

established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO AL D Fort Rucker, AL [Revised]

Cairns Army Air Field, AL
(Lat. 31°16'14" N., long. 85°43'58" W.)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 5-mile radius of lat. 31°18'30" N., long. 85°42'20" W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the DOD IFR—Supplement Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

ASO AL E2 Fort Rucker, AL [New]

Within a 5-mile radius of lat. 31°18'30" N., long. 85°42'20" W. This Class E surface area airspace is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the DOD IFR—Supplement Airport/Facility Directory.

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Issued in College Park, Georgia, on August 3, 1999.

Nancy B. Shelton,

*Acting Manager, Air Traffic Division,
Southern Region.*

[FR Doc. 99–21037 Filed 8–17–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6424–4]

Hazardous Waste Management System; Proposed Exclusion for Identifying and Listing Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also, "the Agency" or "we" in this preamble) is proposing to grant a petition submitted by DuraTherm, Incorporated (DuraTherm). DuraTherm petitioned the Agency to exclude (or delist) desorber solid waste generated at its recycling facility from the lists of hazardous wastes contained in 40 CFR 261.24, 261.31, and 261.32.

DuraTherm submitted the petition under §§ 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, conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

We believe that DuraTherm's petitioned waste is nonhazardous with respect to the original listing criteria

and that the waste process DuraTherm uses will substantially reduce the likelihood of migration of hazardous constituents from this waste. Their process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: We will accept comments until October 4, 1999. 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.

ADDRESSES: Please send three copies of your comments: Send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Send the third copy to the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753. Identify your comments at the top with this regulatory docket number: "F–99–TXDEL–DURATHERM."

You should address requests for a hearing to the Acting Director, Robert E. Hanneschlager, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

Your requests for a hearing must reach EPA by September 2, 1999. The request must contain the information prescribed in § 260.20(d).

FOR FURTHER INFORMATION CONTACT: For technical information concerning this notice, contact Michelle Peace, Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX 75202, (214) 665–7430.

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

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I. Overview Information

a. What Action is EPA Proposing?

The EPA is proposing:

(1) To grant DuraTherm's petition to have their desorber solids excluded, or delisted, from the definition of a hazardous waste; and (2) to use a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency uses this model to predict the concentration of hazardous constituents released from the petitioned waste once it is disposed.

B. Why is EPA Proposing To Approve This Delisting?

DuraTherm petitioned the Agency to exclude, or delist, the desorber solids because they do not believe that the petitioned waste meets the criteria for which EPA listed it. DuraTherm also believes no additional constituents or factors could cause the wastes to be hazardous.

Based on our review, described below, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If our review had found that the waste remained hazardous based on the factors for which DuraTherm originally listed the waste, we would have proposed to deny the petition.)

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See § 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). We evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3).

We also evaluated the waste for other factors or criteria to assess whether these additional factors could cause the

waste to be hazardous. These factors included, (1) whether the waste is considered acutely toxic; (2) the toxicity of the constituents, (3) the concentration of the constituents in the waste, (4) the waste constituent's tendency to migrate and to bioaccumulate, (5) its persistence in the environment once released from the waste, (6) plausible and specific types of management of the petitioned waste, (7) the quantity of waste produced, and (8) waste variability.

The EPA believes that the petitioned waste does not meet the criteria for which we listed the waste, and therefore, should be delisted. The EPA's decision to delist waste from DuraTherm's facility is based on the description of the thermal desorption treatment system and analytical data from the San Leon facility submitted to support today's rule.

C. How Will DuraTherm Manage the Waste if It Is Delisted?

If the petitioned waste is delisted, DuraTherm intends to manage it in one of three off-site municipal solid waste landfills. If the waste is stabilized, DuraTherm must ensure that the stabilized waste will also meet the delisting levels. DuraTherm currently disposes of the petitioned waste (desorber solids) generated at its facility in two off-site RCRA hazardous waste landfills that are not owned/operated by DuraTherm.

D. When Would the Proposed Delisting Exclusion Be Finalized?

The HSWA specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on today's proposal.

This rule, if finalized, will become effective immediately upon final publication. The HSWA amended § 3010 of RCRA allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

The 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 § 3010, and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the

Administrative Procedure Act, 5 U.S.C. 553(d).

E. What States Would Be Affected By This Action?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received our authorization to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a 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. If DuraTherm transports the petitioned waste to or manages the waste in any State with delisting authorization, DuraTherm must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What Is the History of the Delisting Program?

The 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. The EPA has amended this list several times and published it in §§ 261.31 and 261.32.

We list 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.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to demonstrate 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 the Agency because they do not consider the wastes 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 the listed wastes. The criteria for which EPA lists a waste are in § 261.11 and in the background documents for the listed wastes.

