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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FDMS Docket No.: EPA–R08–RCRA–2011–0823; FRL–9502-4]

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: The Environmental Protection Agency ("EPA," "the Agency" or "we" in this preamble) is proposing to grant a petition submitted by the ConocoPhillips Billings, Montana Refinery ("ConocoPhillips" or "Petitioner") to exclude or ''delist,'' from the list of hazardous wastes, residual solids from sludge removed from two storm water tanks at its Billings, Montana refinery and processed in accordance with the petition. The EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the potential impact of the petitioned waste on human health and the environment.

The EPA's proposed decision to grant the petition is based on an evaluation of waste-specific information provided by ConocoPhillips. This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

This exclusion would be valid only when sludge from the two storm water tanks is dewatered and de-oiled using a filter press and/or portable centrifuge, and the resulting residual solids are disposed of in a RCRA Subtitle D landfill that is permitted, licensed, or registered by a state to manage industrial solid waste. If finalized, the EPA would conclude that ConocoPhillips'

petitioned waste is nonhazardous with respect to the original listing criteria and that there are no other factors that would cause the waste to be hazardous.

DATES: The EPA will accept public comments on this proposed decision until (*insert date 30 days after publication in the Federal register)* the EPA 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. Any person may request an informal hearing on this proposed decision by filing a request to the EPA by (*insert date 14 days from publication in the Federal Register)*. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Submit your comments, identified by Docket ID No.: EPA–R08–RCRA–2011–0823, by one of the following methods:

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

2. *E-mail:cosentini.christina@epa.gov.*

3. *Fax:* (303) 312–6341.

4. *Mail, Hand Delivery or Courier:* Deliver your comments to Christina Cosentini, Solid and Hazardous Waste Program, EPA Region 8, Mailcode 8P-HW, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Courier or hand deliveries are only accepted during the EPA Region 8's normal hours of operation from 8:00 AM to 4:00 PM. The public is advised to call in advance to verify the business hours. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No.: EPA–R08–RCRA–2011–0823. The 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 through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ‘‘anonymous access’’ system, which means the 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 the 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA’s public docket visit the EPA Docket Center home page at *http://www.epa.gov/epahome/dockets.htm.*

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, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at: EPA Region 8, from 8:00 AM to 4:00 PM, 1595 Wynkoop Street, Denver, Colorado, contact: Christina Cosentini, phone number (303)

312-6231.

FOR FURTHER INFORMATION CONTACT: Christina Cosentini, Solid and Hazardous Waste Program, EPA Region 8, 1595 Wynkoop Street, Mail Code 8P-HW, Denver, Colorado 80202, (303) 312-6231, cosentini.christina@epa.gov.

SUPPLEMENTARY INFORMATION:

The information in this section is organized as follows:

I. Overview Information

A. What action is the EPA approving?

The EPA is proposing to grant a petition submitted by the ConocoPhillips Billings Refinery to have residual solids from processing sludge removed from two storm water tanks at its Billings, Montana Refinery excluded or delisted from the RCRA definition of a hazardous waste, contingent upon such waste being dewatered and de-oiled using a filter press and/or portable centrifuge and the resulting solids disposed in a RCRA Subtitle D Landfill.

B. Why is the EPA approving this delisting?

The ConocoPhillips petition requested the residual solids from processed storm water tank sludge be excluded from the F037 waste listing. F037 wastes are wastes that are generated in the separation of oil/water/solids from petroleum refinery process wastewaters and oily cooling wastewaters. This exclusion will apply to an annual maximum of 200 cubic yards of residual solids. ConocoPhillips claims that the petitioned waste does not meet the criteria for which the

EPA listed it, and that there are no additional constituents or factors which could cause the waste to be hazardous.

Based on our review described in section III, we agree with the petitioner that the waste is nonhazardous. The EPA reviewed the description of the process which generates the waste and the analytical data submitted by ConocoPhillips. We believe that the petitioned waste does not meet the criteria for the F037 waste listing, and that there are no other factors which might cause the residual solids to be hazardous.

C. How will ConocoPhillips Billings Refinery manage the waste if it is delisted?

ConocoPhillips will dispose of the residual solids from the processed storm water tank sludge in a RCRA Subtitle D landfill which is regulated by the State of Montana, or other state subject to Federal RCRA delisting, to manage industrial waste.

