

NOTICE OF INTENT

Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division

Hazardous Waste Delisting General Provisions
(LAC 33:V.105 and 4999.Appendix E) (HW086)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste regulations, LAC 33:V.105 and 4999.Appendix E (Log #HW086).

Departmental policies regarding petitions for exclusion from the hazardous waste regulations (hazardous waste delistings) are being codified. Petitioners are required to use an independent laboratory and an independent data validator. Analyses of dioxins and furans are included in all four sampling rounds. Certain laboratory data are specified for submittal to the department. The sections titled Data Submittal, Reopener Language, and Notification Requirements in LAC 33:V.4999.Appendix E are being standardized for all conditional hazardous waste exclusions under LAC 33.V.105.M. This action establishes a consistency in the requirements for hazardous waste exclusion petitioners. The basis and rationale for this proposed rule are to codify current departmental policy and to make necessary provisions enforceable and consistent among all the hazardous waste rulemakings.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on September 24, 2004, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by HW086. Such comments must be received no later than October 1, 2004, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of Environmental Assessment, Environmental Planning Division, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3582 or by e-mail to judith.schuerman@la.gov. This proposed regulation is available on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>. Copies of this proposed

regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of HW086.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Wilbert F. Jordan, Jr.
Assistant Secretary

Title 33
ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 1. General Provisions and Definitions

§105. Program Scope

These rules and regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to the denial of a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706. Definitions appropriate to these rules and regulations, including *solid waste* and *hazardous waste*, appear in LAC 33:V.109. Those wastes which are excluded from regulation are found in this Section.

A. - M.6. ...

7. Each petition must include, in addition to the information required by LAC 33:I.Chapter 9:

a. the name and address of the independent laboratory facility, accredited by the state of Louisiana in accordance with LAC 33:I.Subpart 3, performing the sampling or tests of the waste;

b. - i. ...

j. a description of the tests performed (including results);
i. during the first sampling round, these tests must include the Toxicity Characteristic Leaching Procedure (TCLP) analysis of all the groundwater monitoring constituents listed in LAC 33:V.3325.Table 4 and analysis of total volatiles, semi-volatiles, and metals;

ii. all four sampling rounds must include analyses of dioxins and furans;

iii. all lab data, including instrument tuning, method blanks, field blanks, trip blanks, calibration data, chromatograms, duplicates, matrix spikes, and matrix spike duplicates, must be included;

k. the names and model numbers of the instruments used in performing the tests; ~~and~~

l. a report indicating that the data was reviewed by an independent data validator before being submitted to the department; and

m. the following statement signed by the generator of the waste or his authorized representative:

"I certify under penalty of law that I have personally examined and am familiar

with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

M.8. - O.2.c.vi.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217 (March 1990), LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362 (April 1991), LR 17:368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813 (September 1996), LR 22:831 (September 1996), amended by the Office of the Secretary, LR 23:298 (March 1997), amended by the Office of Solid And Hazardous Waste, Hazardous Waste Division, LR 23:564 (May 1997), LR 23:567 (May 1997), LR 23:721 (June 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), LR 23:1511 (November 1997), LR 24:298 (February 1998), LR 24:655 (April 1998), LR 24:1093 (June 1998), LR 24:1687 (September 1998), LR 24:1759 (September 1998), LR 25:431 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:268 (February 2000), LR 26:2464 (November 2000), LR 27:291 (March 2001), LR 27:706 (May 2001), LR 29:317 (March 2003), LR 30:**.

Chapter 49. Lists of Hazardous Wastes

§4999. Appendices – Appendix A, B, C, D, E

Appendix A. - Appendix D. ...

Appendix E. Wastes Excluded Under LAC 33:V.105.M

A. Each facility granted a conditional exclusion must comply with the specific conditions for the waste exclusion as listed in Table 1 of this Appendix. Each waste exclusion listed in Table 1 shall begin with a waste description and include details for the following conditions:

1. testing, including organic and/or inorganic constituents, dioxins, furans, etc.;

2. waste holding and handling;

3. delisting levels, including organic and/or inorganic constituents, dioxins, furans, etc.; and

4. changes in operating conditions or feed streams.

B. Each facility granted a conditional exclusion must comply with the following general conditions pertaining to the waste exclusion listed in Table 1 of this Appendix.

