0049941

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10 HANFORD PROJECT OFFICE
712 SWIFT BOULEVARD, SUITE 5
RICHLAND, WASHINGTON 99352

August 18, 1998

Owen Robertson
Senior Project Manager,
Remedial Action Projects
U.S. Department of Energy
P.O. Box 550
Richland, WA 99352

RE: Environmental Restoration Disposal Facility Leachate Delisting Petition Review

Dear Mr. Robertson:

The U.S. Environmental Protection Agency (EPA) has completed the review of the Environmental Restoration Disposal Facility Leachate Delisting Petition (DOE/RL-98-47, Draft A). The comments focus on the technical adequacy of the sampling plan and compliance with EPA regulations and guidances. 49663

An electronic version of the comments was provided to the Department of Energy and Bechtel Hanford on August 13, 1998. If you have any questions or concerns, please contact me at 376-4919.

Sincerely,

Pamela S. Innis

Pamela S. Innis
ERDF Project Manager

Enclosure

cc: Vern Dronen, BHI
Fred Roeck, BHI
Bob Julian, Ecology
Administrative Record (200-DF-1)
Dave Bartus, EPA
Judy Schwarz, EPA

INTRODUCTION

The U.S. Environmental Protection Agency and their contractor, Gannett Fleming, Inc., have completed the review of the *Environmental Restoration Disposal Facility Leachate Delisting Petition*, DOE/RL-98-47 Draft A, dated July 1998. The included comments reflect the review of the document for technical adequacy, compliance with ARAR and EPA guidance documents, and readability.

GENERAL COMMENTS

Conditional delisting. A conditional delisting is highly appropriate here, since there are enough (legitimate) unknowns that ongoing sampling and analysis are required. The petition should state this. As the petition now reads, delisting levels are based on management in a presumed worst-case scenario, resulting in the "docket" values. It does not seem that the petition is adjusting delisting values for any site-specific management practices, even though they are discussed at length. For example, the petition states that delisted waste either would be used for dust suppression/waste compaction or treated at ETF. In the end, however, delisting numerical levels are not adjusted to account for these particular activities.

Dilution/Attenuation Factors (DAF): There are two sets of DAF values derived from EPACML modeling - the first for management in an unlined Subtitle D landfill, and the second for management in an unlined surface impoundment. See 56 FR 33000, July 18, 1991. Since liquids can't be placed in a landfill (Subtitle D or otherwise), the appropriate modeling scenario is a surface impoundment. Using these figures, a DAF considerably larger value than 10 could be justified. However, the petition should indicate that the likely worst-case management scenario is most likely a surface impoundment. The discussion of DAF selection should be considerably enlarged to reflect the nature of the waste (liquid vs. solid), and how DAFs are calculated.

Leachate Management: Further discussion of the management of the leachate must be given in the documentation. Delisting should be based on a reasonable worst-case management scenario, and the delisting levels shown to be protective under this scenario. Also, a demonstration/analysis should be made to show that there are no planned or potential management scenarios less protective than the presumed worst-case scenario. From this analysis and the resulting delisting scenarios, all management scenarios would be concluded to be protective. Put another way, delisting levels must be made more conservative to account for all potential management scenarios, but cannot be made less stringent on the basis of any proposed site-specific management scenario.

EPA Delisting Policy: EPA issued the *National Policy for Hazardous Waste Delistings* dated July 1, 1998 (attached). The policy deals with two main issues, conditional delisting dependent on the management scenario and revisiting the delisting should data become

available that indicates the delisting was inappropriate. The petition should include these elements.

Upfront Delisting: The executive summary clearly states: "Limited sampling of the leachate . . . The sampling that has been performed does not encompass all of the constituents of concern. In addition, existing data were not subject to data validation protocol and represent only a limited period of leachate generation."