II. Background

A. What is a listed waste?

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 at 40 CFR 261.31 and 261.32. The 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); (2) they meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3); or (3) the wastes are mixed with or derived from the treatment, storage or disposal of such characteristic and listed wastes and which therefore become hazardous under 40 CFR 261.3(a)(2)(iv) or (c)(2)(i), known as the "mixture" or "derived-from" rules respectively.

B. What is a delisting petition?

Individual waste streams may vary depending on raw materials, industrial processes, and other factors. Thus, while a waste described in the regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. A procedure to exclude or delist a waste is provided in 40 CFR 260.20 and 260.22, which allows a person, or a facility, to submit a petition to the EPA, or an authorized state, demonstrating that a specific waste from a particular generating facility is not hazardous.

In a delisting petition, the petitioner must show that a waste does not meet any of the criteria for listed wastes in 40 CFR 261.11 and that the waste does not exhibit any of the hazardous waste characteristics of ignitability, reactivity, corrosivity, or toxicity. The petitioner must present sufficient information for the EPA to decide whether any factors, in addition to those

for which the waste was listed, warrant retaining it as a hazardous waste. (*See* 40 CFR 260.22; 42 U.S.C. 6921(f).)

If a delisting petition is granted, the generator remains obligated under RCRA to confirm that the waste remains nonhazardous.

C. What factors must the EPA consider in deciding whether to grant a delisting 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* HSWA § 222, 42 U.S.C. 6921(f); 40 CFR 260.22(d)(1)-(4). We evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (3).

In addition to considering the criteria in 40 CFR 260.22(a) and 261.11(a)(2) and (3), 42 U.S.C. 6921(f), and information in the background documents for the listed waste, the EPA must consider any factors (including additional constituents) other than those for which the EPA listed the waste, if these additional factors could cause the waste to be hazardous.

The EPA's tentative decision to delist waste from the ConocoPhillips Billings Refinery is based on our evaluation of the waste for factors or criteria that could cause the waste to be hazardous. These factors include: (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 tendency of the constituents to migrate and to bioaccumulate; (5) the persistence in the environment of any constituents 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 must also consider as hazardous wastes mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. *See* 40 CFR 261.3(a)(2)(iv) and (c)(2)(i) (referred to as the "mixture" and "derived-from" rules,

respectively). Mixture and derived-from wastes are also eligible for exclusion but remain hazardous until excluded.

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

A. What waste did ConocoPhillips petition the EPA to delist?

On December 3, 2010, ConocoPhillips petitioned the EPA to exclude a maximum annual volume of 200 cubic yards of F037 residual solids from processing (for oil recovery) the sludge removed from the two storm water tanks at the Billings, Montana refinery from the lists of hazardous waste contained in 40 CFR 261.31 and 261.32. The F037 listing includes residuals from the processing of oil-bearing hazardous secondary materials (i.e., the sludge in the storm water tanks) excluded under 40 CFR 261.4(a)(12)(i). Sediment in the storm water tanks accumulates from storm water runoff from the Refinery's process area, as well as some dry-weather flow consisting of water from wash-down, maintenance, and cleaning activities, steam condensate and heat exchanger back-flushing. This sediment is processed by the refinery for the recovery of oil and the residual solids are classified as hazardous waste due a conservative interpretation for the assignment of hazardous waste code F037. The waste conservatively falls under the classification of listed waste under 40 CFR 261.3.

B. How does ConocoPhillips generate the waste?

ConocoPhillips generates the waste through periodically removing and processing sludge accumulated in two storm water tanks through oil recovery and dewatering. The sludge in the storm water tanks is accumulated storm water runoff from the Refinery's process area, and some dry-weather flow consisting of water from wash-down, maintenance, and cleaning activities as well as steam condensate and heat exchanger back-flushing. The sludge in not accumulated at a constant rate and is currently removed from the tanks at approximately 18 month intervals and

processed via centrifuge and/or filter press for oil recovery and dewatering. Recovered oil is reinserted into the refining process and water from dewatering is routed to the Refinery's on-site wastewater treatment plant.