1. Data Submittal

a. The facility must notify the department, in writing, at least two weeks prior to initiating the specific testing required for the waste exclusion.

b. All data obtained to fulfill the required testing must be submitted to the Office of Environmental Assessment within 60 days after each sampling event.

c. Records of operating conditions and analytical data from the required testing must be compiled, summarized, and maintained on-site for a minimum of three years. These records and data must be furnished upon request of the department and made available for inspection.

d. Failure to submit the required data within the specified time period or failure to maintain the required records on-site for the specified time shall be considered by the department, at its discretion, sufficient basis to revoke the exclusion.

e. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. In the event that any of this information is determined by the department, 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 been in effect, or to the extent directed by the department, and that the company will be liable for any actions taken in contravention of the company's environmental obligations under the Louisiana Environmental Quality Act premised upon the company's reliance on the void exclusion."

2. Reopener Language

a. If, at any time after disposal of the delisted waste, the facility 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 in the delisting verification testing is at a level higher than the delisting level allowed by the department in granting the petition, the facility must report the data, in writing, to the department within 10 days of first possessing or being made aware of that data.

b. If the testing of the waste, as required by the waste exclusion, does not meet the specific delisting requirements of the waste exclusion, the facility must report the data, in writing, to the department within 10 days of first possessing or being made aware of that data.

c. Based on the information described herein and any other information received from any source, the department will make a preliminary determination as to whether the reported information requires that the department take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or such other appropriate response as may be necessary to protect human health and the environment.

d. If the department determines that the reported information does require departmental action, the department will notify the facility, in writing, of the action believed 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 action is not necessary. The facility shall have 10 days from the date of the department's notice to present such information.

e. Following the receipt of information from the facility, or if no such information is received within 10 days, the department will issue a final written determination describing the departmental actions that are necessary to protect human health or the environment.

f. Any required action described in the department's determination shall become effective immediately, unless the department provides otherwise.

3. Notification Requirements

a. The facility must provide a one-time written notification to any state regulatory agency in a state to which or through which the delisted waste will be transported, at least 60 days prior to the commencement of such activities.

b. Failure to provide notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.

Table E1 - Wastes Excluded	
Facility	Address
DuPont Dow Elastomers LLC, LaPlace, LA	
Waste Description	
<p>Dynawave Scrubber Effluent is generated through the combustion of organic waste feed streams carrying the listed EPA Hazardous Waste Numbers F001, F002, F003, and F005. The specific hazardous waste streams being combusted and their EPA Hazardous Waste Numbers are: HCl Feed - D001, D002, and D007; Ponchartrain CD Heels - D001 and F005; Waste Organics - D001, D007, and F005; Catalyst Sludge Receiver (CSR) Sludge - D001, D007, and F005; Isom Purge - D001, D002, and F005; and Louisville CD Heels - D001, D007, D039, F001, F002, F003, and F005. DuPont Dow Elastomers must implement a sampling program that meets the following conditions for the exclusion to be valid.</p> <p>(1). Testing</p>	

Table E1 - Wastes Excluded	
Facility	Address
<p>Sample collections and analyses, including quality control (QC) procedures, must be performed according to methodologies described in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication Number SW-846, as incorporated by reference in LAC 33:V.110.</p> <p>(1)(A). Inorganic Testing During the first 12 months of this exclusion, DuPont Dow must collect and analyze a monthly grab sample of the Dynawave Scrubber Effluent. DuPont Dow must report to the department the unit operating conditions and analytical data (reported in milligrams per liter) for chromium, nickel, and zinc, including quality control information. If the department and DuPont Dow concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(A), then DuPont Dow may replace the inorganic testing required in condition (1)(A) with the inorganic testing required in condition (1)(B). Condition (1)(A) shall remain effective until this concurrence is reached.</p> <p>(1)(B). Subsequent Inorganic Testing Following concurrence by the department, DuPont Dow may substitute the following testing conditions for those in condition (1)(A). DuPont Dow must continue to monitor operating conditions and analyze samples representative of each year of operation. The samples must be grab samples from a randomly chosen operating day during the same month of operation as the previous year’s sampling event. These annual representative grab samples must be analyzed for chromium, nickel, and zinc. DuPont Dow may, at its discretion, analyze any samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.</p> <p>(1)(C). Organic Testing During the first 30 days of this exclusion, DuPont Dow must collect a grab sample of the Dynawave Scrubber Effluent and analyze it for the organic constituents listed in condition (3)(B) below. After completing this initial sampling, DuPont Dow shall sample and analyze for the organic constituents listed in condition (3)(B) on an</p>	