Moving forward under these circumstances is inconsistent with delisting guidance. Characterization supporting delisting should be as thorough, and defensible (data validation) for the entire period of generation. Either the executive summary statement is incorrect, or a delisting decision point is not yet ripe. The proposal to do a 1-year waste characterization study, in the absence of otherwise adequate characterization data, is not consistent with guidance.

Note: Delisting guidance does provide for an "**upfront**" delisting process, where delisting determinations can be made prior to a waste stream being generated by a proposed generating or waste treatment process. This analysis is more complicated than for delisting of an existing waste stream. If this PP will move forward in September before adequate waste stream characterization data are available, then the petition should be recast (and conditions in the PP modified to reflect) as an upfront delisting.

Pesticides: The petition appears to discount pesticide use prior to 1990, at least by removing potential constituents of concern. Given historical pesticide practices (generally, not necessarily Hanford specific), and noting that agricultural test sites were operated at Hanford, this rationale for deleting pesticide COCs is not supportable.

Analysis Methods: A number of COC's are deleted on the basis of no SW-846 methods being available. The detection limits should be low enough to yield data that support the delisting. Given EPA's stated intent to move to a performance-based measurement system, and to remove SW-846 as a promulgated set of methods, these COC removals aren't supportable. The petition should look beyond SW-846 methods for applicable analytical techniques, as well as evaluate whether existing methods (SW-846 or otherwise) could be modified to address new target analytes. SW-846 is not the end-all/be-all, and certainly not the basis for deleting COC's without additional supporting analysis. Similar comments apply to modification of delisting levels based on analytical detection limits. SW-846 provides guidance only, not minimum or maximum detection limits. The petition should provide additional analysis, considering the waste stream matrix, possible analytical method modifications to meet require data quality objectives, etc.

Delisting Exceedances: The petition notes that, if delisting levels are exceeded, then evaluation of alternate management scenarios will be conducted. This is not appropriate, since delisting levels represent reasonable worst-case management scenarios, and site-

specific management controls can't be considered in determining delisting levels. The leachate shall be managed as hazardous at that time. Initially, an examination of changes in the system that may have occurred should be completed. This should include changes incoming waste streams, changes in generator waste characterization, and changes in operation.

Listed Waste in ERDF: The petition should emphasize the small volume of listed waste actually disposed of in the facility. If possible a detailed account of the waste volumes should be included, relative to the total waste received at ERDF.

Radiological Controls: The petition should discuss the data available for the radiological constituents found in the leachate, if any. Additionally, a discussion of the management of the leachate as a potential radiological waste should be included.

Contaminants of Concern: The appearance (or lack thereof) of a compound on EPA's "docket" list should not be a criterion for whether the compound is a constituent of concern. More specifically, the absence of a compound on the docket list must not be a supporting rationale for eliminating a compound as a COC. The docket list is not an exhaustive enumeration of "risk drivers." Docket values are generally taken from other delisting petitions only and thus may not fully capture constituents found at Hanford. The likely ERDF constituents which have no docket values should be examined to determine if risk based "new docket" values for these constituents need to be developed - or at least show why it is not necessary.

Delisting Petition: Overall, the reviewers support the DOE logic requesting the leachate delisting and the methodology to select Chemicals of Potential Concern (COPC). However, the petition requires several technical edits for consistent use of terminology. Portions of the logic are inadequately documented for use by the public. It should be assured that the source documents cited in the petition are adequately presented to assure that an understanding the statements presented.

Adequacy of Sampling Plan: The proposed sampling plan in the ERDF delisting petition indicates that quarterly monitoring will be conducted for the first year to establish a baseline. Then, semiannual monitoring of only a select group of constituents will be monitored, with the full suite of constituents monitored only once every two years. The limited monitoring suite of constituents will be based on detections within a certain defined percentage of the delisting limit. During the first year, it would seem more appropriate to monitor at least the limited suite of indicator constituents on a monthly basis with the full suite of analysis every quarter, until an adequate amount of data is gathered to establish trending information under different conditions. After trending is established, analysis for indicator samples could be reduced to semiannually with the full suite every two years.