C. How did ConocoPhillips sample and analyze the waste?

ConocoPhillips collected sample sludge from 16 locations in each tank, the sludge was composited and processed for oil recovery and dewatering through a filter press, and submission of the filter pressed residual solid material for analysis. A total of eight composite samples, one duplicate and one matrix spike/matrix duplicate were analyzed for both total and Toxicity Characteristic Leaching Procedure (TCLP) analyses of constituents of concern (COC). The COC list was comprised of a subset of the Appendix IX constituent list in 40 CFR 264, and was based on: (1) knowledge of the refinery processes and wastes; (2) the evaluation of available references, including Exhibit 3 of the March 23, 2000 USEPA RCRA Delisting Program Guidance manual for the Petitioner entitled *Constituents of Concern for Wastes from Petroleum Processes*; (3) the U.S. EPA Region 5 "Skinner List" constituents and (4) the basis for the F037 listing per 40 CFR 261 Appendix VII. Each sample was also analyzed for pH, oil & grease, total cyanide and total sulfide. Two samples of the filter pressed material (one from each tank) were analyzed using both neutral and alkaline pH TCLP extraction fluids as presented in the delisting guidance.

D. What were the results of the ConocoPhillips waste analysis?

The table below presents the maximum observed total concentrations and the TCLP concentrations for all the COC. Total concentrations are expressed in milligrams per kilogram (mg/kg) and leachate concentrations are expressed in milligrams per liter (mg/L). ConocoPhillips submitted a signed statement certifying accuracy and responsibility of the results. *See* 40 CFR 260.22(i)(12)).

TABLE I—MAXIMUM TOTAL AND TCLP CONCENTRATIONS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATION LEVELS

[Storm Water Tank – Filter Press residual solids, ConocoPhillips Billings Refinery, Billings, Montana]

Constituent	Maximum total constituent analysis (mg/kg)	Maximum TCLP constituent analysis (mg/L)	Maximum allowable TCLP delisting concentration level (mg/L)
Acenaphthene	8.0	<.0051	37.9
Antimony	1.89	.0074	.97
Anthracene	18.0	.0017	50
Arsenic	60.1	.157	.301
Barium	196	1.12	100
Benz(a)anthracene	3.6	<.005	.25
Benzene	.031	<.01	.5
Benzo(a)pyrene	1.5	<.006	1.1
Benzo(b)fluoranthene	.6	<.008	8.7
Benzo(k)fluoranthene	.66	<.008	50
Beryllium	<.13	<.003	2.78
Bis(2-ethylhexyl)phthalate	1.8	<.0033	50
2-Butanone	.12	<.02	50
Butyl Benzyl phthalate	<.11	<.0007	46.5
Cadmium	1.46	<.006	1.0
Carbon disulfide	.0083J	<.02	36
Chromium	152	<.006	5.0
Chrysene	4.2	<.008	25.0
Chlorobenzene	<0.13	<.01	16.4
Chloroform	<.013	<.01	.286
Cobalt	24.4	.0074	.763
Cyanide(total)	7.72	<.003	41.2
Dibenz(a,h)anthrancene	.17	<0.008	1.16
1,2-Dichlorobenzene	<.0013	<.01	50
1,3-Dichlorobenzene	<.0013	<.01	18.5
1,4-Dichlorobenzene	<.0011	<.01	1.69
1, 2-Dichloroethane	<.0013	<.01	.375
1,1-Dichloroethane	<.0013	<.01	50
1,1-Dichloroethylene	<.0013	<.01	.7
Diethyl phthalate	<.11	<.0005	50
Dimethyl phthalate	<.11	<.0005	50
2, 4-Dimethylphenol	<.13	<.0019	40.4
Di-n-butyl phthalate	<.11	<.0005	50
2, 4-Dintrophenol	<.23	<.0014	4.12
2, 4-Dinitrotoluene	<.22	<.001	.059
Di-n-octyl phthalate	.19	<.0006	50
1,4-Dioxane	<.43	<2	36.5
Ethylbenzene	.660	<.01	12
Ethylene Dibromide	<.0013	<.01	2.74
Fluoranthene	3.8	<0.0035J	8.78

Fluorene	19.0	<0.0085	17.5
Indeno(1,2,3-cd)pyrene	.440	<0.0013	27.3
Lead	43.1	0.0053	5.0
Mercury	1.46	0.00005	0.2
MTBE……	<.013	<.01	50
m&p -Cresol…….	1.60	.024	10.3
Naphthalene	90.0	0.086	1.17
Nickel	212	0.173	48.2
Nitrobenzene……	<.12	<.0008	1.03
4-Nitrophenol……...	<.22	<.0019	50
o-Cresol……	.170	<.001	50
Phenanthrene	62.0	<.180	50
Phenol……..	.320J	.0032	50
Pyrene	9.7	<0.0026J	15.9
Pyridine……	<.11	<.002	2.06
Quinoline……	<.11	<.0006	50
Selenium	100	.18	1.0
Silver.....	.16J	<0.007	5.0
Styrene……	<.013	<.01	50
Sulfide (total).....	145	N/A	500
Tetrachloroethene…….	.073	<.012	.7
Toluene……..	.630	.02J	26
1,1,1-Trichloroethane……..	<.0013	<.01	50
Trichloroethene…….	.0076	<.01	.403
Vanadium	114	.13	12.3
Xylenes, Total	7.60	.071	22
Zinc	1140	.227	500

