E. Verification Testing Conditions IV. Effective Date V. Regulatory Impact VI. Regulatory Flexibility Act VII. Paperwork Reduction Act VIII. List of Subjects in 40 CFR Part 261

### I. Disposition of Delisting Petition

U.S. Department of Energy's Hanford Facility, Richland, Washington

## A. Site History

In 1943, the U.S. Army Corps of Engineers selected the U.S. Department of Energy's (DOE) Hanford site located in Richland, Washington, as the location for reactor, chemical separation, and related activities in the production and purification of special nuclear materials. The site is situated on approximately 560 square miles (1,450 square kilometers), which is owned by the U.S. Government and managed by DOE. By the 1980s, environmental impacts resulting from operations at this site were acknowledged, and DOE initiated cleanup efforts. In May of 1989, DOE entered into a Tri-Party Agreement ("The Hanford Federal Facility Agreement & Consent Order"), with the State of Washington and the U.S. Environmental Protection Agency to initiate environmental restoration efforts over a 30-year period. As such, the current mission for DOE's Hanford facility is focused on waste management and environmental restoration and remediation. In order to carry out this mission (and allow for possible future use of the site after cleanup), it is critical for DOE's Hanford facility to obtain a delisting for certain wastes generated on-site. (See the public docket for the final report on *The Future for* Hanford: Uses and Cleanup, December 1992.)

### B. Petition for Exclusion

On October 30, 1992, DOE petitioned the Agency to exclude treated wastes generated from its proposed 200 Area Effluent Treatment Facility (ETF). DOE subsequently provided additional information to complete its petition and also submitted an addendum to the petition. The ETF is designed to treat process condensate (PC) from the 242-A Evaporator. The untreated PC is a low-level radioactive waste as defined in DOE Order 5820.2A and a RCRA listed hazardous waste (EPA Hazardous Waste Nos. F001 through F005 and F039 derived from F001 through F005) as defined in 40 CFR § 261.31(a). DOE intends to discharge the treated effluents from the ETF to a Washington State Department of Ecology-approved land disposal site. (See DOE's delisting petition and addendum, which are included in the public docket for this

notice, for details regarding wastes being treated and treatment process.)

While the constituents of concern in listed wastes F001, through F005 wastes include a variety of solvents (see Part 261, Appendix VII), the constituents (based on PC sampling data and process knowledge) that serve as the basis for characterizing DOE's petitioned wastes as hazardous were limited to 1,1,1-trichloroethane (F001), methylene chloride (F002), acetone and methyl isobutyl ketone (F003), cresylic acid (F004), and methyl ethyl ketone (F005).

DOE petitioned the Agency to exclude its ETF generated liquid effluent because it does not believe that these wastes, once generated, will meet the listing criteria. DOE claims that its treatment process will generate nonhazardous wastes because the constituents of concern in the wastes are no longer present or will be present in insignificant concentrations. DOE also believes that the wastes will not contain any other constituents that would render it hazardous. Review of the petitioned wastes, except for the radioactive component which are regulated under the Atomic Energy Act (see Part II. Section B. below for details), included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See Section 222 of HSWA, 42 U.S.C. 6921(f), and § 260.22(d)(2)-(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of DOE's petition.

# II. Background

## A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in § 261.31 and § 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or 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 that is 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, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains nonhazardous based on the hazardous waste characteristics.

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See §§ 261.3(a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. 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 Agency on procedural grounds (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 on an interim basis, and solicited comments on other ways to regulate waste mixtures and residues (see 57 FR 7628). The Agency is going to address issues related to waste mixtures and residues in a future rulemaking.

## B. Regulatory Status of Mixed Wastes

The petitioned wastes that are subject to today's notice are "mixed wastes." Mixed wastes are defined as a mixture of hazardous wastes regulated under Subtitle C of RCRA and radioactive