

EXECUTIVE SUMMARY

Proposed Rulemaking Exclusion for Identification and Listing Hazardous Waste at MAX Environmental Technologies, Inc. Bulger and Yukon Facilities

25 Pa. Code Chapter 261a

The Department of Environmental Protection (Department) proposes to amend 25 Pa. Code Chapter 261a (relating to identification and listing of hazardous waste) to read as set forth in Annex A. This proposed rulemaking is the result of two delisting petitions submitted by MAX Environmental Technologies, Inc. (MAX Environmental) in 2019 for the wastewater treatment sludge filter cake currently listed as hazardous wastes generated at their Bulger (MAX Bulger) and Yukon (MAX Yukon) facilities. The proposed rulemaking would amend Chapter 261a Appendix IXa, Table 2a (relating to wastes excluded from specific sources) to provide a specific conditional delisting of the wastewater treatment sludge filter cake generated at the MAX Bulger and MAX Yukon facilities from the list of hazardous wastes found in 40 CFR 261.31.

Purpose of the Proposed Rulemaking

Due to the nature of the wastes disposed of at the MAX Bulger and MAX Yukon facilities, the leachate generated is classified as an F039 listed hazardous waste. A delisting petition is a request to exclude waste from a particular facility from the list of hazardous wastes under the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C.A. §§ 6901—6986) and the Solid Waste Management Act. Under 40 CFR 260.20 and 260.22 (relating to general; and petitions to amend part 261 to exclude a waste produced at a particular facility), which are incorporated by reference in § 260a.1 (relating to incorporation by reference, purpose, scope and applicability) and modified by § 260a.20 (relating to rulemaking petitions), a person may petition the United States Environmental Protection Agency (EPA) or a state administering an EPA-approved hazardous waste management program to remove waste or the residuals resulting from effective treatment of a waste from a particular generating facility from hazardous waste control by excluding the waste from the lists of hazardous wastes in 40 CFR 261.31 and 261.32 (relating to hazardous wastes from non-specific sources; and hazardous wastes from specific sources). Specifically, 40 CFR 260.20 allows a person to petition to modify or revoke any provision of 40 CFR Parts 260—266, 268 and 273. Section 260.22 of 40 CFR provides a person the opportunity to petition to exclude a waste on a "generator specific" basis from the hazardous waste lists.

In a delisting petition, the petitioner must demonstrate that waste generated at a particular facility does not meet any of the criteria for which the waste was originally listed as a hazardous waste in 40 CFR 261.11 (relating to criteria for listing hazardous waste). In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e. ignitability, corrosivity, reactivity and toxicity) and present sufficient information for the Department to decide whether factors other than those for which the waste was originally listed as hazardous warrant retaining it as a hazardous waste. Only after the Department's analysis has shown that the waste does not meet the criteria for being listed as a hazardous waste, nor does it exhibit any of hazardous waste characteristics, may amendments be pursued to exclude the waste from the lists of hazardous wastes in 40 CFR 261.31 and 261.32 (relating to hazardous wastes

from non-specific sources; and hazardous wastes from specific sources). It is important to emphasize that a delisting does not exclude a hazardous waste from hazardous waste regulation. More accurately, a delisting excludes a waste that is not hazardous from being managed as a hazardous waste.

In May 2019, MAX Environmental submitted two petitions to conditionally delist the sludge generated from the leachate treatment plant at MAX Bulger and MAX Yukon. A conditional delisting means MAX would be required to test samples of the sludge filter cake and verify that the samples on a volume basis do not exhibit any hazardous waste characteristics as described in Chapter 261a Appendix IXa, Table 2a (1) (relating to delisting levels) prior to waste disposal. Management of the sludge material prior to sample verification would continue to be as a hazardous waste, and only after sample verification could the sludge be managed as non-hazardous waste.

In keeping with the Environmental Quality Board's (Board) policy for processing petitions, the Board voted unanimously to accept both delisting petitions for further study on June 18, 2019. The Department then conducted a careful and independent review of the delisting petitions, which included appropriate analyses and sampling of the leachate. On June 16, 2020, the Department presented to the Board two evaluation reports that included the Department's findings from its review of the petitions. Based on the Department's conclusion that the sludge from both MAX Bulger and MAX Yukon did not meet the criteria for being listed as an F039 hazardous waste, nor did it exhibit any of the hazardous waste characteristics, the Board unanimously approved both delisting petitions for rulemaking.

Summary of the Proposed Rulemaking

The proposed rulemaking amends Chapter 261a Appendix IXa, Table 1a (relating to wastes excluded from nonspecific sources) to provide a specific conditional delisting of wastewater treatment sludge filter cake at the MAX Bulger and MAX Yukon facilities. The delisting levels in Appendix IXa were established by using the more conservative health-based values, calculated by either the Delisting Risk Assessment Software (DRAS) or toxicity characteristic regulatory levels.

The proposed rulemaking represents a conditional exclusion, meaning that there will be post-exclusion testing requirements that must be met by the Petitioner prior to waste disposal. Management of the sludge material prior to sample verification would continue to be as a hazardous waste. Only after sample verification could the sludge be managed as non-hazardous waste. This sludge would then be managed under DEP's Residual Waste regulations.

Affected Parties

Aside from MAX Environmental, the proposed rulemaking is not expected to have any impact on the regulated community, local government or state government. As indicated, the proposed rulemaking is site-specific, in that it is specific to the MAX Bulger and MAX Yukon facilities, respectively.

Outreach (Advisory Committee/Stakeholder Consultation)

The EQB accepted both petitions for evaluation by the Department on June 18, 2019.

The EQB approved both petitions for proposed rulemaking on June 16, 2020.

The Department's Solid Waste Advisory Committee was briefed on the petition and proposed rulemaking on September 10, 2020, and concurred with the Board's recommendation to proceed to proposed rulemaking. No public meetings or hearings have been held to date.

Recommendation

The Department recommends adoption of this proposed rulemaking. A 45-day public comment period is also recommended with three public hearings. Two hearings would be held in-person in the communities near each facility and one hearing would be held virtually via Webex.