Table E1 - Wastes Excluded	
Facility	Address
<p>annual basis.</p> <p>(1)(D). Dioxins and Furans Testing During the first 30 days of this exclusion, DuPont Dow must collect a grab sample of the Dynawave Scrubber Effluent and analyze it for the dioxins and furans in condition (3)(C) below. After completing this initial sampling, DuPont Dow shall sample and analyze for the dioxins and furans in condition (3)(C) once every three years to commence three years after the initial sampling.</p> <p>(2). Waste <u>Hold</u>ing and Handling Consequent to this exclusion, the Dynawave Scrubber Effluent becomes, on generation, nonhazardous solid waste and may be managed and disposed of on the DuPont Dow plant site in any one of three permitted underground deep injection wells. With prior written authorization from the department, alternative disposal methods may be either a Louisiana Pollution Discharge Elimination System/National Pollution Discharge Elimination System (LPDES/NPDES) permitted outfall or a permitted commercial underground deep injection well. This newly delisted waste must always be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in any representative sample equal or exceed any of the delisting levels set in condition (3), the Dynawave Scrubber Effluent must be immediately resampled and reanalyzed for the constituent(s) that exceeded the delisting levels. If the repeat analysis is less than the delisting levels, then DuPont Dow shall resume the normal sampling and analysis schedule as described in condition (1). If the results of the reanalysis equal or exceed any of the delisting levels, then within 45 days DuPont Dow shall submit a report to the department that outlines the probable causes for exceeding the constituent level and recommends corrective action measures. The department shall determine the necessary corrective action and shall notify DuPont Dow of the corrective action needed. DuPont Dow shall implement the corrective action and resume sampling and analysis for the constituent per the schedule in condition (1). Within 30 days after receiving written notification, DuPont Dow may appeal the corrective action determined by the department. During</p>	

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Facility	Address
<p>the full period of corrective action determination and implementation, the exclusion of the Dynawave Scrubber Effluent shall remain in force unless the department notifies DuPont Dow in writing of a temporary rescission of the exclusion. Normal sampling and analysis shall continue through this period as long as the exclusion remains in force.</p> <p>(3). Delisting Levels The following delisting levels have been determined safe by taking into account health-based criteria and limits of detection. Concentrations in conditions (3)(A) and (3)(B) must be measured in the extract from the samples by the method specified in LAC 33:V. 4903.E. Concentrations in the extract must be less than the following levels (all units are milligrams per liter).</p> <p>(3)(A). Inorganic Constituents Chromium - 2.0; Nickel - 2.0; Zinc - 200.</p> <p>(3)(B). Organic Constituents Acetone - 80; Chlorobenzene - 2.0; Chloroform - 0.2; Chloroprene - 14; Ethylbenzene - 14; Methylene Chloride - 0.1; Styrene - 2.0; Toluene - 20; Xylenes - 200.</p> <p>(3)(C). Dioxins and Furans The 15 congeners listed in Section 1.1 of EPA Publication Number SW-846 Method 8290 - Monitor only.</p> <p>(4). Changes in Operating Conditions or Feed Streams If DuPont Dow either significantly changes the operating conditions specified in the petition or adds any previously unspecified feed streams and either of these actions would justify a Class 3 modification to the<u>their</u> combustion permit, DuPont Dow must notify the department in writing. Following receipt of written acknowledgement by the department, DuPont Dow must collect a grab sample and analyze it for the full universe of constituents found in 40 CFR Part 264, Appendix IX - Ground Water Monitoring List (LAC 33:V.3325). If the results of the Appendix IX analyses identify no new hazardous constituents, then DuPont Dow must reinstitute the testing required in condition (1)(A) for a minimum of 12 monthly operating periods. During the full period described in this</p>	

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Facility	Address
<p>condition, the delisting of the Dynawave Scrubber Effluent shall remain in force unless a new hazardous constituent is identified or the waste volume exceeds 25,000 cubic yards per year; at this time the delisting petition shall be reopened. DuPont Dow may eliminate feeding any stream to the combustion unit at any time without affecting the delisting of the Dynawave Scrubber Effluent or the sampling schedule.</p> <p>(5) Data Submittal DuPont Dow must notify the department, in writing, at least two weeks prior to initiating condition (1)(A). All data obtained to fulfill condition (1) must be submitted to the Office of Environmental Assessment within 60 days after each sampling event. Records of operating conditions and analytical data from condition (1) must be compiled, summarized, and maintained on-site for a minimum of three years. These records and data must be furnished upon request by the department and made available for inspection. Failure to submit the required data within the specified time period or failure to maintain the required records on-site for the specified time shall be considered by the department, at its discretion, sufficient basis to revoke the exclusion. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted.</p> <p>"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. In the event that any of this information is determined by the department, 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 been in effect or to the extent directed by the department and that the company will be liable for any actions taken in contravention of the company's</p>	

