastewater treatment biosludge according to all applicable solid waste regulations. (B) Annual Testing: (i) If OxyChem completes the weekly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), OxyChem must begin annual testing as follows: OxyChem must test a representative composite sample of the wastewater treatment biosludge for all constituents listed in paragraph (1) at least once per calendar year. If any measured constituent concentration exceeds the delisting levels set forth in paragraph (1), OxyChem must collect an additional representative composite sample within 10 days of being made aware of the exceedence and test it expeditiously for the constituent(s) which exceeded delisting levels in the original annual sample. (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 OxyChem wastewater treatment biosludge are representative for all constituents listed in paragraph (1). (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. (iv) The annual testing report should include the total amount of delisted waste in cubic yards disposed during the calendar year.

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(4) Changes in Operating Conditions: If OxyChem significantly changes the process described in its petition or starts any processes that generate(s) 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. OxyChem 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. (5) Data Submittals: OxyChem must submit the information described below. If OxyChem 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). OxyChem must: (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 comparable electronic media. (B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when either EPA or the State of Texas requests them for inspection. (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. 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. 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.'' (6) Reopener. (A) If, anytime after disposal of the delisted waste OxyChem 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 level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If either the annual testing (and retest, if applicable) of the waste does not meet the delisting requirements in paragraph 1, OxyChem must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(C) If OxyChem fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA 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. (D) If the Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director 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 as to why the proposed EPA action is not necessary. The facility shall have 10 days from receipt of the Division Director's notice to present such information. (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), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (7) *Notification Requirements:* OxyChem 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. (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. (B) Update one-time written notification, if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
*	*	* * * * *

[FR Doc. E9–16272 Filed 7–8–09; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1490; MB Docket No. 09–115; RM–11543]

Television Broadcasting Services; Fond du Lac, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by WWAZ License, LLC (''WWAZ''), the licensee of station WWAZ–DT, DTV channel 44, Fond du Lac, Wisconsin. WWAZ requests the substitution of DTV channel 5 for DTV channel 44 at Fond du Lac.

DATES: Comments must be filed on or before July 24, 2009, and reply comments on or before August 3, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Kathleen Victory, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: David J. Brown, *david.brown@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MB Docket No. 09–115, adopted June 29, 2009, and released July 1, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of