Notes:
(A) 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.
(B) Based on lowest level of: nominal upper limit, land disposal restriction limit, RCRA hazardous level; or DRAS modeling with a target risk of 10–6 and a target HI of 0.1 with the exception of: arsenic , naphthalene and 1,4-Dioxane TCLP set at 10-5 and HI of 1.0.

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

For this delisting determination, the EPA applied the Delisting Risk Assessment Software (DRAS) described in various EPA rulemakings. *See, e.g.,* 65 FR 58,015 (Sept. 27, 2000); 65 FR 75,637 (Dec. 4, 2000) and 73 FR 28,768 (May 19, 2008). We used the most recent version of DRAS, v.3.0.34 updated in September 2010. DRAS calculates the potential risks associated with disposing a given waste stream to a landfill or surface impoundment. For a given waste stream, DRAS calculates both the waste's aggregate risks and also back-calculates each waste constituent's maximum allowable concentration permissible for delisting. DRAS requires the user to assign a target cancer risk and hazard index.

For this analysis, DRAS was used to predict the maximum allowable concentrations of

hazardous constituents that may be released from ConocoPhillips's storm water tank filter press solids after landfill disposal, and determined the potential impact of disposal on human health and the environment. In assessing potential risks to ground water, the 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 ground water at a hypothetical receptor well down gradient from the disposal site. The EPA used two risk levels to evaluate the ConocoPhillips waste: carcinogenic risk of 10–6 and non-cancer hazard index of 0.1 and; carcinogenic risk of 10–5 and non-cancer hazard index of 1.0. The DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and the EPA health-based numbers. Using the maximum compliance-point concentrations and the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in ground water.

The EPA believes 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 ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

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, 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, DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations, also known as delisting levels. In most cases, because a delisted waste is no longer subject to hazardous waste control, the EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, the EPA currently believes that it is inappropriate to consider extensive site specific factors when applying the fate and transport model.

DRAS results, which calculate the maximum allowable concentration of chemical constituents in the waste, are presented in Table I. Based on the comparison of DRAS results and the maximum TCLP and Totals concentrations found in Table I, the petitioned waste should be delisted because no constituents of concern tested are likely to be present or formed as reaction products or by-products above the delisting levels.

F. What did the EPA conclude about the ConocoPhillips waste?

ConocoPhillips's petition requests a delisting of the residual solids from processed sludge from the two storm water tanks from being considered a F037 waste. ConocoPhillips believes that the storm water tank sludge does not meet the original criteria for the hazardous waste listing. ConocoPhillips also believes no additional constituents or factors could cause the waste to be hazardous. The 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* RCRA 3001(f), 42 U.S.C. 6921(f); 40 CFR 260.22(d)(1)–(4). In making the initial

delisting determination, the EPA evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. If the EPA, based on this review, had found that the waste remained hazardous based on the factors for which the waste was originally listed, the EPA would have proposed to deny the petition. The 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. The 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. The EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. The EPA's proposed decision to delist waste from the ConocoPhillips Billings Refinery is based on the information submitted in support of this rule, including descriptions of the wastes and analytical chemistry data of the residual solids from the storm water tank clean-out.

The maximum reported concentrations of hazardous constituents found in the filter press solids and the filter press solids TCLP extracts are presented in Table I above. The table also presents the maximum allowable concentrations in a TCLP extract of the residual solids from storm water tank sludge processing, calculated by the DRAS program. The concentrations of all constituents in leachate from the filter press solids are below the allowable concentrations. We, therefore, conclude that the ConocoPhillips waste does not pose a potential substantial hazard to human health and the environment when disposed of in a RCRA Subtitle D landfill.

We, therefore, propose to grant exclusion for this waste. If this exclusion is finalized,

ConocoPhillips must dispose of the residual solids from the processed storm water tank sludge in a RCRA Subtitle D landfill regulated by the State of Montana, or other state subject to Federal RCRA delisting, to manage industrial waste. Prior to disposal ConocoPhillips must verify that the concentrations of the constituents of concern in the residual solids do not exceed the allowable levels set forth in this exclusion. The list of constituents for verification is based on the concentration and frequency of occurrence, as presented in the ConocoPhillips petition.