In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for the EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. See § 260.22, 42 U.S.C. § 6921(f) and the background documents for the listed wastes.

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the wastes.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in § 260.22(a), in 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 we listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous. See the Hazardous and Solid Waste Amendments (HSWA) of 1984.

The EPA must also consider as hazardous wastes mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See §§ 261.3(a)(2)(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.

The "mixture" and "derived-from" rules are now final, after having been vacated, remanded, and reinstated. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to the EPA on procedural grounds. See *Shell Oil Co. v. EPA.*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278). Consult these references for more information about mixtures derived from wastes.

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

A. What Wastes Did DuraTherm Petition EPA To Delist?

On November 6, 1998, DuraTherm in San Leon, Texas, petitioned the EPA for a standard exclusion of 20,000 cubic yards of desorber solids, per calendar year, resulting from its thermal desorption treatment process. The Agency has presently listed the resulting waste under § 261.3(c)(2)(I) (the "derived from" rule), as EPA Hazardous Waste No. F037, F038, K048, K049, K050 and K051. Table 1 lists the constituents of concern for these waste codes.

TABLE 1.—HAZARDOUS WASTE CODES ASSOCIATED WITH WASTE STREAMS

Waste Code	Basis for Characteristics/Listing
F037	Benzene, benzo(a)pyrene, Chrysene, lead, chromium.
F038	Benzene, benzo(a)pyrene, Chrysene, lead, chromium.
K048	Hexavalent Chromium, Lead
K049	Hexavalent Chromium, Lead.
K050	Hexavalent Chromium.
K051	Hexavalent Chromium, Lead.

B. What Information and Analyses Did DuraTherm Submit To Support This Petition?

To support its petition, DuraTherm submitted:

- (1) Descriptions of its thermal desorption processes associated with petitioned wastes;
- (2) results of the total constituent list for 40 CFR part 264 Appendix IX volatiles, semivolatiles, and metals except pesticides, herbicides, and PCBs;
- (3) results of the constituent list for Appendix IX on Toxicity Characteristic

Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

- (4) results for reactive sulfide,
- (5) results for reactive cyanide,
- (6) results for pH,
- (7) results of the metals concentrations in the Multiple Extraction Procedure extract, and
- (8) results of ignitability.

DuraTherm tested and analyzed the waste stream under five conditions to properly account for variables in the waste stream: during start-up operations, shut-down operations, slow feed rates, fast feed rates, and normal operations. For wastes that failed to meet the estimated delisting levels, DuraTherm stabilized the wastes to prevent leaching metal constituents from the wastes. The facility submitted results from the Multiple Extraction Procedure run on the stabilized materials.

C. Who Is DuraTherm, and What Process Do They Use To Generate the Petitioned Waste?

DuraTherm is an environmental waste management and resource recovery company specializing in separation technologies applicable to hydrocarbon contaminated wastes. The company has operated a RCRA Part B permitted thermal desorber facility since 1994. The facility processes large volumes of hazardous waste from petroleum industries. The DuraTherm process recovers hydrocarbons from hydrocarbon contaminated soils and sludges and reduces the volume of solids requiring landfill disposal. The thermal desorption process uses high temperatures to volatilize organics from a waste matrix in a nonoxidizing atmosphere, while pulverizing the waste material.

The thermal desorption system:

(1) Consists of a rotating drum that a gas-fired convection heater externally heats.

(2) Has support systems for feed, vapor condensation, recovery and phase separation of liquids, solids, cooling and handling and air pollution control devices.

(3) Uses countercurrent inert gas or nitrogen purge/sweep to maintain oxygen levels below those required for combustion. The purge/sweep system also directs volatilized contaminants to the vapor exit.

(4) Uses a continuous feed system. Feed rates can vary from 2,000 to 8,000 pounds per hour depending on moisture content. Weight scales in the hopper monitor the feed rates.

Hot air that is circulated around the drum heats the rotary drum. A high temperature fan pulls the hot air away

from the enclosed burner box through the stationary heater shell and across the finned section of the rotary drum.

The solids are removed from the drum by water jacketed hollow shaft screw conveyors that are split to two parallel lines and then discharged through an air lock into roll-off containers. These containers are sealed under hydraulically controlled lids to eliminate particulate emissions. The facility moves roll-off containers of filled with desorber solids to a container storage area.

DuraTherm then samples and tests the desorber solids. They ship the waste when the analysis is complete and results indicate the materials meet applicable land disposal restrictions.

DuraTherm sells the recovered oil that meets the used oil specifications as product. The company sells the oil that fails the used oil specifications to petroleum refiners for use in the refining process.

D. How Did DuraTherm Sample and Analyze the Data in This Petition?

DuraTherm generated the waste samples from the thermal desorption unit under five different operating conditions: at start-up, shutdown, high feed rates, low feed rates, and under normal operating conditions.