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Facility	Address
<p>environmental obligations under the Louisiana Environmental Quality Act premised upon the company's reliance on the void exclusion."</p>	
<p>Marathon Oil Co., Garyville, LA</p>	
Waste Description	
<p>Residual solids <u>are</u> generated from the thermal desorption treatment of the following wastes: EPA Hazardous Waste Number K048, dissolved air flotation (DAF) float; K049, slop oil emulsion solids; K050, heat exchanger bundle cleaning sludge; K051, American Petroleum Institute (API) separator sludge; F037, primary oil/water/solids separation sludge; and F038, secondary emulsified oil/water/solids separation sludge. The constituents of concern for K048-K051 wastes are listed as hexavalent chromium and lead (see LAC 33:V. 4901). The constituents of concern for F037 and F038 wastes are listed as hexavalent chromium, lead, benzene, benzo(a)pyrene, and chrysene (see LAC 33:V.4901). Marathon must implement a testing program that meets the following conditions for the exclusion to be valid.</p> <p>(1). Testing Sample collection and analyses, including quality control (QC) procedures, must be performed according to methodologies described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication Number SW-846, as incorporated by reference in LAC 33:V.110. If the department judges the desorption process to be effective under the operating conditions used during the initial verification testing, Marathon may replace the testing required in condition (1)(A) with the testing required in condition (1)(B). Marathon must continue to test as specified in condition (1)(A) until and unless notified by the department in writing that testing in condition (1)(A) may be replaced by condition (1)(B), or that testing requirements may be reduced or terminated as described in conditions (1)(C) and (1)(D) to the extent directed by the department.</p> <p>(1)(A). Initial Verification Testing During at least the first four weekly operating periods of full-scale operation of the thermal desorption unit, Marathon must monitor the operating conditions of the thermal desorption unit to maintain a minimum residual</p>	

Table E1 - Wastes Excluded	
Facility	Address
<p>solids temperature throughout the high temperature unit of 870°F. The residual solids must be analyzed as weekly composites. The weekly composites must be composed of a minimum of two representative grab samples from each operating day during each weekly period of operation. The samples must be analyzed for the constituents listed in condition (3) prior to disposal of the residual solids. Marathon must report the operational and analytical test data, including quality control information, obtained during this initial period, no later than 90 days after initiating full-scale processing.</p> <p>(1)(B). Subsequent Verification Testing Following notification of approval by the department, Marathon may substitute the following testing conditions for those in condition (1)(A). Marathon must continue to monitor operating conditions and analyze samples representative of each month of operation. The samples must be composed of eight representative samples from randomly chosen operating days during the four-week period of operation of each month. These monthly representative composite samples must be analyzed for the constituents listed in condition (3) prior to the disposal of the residual solids. Marathon may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.</p> <p>(1)(C). Termination of Monthly Organic Testing Marathon must continue to monitor unit operating conditions and perform testing as required under condition (1)(B), for the constituents listed in condition (3)(B), until the analyses submitted under condition (1)(B) show a minimum of three consecutive monthly representative samples with levels of constituents significantly below delisting levels listed in condition (3)(B). Following notification of approval by the department, Marathon may terminate monthly testing for the organic constituents found in condition (3)(B). Following termination of monthly testing for organic constituents, Marathon must test a representative composite sample, composited over a one-week time period, for all constituents listed in condition (3)(B) on a quarterly basis. If delisting levels for any organic</p>	

Table E1 - Wastes Excluded	
Facility	Address
<p>constituents listed in condition (3)(B) are exceeded in the quarterly sample, Marathon must re-institute testing as required in condition (1)(B).</p> <p>(1)(D). Termination of Monthly Inorganic Testing Marathon must continue to monitor unit operating conditions and perform testing as required under condition (1)(B), for the constituents listed in condition (3)(A), until the analyses submitted under condition (1)(B) show a minimum of three consecutive monthly representative samples with levels of constituents significantly below delisting levels listed in condition (3)(A). Following notification of approval by the department, Marathon may terminate monthly testing for the inorganic constituents found in condition (3)(A). Following termination of monthly testing for inorganic constituents, Marathon must test a representative composite sample, composited over a one-week time period, for all constituents listed in condition (3)(A) on a quarterly basis. If delisting levels for any inorganic constituents listed in condition (3)(A) are exceeded in the quarterly sample, Marathon must re-institute testing as required in condition (1)(B).</p> <p>(2). Waste Holding and Handling Marathon must store as hazardous wastes all residual solids generated until each batch has completed verification testing, as specified in conditions (1)(A)-(1)(D), and has satisfied the delisting criteria, as specified in condition (3). If the levels of constituents in the samples of residual solids are below all of the applicable levels set forth in condition (3), then the residual solids thereby become nonhazardous solid wastes and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in any weekly composite or other representative sample equal or exceed any of the delisting levels set in condition (3), the residual solids generated during the corresponding period must be retreated to meet the delisting levels or managed and disposed of in accordance with subtitle C of RCRA.</p> <p>(3). Delisting Levels The following delisting levels have been determined safe</p>	

