Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination under the Instruction that this action is not likely to have a significant effect on the human environment. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.778 to read as follows:

§ 165.778 Security Zone; Port of Mayaguez, Puerto Rico.

(a) *Security zone.* A moving and fixed security zone is established around all cruise ships entering, departing, mooring, or anchoring in the Port of Mayaguez, Puerto Rico. The regulated area includes all waters from surface to bottom within a 50-yard radius of the vessel. The zone is activated when a cruise ship on approach to the Port of Mayaguez enters within 1 nautical mile of the Bahia de Mayaguez Range Front Light located in position 18°13′12″ N, 067°10′46″ W. The zone is deactivated when a cruise ship departs the Port of Mayaguez and is no longer within 1 nautical mile of the Bahia de Mayaguez Range Front Light.

(b) *Definitions.* As used in this section:

Cruise ship means a passenger vessel greater than 100 feet in length that is authorized to carry more than 150 passengers for hire, except for a ferry.

Designated representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels and Federal, State, and local officers designated by or assisting the COTP San Juan in the enforcement of the safety zone.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, except U.S. Coast Guard or U.S. naval vessels and servicing pilot and tug boats.

(c) *Regulations.* (1) No person or vessel may enter into the security zone under this section unless authorized by the Captain of the Port San Juan.

(2) Vessels seeking to enter a security zone established in this section, may contact the COTP on VHF channel 16 or by telephone at (787) 289–2041 to request permission.

(3) All persons and vessels granted permission to enter the security zone must comply with the orders of the COTP and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: September 2, 2008.

E. Pino,

Captain, U.S. Coast Guard, Captain of the Port San Juan.

[FR Doc. E8–22242 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2008–0456; SW FRL–8713–2]

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 BAE Systems, Inc. (BAE) to exclude (or delist) a certain solid waste generated by its Sealy, 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 October 23, 2008. 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 October 8, 2008. 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–2008–0456 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–2008–0456, 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 BAE facility petition, contact Wendy Jacques, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202, by calling 214–665–7395 or by e-mail at *jacques.wendy@epa.gov*.

SUPPLEMENTARY INFORMATION: BAE 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 BAE to have its waste filter cake (F019 listed hazardous waste) excluded, or delisted, from the definition of a hazardous waste.

B. Why is EPA proposing to approve this delisting?

BAE's petition requests a delisting for the waste filter cake derived from the treatment of hazardous waste water listed as F019. BAE does not believe that the petitioned waste meets the criteria for which EPA listed it. BAE 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 BAE, Sealy, Texas facility.

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

BAE will dispose of the waste filter cake in a Subtitle D landfill. The Subtitle D landfill should be permitted or approved by a State regulatory agency.

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 (e.g., Oklahoma, Louisiana, etc.).

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 or his designee under § 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 BAE petition EPA to delist?

BAE petitioned EPA on December 23, 2005, to exclude from the lists of hazardous waste contained in § 261.31, the waste filter cake from its waste water treatment plant.

The waste filter cake is generated from the BAE facility located in Sealy, Texas. The waste filter cake is listed under EPA Hazardous Waste No. F019, because it is derived from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. Specifically, in its petition, BAE requested that EPA grant exclusion for 1,200 cubic yards per calendar year of F019 waste resulting from the treatment of waste waters from the manufacturing processes at its facility.

B. Who is BAE and what process do they use to generate the petitioned waste?

BAE manufactures trucks for the U.S. Army. Manufacturing consists of machining, cutting, welding, metal prep and priming, painting, assembly and final prep. Wastewater is treated and discharged to waters of the United States through permitted outfalls.

BAE's preprocess steps include fabrication and surface preparation and coating. The waste stream is a by-product of one main manufacturing process consisting of five process lines; Steel E-Coat (E-Coat 1 and E-Coat 2), Small Parts Steel E-Coat, Long-Term Armored Survivability (LTAS) and Small Parts Aluminum E-Coat. The waste generated is a solid by-product of BAE's wastewater treatment system.

BAE intends to dispose of the delisted waste filter cake at a Subtitle D Landfill. Treatment of the waste waters, which result from the manufacturing process generates the waste filter cake that is classified as F019 listed hazardous wastes pursuant to § 261.31. The 40 CFR

part 261, Appendix VII hazardous constituents, which are the basis for listing F019 hazardous wastes are: hexavalent chromium and cyanide.

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

To support its petition, BAE 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 seven filter cake samples;

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

(3) Description of the waste water treatment process.