IV. Conditions for Exclusion

A. When would the EPA finalize the proposed delisting exclusion?

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

RCRA 3010(b)(1), 42 U.S.C. 6930(b)(1), 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 publication of the final rule because a six-month deadline is not necessary to achieve the purpose of RCRA 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).

B. How will ConocoPhillips manage the waste if it is delisted?

ConocoPhillips must dispose of the residual solids from the processed storm water tank

sludge in a RCRA Subtitle D landfill that is regulated by the State of Montana, or other state subject to Federal RCRA delisting, to manage industrial waste. ConocoPhillips must verify prior to disposal that the concentrations of the COC in the residual solids do not exceed the allowable levels set forth in this exclusion.

C. What are the maximum allowable concentrations of hazardous constituents in the waste?

Concentrations measured in the TCLP extract of the waste must not exceed the values given in Table I.

D. How frequently must ConocoPhillips test the waste?

During the period of cleanout, ConocoPhillips must collect two composite samples of the residual solids from the filter pressed sludge to account for potential variability in each tank. Composite samples from the storm water tanks processed residuals must be collected each time cleanout occurs and residuals are generated. TCLP analyses for the standard acid extraction for trace elements and organic COC listed in Table I must be conducted. Concentrations of all constituents must be below the delisting limits in Table I above.

E. What data must ConocoPhillips submit?

Whenever tank cleanout is conducted, ConocoPhillips must verify that the filter press solids meet the delisting levels in 40 CFR 261, Appendix IX, Table 1, as amended by this notice. ConocoPhillips must submit the verification data to U.S. EPA Region 8, 1595 Wynkoop Street, RCRA Delisting Program, Mail code 8P-HW, Denver, CO 80202. ConocoPhillips must compile, summarize and maintain, onsite, records of operating conditions and analytical data for a period of five years.

F. What happens if ConocoPhillips waste fails to meet the conditions of the exclusion?

If ConocoPhillips violates the terms and conditions established in this exclusion, the EPA

will initiate procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the EPA will evaluate the need for enforcement activities on a case-by-case basis. The EPA expects ConocoPhillips to conduct the appropriate waste analysis and comply with the criteria detailed in 40 CFR 261, Appendix IX, Table 1, as amended by this notice.

G. What must ConocoPhillips do if the process changes?

ConocoPhillips must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process significantly change. ConocoPhillips must handle wastes generated after the process change as hazardous until it has: demonstrated that the wastes continue to meet the delisting concentrations in paragraph (1); demonstrated that no new hazardous constituents listed in Appendix VIII of 40 CFR 261 have been introduced; and it has received written approval from the EPA.

V. How would this action affect states?

Because the 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 who have received authorization from the EPA to make their own delisting decisions.

The EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than the EPA's, under RCRA 3009, 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, the EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under applicable state law. Delisting

petitions approved by the EPA Administrator or his delegate pursuant to 40 CFR 260.22 are effective in the State of Montana after the final rule has been published in the Federal Register.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, Oct. 4, 1993) this rule is not of general applicability and, therefore, is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism", (64 FR 43255, Aug. 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will apply to a particular facility, this final rule does not have tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," (65 FR 67249, Nov. 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, Apr. 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 DRAS, which considers health and safety risks to 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, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

List of Subjects in 40 CFR Part 261

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

Dated November 18, 2011. _____

James B. Martin
Regional Administrator
Region 8

For the reasons set out in the preamble, the EPA proposes to amend 40 CFR part 261 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, 6924(y) and 6938

2. In Table 1 of Appendix IX to part 261 add the following waste stream in alphabetical order by

facility to read as follows:

