

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
<p>* * * * *</p> <p>[FR Doc. 2010–20847 Filed 8–20–10; 8:45 am]</p> <p>BILLING CODE 6560–50–P</p>	<p>floor from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is EPA–R06–RCRA–2009–0108. 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.</p>	<p>Tokusen 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.</p> <p>(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.</p> <p>(B) Update one-time written notification, if it ships the delisted waste into a different disposal facility.</p> <p>(C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.</p>
<p><b>ENVIRONMENTAL PROTECTION AGENCY</b></p>	<p><b>FOR FURTHER INFORMATION CONTACT:</b> Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. For technical information concerning this notice, contact Wendy Jacques, Environmental Protection Agency Region 6, 1445 Ross Avenue, (6PD–F), Dallas, Texas 75202, at (214) 665–7395, or <a href="mailto:jacques.wendy@epa.gov">jacques.wendy@epa.gov</a>.</p>	<p><b>I. Overview Information</b></p>
<p><b>40 CFR Part 261</b></p>	<p><b>SUPPLEMENTARY INFORMATION:</b> The information in this section is organized as follows:</p>	<p><i>A. What action is EPA finalizing?</i></p>
<p>[EPA–R06–RCRA–2008–0456; SW–FRL–9191–7]</p> <p><b>Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion</b></p>	<p><b>I. Overview Information</b></p> <p>A. What action is EPA finalizing?</p> <p>B. Why is EPA approving this action?</p> <p>C. What are the limits of this exclusion?</p> <p>D. How will OxyChem manage the waste if it is delisted?</p> <p>E. When is the final delisting exclusion effective?</p> <p>F. How does this final rule affect States?</p>	<p>After evaluating the petition, EPA proposed, on July 9, 2009, to exclude the wastewater treatment biosludge from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (<i>see</i> 73 FR 54760). EPA is finalizing the decision to grant OxyChem’s delisting petition to have its wastewater treatment biosludge managed and disposed as non-hazardous waste provided certain verification and monitoring conditions are met.</p>
<p><b>AGENCY:</b> Environmental Protection Agency.</p>	<p><b>II. Background</b></p> <p>A. What is a delisting petition?</p> <p>B. What regulations allow facilities to delist a waste?</p> <p>C. What information must the generator supply?</p>	<p><i>B. Why is EPA approving this action?</i></p>
<p><b>ACTION:</b> Final rule.</p>	<p><b>III. EPA’s Evaluation of the Waste Information and Data</b></p> <p>A. What waste did OxyChem petition EPA to delist?</p> <p>B. How much waste did OxyChem propose to delist?</p> <p>C. How did OxyChem sample and analyze the waste data in this petition?</p>	<p>OxyChem’s petition requests a delisting from K019, K020, F025, F001, F003, and F005 wastes listed under 40 CFR 260.20 and 260.22. OxyChem does not believe that the petitioned wastes meet 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. See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is 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 as originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is</p>
<p><b>SUMMARY:</b> Environmental Protection Agency (EPA) is granting a petition submitted by Occidental Chemical Corporation (OxyChem) to exclude (or delist) its wastewater treatment biosludge generated by its Ingleside, Texas facility from the lists of hazardous wastes. This final rule responds to the petition submitted by OxyChem to delist K019, K020, F025, F001, F003, and F005 waste resulting from the treatment of wastewaters from the manufacturing processes at its facility.</p>	<p><b>IV. Public Comments Received on the Proposed Exclusion</b></p> <p>A. Who submitted comments on the proposed rule?</p>	<p>EPA considered whether the waste is</p>
<p>After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded that the petitioned waste is not hazardous waste. This exclusion applies to 7,500 cubic yards per year of the K019, K020, F025, F001, F003, and F005 waste. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when it is disposed in a Subtitle D Landfill.</p>	<p><b>V. Statutory and Executive Order Reviews</b></p>	
<p><b>DATES:</b> <i>Effective Date:</i> August 23, 2010.</p>		
<p><b>ADDRESSES:</b> The public docket for this final rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Freedom of Information Act review room on the 7th</p>		

acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's final decision to delist the waste water treatment biosludge from OxyChem's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Ingleside, Texas facility.