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

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

TABLE 1—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE FILTER CAKE [1]

Constituent	Maximum total (mg/kg)	Maximum TCLP (mg/l)	Maximum allowable TCLP delisting level (mg/L)
Acetone	3.8	<.50	3211
Arsenic	2.69	.0108	.052
Barium	47.5	.0148	100
Bis(2-ethylhexyl)phthalate	2.3	.010	103
Cadmium	2.93	.0500	.561
Chloroform	.013	<.010	.4924
Chromium	2740	1.82	5.00
Copper	99.2	.371	149
Cyanide	2.06	.065	19
Furans	.00000893	.0000000536	3.57
Hexavalent Chromium	<2.00	.0253	5
Lead	21.2	<.0500	3.57
Lindane	<.0017	.00011	.4
Methyl Ethyl Ketone	.034	<.20	200
Nickel	6860	.0235	82.2
Selenium	<.806	.144	1
2,4,5,-TP (Silvex)	.77	.0061	1
2,4-D	.0050	.0078	6.65
Tin	319	.162	9001
Tetrachlorodibenzo-p-dioxins	.0000716	.0000000134	249
Tetrachloroethylene	.020	<.10	.125685
Zinc	3190	.81	1240

[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 sludge 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 sludge. EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for the wastes. 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, the facilities have never directly disposed of this material in a solid waste landfill, so 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 the wastes 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 of the filter cake 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 BAE's waste.

F. What changes have been made to the DRAS model?

Since 2004, U.S. EPA has been preparing an update of the *Delisting Risk Assessment Software (DRAS)* Version 2.0. The updates will be released as DRAS version 3.0. The update addresses a number of issues with version 2 and improved the fate and transport modeling.

To estimate the downgradient concentrations of waste leachate constituents released into groundwater, the *DRAS* utilizes conservative dilution-attenuation factors (DAFs) taken from Monte-Carlo applications of U.S. EPA's *Composite Model for Leachate Migration with Transformation Products (CMTP). DRAS 3.0* includes all new DAFs from new *CMTP* modeling runs. The new modeling takes advantage of: updated saturated flow and transport modules; a new surface impoundment module and database; model corrections for unrealistic scenarios (like water tables modeled above the ground surface); new isotherms for metals; and a revised recharge and infiltration database. As a result, many of the DAFs used in previous versions of *DRAS* have changed. Further affecting the groundwater calculation, the relationships for determining scaling factors used to scale the DAFs to account for very small waste streams have been updated to reflect the new database information on landfills and surface impoundments and were also corrected for a metric conversion of cubic meters to cubic yards. The new scaling factors are generally higher than those of previous versions of *DRAS*, resulting in higher estimated dilution and attenuation at lower waste volumes for both landfills and surface impoundments.

The new metals DAFs, based on MINTEQA2 isotherms, can vary as a function of the landfill leachate concentration. This means that the effective DAF (including a scaling factor adjustment, if necessary) for an input concentration may differ significantly with the effective DAF that corresponds to the allowable leachate concentration. *DRAS 3.0* now displays the DAFs in both the forward calculated risk tables and the tables of maximum allowable concentrations so that the difference is evident to the user. The isotherms that vary by leachate concentration are represented in *DRAS* by a look-up table with leachate concentrations paired with DAFs. In the event that an actual concentration input to *DRAS* lies between two values in the table, or an allowable receptor concentration lies between two calculated receptor concentrations from the table, *DRAS 3.0* will linearly and proportionally extrapolate between the two values to determine the corresponding exposure or allowable leachate concentration.

EPA changed the calculation for particle emissions caused by vehicles driving over the waste at the landfill to provide a more realistic estimate. The estimate depends upon the number of trips per day landfill vehicles make back and forth over the waste. In previous versions of *DRAS,* this value was conservatively set at 100 trips per day, corresponding with an extremely high annual waste volume. In DRAS 3.0, a minimum number of trips per day was conservatively assumed from the Subtitle D landfill survey (7.4 trips per day at the 95th percentile of values reported). The number of trips per day specific to the actual waste volume is then added to the minimum to reflect the impact of very large waste streams. This will considerably reduce the particle emission estimate for wastes generated at all but the largest annual volumes.

EPA added a conversion from English to metric tons to the calculation of particle emissions from waste unloading, resulting in a decrease of roughly 10% over previous versions of *DRAS*. We also made a unit-conversion factor correction to part of the air-volatile pathway which will reduce the impact to the receptor.

An error in the back-calculation for fish ingestion pathway was corrected to reflect the difference between freely dissolved and total water column waste constituent concentrations.

For the estimation of risk and hazard, we made a number of updates to the forward and back calculations. Previous versions of *DRAS* assumed that only 12.5% of particles are absorbed by the receptor's respiratory system. This is no longer necessary as toxicity reference values for inhalation currently recommended by U.S. EPA relate risk or hazard directly to exposure concentration. *DRAS 3.0* does not include the 12.5% reduction. This change significantly increases estimated risks due to particle inhalation and lowers corresponding allowable concentrations.