Washington Administrative Code: Section 1.4 indicates that delisting limits will be based on the lower of either (1) . . . dangerous waste levels found in the Washington Administrative Code (WAC), or (2) constituent concentrations provided in the EPA docket multiplied by a factor of 10. The petition is for a delisting of DW under state law as well. The language states that Ecology concurs in the decision, and that the federal process is "substantially similar" to the state process, but the petition stops short of saying his is delisting under federal law and "delisting" under state law.

Logic Diagrams: The logic followed for the development of the Constituents of Concern (COCs) seem to be reasonable, thorough and appropriately conservative. The process starts with a list of Chemicals of Potential Concern (COPCs) that have been gathered from historical data and regulatory sources. Constituents are eliminated based upon potential use at the site, positive detects in the leachate, and potential risk associated with the COPC. The initial list of COPCs is presented in Table 2-12 and will comprise the baseline monitoring suite to be done on the leachate. The only confusion is that the terms COCs and COPC seem to be used interchangeably. This nomenclature should be clarified and then used consistently.

Compounds Detected: Because the ERDF is an operating landfill, some background chemistry is already available by DOE. It would be helpful to the public if a listing of detectable leachate chemistry is compared directly to the EPA docket values. Some of the information is already presented in the text, but was hard for the reviewers to extract this information from the petition. We believe this small effort will do much to allay potential public concerns to delist the leachate.

Adjusting limits: The petition talks about adjusting the delisting limits if there are exceedances and if such an adjustment "is appropriate." However, there isn't any discussion about what factors to use to determine "appropriateness" and how much the delisting limits can be increased. The public should be able to know what "ceiling" on upward adjustments may exist, or whether they exist at all. For example, can a delisting limit be adjusted upward indefinitely so that the constituent would never exceed the "adjusted" delisting limit? Section 3.2.3 of the delisting petition states some "examples" of reasons for adjusting the delisting limits, but this section should exclude other reasons, such as cost, for upward adjustment. The section talks about using EPA's Composite Model for making risk-based adjustments, but is that the only way to accomplish upward adjustments. Also, the last sentence of that section states that EPA's role is one of "consulting" rather than "deciding" whether to adjust the limits.

The petition proposes to use the EPACMTP model to reevaluate delisting levels for constituents with repeated exceedances. This model, unlike the EPACML model, does allow consideration of site-specific circumstances. While this may result in favorable change to delisting levels, its use is generally inconsistent with delisting policy, which precludes consideration of site-specific circumstances other than waste volume. The only

time site-specific considerations must be evaluated is when more conservative delisting values would result (see 6/11 policy memo).

SPECIFIC COMMENTS:

Executive Summary: The executive summary should be updated to reflect comments made on the petition.

Section 1.4, page 1-1: The current design should be defined as four cells, to include the expansion, rather than two cells.

Section 1.4, Page 1-2: The ERDF also contains waste with a listing designation of F003 per WAC 173-303. Additionally, if other codes besides those stated are being evaluated for delisting, they should be stated. Potential waste codes for waste destined for ERDF should be examined.

The constituent concentration is stated as the EPA docket value multiplied by 10. The basis of the petition is to compare the leachate chemistry with the health-based levels established by EPA, and multiply by 10 to establish a delisting level. It is further stated that this process to multiply the docket value is "standard procedure" for large-volume wastes and is conservative. No specific reference source was cited for this multiplication.

Section 1.4, Page 1-2: The petition states, *"If a constituent in the leachate exceeds the delisting limits for three sample events, and there is no justifiable basis for adjusting the limit for that constituent, DOE/Environmental Restoration Contractor (ERC) will establish the appropriate management procedures for the leachate under RCRA after consultation with EPA."* The text infers if a constituent exceeds the delisting limits, the leachate will be managed as a nonhazardous waste until the completion of a total of three sampling rounds (up to 1½ years based upon semiannual monitoring for some compounds) before an appropriate management procedure will be established. Monitoring samples must be demonstrated to be representative of a particular volume of leachate. If the sample result indicates an exceedance of the delisting level for any parameter, then that volume does not meet the delisting criteria and must be managed as a hazardous waste.

