

<h1 style="margin: 0;">Regulatory Analysis Form</h1> <p style="margin: 0;">(Completed by Promulgating Agency)</p>		<p><b><i>INDEPENDENT REGULATORY REVIEW COMMISSION</i></b></p>
<p><b>(All Comments submitted on this regulation will appear on IRRC's website)</b></p>		
<p>(1) Agency:</p> <p style="padding-left: 20px;">Department of Environmental Protection</p>		<p>IRRC Number:</p>
<p>(2) Agency Number: 7</p> <p style="padding-left: 20px;">Identification Number: 566</p>		
<p>(3) PA Code Cite: 25 Pa. Code, Part I, Subpart D, Article VII. Hazardous Waste Management, Chapter 261a (Identification and Listing of Hazardous Waste)</p>		
<p>(4) Short Title:</p> <p>Exclusion for Identification and Listing Hazardous Waste at MAX Environmental Technologies, Inc. Bulger and Yukon Facilities</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Laura Griffin, (717) 783-8727, laurgriffi@pa.gov                  Secondary Contact: Jessica Shirley, (717) 783-8727, jessshirley@pa.gov</p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input checked="" type="checkbox"/> Proposed Regulation  <input type="checkbox"/> Final Regulation  <input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation;  <input type="checkbox"/> Certification by the Governor  <input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>A delisting petition is a request to exclude waste from a particular facility from the list of hazardous wastes identified under the Resource Conservation and Recovery Act (RCRA) of 1976. This proposed rulemaking is the result of two delisting petitions submitted by MAX Environmental Technologies, Inc. (MAX Environmental) for the wastewater treatment sludge filter cake currently listed as hazardous wastes generated at the MAX Bulger and Yukon facilities. The petition process required MAX Environmental to demonstrate that the wastewater treatment sludge filter cakes generated at their Bulger and Yukon facilities did not meet any of the criteria for which the waste was originally listed as hazardous and does not exhibit any hazardous waste characteristics (ignitability, corrosivity, reactivity and toxicity).</p> <p>The delisting petition process and associated analysis by the Department demonstrated that the wastewater treatment sludge filter cake from both the MAX Bulger and Yukon facilities did not meet the criteria for being listed as hazardous wastes nor did it exhibit any hazardous waste characteristics. As such, this proposed rulemaking would amend Chapter 261a Appendix IXa, Table 1a to remove (delist) the wastewater treatment sludge filter cake at the MAX Bulger and Yukon facilities from the list of hazardous wastes as long as specific conditions demonstrating the filter cake does not exhibit any hazardous waste characteristics are met.</p>		

(8) State the statutory authority for the regulation. Include specific statutory citation.

This proposed rulemaking is adopted under the authority of sections 105, 402 and 501 of the Solid Waste Management Act (SWMA) (35 P. S. §§ 6018.105, 6018.402 and 6018.501), section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), and Section 303 of the Hazardous Sites Cleanup Act (35 P.S. §§ 6020.303 and 6020.305(e)(2)), which grants the Board the authority to promulgate regulations to carry out the provisions of that Act. Under sections 105, 402 and 501 of the SWMA, the Environmental Quality (Board) has the power and duty to adopt rules and regulations concerning the storage, treatment, disposal and transportation of hazardous waste that are necessary to protect the public's health, safety, welfare and property, and the air, water and other natural resources of this Commonwealth. Section 1920-A of The Administrative Code of 1929 grants the Board the authority to promulgate rules and regulations that are necessary for the proper work of the Department.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No, this regulation is not mandated by any federal or state law or court order or federal regulation. This proposed rulemaking is the result of two petitions to amend the hazardous waste regulations to exclude a particular waste generated at the MAX Bulger and MAX Yukon facilities from the lists of hazardous wastes.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Federal regulations, incorporated by reference by Pennsylvania, allow a person to submit a petition to remove certain wastes from a particular facility from the lists of hazardous waste in 40 CFR 261.31 and 261.32 (relating to hazardous wastes from non-specific sources; and hazardous wastes from specific sources) if the petitioner can demonstrate that the waste does not meet any of the criteria for which the waste was originally listed as a hazardous waste in 40 CFR 261.11. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for the Department to decide whether factors other than those for which the waste was originally listed warrant retaining it as a hazardous waste. If the petitioner can make that demonstration, then the Department must proceed with a rulemaking to delist the waste so it may be managed as a non-hazardous waste.