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

This exclusion applies to the waste described in the petition only if the requirements described in 40 CFR part 261, Appendix IX, Table 1 and the conditions contained herein are satisfied.

### D. How will OxyChem manage the waste if it is delisted?

The wastewater treatment biosludge from OxyChem will be disposed of in a RCRA Subtitle D landfill.

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

This rule is effective August 23, 2010. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA, 42 U.S.C. 6930(b)(1) allows rules to become effective less than six months after the rule is published when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous waste. This reduction in existing requirements also provides a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

### F. How does this final rule affect States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude States which have received authorization from EPA to make their own delisting decisions.

EPA allows States to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision

that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some States (for example, Louisiana, Oklahoma, Georgia, and Illinois) to administer a RCRA delisting program in place of the Federal program; that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States unless that State makes the rule part of its authorized program. If OxyChem transports the petitioned waste to or manages the waste in any State with delisting authorization, OxyChem must obtain delisting authorization from that State before it can manage the waste as non-hazardous in the State.

## II. Background

### A. What is a delisting petition?

A delisting petition is a request from a generator to EPA, or another agency with jurisdiction, to exclude or delist from the RCRA list of hazardous waste, certain wastes the generator believes should not be considered hazardous under RCRA.

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

Under §§ 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 265 and 268. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

### C. What information must the generator supply?

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. Based on the complete application, 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. The generator must also supply information to demonstrate that the waste does not exhibit any of the characteristics defined in § 261.21–§ 261.24.

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

### A. What waste did OxyChem petition EPA to delist?

On September 20, 2007, OxyChem petitioned EPA to exclude from the lists of hazardous wastes contained in § 261.31, wastewater treatment biosludge (K019, K020, F025, F001, F003, and F005) generated from its facility located in Ingleside, Texas. The waste falls under the classification of listed waste pursuant to § 261.31.

### B. How much waste did OxyChem propose to delist?

Specifically, in its petition, OxyChem requested that EPA grant a standard exclusion for 7,500 cubic yards per year of biosludge resulting from the treatment of wastewaters from the manufacturing processes at its facility.

### C. How did OxyChem sample and analyze the waste data in this petition?

To support its petition, OxyChem submitted:

- Analytical results of the toxicity characteristic leaching procedure and total constituent analysis for volatile and semi volatile organics, pesticides, herbicides, dioxins/furans, PCBs and metals for four wastewater treatment biosludge samples;
- Analytical results from multiple pH leaching of metals; and
- Descriptions of the waste water treatment process.

## IV. Public Comments Received on the Proposed Exclusion

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

The EPA received a Freedom of Information request for OxyChem's original delisting petition and all supporting documents from Arnold & Porter LLP. The EPA submitted OxyChem's original delisting petition and all supporting documents, excluding all confidential material, to Arnold & Porter LLP. No specific comments were received.

EPA discovered an error in the proposed exclusion for the total concentration limit for 2,3,7,8-TCDD in the proposed rule. The calculated value for the delisting limit for 2,3,7,8-TCDD should be 5.23E-04 mg/kg instead of 4.30E-05 mg/kg as was proposed. This

change does not materially affect the proposal.

**V. Statutory and Executive Order Reviews**

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism", (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

Similarly, because this rule will affect only a particular facility, this final rule does not have Tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with

Indian Tribal Governments" (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, "Civil Justice Reform", (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

**Lists of Subjects in 40 CFR Part 261**

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

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

Dated: August 11, 2010.