Section 1.5, Page 1-7: The first statement notes that analyses to date do not indicate that concentrations are listed or characteristic values. The intent of this statement is not clear. Is it to note that the leachate is not characteristic in nature and does not exceed LDR?

Section 1.5, Page 1-8: The justification for calculating delisting limits is referenced as the 1998 EPA docket. The list presented for use in the petition is not from a specific docket report. It may be stated that EPA provided a preliminary list of values for use in the petition. The values represent a compendium of health base values from multiple sources including the Clean Water Act.

It is implied from the text that the "1998" docket provides guidance on how to multiply the docket value by 10 for large volume waste streams. The multiplier represents a dilution/attenuation factor as leachate moves through the subsurface environment. The 1998 docket is not the appropriate reference. Additionally, it is not clear from the text what constitutes "a large volume waste stream" and whether or not the ERDF waste stream complies with such a definition. Finally, the appropriate reference should be provided.

Section 1.5, page 1-8, ¶ 1: The intent of the paragraph is somewhat unclear. Although RCRA storage requirements may not be necessary if the leachate were delisted, some available storage capacity for leachate would be required. Should the material become listed at some point it may be preferred to have RCRA compliant storage available. Additionally, delisting of the leachate is considered conditional based on management practices. Also, considering the data to date is suspect, to state that historical analyses to date indicate that there are no risks associated with the leachate is presumptive.

Section 1.5, page 1-8, ¶ 2: The second full paragraph on this page of the petition notes "Because of the hazardous waste listing, excess leachate currently is used at the ERDF for dust suppression . . . " This is not the case. EPA's approval of this practice was that use of pure water was a normal, legitimate practice, and that substituting leachate for pure water could be legitimately justified on substituting leachate water for pure water, not for substituting the listed component of leachate for pure water. This sentence should be reworded.

Section 1.5, Page 1-8, and Table 1-1. The last paragraph indicates that delisting limits may be adjusted to the detection limit of the analytical method if the docket value is less than the analytical detection limit. It does not appear that delisting limits in Table 1-1 have been adjusted in cases where the docket value is lower than the analytical detection limit. If this adjustment is to be used, it should be presented in Table 1-1.

Figure 2-1: Colors are noted in the legend for water sources, but do not show in the drawing.

Section 2.1.2, page 2-5: Waste minimization efforts to reduce the amount of leachate generated at ERDF should be specified, if any.

Section 2.2.2, Page 2-7: The delisting petition states that, " . . . currently monitored constituents are below the docket value for these compounds." Table 2-2 illustrates evidence of the docket value being exceeded for Bis(2-ethylhexyl) phthalate.

Table 2-1, Page 2-8. The detected concentrations of both Acetone and Toluene are

below their respective Estimated Quantitation Limits (EQL). According to EPA Functional Guidelines for data validation, this data should be flagged with a "J" qualifier to indicate that these are estimated results below the EQL.

Table 2-2, Page 2-8. The detected concentration of Butylbenzylphthalate is below the Estimated Quantitation Limit (EQL). According EPA Functional Guidelines for data validation, this data should be flagged with a "J" qualifier to indicate that these are estimated results below the EQL.

Table 2-3, Page 2-9. The detected concentrations of barium, beryllium, chromium, copper, manganese, mercury, nickel, vanadium and zinc are below their respective Estimated Quantitation Limits (EQL). According EPA Functional Guidelines for data validation, this data should be flagged with a "J" qualifier to indicate that these are estimated results below the EQL.

Table 2-5, page 2-10: Did Department of Energy propose delisting numbers for sulfate? If yes, what are the numbers based on? If not, they should add them or justify why not.