MAX Environmental submitted two petitions to delist the wastewater treatment sludge filter cake derived from the treatment of EPA Hazardous Waste No. F039 (multi-source leachate) generated at the MAX Bulger and Yukon facilities from the list of hazardous wastes found in 40 CFR 261.31. In accordance with the petition process, the Department conducted an independent review of the Delisting Petitions and found that the sludge filter cake 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. This regulation will take the Board's direction and continue the appropriate management of the sludge filter cake from the MAX Bulger and MAX Yukon facilities in a manner to prevent detriment to the environment or public health and safety.

The main beneficiary of this proposed regulation is MAX Environmental. Presently, MAX Environmental incurs significant economic impact by having to manage the wastewater treatment plant

sludge filter cake as a hazardous waste (see questions #17 and #18 for greater detail). There are both transportation and disposal costs incurred for each facility. MAX Environmental has provided figures of \$1,439 per ton of dry sludge (disposal and transportation) for management as a hazardous waste. If the rulemaking is adopted, disposal of the sludge would be allowed onsite. The estimate provided for disposal of non-hazardous sludge is \$40/ton.

Under the terms of the rulemaking, MAX Environmental would still be required to conduct sampling to verify the sludge does not exhibit hazardous waste characteristics and provide assurance via recordkeeping and record submittal to the Department that the terms and conditions of the delisting are being met prior to disposal of the sludge. The terms of the delisting also provide procedures for waste handling prior to verification sampling and provides procedures for changes in operations or reopeners should that need arise. However, even with the added laboratory expenses from the monitoring and coordination required as part of the regulation, MAX Environmental would still realize a financial savings for both the MAX Bulger and MAX Yukon facilities that would approach \$950,000 annually due to the reduced transportation and disposal costs noted above.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

This proposal is not more stringent than federal standards. It is a provision that has been authorized by the EPA for the Department to implement in Pennsylvania in lieu of the federal standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Not all states are authorized to process hazardous waste delisting petitions, in which case the EPA processes the petitions. This specific proposal will not put Pennsylvania at a competitive disadvantage with other states. The proposed rulemaking would only be effective in Pennsylvania.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation will not impact any other regulations of the Department. The structure for the proposed regulation already exists at 25 Pa. Code Chapter 261a through incorporation by reference of the federal hazardous waste regulations, and Pennsylvania has also previously approved a different delisting petition. Regulations of other state agencies will not be affected.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

This proposal was developed in response to two (2) delisting petitions to amend the regulation. Under the Commonwealth's hazardous waste regulations in 25 Pa. Code § 260a.20, delisting petitions shall be submitted to the Board in accordance with the procedures established in Chapter 23 (relating to Environmental Quality Board policy for processing petitions—statement of policy). In keeping with these procedures, the Department alerted the Board that the petitions met the requirements for acceptability, and at the June 18, 2019 Board meeting, recommended that the Board accept both petitions for further study. The Board voted unanimously to accept this recommendation. Notice of

acceptance of the petitions was published in the *Pennsylvania Bulletin* on June 29, 2019 (49 Pa.B. 3316). Following the Department's evaluation of both petitions, the Board unanimously approved both petitions for rulemaking on June 16, 2020.

The petitioner, MAX Environmental, provided the analytical data and other information that was reviewed by the Board and used to draft the proposed rulemaking.