DRAS Version 3.0 has a reformulated back calculation of the allowable leachate concentrations from exposure due to contaminants volatilized during household water use to match the forward calculation of risk. In previous versions of *DRAS*, the forward calculation summed the risks from exposure to all three evaluated household compartments (the shower, the bathroom, and the whole house) while the back calculation based the maximum allowable level on the single most conservative compartment. The *DRAS 3.0* maximum allowable leachate concentrations are now based on the combined impact of all three compartments. The house exposure was also expanded to a 900 minute (15 hour) daily exposure to reflect non-working residents who have an overall 16 hour in-house exposure (the other 1 hour is spent in the shower and bathroom).

EPA resolved the inconsistencies with the way *DRAS* chooses limiting

pathways for specific waste constituents in *DRAS 3.0*.

EPA checked all toxicity reference values in *DRAS* and updated where necessary. Approximately 180 changes were made to the toxicity reference values in *DRAS* based on data in IRIS, PPRTV, HEAST, NCEA, CalEPA and other sources. Some route-to-route extrapolations of oral toxicity data to inhalation exposure have been returned to DRAS 3.0 is consistent with Agency policy. See the Delisting Technical Support Document for full accounting of this methodology. The same reference also includes discussions of toxicity reference choices where the multiple values were available or where the toxicity reference values were specific to particular species of constituents.

The DRAS results, which calculated the maximum allowable concentration of chemical constituents in the filter cake 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 BAE's waste.

G. What did EPA conclude about BAE's analysis?

EPA concluded, after reviewing BAE's processes that no other hazardous constituents of concern, other than those for which BAE tested, are likely to be present or formed as reaction products or by-products in BAE's wastes. In addition, on the basis of explanations and analytical data provided by BAE, pursuant to § 260.22, EPA concludes that the petitioned waste, filter cake, does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. See §§ 261.21, 261.22, 261.23, and 261.24, respectively.

H. 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 filter cake. 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 filter cake under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from the waste water 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 filter cake.

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

The descriptions by BAE 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 filter cake generated by BAE 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 BAE an exclusion from the list of hazardous wastes for the filter cake. EPA believes that the data submitted in support of the petition show the BAE's filter cake to be non-hazardous.

EPA has reviewed the sampling procedures used by BAE and has determined they satisfy EPA's criteria for collecting representative samples of variable constituent concentrations in the filter cake. The data submitted in support of the petition show that constituents in BAE'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 BAE has successfully demonstrated that the filter cake is non-hazardous.

EPA, therefore, proposes to grant an exclusion to BAE for the filter cake described in its December 2005 petition. EPA's decision to exclude this waste is based on analysis performed on samples taken of the filter cake.

If EPA finalizes the proposed rule, EPA will no longer regulate 1,200 cubic yards/year of filter cake from BAE's Sealy 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, BAE, 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 BAE must test in the filter cake, 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 BAE, 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 filter cake.

(2) Waste Holding and Handling

Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) has occurred for two consecutive quarterly sampling events. For example, if BAE is issued a final exclusion in August, the first quarter samples are due in November and the second quarter samples are due in February. If EPA deems that both the first and second quarter samples (a total of four) meet all the delisting limits, classification of the waste as non-hazardous can begin in March. If constituent levels in any sample taken by BAE exceed any of the delisting levels set in paragraph (1), BAE must: (i) notify EPA in accordance with paragraph (6), and; (ii) manage and dispose of the filter cake as hazardous waste generated under Subtitle C of RCRA.

(3) Verification Testing Requirements

BAE must complete a verification testing program on the filter cake 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 do not support the data provided in the petition, the exclusion will not cover the tested waste. This verification program operates on two levels.

The first part of the quarterly verification testing program consists of testing a batch of filter cake for specified indicator parameters as described in paragraph (1). Each quarterly sampling event will consist of at least two samples of the filter cake. Levels of constituents measured in the samples of the filter cake that do not exceed the levels set forth in paragraph (1) can be considered non-hazardous after two consecutive quarters of sampling data meet the levels listed in paragraph (1).

The second part of the verification testing program is the annual testing of two representative composite samples of the filter cake for all constituents specified in paragraph (1).

If BAE demonstrates for two consecutive quarters complete attainment of all specified limits, then BAE may request approval of EPA to reduce the frequency of testing to annually. If, after review of performance of the treatment system, EPA finds that annual testing is adequately protective of human health and the environment, then EPA may authorize BAE to reduce the quarterly comprehensive sampling frequency to an annual basis. If the annual testing of the wastes does not meet the delisting levels in paragraph (1), BAE 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). BAE 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 two consecutive quarters of verification sampling comply with the levels specified in paragraph (1). The waste classification as ''non-hazardous'' is also not authorized, if BAE fails to perform the quarterly and yearly testing as specified herein. Should BAE fail to conduct the quarterly/yearly testing as specified herein, then disposal of filter cake as delisted waste may not occur in the following quarter(s)/year(s) until BAE obtains the written approval of EPA.