Section 2.2.5, page 2-27: Disposal of PCB waste in the ERDF necessitates monitoring for PCBs, ph, specific conductance, and chlorinated organics as specified in 40CFR761. It is not clear if sufficient chlorinated organics are included in the testing parameters.

Section 3.1, page 3-1: The current uses of leachate in the facility for dust suppression and waste compaction are conditional upon receiving delisting. If the delisting does not occur, the use of leachate within the trench shall cease.

Section 3.2.2, Page 3-5. The first paragraph indicates that Figure 2-1 identifies the sampling locations. However, Figure 2-1 identifies only one sampling location. The number and location of sampling points should be clarified.

Section 3-6 ¶2 Why so many events before triggering studies? If the limits are not met, they should not qualify for delisting. The one exception will be laboratory error. If the delisting is based on a specific DAF, Energy cannot just change it. It must go through appropriate public comment and at the minimum an ESD to the ERDF ROD.

Section 3.2.2, Page 3-6 and Figure 3-1. The last paragraph indicates that new waste streams with compounds not currently on the COPC list will be screened using the same process and criteria used to develop the initial COPC list. If retained using the screening criteria, then the compound will be added to the routine monitoring list for one (1) year. However, Figure 3-1 indicates that if new compounds are not on the COPC list from Table 2-12, they will not be analyzed. The approach described in the text is the most appropriate for handling new compounds. Figure 3-1 should be revised to reflect the approach described in the text.

Table 3-1. The table lists the holding times and sample container/preservative requirements for the methods of analysis to be utilized. The following are corrections to the information in that table.

a) The holding time for method 9056 is listed as "Analyze Immediately", however, the shortest holding time for the analytes to be done by this method is typically 48 hours (nitrate and nitrite). The "Analyze Immediately" holding time should be verified since this will be difficult to meet.

b) The ammonia method listed in Table 2-12 is 350.2, In Table 3-1, it is 350.1. The correct method for ammonia analysis is the distillation method, 350.2. The method should be corrected in Table 3-1.

Table 3-2. Table 3-2 provides a comparison of delisting values to Lab Practical Quantitation Limits (PQL)/Estimated Quantitation Limits (EQL). However, the delisting values presented in Table 3-2 are the docket values listed in Table 1-1, rather than the delisting values from Table 1-1. This discrepancy should be clarified so that the tables agree with each other.

Several of the metals are being analyzed by method 6010B, but are going to be reported at estimated levels below the PQL/EQL according to the comments within Table 3-2. These metals could easily be analyzed by the graphite furnace methods in SW846 to reach the required reporting limits with greater reliability. These metals include antimony, arsenic, lead, selenium and thallium. It is recommended that the graphite furnace methods be utilized for these metals rather than method 6010B.

The comments column includes a comment listed as "IDLSs" for several of the metals. However, this comment is not defined in the key of the table. A definition for this comment should be included in the key for this table.

Constituents that are printed in italics have PQLs which are greater than the delisting level. However, there are several discrepancies in the use of the italics print:

a) Acetonitrile should not be in italics because the PQL of 23.5 < delisting value of 200.

b) 1,1,2,2-Tetrachloroethane, Acrylonitrile, Chloromethane, Ethylene Dibromide and Benzo(k) fluoranthene should be in italics because their respective PQLs are all greater than the associated delisting value.

Appendix A, Table A-1. Detection limits are too high for some constituents. Energy needs to make sure that data quality objectives (DQOs) are set and methods are selected to meet the DQOs.

Appendix A, Table A-1, Page A-16. The detects listed in Table A-1 for phosphate

indicate that phosphate should be included in Table 2-5 as a detected wet chemistry parameter. Phosphate has been included as a COPC in Table 2-12. Table 2-5 should be modified to include phosphate and the associated data.