Table E1 - Wastes Excluded	
Facility	Address
<p>by taking into account health-based criteria and limits of detection. Concentrations in conditions (3)(A) and (3)(B) must be measured in the extract from the samples by the method specified in LAC 33:V.4903.E. Concentrations in the extract must be less than the following levels (all units are milligrams per liter).</p> <p>(3)(A). Inorganic Constituents Antimony - 0.22; Arsenic - 0.40; Barium - 72; Beryllium - 0.14; Cadmium - 0.18; Chromium - 3.6; Lead - 0.54; Mercury - 0.072; Nickel - 3.6; Selenium - 1.80; Silver - 7.25.0; Vanadium - 7.2.</p> <p>(3)(B). Organic Constituents Acenaphthene - 72; Benzene - 0.18; Benzo(a)anthracene - 0.050; Benzo(a)pyrene - 0.050; Benzo(b)fluoranthrene - 0.050; Bis(2-ethylhexyl)phthalate - 0.22; Chrysene - 0.05; Ethylbenzene - 25; Fluoranthrene - 72; Fluorene - 72; Naphthalene - 36; Pyrene - 72; Toluene - 36.</p> <p>(4). Changes in Operating Conditions After completing the initial verification test period in condition (1)(A), if Marathon significantly changes the operating conditions specified in the petition, Marathon must notify the department in writing. Following receipt of written approval by the department, Marathon must re-institute the testing required in condition (1)(A) for a minimum of four weekly operating periods. Marathon must report unit operating conditions and test data required by condition (1)(A), including quality control data, obtained during this period no later than 60 days after the changes take place. Following written notification by the department, Marathon may replace testing condition (1)(A) with (1)(B), or reduce or terminate testing requirements as described in conditions (1)(C) and (1)(D) to the extent directed by the department. Marathon must fulfill all other requirements in condition (1).</p> <p>(4)(A). Processing Equipment Marathon may elect to change thermal desorption processing equipment based on operational performance and economic considerations. In the event that Marathon changes operating equipment, i.e., generic thermal</p>	

Table E1 - Wastes Excluded	
Facility	Address
	<p>desorption units, Marathon must re-institute processing and initiate testing required in condition (1)(A) for a minimum of four weekly operating periods. Marathon must report unit operating conditions and test data required in condition (1)(A), including quality control data, obtained during this period no later than 60 days after the changes take place. Following written notification by the department, Marathon may replace testing condition (1)(A) with (1)(B), or reduce or terminate testing requirements as described in conditions (1)(C) and (1)(D) to the extent directed by the department. Marathon must fulfill all other requirements in condition (1).</p> <p>(4)(B). Batch Processing Marathon may periodically elect to change operating conditions to accommodate batch processing of single-event waste generations. In the event that Marathon initiates batch processing and changes the operating conditions established under condition (1), Marathon must re-institute the testing required in condition (1)(A) during such batch processing events and monitor unit operating conditions and perform testing required by condition (1)(A), as appropriate. Following the completion of batch processing operations, Marathon must return to the operating conditions applicable prior to initiation of the batch processing and may return to the testing conditions that were applicable prior to the initiation of the batch processing activities.</p> <p>(5). Data Submittal Marathon must notify the department, in writing, at least two weeks prior to initiating condition (1)(A). The data obtained during condition (1)(A) must be submitted to the Office of Environmental Assessment within the specified 90 days. Records of operating conditions and analytical data from condition (1) must be compiled, summarized, and maintained on-site for a minimum of five years. These records and data must be furnished upon request by the department and made available for inspection. Failure to submit the required data within the specified time period or failure to maintain the required records on-site for the specified time will be considered by the department, at its discretion, sufficient basis to revoke the</p>