For sampling, DuraTherm developed a list of constituents of concern from comparing a list of all raw materials used in the plant that could potentially appear in the petitioned waste with those in 40 CFR Appendix IX part 264.

During a twenty-one day operational period, DuraTherm conducted its sampling. Using the list of constituents of concern, DuraTherm developed a sampling list based on the availability of test methods and process knowledge. DuraTherm analyzed the forty composite samples:

(1) For the total concentrations (that is, the mass of a particular constituent per mass of waste) of selected volatiles and semivolatiles, and metals from Appendix IX.

(2) to determine whether the waste exhibited ignitable, corrosive, or reactive properties as defined under 40 CFR 261.21, 261.22, and 261.23, including analysis for total constituent concentrations of cyanide, sulfide, reactive cyanide, and reactive sulfide.

(3) for TCLP concentrations (that is, the mass of a particular constituent per unit volume of extract) of selected volatiles, semivolatiles, and metals on the Appendix IX list.

DuraTherm Used These Methods	To Quantify
SW-846 Method 8260A, 8270B, and 6010.	The total constituent concentrations of 40 CFR, part § 264 Appendix IX Volatiles Appendix IX Semivolatiles (excluding PCBs, Pesticides, Herbicides) and Appendix IX Metals.
SW-846 Methods 1311, 8260A, 8270B, 6010, 8290.	The TCLP concentrations of constituents in the extract.
SW-846 1320	The concentration of metal constituents in the extract after the Multiple Extraction Procedure.
SW-846 Methods 7470A, 7471A.	Mercury.
SW-846 9071A	Total oil and grease.
SW-846 9045A	pH.
SW-846 9030	Reactive Sulfide.
SW-846 9010A	Reactive Cyanide.

E. What Were the Results of DuraTherm's Analysis?

The Desorber Solids do not meet the definitions for characteristic waste as defined by §§ 261.21–261.24. Table 2 presents the maximum total constituent and leachate concentrations for the Desorber Solids.

Twenty-six of the forty samples tested exceeded the maximum allowable leachate concentration for antimony. For this petition the maximum allowable leachate concentration for antimony is 0.162 mg/L. The EPA did not base its listing of F037, F038, K048, K049, K050 or K051 on the presence of antimony. One of the twenty-six waste samples exceeded the maximum allowable leachate concentration for lead (0.405 mg/L). We eliminated these samples from the delisting evaluation. The EPA evaluated fourteen samples of waste. We believe that these fourteen samples are representative of the waste codes to be delisted. DuraTherm also anticipated the failures, stabilized the waste with Portland Cement, and analyzed three of these samples using the Multiple Extraction Procedure. The Multiple Extraction Procedure detected metals concentrations for zinc (3.98 mg/l), antimony (0.15 mg/l), barium (3.37 mg/l), chromium (0.01 mg/l), and vanadium (0.03 mg/l). These concentrations were below the maximum allowable leachate concentrations EPA sets as delisting criteria.

TABLE 2. MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS DESORBER SOLIDS¹

Constituents	Total constituent analyses (mg/kg)	Leachate analyses (mg/l)
Antimony	107	0.14
Arsenic	67.1	0.67
Barium	7,750	2.86
Benzene	5.56	0.0129
Benzo (a) anthracene.	0.241	ND
Beryllium	4.73	0.006
Bis ethylhexyl phthalate.	0.356	ND
Butanone (MEK) ...	1.76	0.0315
Cadmium	7.19	0.11
Carbon Disulfide ...	0.67	ND
Chromium	987	0.18
Chrysene	0.08	ND
o-Cresol	0.134	0.0044
m,p cresols	0.088	0.0053
Ethylbenzene	0.15	ND
Fluoranthene	0.166	ND
Lead	3,910	0.23
Nickel	1,310	2.37
Phenanthrene	0.284	ND
Phenol	0.259	0.0135
Pyrene	0.153	ND
Selenium	58.8	0.22
Silver	8.05	0.02
Styrene	0.38	ND
Toluene	1.16	0.0008
Vanadium	3,760	0.11
Xylene	0.17	ND
Zinc	6,290	26.5
Reactive sulfide ...	60	
Total sulfide	21,800	
Total cyanide	2.3	
Oil and grease	4,700	
pH	5.97–12.4	

ND Denotes that the constituent was not detected at the detection limit specified in the table.

¹These levels represent the highest concentration of each constituent found in any sample. These levels do not necessarily represent the specific levels found in one sample.

F. How Did EPA Evaluate the Risk of Delisting This Waste?

The EPA considered the appropriateness of alternative waste management scenarios for DuraTherm's desorber solids. Based on the information provided in the petition, we decided that disposing of the desorber solids in a municipal solid waste landfill is the most reasonable, worst-case scenario for the desorber solids.

Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The EPA, therefore, evaluated DuraTherm's petitioned wastes using the modified EPA Composite Model for Landfills/Surface Impoundments (EPACML). The model predicts the potential for ground water

contamination from wastes disposed of in a landfill.

You can find a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting in 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991) and the RCRA public docket. This model includes both unsaturated and saturated zone transport modules. It uses the reasonable worst-case contaminant levels in ground water at a compliance point; that is, a receptor well serving as a drinking-water supply.

Specifically, the model estimates the dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from ground water recharge for a specific volume of waste. The EPA requests comments on using the EPACML to evaluate DuraTherm's desorber solids.

To evaluate DuraTherm's petitioned waste, we used the EPACML to evaluate the mobility of the hazardous constituents detected in the extract of samples of DuraTherm's desorber solids. Typically, the EPA uses the maximum annual waste volume to derive a petition-specific DAF. The DAFs are currently calculated assuming that an ongoing process generates wastes for 20 years. The DAF for the waste volume of desorber solids is 20,000 cubic yards/year, assuming 20 years is 27.

The EPA's evaluation of the desorber solids using a DAF of 27, an estimated maximum waste volume of 20,000 cubic yards, and the maximum reported TCLP concentrations (see Table 2), yielded compliance point concentrations (see Table 3) that are below the current health-based levels.

TABLE 3.—COMPLIANCE POINT CONCENTRATIONS

Constituents	Compliance point concentration	Regulatory limit
Antimony	0.005	0.006
Arsenic	0.02	0.05
Barium	0.106	2
Benzene	0.0005	0.005
Beryllium	0.0002	0.004
Butanone (MEK)	0.0012	20
Cadmium	0.004	0.005
Chromium	0.006	0.1
o Cresol	0.002	2
m,p cresols	0.009	0.2
Lead	0.008	0.015
Nickel	0.087	0.1
Phenol	0.009	20
Selenium	0.008	0.05
Silver	0.0007	0.2
Styrene	0.0002	0.1
Toluene	0.0004	1
Vanadium	0.004	0.2
Zinc	0.981	10

The maximum reported or calculated leachate concentrations of barium, benzene, and selenium in the desorber solids yielded compliance point concentrations below the health-based levels used in the delisting decision-making.

The EPA did not evaluate the mobility of the remaining constituents (for example, anthracene and pyrene) from DuraTherm's waste because DuraTherm did not detect them in the leachate using the appropriate analytical test methods (see Table 2). As explained above, we do not evaluate nondetectable concentrations of a constituent of concern in a petitioner's modeling efforts for delisting.

We believe the TCLP is the appropriate analytical method to use in evaluating this petition. DuraTherm's waste streams range in pH between 5.97 and 12.4. We also know the disposal scenarios used. The EPA believes that the TCLP will adequately predict the leachability of constituents in the waste. To confirm that the waste will not leach at concentrations that may affect human health and the environment, EPA will require DuraTherm to analyze the constituents in the waste at varying pH conditions during the verification testing.

G. What Did EPA Conclude About DuraTherm's Analysis?

After reviewing DuraTherm's processes, the EPA concludes that:

- (1) No additional hazardous constituents of concern are likely to be present or formed as reaction products or by-products in DuraTherm's waste.
- (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

H. What Other Factors Did EPA Consider in Its Evaluation?

During the evaluation of DuraTherm's petition, the EPA also considered the potential impact of the petitioned waste via air emission and surface run-off.

Potential Impact Via Air Emission

The Agency evaluated the potential hazards resulting from airborne exposure to the hazardous constituents released from the desorber solids. We investigated the potential hazard from exposure to particulates released from the surface of an open landfill.

We considered exposure to hazardous constituents through: (1) Inhalation of particulates and absorption into the lungs, (2) ingestion of particulates eliminated from respiratory passages and subsequently swallowed, and (3) air

deposition of particulates and subsequent ingestion of the soil/waste mixture.

We believe that exposure to airborne contaminants from DuraTherm's petitioned wastes is unlikely. DuraTherm's waste should have no appreciable air releases under the proposed disposal conditions.

The results of this worst-case analysis suggested no substantial present or potential hazard to human health from airborne exposure to constituents from DuraTherm's desorber solids.

The estimated levels of the hazardous constituents of concern released into the air are below health-based levels for human health, ingestion, and inhalation levels of concern, and the EPA Concentration-Based Exemption Criteria for Soils (57 FR 21450, May 20, 1992).

For a description of the EPA's assessment of the potential impact of DuraTherm's waste on airborne dispersion of waste contaminants, see the RCRA public docket for today's proposed rule.