(4) Changes in Operating Conditions

Paragraph (4) would allow BAE the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment processes. However, BAE must prove the effectiveness of the modified process and request approval from EPA. BAE 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 BAE facility is correctly managing the filter cake, BAE must compile, summarize, and keep delisting records on-site for a minimum of five years. It should keep all analytical data obtained pursuant to paragraph (3), including quality control information, for five years. Paragraph (5) requires that BAE 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 1,200 cubic yards per calendar year of filter cake generated at the BAE facility after successful verification testing.

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

(a) If BAE significantly alters the manufacturing process treatment system except as described in paragraph (4).

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

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

BAE 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.

BAE must manage waste volumes greater than 1,200 cubic yards of filter cake as hazardous waste until EPA grants a revised exclusion. When this exclusion becomes final, the management by BAE of the filter cake covered in this petition would be relieved from Subtitle C jurisdiction. BAE may not classify the waste as non-hazardous until the revised exclusion is finalized.

(6) Reopener

The purpose of paragraph (6) is to require BAE 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. BAE must also use this procedure if the waste sample 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 BAE 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 Procedure 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 BAE violates the terms and conditions?

If BAE 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 BAE 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–2008–0456. 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 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: August 29, 2008.

Bill Luthans,

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

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
* * * * * * *		
BAE Systems, Inc.	Sealy, TX	Filter Cake (EPA Hazardous Waste Number F019) generated at a maximum rate of 1,200 cubic yards per calendar year after [insert publication date of the final rule]. For the exclusion to be valid, BAE must implement a verification testing program that meets the following Paragraphs:

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. Filter Cake Leachable Concentrations (mg/l): Acetone—3211; Arsenic—0.052; Barium—100; Bis(2-ethylhexyl)phthalate—103; Cadmium—0.561; Chloroform—0.4924; Chromium—5.0; Copper—149; Cyanide—19; Furans—3.57; Hexavalent Chromium—5.0; Lead—3.57; Lindane—0.4; Methyl Ethyl Ketone—200; Nickel—82.2; Selenium—1.0; 2,4,5–TP (Silvex)—1.0; 2,4–D—6.65; Tin—9001; Tetrachlorodibenzo-p-dioxin—249; Tetrachloroethylene—0.125685; Zinc—1240. (2) Waste Holding and Handling: (A) Waste classification as non-hazardous can not begin until compliance with the limits set in paragraph (1) for filter cake has occurred for two consecutive quarterly sampling events. (B) If constituent levels in any sample taken by BAE exceed any of the delisting levels set in paragraph (1) for the filter cake, BAE must do the following: (i) Notify EPA in accordance with paragraph (6) and (ii) Manage and dispose the filter cake as hazardous waste generated under Subtitle C of RCRA. (3) Testing Requirements: Upon this exclusion becoming final, BAE may perform quarterly analytical testing by sampling and analyzing the filter cake as follows: (A) Quarterly Testing: (i) Collect two representative composite samples of the filter cake at quarterly intervals after EPA grants the final exclusion. The first composite samples may be taken at any time after EPA grants the final approval. Sampling should be performed in accordance with the sampling plan approved by EPA in support of the exclusion. (ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) for the filter cake must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements. (iii) Within thirty (30) days after taking its first quarterly sample, BAE will report its first quarterly analytical test data to EPA. If levels of constituents measured in the samples of the filter cake do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, BAE can manage and dispose the non-hazardous filter cake according to all applicable solid waste regulations. (B) Annual Testing: (i) If BAE completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), BAE may begin annual testing as follows: BAE must test two representative composite samples of the filter cake for all constituents listed in paragraph (1) at least once per calendar year. (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 BAE filter cake 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 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 BAE 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. BAE 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: BAE must submit the information described below. If BAE 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). BAE 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 some 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 BAE 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 quarterly or annual testing of the waste does not meet the delisting requirements in paragraph 1, BAE must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If BAE 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.

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(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 the date 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: BAE Systems 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 the 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.
* * * * * * *		

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2008–0457; SW–FRL–8713–1]

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 Cooper Crouse-Hinds (C–H) to exclude (or delist) a wastewater treatment plant (WWTP) sludge and filter sand (collectively, sludge) generated by C–H in Amarillo, TX from the lists of hazardous wastes. EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment.

EPA 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 exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, EPA would conclude that C–H's petitioned waste is non-hazardous with respect to the original listing criteria. EPA would also conclude that C–H's process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: We will accept comments until October 23, 2008. We will stamp comments postmarked 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 October 8, 2008. The request must contain the information described in § 260.20(d).

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–RCRA–2008–0457 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: kim.youngmoo@epa.gov.*

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

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

Instructions: Direct your comments to Docket ID No. EPA–R06–RCRA–2008–0457. 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://*