Table E1 - Wastes Excluded	
Facility	Address
<p>exclusion. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:</p> <p>"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."</p> <p>In the event that any of this information is determined by the department, 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 been in effect."</p>	
Motiva Enterprises LLC, Norco, LA	
Waste Description	
<p>Residual solids, at a maximum annual generation rate of 10,000 cubic yards per year (7,500 tons/year), are generated from the thermal desorption recycling of oil-bearing secondary materials resulting from petroleum processing operations, which are classified as newly generated EPA Hazardous Waste Number F037, petroleum refinery primary oil/water/solids separation sludge (effective February 8, 1999, per the updated definition promulgated on August 6, 1998, and the corrected definition dated June 8, 2000). For the purpose of this exclusion, oil-bearing hazardous secondary materials resulting from petroleum refining operations include EPA Hazardous Waste Numbers K048-K052, K169-K170, F037, and F038. The constituents of concern for F037 waste are listed as hexavalent chromium, lead, benzene, benzo(a)pyrene, and chrysene (see LAC 33:V.4901). Motiva must implement a testing and management program that meets the following conditions for the exclusion to be valid.</p> <p>(1). Testing Sample collection and analyses, including quality control</p>	

Table E1 - Wastes Excluded	
Facility	Address
<p>(QC) procedures, must be performed according to methodologies described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication Number SW-846, as incorporated by reference in LAC 33:V.110.</p> <p>(1)(A). Inorganic Testing During the first 12 months of this exclusion, Motiva must collect and analyze a monthly composite sample of the residual solids. Composite samples must be composed of a minimum of two representative grab samples from each operating day during a representative week of operation. The samples must be analyzed for the constituents listed in condition (3)(A) prior to disposal of the residual solids. Motiva must report to the department the unit operating conditions and analytical data (reported in milligrams per liter) for antimony, arsenic, barium, chromium, lead, mercury, nickel, selenium, silver, vanadium, and zinc, including quality control information. If the department and Motiva concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(A), then Motiva may replace the inorganic testing required in condition (1)(A) with the inorganic testing required in condition (1)(B). Condition (1)(A) shall remain effective until this concurrence is reached.</p> <p>(1)(B). Subsequent Inorganic Testing Following concurrence by the department, Motiva may substitute the following testing conditions for those in condition (1)(A). Motiva must continue to monitor operating conditions and analyze quarterly composite samples representative of normal operations. The samples must be composed of representative grab samples from each operating day during a representative week of operation, during the first month of each quarterly period. These quarterly representative composite samples must be analyzed for the constituents listed in condition (3)(A) prior to disposal of the residual solids. If delisting levels for any inorganic constituents listed in condition (3)(A) are exceeded in the quarterly sample, Motiva must re-institute testing as required in condition (1)(A). Motiva may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of</p>	

Table E1 - Wastes Excluded	
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<p>waste are nonhazardous.</p> <p>(1)(C). Organic Testing During the first 12 months of this exclusion, Motiva must collect and analyze two monthly grab samples of the residual solids. These two representative grab samples should be collected on different operating days during a representative week of operation. The samples must be analyzed for the constituents listed in condition (3)(B) prior to disposal of the residual solids. Motiva must report to the department the unit operating conditions and analytical data (reported in milligrams per liter) for anthracene, benzene, toluene, xylenes, carbon disulfide, chrysene, naphthalene, and pyrene, including quality control information. If the department and Motiva concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(B), then Motiva may replace the organic testing required in condition (1)(C) with the organic testing required in condition (1)(D). Condition (1)(C) shall remain effective until this concurrence is reached.</p> <p>(1)(D). Subsequent Organic Testing Following concurrence by the department, Motiva may substitute the following testing conditions for those in condition (1)(C). Motiva must continue to monitor operating conditions and analyze two annual grab samples representative of normal operations. The samples must be representative grab samples from different operating days during a representative week of operation, during the first month of each annual period. These annual representative grab samples must be analyzed for the constituents listed in condition (3)(B) prior to disposal of the residual solids. If delisting levels for any organic constituents listed in condition (3)(B) are exceeded in the annual sample, Motiva must re-institute testing as required in condition (1)(C). Motiva may, at its discretion, analyze grab samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.</p> <p>(2). Waste Holding and Handling Motiva must store as hazardous wastes all residual solids generated until each batch has completed verification</p>	