Appendix A, Page A-85. The partial table at the top of page A-85 is identified as Table A-8 (6 sheets). However, the table appears to be part of Table A-9 (2 sheets). This discrepancy should be resolved and the table renumbered.

Appendix B, Table B4-1. A "B" qualifier is used to identify an "estimated value, between the IDL and CRDL" for inorganic data. However, the "B" qualifier is generally reserved to indicate that the contaminant was also identified in the associated blank. The correct identifier for estimated values is "J" for both organic and inorganic data. The use the "J" qualifier is recommended for consistency with National Function Guidelines.

Appendix B, Table B4-1. Barium and Calcium results for sample 97-201 should be printed in italics because these are Field Blank results.

Appendix B, Table B4-1. Several results are reported as "U", undetected, based on the results of either laboratory blanks or field blanks. In each of these cases, the reporting limit is listed as the original PQL. However, according to the National Function Guidelines, the correct procedure is to use the concentration of the contaminant in the blank as the nondetect limit. The results and reporting limits should be revised to meet this requirement.

MEMORANDUM

SUBJECT: National Policy for Hazardous Waste Delistings

FROM: Elizabeth A. Cotsworth, Acting Director
Office of Solid Waste

TO: Regional RCRA Senior Policy Advisors

As you know, the Administrator redelegated the delisting program to the Regional Administrators on October 25, 1995. I understand that the redelegation has proceeded smoothly and am very pleased with this result. You and your staff should be congratulated for this successful transition. Delisting was and will continue to be an evolving program as substantive technical and policy issues continued to develop. While working jointly with the Regions on a number of issues, we found it is important to have and maintain an appropriate level of national consistency among the Regional delisting programs.

The purpose of this memorandum is to transmit to you a national policy for the hazardous waste delisting program. It covers two important elements. First, the policy contains a "conditional delisting" element, designed to ensure that delisted wastes are managed in a manner consistent with the risk evaluation that supports the delisting decision. Second, the policy provides a delisting "reopener" element, designed to provide the Agency with a mechanism for immediate response to new information or data indicating conditions exist that may alter the Agency's position on the approval of a delisting. I recommend the application of each of these elements of this national policy to ensure the EPA delisting program remains safe and effective in protecting human health and the environment and at the same time achieves the goal of allowing the exit of certain wastes from the hazardous waste management system. The principles of this policy have been discussed among the Regional delisting coordinators during a series of monthly conference calls.

Background

In considering whether to exclude a particular solid waste from the list of hazardous wastes contained in 40 CFR 261.31 and 261.32, the Agency has historically considered disposal in an unlined landfill or surface impoundment to be representative of the reasonable worst-case

management scenarios for such waste. The Agency believes that it is appropriate to consider the worst-case management scenario because it is extremely difficult to project all potential management scenarios that can occur once the waste is delisted. Thus, the Agency generally has only modeled the risks related to these two disposal practices. The generic risk assessment model currently used (i.e., EPACML) or the model delisting may soon adopt (i.e., EPACMTP) are designed only to predict groundwater impacts for these two disposal scenarios (i.e., an unlined landfill and an unlined surface impoundment). These two models, as adapted to delisting, cannot predict risks resulted from exposures to wastes that are managed in other non-disposal scenarios, including uses constituting disposal and other recycling practices.

However, the Agency has generally not restricted how a delisted waste could subsequently be managed, provided it was managed in accordance with the applicable state's nonhazardous waste management requirements. Therefore, generators could decide to manage their waste in another, perhaps riskier, manner, and so the potential exposure from another and different management practice could pose greater environmental risks than the exposure scenarios modeled. For unconditionally delisted wastes, there is typically no legal impediment to these changes in management.