Potential Impact Via Surface Run-off Water Routes

The EPA also considered the potential impact of the petitioned wastes via a surface water route. The EPA believes those containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations prohibit pollutant discharges into surface waters. See 56 FR 50978, October 9, 1991.

The concentrations of any hazardous constituents dissolved in the run-off might be lower than the levels in the TCLP leachate analyses reported in today's notice due to the aggressive acidic medium used for extraction in the TCLP.

We believe leachate derived from the waste is unlikely to directly enter a surface water body. The leachate will not enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water. The leachable concentration shows the fraction of the constituent that mobilizes in surface water and ground water.

For the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, we evaluated the potential impacts on surface water if release of constituents of DuraTherm's waste by runoff and erosion occurs. See the RCRA public docket for today's

proposed rule. The estimated levels of the hazardous constituents of concern in surface water are below health-based levels for human health and the EPA Chronic Water Quality Criteria for aquatic organisms (EPA, OWRS, 1987).

The EPA, therefore, concluded that DuraTherm's desorber solids waste is not a substantial or potential hazard to human health and the environment via surface water exposure.

I. What Is EPA's Final Evaluation of This Delisting Petition?

The descriptions of the DuraTherm 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 exclusion. We conclude DuraTherm's process will substantially reduce the likelihood of migration of hazardous constituents from the petitioned waste. Their process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes we should grant DuraTherm a conditional exclusion for the desorber solids. The EPA believes the data submitted in support of the petition show DuraTherm's process can render the desorber solids nonhazardous.

We have reviewed the sampling procedures used by DuraTherm and have determined they satisfy EPA criteria for collecting representative samples of variable constituent concentrations in the desorber solids. The data submitted in support of the petition show that constituents in DuraTherm's waste are presently below the compliance point concentrations used in the delisting decision-making and would not pose a substantial hazard to the environment. The EPA believes that DuraTherm has successfully demonstrated that the desorber solids are nonhazardous.

The EPA therefore, proposes to grant a conditional exclusion to the DuraTherm Corporation, in San Leon, Texas, for the desorber solids described in its petition. The EPA's decision to conditionally exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the desorber solids.

If we finalize the proposed rule, the Agency will no longer regulate the petitioned waste 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, DuraTherm, must comply with the requirements in 40 CFR part 261, Appendix IX, Tables 1 and 2. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituents that DuraTherm must test the leachate from the desorber solids, below which these wastes would be considered nonhazardous.

The EPA selected the set of inorganic and organic constituents specified in Paragraph (1) because of information in the petition. We compiled the list from the composition of the waste, descriptions of DuraTherm's treatment process, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making.

We established the proposed delisting levels by calculating the Maximum Allowable Leachate (MALs) concentrations from the Health-based levels (HBL) for the constituents of concern and the EPACML chemical-specific DAF of 27, that is, $MAL = HBL \times DAF$. We also limited the MALs so the concentrations would not exceed non waste water concentrations in the Land Disposal Restriction treatment standards for F037, F038, K048, K049, K050, and K051 in 40 CFR part 268. These delisting levels correspond to the allowable levels measured in the TCLP extract of the waste.

(2) Waste Holding and Handling

The purpose of this paragraph is to ensure that DuraTherm manages and disposes of any desorber solids that might contain hazardous levels of inorganic and organic constituents according to Subtitle C of RCRA. Holding the desorber solids until characterization is complete will protect against improper handling of hazardous material. If EPA determines that the data collected under this Paragraph do not support the data provided for in the petition, the exclusion will not cover the petitioned waste. The exclusion is effective when we sign it, but the disposal cannot begin until the verification sampling is completed.

(3) Verification Testing Requirements

(A) Initial Verification Testing:

If the EPA determines that the data from the initial verification period shows the treatment process is effective, DuraTherm may request that EPA allow it to conduct verification testing

quarterly. If EPA approves this request in writing, then DuraTherm may begin verification testing quarterly.

The EPA believes that an initial period of 60 days is adequate for a facility to collect sufficient data to verify that the data provided for the desorber solids, in the 1998 petition, is representative.

We are requiring DuraTherm to conduct a multiple pH analysis because in our experience more leaching can occur from disposed waste when the pH of the waste is extremely acidic or basic. DuraTherm's desorber solids vary greatly in pH, from 5.97 to 12.4. The pH of the desorber solid cannot exceed a pH of 12.5 when measured using SW-846, Method 9045C. DuraTherm must analyze 10 samples of the desorber solids using a multiple pH extraction procedure. The 10 waste samples should consist of both the non-stabilized and stabilized residual solids samples. If none of the samples collected during the 60 day test period need to be stabilized, DuraTherm should provide multiple pH data on the first sample of stabilized wastes generated. The multiple pH test is similar to the TCLP, but the test uses different pH extraction fluids.