Additionally, the Department's Solid Waste Advisory Committee (SWAC) was briefed on the petition and shown a draft Annex A of the proposed rulemaking on September 10, 2020. SWAC works with the Department to develop programs, policies and regulations to effectively implement Pennsylvania's solid waste management and recycling programs. SWAC's current membership includes individuals representing municipal solid waste authorities, local government interests, solid waste management industry groups, consulting firms and private citizens. At its September 10, 2020 meeting, SWAC concurred with the Department's recommendation to proceed to proposed rulemaking.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Only the petitioner, MAX Environmental, will be affected by this proposed rulemaking. The proposed rulemaking is to provide a specific conditional delisting of wastewater treatment sludge filter cake generated at the MAX Bulger and MAX Yukon facilities. MAX Environmental will benefit from reduced costs associated with the delisted waste streams as they will now be able to dispose of the filter cake in their own permitted Subtitle D landfill after performing certain verification testing to verify the sludge is not exhibiting hazardous waste characteristics.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Only the petitioner, MAX Environmental, will be required to comply with the conditions included in the proposed rulemaking. The proposed rulemaking provides a specific conditional delisting of wastewater treatment sludge filter cake generated at the MAX Bulger and MAX Yukon facilities and is therefore not applicable to other facilities.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The primary beneficiary of this proposed rulemaking is MAX Environmental. Under the terms of the proposed rulemaking, MAX Environmental would have the ability to dispose of the filter cake from the MAX Bulger and MAX Yukon facilities in their own permitted Subtitle D landfill after performing certain verification testing to confirm the sludge is not exhibiting hazardous waste characteristics. Based on the costs incurred by MAX Environmental to properly dispose of the hazardous filter cake sludge currently, the company will save over \$850,000 annually for the Bulger facility waste and over \$100,000 annually for the Yukon facility waste in disposal, transportation and laboratory costs as a result of this delisting amendment. Specifically, MAX Environmental has provided the following breakdown of the economic and social impacts of this proposed rulemaking on their operations and the surrounding public. The Department independently reviewed these impacts and concurs with the analysis below, which describes the anticipated economic impact from the MAX Yukon facility:

**1. Shipping the waste to a hazardous waste landfill:** Currently, if the waste has to be shipped in a wet slurry form, the cost per gallon is \$2.38, or about \$12,157 per tanker truck (disposal and transportation) or \$1,439 per ton for dry sludge (disposal and transportation), based on invoice data from American Waste Management Services/US Ecology. If the waste was classified as non-hazardous, there would only be an internal labor cost for disposal of the sludge at the MAX Yukon facility with a cost of approximately \$1.25/ton. Off-site shipping and disposal of this waste as non-hazardous would cost \$40/ton based on current rates that MAX Environmental has obtained from third party area landfills and trucking companies. Hence, the impact is at least a savings of \$1,439 per ton as hazardous compared to \$40 per ton as non-hazardous, a difference in cost of about \$1,399 per ton.

Based on the average annual quantity of sludge generated, it costs MAX Environmental \$115,120 to ship 80 tons of MAX Yukon sludge off-site as a hazardous waste. Conversely, it would cost MAX Environmental \$3,360 to ship 80 tons of MAX Yukon sludge off-site as non-hazardous. It would cost about \$100 annually if the MAX Yukon sludge is disposed on-site as non-hazardous.

**2. Laboratory Testing:** The delisting proposal requires TCLP metals testing for each batch of sludge generated to confirm that the sludge meets the proposed delisting limits. Using a typical third-party laboratory rate for TCLP metals testing of \$150 and assuming 20 tons per batch, lab analyses would cost \$600 for MAX Yukon annually using average annual sludge generation amounts.

**3. Unnecessary Truck Traffic Increasing Safety and Environmental Impacts.** In addition to the costs savings described above, the delisting may potentially avoid over 12,000 truck miles on the highways in western Pennsylvania and elsewhere currently accumulated while transporting the waste as hazardous for appropriate disposal.

**Summary:**

<b>Annual Costs</b>	<b>Hazardous</b>	<b>Delisted</b>	<b>Difference/Savings</b>
Offsite Disposal and Transportation	\$115,120 (min)	\$3,360 (min)	\$111,760 (min)
Laboratory Analysis	\$0	\$600	(\$600)
<b>Total Impact</b>	<b>\$115,120 (min)*</b>	<b>\$3,960 (max)*</b>	<b>\$111,160</b>

\* Minimum assumes that the waste can be managed as dry hazardous; maximum assumes cost for off-site shipment of delisted sludge.

Plus: Increased truck traffic impact to safety.