Conditional Delisting Policy

To reduce the uncertainty caused by the potential unrestricted use or management of delisted waste, it is important that new delistings apply only to wastes managed in the type of unit (e.g., "a landfill") modeled in the delisting risk assessment. For example, if the delisting determination modeled risks associated with disposal in landfills, the delisting would specify that the waste is delisted conditioned on disposal solely in a landfill. If the generator places the waste anywhere other than a landfill, the waste is a "hazardous waste" subject to RCRA Subtitle C regulation, unless otherwise exempted from regulation (i.e., 40 CFR 266.20). The regulations in 40 CFR 266.20, which apply to recyclable materials (i.e., hazardous waste) used in a manner constituting disposal, impose certain requirements on such uses.

In the Agency's view, a conditionally delisted waste would exit the hazardous waste management system at the point it meets the established delisting levels, and would remain outside of the hazardous waste management system so long as the delisted waste generator complies with the conditions placed on the disposal of the delisted waste. The Regions should consider including appropriate mechanisms in conditional delistings that would help ensure that the waste was being managed in accordance with the conditions. For example, the Regions may consider adding a condition that the generator keep records, such as those they keep for business purposes, as to where they sent the waste.

EPA's policy of not considering site-specific factors when applying the fate and transport models remains unchanged. Therefore, at this time, Regions should not conditionally delist a waste based on consideration of protective site-specific hydrogeologic conditions (e.g., underlying clay) or specific landfill designs (e.g., liners, or covers). We would not be comfortable at this time delisting a waste based on consideration of site-specific hydrogeologic conditions and specific landfill designs that would not be delisted based on a less site-specific

analysis. While the Agency may consider a site-specific approach in the future, the Agency is not currently in a position to commit the necessary time and resources such site specific modeling evaluations would require and has not determined that this is an appropriate policy direction to take.

Nevertheless, the Agency realizes that for a relatively small number of petitioned wastes that are not (or will not be) managed under a scenario our generic delisting models can assess, Regions may have to consider site-specific circumstances or consider adding specific conditions, on a case-by-case basis. These cases are likely to raise issues of national significance, therefore, the Region should consult with the Office of Solid Waste.

Delisting Reopener Policy

In light of a recent experience that required the Agency to repeal an existing delisting, we recommend that the Regions include in future delistings, a provision that establishes a mechanism to review the delisting when additional data become available indicating the initial delisting decision was inappropriate or wrong. This is particularly important if the additional data shows that the delisted waste is not behaving in the disposal site as was predicted by the delisting risk assessment model. Therefore, Regions should include the following or similar language in future delisting decisions, unless there are clear rationales not to:

(a) If, anytime after disposal of the delisted waste, [insert facility name] 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 Condition (x) is at a level in the environment (such as in the leachate or in the ground water) higher than the delisting level established in Condition (x), then [insert facility name] must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data.

(b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency 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 Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify the facility in writing of the actions the Regional Administrator 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 Agency action is not necessary or to suggest an alternative action. The facility shall have 10 days from the date of the Regional Administrator's notice to present such information.

(d) Following the receipt of information from the facility described in paragraph (c) or (if no information is presented under paragraph (c)) the initial receipt of information described in paragraph (a), the Regional Administrator 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 Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.

This language is intended to provide the Agency with a mechanism to review and act expeditiously on information that a previously granted delisting may be causing a threat to human health or the environment that was unknown at the time the Agency acted initially. Use of this language will provide you the ability to reopen, revoke, or otherwise suspend the delisting in a timely manner. Please share this national policy with the states within your Region that are authorized to administer their own delisting programs

This memorandum provides guidance to EPA personnel. The guidance is designed to communicate national policy regarding the RCRA delisting program. The memorandum does not, however, substitute for EPA's statutes or regulations, nor is it a regulation itself. Thus, it cannot impose legally-binding requirements on EPA, States, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA may change this guidance in the future, as appropriate.

If you have any question regarding this policy, please feel free to contact David Bussard, Director, Hazardous Waste Identification Division, at (703) 308-8887 or have your staff contact Rick Brandes, Chief, Waste Identification Branch, at (703) 308-8890.

cc: Regional Counsels
David Nielsen, OECA