Table E1 - Wastes Excluded	
Facility	Address
<p>testing, as specified in conditions (1)(A) - (1)(D), and has satisfied the delisting criteria, as specified in condition (3). If the levels of constituents in the samples of residual solids are below all of the applicable levels set forth in condition (3), then the residual solids thereby become nonhazardous solid wastes and may be managed and disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any monthly composite or other representative sample equal or exceed any of the delisting levels set in condition (3), the residual solids generated during the corresponding period must be retreated and/or stabilized as allowed below until the residual solids meet the delisting levels, or managed and disposed of in accordance with Subtitle C of RCRA. If the residual solids contain leachable inorganic concentrations at or above the delisting levels set forth in condition (3)(A), then Motiva may stabilize the material with Type 1 portland cement and/or hydrated lime, as demonstrated in the petition, to immobilize the metals. Following stabilization, Motiva must repeat analyses in condition (3)(A) prior to disposal.</p> <p>(3). Delisting Levels Concentrations in conditions (3)(A) and (3)(B) must be measured in the extract from the samples by the method specified in LAC 33:V.4903.E. All leachable concentrations in the extract must be less than the following levels (all units are milligrams per liter).</p> <p>(3)(A). Inorganic Constituents Antimony - 0.50; Arsenic - 0.50; Barium - 50.0; Chromium - 0.50; Lead - 0.50; Mercury - 0.05; Nickel - 5.0; Selenium - 1.0; Silver - 0.5; Vanadium - 1.6; Zinc - 50.0.</p> <p>(3)(B). Organic Constituents Anthracene - 0.20; Benzene - 0.10; Carbon disulfide - 4.8; Chrysene - 0.05; Naphthalene - 0.05; Pyrene - 0.05; Toluene - 0.10; Xylenes - 0.10.</p> <p>(4). Changes in Operating Conditions If Motiva significantly changes the operating conditions specified in the petition, Motiva must notify the department in writing. Following receipt of written</p>	

Table E1 - Wastes Excluded	
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	<p>approval by the department, Motiva must re-institute the testing required in conditions (1)(A) and (1)(C) for a minimum of four months. Motiva must report unit operating conditions and test data required by conditions (1)(A) and (1)(C), including quality control data, obtained during this period no later than 60 days after the changes take place. Following written notification by the department, Motiva may replace testing conditions (1)(A) and (1)(C) with (1)(B) and (1)(D). Motiva must fulfill all other requirements in condition (1).</p> <p>(4)(A). Processing Equipment Motiva may elect to change thermal desorption processing equipment based on operational performance and economic considerations. In the event that Motiva changes operating equipment, i.e., generic thermal desorption units, Motiva must re-institute processing and initiate testing required in conditions (1)(A) and (1)(C) for a minimum of four months. Motiva must report unit operating conditions and test data required in conditions (1)(A) and (1)(C), including quality control data, obtained during this period, no later than 60 days after the changes take place. Following written notification by the department, Motiva may replace testing conditions (1)(A) and (1)(C) with (1)(B) and (1)(D). Motiva must fulfill all other requirements in condition (1).</p> <p>(4)(B). Batch Processing Motiva may periodically elect to change operating conditions to accommodate batch processing of single-event waste generations. In the event that Motiva initiates batch processing and changes the operating conditions established under condition (1), Motiva must re-institute the testing required in conditions (1)(A) and (1)(C) during such batch processing events, monitor unit operating conditions, and perform testing required by conditions (1)(A) and (1)(C), as appropriate. Following the completion of batch processing operations, Motiva must return to the operating conditions applicable prior to initiation of the batch processing and may return to the testing conditions that were applicable prior to the initiation of the batch processing activities.</p> <p>(5). Data Submittal</p>

Table E1 - Wastes Excluded	
Facility	Address
<p>Motiva must notify the department, in writing, at least two weeks prior to initiating condition (1)(A). All data obtained to fulfill condition (1) must be submitted to the Office of Environmental Assessment within 60 days after each sampling event. Records of operating conditions and analytical data from condition (1) must be compiled, summarized, and maintained on site for a minimum of three years. These records and data must be furnished upon request by the department and made available for inspection. Failure to submit the required data within the specified time period or failure to maintain the required records on site for the specified time shall be considered by the department, at its discretion, sufficient basis to revoke the exclusion. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted.</p> <p>"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. In the event that any of this information is determined by the department, 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 been in effect, or to the extent directed by the department, and that the company will be liable for any actions taken in contravention of the company's environmental obligations under the Louisiana Environmental Quality Act premised upon the company's reliance on the void exclusion."</p> <p>(6). Reopener Language If, at any time after disposal of the delisted waste, Motiva 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 in the delisting verification testing is</p>	