DuraTherm should design the analytical test to show that the petitioned waste when disposed of in an acidic and basic landfill environment would not leach concentrations above the levels of regulatory concern. The third condition should reflect how the petitioned waste will behave when it is disposed in a landfill environment similar to the pH of the waste. The EPA believes that evaluating the leachate generated from using extraction fluids over a range of pHs can simulate general disposal conditions and provide added assurance that the waste will remain nonhazardous when disposal conditions change. The petitioner must perform these analyses to confirm that the leachate concentrations do not exceed the concentrations in Paragraph 1 over a wide pH range. While the waste's pH does vary, the Agency believes that under the various pH conditions the waste will remain stable, and thus will proceed with the promulgation of the proposed decision.

If we determine that the data collected under this Paragraph do not support the data provided for the petition, the exclusion will not cover the generated wastes. If the data from the initial verification period demonstrate that the treatment process is effective, DuraTherm may request quarterly testing. EPA will notify DuraTherm, in writing, if and when they may replace the testing conditions in paragraph

(3)(A)(i) with the testing conditions in (3)(B).

(B) Subsequent Verification Testing:

The EPA believes that the concentrations of the constituents of concern in the desorber solids may vary over time. As a result, to ensure that DuraTherm's treatment process can effectively handle any variation in constituent concentrations in the waste, we are proposing a subsequent verification testing condition.

The proposed subsequent testing would verify that DuraTherm operates the thermal desorption as it did during the initial verification testing. It would also verify that the desorber solids do not exhibit unacceptable levels of toxic constituents. The EPA is proposing to require DuraTherm to analyze representative samples of the desorber solids quarterly during the first year of waste generation. DuraTherm would begin quarterly sampling on the anniversary date of the final exclusion as described in Paragraph (3)(B). They must also use the multiple pH extraction procedure for samples collected during the quarterly and annual sampling.

(C) Termination of Organic Testing:

The EPA is proposing to end the subsequent testing conditions for organics during the first year in Paragraph (1)(C) after DuraTherm has demonstrated that the waste consistently meets the delisting levels. Annual testing requires the full list of components in Paragraph 1.

If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, DuraTherm must notify the Agency according to the requirements in Paragraph 6. We will take the appropriate actions necessary to protect human health and the environment. The facility must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

To confirm that the characteristics of the waste do not change significantly over time, DuraTherm must continue to analyze a representative sample of the waste for organic constituents annually. If operating conditions change as described in Paragraph (4); DuraTherm must reinstate all testing in Paragraph (1)(A). They must prove through a new demonstration that their waste meets the conditions of the exclusion. DuraTherm must continue organic testing of the desorber solids for the exclusion of that waste.

(4) Changes in Operating Conditions

Paragraph (4) would allow DuraTherm the flexibility of modifying its processes (for example, changes in

equipment or change in operating conditions) to improve its treatment process. However, DuraTherm must prove the effectiveness of the modified process and request approval from the EPA. DuraTherm must manage wastes generated during the new process demonstration as hazardous waste until they have obtained written approval and Paragraph (3) is satisfied.

(5) Data Submittals

To provide appropriate documentation that DuraTherm's facility is properly treating the waste, DuraTherm must compile, summarize, and keep delisting records on-site for a minimum of five years. They should keep all analytical data obtained through Paragraph (3) including quality control information for five years. Paragraph (5) requires that DuraTherm 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, it will apply only to 20,000 cubic yards of desorber solids, generated annually at the DuraTherm facility after successful verification testing.

We would require DuraTherm to file a new delisting petition under any of the following circumstances:

- (a) If they significantly alter the thermal desorption treatment system except as described in Paragraph (4)
- (b) If they use any new manufacturing or production process(es), or significantly change from the current process(es) described in their petition; or
- (c) If they make any changes that could affect the composition or type of waste generated.

DuraTherm must manage waste volumes greater than 20,000 cubic yards of desorber solids as hazardous until we grant a new exclusion.

When this exclusion becomes final, DuraTherm's management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction. DuraTherm must either treat, store, or dispose of the waste in an on-site facility. If not, DuraTherm must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a State permit, license, or register to manage municipal or industrial solid waste.

(6) Reopener Language

The purpose of Paragraph 6 is to require DuraTherm 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. DuraTherm 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 the Agency. The EPA will evaluate the information on which we 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 DuraTherm 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.

The EPA believes that we have the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978) *et seq.*, to reopen a delisting decision. We may reopen a delisting decision when we receive new information that calls into question the assumptions underlying the delisting.

The Agency believes a clear statement of its authority in delistings is merited in light of Agency experience. See Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading the Agency to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations case by case. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. See APA 553 (b).