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

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
ConocoPhillips Billings Refinery	Billings, Montana	Residual solids from centrifuge and/or filter press processing of storm water tank sludge (F037) generated at a maximum annual rate of 200 cubic yards per year must be disposed in a lined Subtitle D landfill, licensed, permitted or otherwise authorized by a state to accept the delisted processed storm water tank sludge. The exclusion becomes effective (*insert final publication date*).
		For the exclusion to be valid, the ConocoPhillips Billings Refinery must implement a verification testing program that meets the following Paragraphs:
		1. *Delisting levels:* The constituent concentrations in a leachate extract of the waste measured in any sample must not exceed the following concentrations (mg/L TCLP): Acenaphthene-37.9; Antimony-.97; Anthracene-50; Arsenic-.301; Barium-100; Benz(a)anthracene-.25; Benzene-.5; Benzo(a)pyrene-1.1; Benzo(b)fluoranthene-8.7; Benzo(k) fluoranthene-50; Bis(2-ethylhexyl)phthalate -50; 2-Butanone -50; Cadmium-1.0; Carbon disulfide-36; Chromium- 5.0; Chrysene-25.0; Cobalt-.763; Cyanide(total)-41.2; Dibenz(a,h)anthrancene-1.16; Di-n-octyl phthalate-50; 1,4-Dioxane -36.5; Ethylbenzene-12; Fluoranthene -8.78; Fluorene-17.5; Indeno(1,2,3-cd)pyrene-27.3; Lead-5.0; Mercury-.2; m&p –Cresol-10.3; Naphthalene-1.17; Nickel-48.2; o-Cresol-50; Phenanthrene-50; Phenol-50; Pyrene-15.9; Selenium -1.0; Silver-5.0; Tetrachloroethene-0.7; Toluene-26;Trichloroethene -.403; Vanadium-12.3; Xylenes (total)-22; Zinc-500. 2. *Verification Testing:* To verify that the waste does not exceed the specified delisting levels, ConocoPhillips must collect and analyze two composite samples of the residual solids from the processed sludge to account for potential variability in each tank. Composite samples must be collected each time cleanout occurs and residuals are generated. Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. If oil and grease comprise less than 1 percent of the waste, SW–846 Method 1311 must be used for generation of the leachate extract used in the testing for constituents of concern listed above. SW–846 Method 1330A must be used for generation of the leaching extract if oil and grease comprise 1 percent or more of the waste. SW–846 Method 9071B must be used for determination of oil and grease. SW–846 Methods 1311, 1330A, and 9071B are incorporated by reference in 40 CFR 260.11. As applicable, the

		SW-846 methods might include Methods 1311, 3010, 3510, 6010, 6020, 7470, 7471, 8260, 8270, 9014, 9034, 9213, and 9215. If leachate concentrations measured in samples do not exceed the levels set forth in paragraph 1, ConocoPhillips can dispose of the filter pressed sludge in a lined Subtitle D landfill which is permitted, licensed, or registered by the state of Montana or other state which is subject to Federal RCRA delisting. If constituent levels in any sample and any retest sample for any constituent exceed the delisting levels set in paragraph (1) ConocoPhillips must do the following: (A) notify the EPA in accordance with paragraph (5) and; (B) manage and dispose of the process residual solids as F037 hazardous waste generated under Subtitle C of RCRA. 3. *Changes in Operating Conditions:* ConocoPhillips must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process significantly change. ConocoPhillips must handle wastes generated after the process change as hazardous until it has: demonstrated that the wastes continue to meet the delisting concentrations in paragraph (1); demonstrated that no new hazardous constituents listed in appendix VIII of part 261 have been introduced; and it has received written approval from the EPA. 4. *Data Submittal:* Whenever tank cleanout is conducted ConocoPhillips must verify that the residual solids from the processed storm water tank sludge meet the delisting levels in 40 CFR 261 Appendix IX Table 1, as amended by this notice. ConocoPhillips must submit the verification data to U.S. EPA Region 8, 1595 Wynkoop Street, RCRA Delisting Program, Mail code 8P-HW, Denver, CO 80202. ConocoPhillips must compile, summarize and maintain onsite records of operating conditions and analytical data for a period of five years. 5. *Reopener Language:* (A) If, anytime after final approval of this exclusion, ConocoPhillips 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 EPA in granting the petition, then the facility must report the data, in writing to the EPA at the address above, within 10 days of first possessing or being made aware of that data. (B) If ConocoPhillips fails to submit the information described in paragraph (A) or if any other information is received from any source, the EPA will make a preliminary determination as to whether the reported information requires EPA action to protect human health or the environment. Further action may include

		suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the EPA determines that the reported information requires the EPA action, the EPA will notify the facility in writing of the actions the agency 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 the EPA action is not necessary. The facility shall have 30 days from the date of the notice to present such information. (D) If after 30 days ConocoPhillips presents no further information or after a review of any submitted information, the EPA 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 EPAs determination shall become effective immediately, unless the EPA provides otherwise. (E) Notification Requirements: ConocoPhillips 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. (1) 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. (2) Update the onetime written notification, if it ships the delisted waste to a different disposal facility. (3) 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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