**Bill Luthans,**

*Acting Director, Multimedia Planning and Permitting Division, Region 6.*

■ 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 Tables 1 and 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 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES**

Facility	Address	Waste description
* Oxychem .....	* Ingleside, TX .....	* Wastewater Treatment Biosludge (EPA Hazardous Waste Number K019, K020, F025, F001, F003, and F005) generated at a maximum rate of 7,500 cubic yards per calendar year after August 23, 2010. 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—5.23 E-04 (2) Waste Holding and Handling:

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		<p>(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.</p> <p>(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:</p> <p>(i) Notify EPA in accordance with paragraph (6) and</p> <p>(ii) Manage and dispose the wastewater treatment biosludge as hazardous waste generated under Subtitle C of RCRA.</p> <p>(3) Testing Requirements: Upon this exclusion becoming final, OxyChem must perform analytical testing by sampling and analyzing the wastewater treatment biosludge as follows:</p> <p>(A) Initial Verification Testing:</p> <p>(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.</p> <p>(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).</p> <p>(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.</p> <p>(B) Annual Testing:</p> <p>(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.</p> <p>(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).</p> <p>(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.</p> <p>(iv) The annual testing report should include the total amount of delisted waste in cubic yards disposed during the calendar year.</p> <p>(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.</p> <p>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.</p>

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		<p>(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:</p> <p>(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.</p> <p>(B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years.</p> <p>(C) Furnish these records and data when either EPA or the State of Texas requests them for inspection.</p> <p>(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:</p> <p>“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.</p> <p>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.</p> <p>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.”</p> <p>(6) Reopener</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(7) Notification Requirements:</p> <p>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.</p> <p>(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.</p>

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(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.

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Oxychem		Wastewater Treatment Biosludge (EPA Hazardous Waste Number K019, K020, F025, F001, F003, and F005) generated at a maximum rate of 7,500 cubic yards per calendar year after August 23, 2010. Oxychem must implement the testing program in Table 1. Wastes Excluded from Non-Specific Sources for the petition to be valid.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 0907301206-0032-02]

RIN 0648-XX82

**Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Directed Butterfish Fishery**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces that the directed fishery for butterfish in the Exclusive Economic Zone (EEZ) will be closed effective 0001 hours, August 24, 2010. Vessels issued a Federal permit to harvest butterfish may not retain or land more than 250 lb (0.11-mt) of butterfish per trip for the remainder of the year (through December 31, 2010). This action is necessary to prevent the fishery from exceeding its domestic annual harvest (DAH) of 485 mt, and to allow for effective management of this stock.

**DATES:** Effective 0001 hours, August 24, 2010, through 2400 hours, December 31, 2010.

**FOR FURTHER INFORMATION CONTACT:** Lindsey Feldman, Fishery Management Specialist, 978 675-2179, Fax 978-281-9135.

**SUPPLEMENTARY INFORMATION:**

Regulations governing the butterfish fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing, and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). The procedures for setting the annual initial specifications are described in § 648.21.

The 2010 specification of DAH for butterfish was set at 485 mt (75 FR 5537, February 3, 2010).

Section 648.22 requires NMFS to close the directed butterfish fishery in the EEZ when 80 percent of the total annual DAH has been harvested. If 80 percent of the butterfish DAH is projected to be landed prior to October 1, a 250-lb (0.11-mt) incidental butterfish possession limit is put in effect for the remainder of the year, and if 80 percent of the butterfish DAH is projected to be landed on or after October 1, a 600-lb (0.27-mt) incidental butterfish possession limit is put in effect for the remainder of the year. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of butterfish permits at least 72 hr before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**.

The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has

determined that 80 percent of the DAH for butterfish in 2010 fishing year will be harvested. Therefore, effective 0001 hours, August 24, 2010, the directed fishery for the butterfish fishery is closed and vessels issued Federal permits for butterfish may not retain or land more than 250 lb (0.11 mt) of butterfish per trip or calendar day. The directed fishery will reopen effective 0001 hours, January 1, 2011, when the 2011 DAH becomes available.

**Classification**

This action is required by 50 CFR part 648, and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action closes the butterfish fishery until January 1, 2011, under current regulations. The regulations at § 648.21 require such action to ensure that butterfish vessels do not exceed the 2010 TAC. Data indicating the butterfish fleet will have landed at least 80 percent of the 2010 TAC have only recently become available. If implementation of this closure is delayed to solicit prior public comment, the quota for this year will be exceeded, thereby undermining the conservation objectives of the FMP. The AA further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

**Authority:** 16 U.S.C. 1801 *et seq.*