(7) Notification Requirements

In order to adequately track wastes that have been delisted, EPA is requiring that DuraTherm provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. DuraTherm must provide this notification within 60 days of commencing this activity.

D. What Happens if DuraTherm Violates the Terms and Conditions?

If DuraTherm violates the terms and conditions established in the exclusion, the Agency will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the Agency will

continue to evaluate these events on a case-by-case basis. The Agency expects DuraTherm to conduct the appropriate waste analysis and comply with the criteria explained above in Paragraphs 3, 4, 5 and 6 of the exclusion.

V. Public Comments

A. How May I as an Interested Party Submit Comments?

The EPA is requesting public comments on this proposed decision and on the applicability of the fate and transport model used to evaluate the petition.

Please send three copies of your comments: Send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD-O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Send the third copy to the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753. Identify your comments at the top with this regulatory docket number: F-99-TXDEL-DURATHERM.

You should address requests for a hearing to the Acting Director, Robert E. Hanneschlager, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

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 Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9:00 a.m. to 4:00 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. Regulatory Impact

Under Executive Order (E.O.) 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from today's proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of E.O. 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on a small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (Public Law (Pub. L.) 96-511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator

explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 12875

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

XI. Executive Order 13045

The E.O. 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines: (1) Is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by E.O. 12866.

XII. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of E.O. 13084 do not apply.

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects that communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

XIII. National Technology Transfer and Advancement Act

Under section 12(d) if the National Technology Transfer and Advancement Act (NTTAA), the Agency is directed to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus

standard bodies. Where EPA does not use available and potentially applicable voluntary consensus standards, the NTTAA requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards, and thus the Agency has no need to consider the use of voluntary consensus standards in developing this rule.

List of Subjects in 40 CFR Part 261

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

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

Dated: July 13, 1999.

Robert E. Hanneschlager,
Acting Division Director, Multimedia
Planning and Permitting Division.

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

PART 261—IDENTIFYING AND LISTING 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 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

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

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility and address	Waste description
* DuraTherm, Incorporated San Leon, Texas.	* Desorber solids, (at a maximum generation of 20,000 cubic yards per calendar year) generated by DuraTherm using the thermal desorption treatment process, (EPA Hazardous Waste No. F037 and F038) and that is disposed of in Subtitle D landfills after [publication date of the Final exclusion]. For the exclusion to be valid, DuraTherm must implement a testing program that meets the following Paragraphs: (1) Delisting Levels: All leachable concentrations for those constituents must not exceed the following levels (ppm). The petitioner must use an acceptable leaching method, for example SW-846, Method 1311 to measure constituents in the waste leachate. Desorber solids— (i) Inorganic Constituents Arsenic—1.35; Antimony—0.162; Barium—21.0; Beryllium—0.108; Cadmium—0.135; Chromium—2.7; Lead—0.405; Nickel—2.7; Selenium—0.82; Silver—0.43; Vanadium—4.3; Zinc—270. (ii) Organic Constituents Anthracene—0.28; Benzene—0.135; Benzo(a) anthracene—0.059; Benzo(b)fluoranthene—0.11; Benzo(a)pyrene—0.061; Bis-ethylhexylphthalate—0.28; Carbon Disulfide—3.8; Chlorobenzene—0.057; Chrysene—0.059; o,m,p Cresols—54; Dibenzo(a,h) anthracene—0.055; 2,4 Dimethyl phenol—18.9; Dioctyl phthalate—0.017; Ethylbenzene—0.057; Fluoranthene—0.068; Fluorene—0.059; Naphthalene—0.059; Phenanthrene—0.059; Phenol—6.2; Pyrene—0.067; Styrene—2.7; Trichloroethylene—0.054; Toluene—0.08; Xylene—0.032 (2) Waste Holding and Handling: DuraTherm must store the desorber solids as described in its RCRA permit, or continue to dispose of as hazardous all desorber solids generated, until they have completed verification testing described in Paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied. (B) Levels of constituents measured in the samples of the desorber solids that do not exceed the levels set forth in Paragraph (1) are nonhazardous. DuraTherm can manage and dispose the nonhazardous desorber solids according to all applicable solid waste regulations.

