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RCRA Listed Hazardous Waste/K051: U.S. Environmental Protection Agency Proposes to Grant Delisting Petition

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The United States Environmental Protection Agency ("EPA") published a January 23rd Federal Register Notice proposing to grant a petition to delist up to 2,409 cubic yards of K051 API (separator sludge) from the List of Resource Conservation and Recovery Act ("RCRA") hazardous wastes. See 88 Fed. Reg. 3945.

The delisting request was filed by ExxonMobil Baytown Refinery located in Baytown, Texas.

The RCRA Subtitle C regulations provide a procedure to exclude or delist a waste pursuant to 40 C.F.R. 260.20 and 260.22. The procedure involves the submission of a petition to EPA (or an authorized state) demonstrating a specific waste from a particular generating facility should not be regulated as hazardous.

The petitioner is required to demonstrate that a waste does not meet any of the criteria for a listed waste in 40 C.F.R. 261.1. In addition, the waste cannot exhibit any of the hazardous waste characteristics which include:

- Ignitability
- Reactivity
- Corrosivity
- Toxicity

The granting of a delisting petition for the specific identified waste will then exclude this material from the list of hazardous wastes so long as the conditions in the delisting are met.

EPA describes in the Federal Register public notice addressing the delisting petition proposed decision:

- What is the history of the delisting program?
- What is a delisting petition, and what does it require of a petition?
- What factors must the EPA consider in deciding whether to grant a delisting petition?
- Environmental Justice Evaluation?
- Wastes the petitioner requests to be delisted?
- How is the waste generated by the petitioner?
- How did the petitioner sample and analyze the petitioned waste?
- What factors did the EPA consider in deciding whether to propose to grant the delisting petition?
- How did the EPA evaluate the risk of delisting the waste?
- What did the EPA conclude?
- How will the petitioner manage the waste if it is delisted?
- What are the maximum allowable concentrations of hazardous constituents in the waste?
- How frequently must the petitioner test the waste?

- What data must the petitioner submit?
- What happens if the petitioner fails to meet the conditions of the exclusion?
- What must the petitioner do if the process changes?
- When would the EPA finalize the proposed delisting exclusion
- How would this action affect states?

A copy of the Federal Register notice can be found [here](#).