Table E1 - Wastes Excluded	
Facility	Address
<p>at a level higher than the delisting level allowed by the department in granting the petition, Motiva must report the data, in writing, to the department within 10 days of first possessing or being made aware of that data. If the testing of the waste, as required by condition (1), does not meet the delisting requirements of condition (3), Motiva must report the data, in writing, to the department within 10 days of first possessing or being made aware of that data. Based on the information described herein and any other information received from any source, the department will make a preliminary determination as to whether the reported information requires that the department take 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. If the department determines that the reported information does require departmental action, the department will notify the facility, in writing, of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Motiva with an opportunity to present information as to why the proposed action is not necessary. Motiva shall have 10 days from the date of the department's notice to present such information. Following the receipt of information from Motiva, or if no such information is received within 10 days, the department will issue a final written determination describing the departmental actions that are necessary to protect human health or the environment. Any required action described in the department's determination shall become effective immediately, unless the department provides otherwise.</p> <p>(7). Notification Requirements</p> <p>Motiva must provide a one-time written notification to any state regulatory agency in a state to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.</p>	

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, LR 20:1000 (September 1994), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:944 (September 1995), LR 22:830 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2397 (December 1999), LR 26:2509 (November 2000), LR 29:1084 (July 2003), repromulgated LR 29:1475 (August 2003), amended LR 30:**.

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

Person

Preparing

Statement: Judith A. Schuerman

Dept.: Environmental Quality

Phone: (225) 219-3558

Office: Environmental Assessment

Return Address: DEQ
P. O. Box 4314
Baton Rouge, LA 70821-4314

Rule Title: Hazardous Waste Delisting
General Provisions
(LAC 33:V.105.M.7 and
4999.Appendix E)

Date Rule

Takes Effect: upon promulgation

SUMMARY

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No implementation costs or savings to state or local governmental units will result from this proposed action. Nothing will be done differently. Current departmental policies are simply gaining regulatory status.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated effect on revenue collections of state or local governmental units from the proposed action.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

No persons or non-governmental groups will be directly affected by the proposed action.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed action will have no impact on competition or employment.

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Signature of Agency Head or Designee

Legislative Fiscal Officer or Designee

Wilbert F. Jordan, Jr., Assistant Secretary

Typed Name and Title of Agency Head or Designee

Date of Signature

Date of Signature

LFO 03/09/2001

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

Departmental policies regarding petitions for exclusion from the hazardous waste regulations (hazardous waste delistings) are being codified. Petitioners are required to use an independent laboratory and an independent data validator. Analyses of dioxins and furans are included in all four sampling rounds. Certain laboratory data are specified for submittal to the department. The sections titled Data Submittal, Reopener Language, and Notification Requirements in LAC 33:V.4999.Appendix E are being standardized for all conditional hazardous waste exclusions under LAC 33:V.105.M.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

The proposed action establishes a consistency in the requirements for hazardous waste exclusion petitioners.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session
(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No, the proposed rule will not result in any increase in the expenditure of funds.

- 2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) _____ Yes. If yes, attach documentation.

(b) _____ No. If no, provide justification as to why this rule change should be published at this time.

This is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 04-05	FY 05-06	FY 06-07
PERSONAL SERVICES _____			
OPERATING EXPENSES _____			
PROFESSIONAL SERVICES _____			
OTHER CHARGES _____			
EQUIPMENT _____			
TOTAL	0	0	0
MAJOR REPAIR & CONSTR.	0	0	0
POSITIONS (#)	0	0	0

No costs or savings to state agencies will result from this proposed action.

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

Approving or disapproving this rule will not affect state agency staffing levels. Nothing will be done differently. Current departmental policies are simply gaining regulatory status. There are no costs or savings associated with the implementation of this rule.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 04-05	FY 05-06	FY 06-07
STATE GENERAL FUND _____			
AGENCY SELF-GENERATED _____			
DEDICATED _____			
FEDERAL FUNDS _____			
OTHER (Specify) _____			
TOTAL	0	0	0

No funds are needed to implement this rule.

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

No funds are needed to implement this rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

There is no anticipated impact of the proposed action on local governmental units.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

This is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

<u>REVENUE INCREASE/DECREASE</u>	<u>FY 04-05</u>	<u>FY 05-06</u>	<u>FY 06-07</u>
STATE GENERAL FUND _____			
AGENCY SELF-GENERATED _____			
RESTRICTED FUNDS* _____			
FEDERAL FUNDS _____			
LOCAL FUNDS _____			
TOTAL	0	0	0

*Specify the particular fund being impacted.

There is no anticipated increase or decrease in revenues from the proposed action.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

This is not applicable.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

No persons or non-governmental groups will be directly affected by the proposed action. The three facilities that currently have conditional hazardous waste exclusions under LAC 33:V.105.M already comply with these departmental policies that are now being codified. Likewise, all facilities currently seeking to delist their wastes also already comply with the proposed action.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

There will be no impact on receipts and/or income to these groups resulting from this rule change.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

The proposed action will have no impact on competition or employment.