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

Facility and address	Waste description
	<p>(C) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), DuraTherm must re-treat or stabilize the batches of waste used to generate the representative sample until it meets the levels. DuraTherm must repeat the analyses of the treated or stabilized waste.</p> <p>(D) If the facility has not treated or stabilized the waste, DuraTherm must manage and dispose the waste generated under Subtitle C of RCRA.</p> <p>(3) <i>Verification Testing Requirements:</i> DuraTherm must perform sample collection and analyses, including quality control procedures, according to SW-846 methodologies. If EPA judges the process to be effective under the operating conditions used during the initial verification testing, DuraTherm may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). DuraTherm must continue to test as specified in Paragraph (3)(A) until and unless notified by EPA in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B).</p> <p>(A) <i>Initial Verification Testing:</i> After EPA grants the final exclusion, DuraTherm must do the following:</p> <ul style="list-style-type: none"> (i) Collect and analyze composites of the desorber solids. (ii) Make two composites of representative grab samples collected. (iii) Analyze the waste, before disposal, for all of the constituents listed in Paragraph 1. (iv) Sixty (60) days after this exclusion becomes final, report the operational and analytical test data, including quality control information. (v) Submit the test plan for conducting the multiple pH leaching procedure to EPA for approval at least 10 days before conducting the analysis. (vi) Conduct a multiple pH leaching procedure on 10 samples collected during the sixty-day test period. (vii) The ten samples should include both non-stabilized and stabilized residual solids. If none of the samples collected during the sixty-day test period need to be stabilized, DuraTherm should provide multiple pH data on the first sample of stabilized wastes generated. (vii) Perform the toxicity characteristic leaching procedure using three different pH extraction fluids to simulate disposal under three conditions. Simulate an acidic landfill environment, basic landfill environment, and a landfill environment similar to the pH of the waste. <p>(B) <i>Subsequent Verification Testing:</i> Following written notification by EPA, DuraTherm may substitute the testing conditions in (3)(B) for (3)(A)(i). DuraTherm must continue to monitor operating conditions, and analyze representative samples each quarter of operation during the first year of waste generation. The samples must represent the waste generated in one quarter. DuraTherm must run the multiple pH procedure on these waste samples.</p> <p>(C) <i>Termination of Organic Testing:</i></p> <ul style="list-style-type: none"> (i) DuraTherm must continue testing as required under Paragraph (3)(B) for organic constituents in Paragraph (1)(A)(ii), until the analytical results submitted under Paragraph (3)(B) show a minimum of two consecutive samples below the delisting levels in Paragraph (1)(A)(i), DuraTherm may then request that EPA stop quarterly organic testing. After EPA notifies DuraTherm in writing, the company may end quarterly organic testing. (ii) Following cancellation of the quarterly testing, DuraTherm must continue to test a representative composite sample for all constituents listed in Paragraph (1) annually (by twelve months after final exclusion). <p>(4) <i>Changes in Operating Conditions:</i> If DuraTherm 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 as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), they must notify EPA in writing; they may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in Paragraph (1) and they have received written approval to do so from EPA.</p> <p>(5) <i>Data Submittals:</i> DuraTherm must submit the information described below. If DuraTherm 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. DuraTherm must:</p> <ul style="list-style-type: none"> (A) Submit the data obtained through Paragraph 3 to Mr. William Gallagher, Chief, Region 6 Delisting Program, EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733, Mail Code, (6PD-O) within the time specified. (B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the State of Texas request 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: <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) <i>Reopener Language—</i></p>

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

Facility and address	Waste description
	<p>(A) If, anytime after disposal of the delisted waste, DuraTherm possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater 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 Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data.</p> <p>(B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, DuraTherm must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data.</p> <p>(C) If DuraTherm 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 Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.</p> <p>(D) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate 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 Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate'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 Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise.</p> <p>(7) Notification Requirements: DuraTherm must do 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 they will transport the delisted waste described above for disposal, 60 days before beginning such activities.</p> <p>(B) Update the one-time written notification if they ship the delisted waste into a different disposal facility.</p>

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility and address	Waste description
<p>* * * * *</p> <p>DuraTherm, Incorporated San Leon, Texas.</p>	<p>* * * * *</p> <p>Desorber Solids, (at a maximum generation of 20,000 cubic yards per calendar year) generated by DuraTherm using the treatment process to treat the Desorber solids, (EPA Hazardous Waste No. K048, K049, K050, and K051 and disposed of in a Subtitle D landfill. DuraTherm must implement the testing program found in Table 1. Wastes Excluded From Non-Specific Sources, for the petition to be valid.</p>

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-6423-9]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program Revisions for State of Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA (also, "the Agency" in this preamble) is proposing to grant final authorization to the Texas Natural Resource Conservation Commission

(TNRCC) for its hazardous waste program revisions, specifically, revisions needed to meet Resource Conservation and Recovery Act (RCRA) Cluster V, which contains Federal rules promulgated between July 1, 1994 to June 30, 1995. In the "Rules and Regulations" section of this **Federal Register** (FR), EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If the EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If the EPA receives adverse written comments,

a second **Federal Register** document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before September 17, 1999.

ADDRESSES: Mail written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Louisiana during normal business hours at the