RCRA Listed Hazardous Waste/FO37: U.S. Environmental Protection Agency Final Rule Granting Delisting Petition for Borger, Texas Facility



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

07/07/2025

The United States Environmental Protection Agency ("EPA") published a June 17th Federal Register Notice issuing a final rule granting a petition to exclude (Delist) certain hazardous waste generated by a particular facility from a Resource Conservation and Recovery Act ("RCRA") list of hazardous wastes. See 90 Fed. Reg. 25502.

The materials being delisted are 7,000 cubic yards of F037 (petroleum refinery sludge) solids to be removed from their stormwater storage tanks for a one-time delisting.

The RCRA regulations provide generators the opportunity to petition to delist a hazardous waste from the list of hazardous waste. Such requests are addressed on a generator specific basis.

To be delisted, the regulations require sufficient information to allow EPA to determine the waste does not meet any of the criteria under which it is listed as a hazardous waste. The agency must also have a reasonable basis to believe that factors (including additional constituents other than for which the waste was listed) could cause the waste to be hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

WRB Refinery ("WRB") is stated to have petitioned EPA to exclude from the list of hazardous waste contained in 40 CFR 261.31 and 261.32 solids from stormwater tanks (FO37) generated from this facility located in Borger, Texas. The petition requested that EPA grant a one-time exclusion for 7,000 cubic yards of solids.

EPA concludes that the petitioned waste is not hazardous waste when disposed of in Subtitle D landfills. Therefore, the final rule excludes the petitioned waste from the requirements of hazardous waste regulations under RCRA when disposed of in a Subtitle D landfill but imposes testing conditions that EPA believes are necessary to ensure that the future-generated waste remain qualified for delisting.

Components of the preamble to the final rule include:

- Overview Information
- Background
- EPA's Evaluation of the Waste Data
- Public Comments Received on the Proposed Exclusion

A copy of the Federal Register Notice can be downloaded here.