Below describes the anticipated economic impact from the MAX Bulger facility:

**1. Shipping the waste to a hazardous waste landfill:** If the waste has to be shipped in a wet slurry form, the cost per gallon is \$2.38, or about \$12,157 per tanker truck (disposal and transportation) or \$1,439 per ton for dry sludge (disposal and transportation), based on invoice data from American Waste Management Services/US Ecology. If the waste was classified as non-hazardous there would only be an internal labor cost for disposal of the sludge at the MAX Bulger facility, if the MAX Bulger residual waste landfill is appropriately permitted, which works out to about \$1.25/ton. Off-site shipping and disposal of this waste as non-hazardous would cost \$40/ton based on current rates obtained from third party area landfills and trucking companies. Hence, the impact is at least \$1,439 per ton as hazardous compared to \$40 per ton as nonhazardous, a difference in cost of \$1,399 per ton.

Based on the annual quantity of sludge generated, it would cost MAX Environmental about \$863,400 to ship MAX Bulger’s sludge off-site as hazardous. Conversely, it would cost MAX Environmental approximately \$24,000 to ship 600 tons of MAX Bulger sludge off-site as non-hazardous.

2. **Laboratory Testing:** The delisting proposal requires TCLP metals testing for each batch of sludge generated to confirm the sludge meets the proposed delisting limits. Using a typical third-party laboratory rate for TCLP metals testing of \$150 and assuming 20 tons per batch, lab analyses would cost \$4,500 for MAX Bulger annually at the delisting petition annual quantity of sludge generated amount. At approximately \$7.50 per ton, this is an insignificant cost compared to the costs shown above of treating the material as hazardous.

3. **Unnecessary Truck Traffic Increasing Safety and Environmental Impacts.** In addition to the costs savings described above, the delisting may potentially avoid over 12,000 truck miles on the highways in western Pennsylvania and elsewhere currently accumulated while transporting the hazardous waste for appropriate disposal.

**Summary:**

<b>Annual Costs</b>	<b>Hazardous</b>	<b>Delisted</b>	<b>Difference/Savings</b>
Offsite Disposal and Transportation	\$863,400 (min)	\$24,000 (max)	\$839,400
Laboratory Analysis	\$0	\$4,500	(\$4,500)
<b>Total Impact</b>	<b>\$863,400 (min)*</b>	<b>\$28,500 (max)*</b>	<b>\$834,900</b>

\* Minimum assumes that the waste can be managed as dry hazardous; maximum assumes cost for off-site shipment of delisted sludge.

Plus: Increased truck traffic impact to safety.

The sample frequency and verification sampling provide assurance that the terms and conditions of the delisting are being met by the MAX Bulger and MAX Yukon facilities. Recordkeeping and record submittal procedures to the Department also provide that assurance. The terms of the delisting also provide procedures for waste handling prior to verification sampling and provides procedures for changes in operations or reopeners should that need arise.

In conclusion, MAX Environmental incurs significant economic impact by having to manage the wastewater treatment plant sludge as a hazardous waste. There are both transportation and disposal costs incurred for each facility. If the rulemaking is approved, disposal of the sludge would be onsite. The offset of laboratory expenses for delisting against managing the waste as hazardous is more than recuperated by eliminating transportation costs and disposal as a hazardous waste. Combined, MAX Environmental estimates that financial savings for both the MAX Bulger and MAX Yukon facilities would approach \$950,000 annually. The application of this proposed regulation would therefore provide a cost-effective and environmentally responsible method of disposal for the proposed non-hazardous waste.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The main benefit of this proposed rulemaking is that the petitioner, MAX Environmental, would be able to dispose of the filter cake from their Bulger and Yukon facilities at their own permitted Subtitle D landfill, which will allow MAX Environmental to save over \$850,000 annually for the Bulger facility

waste and over \$100,000 annually for the Yukon facility waste in disposal, transportation and laboratory costs.

Under the terms of the rulemaking, MAX Environmental would still be required to conduct sampling to verify the sludge does not exhibit hazardous waste characteristics and provide assurance via recordkeeping and record submittal to the Department that the terms and conditions of the delisting are being met prior to disposal of the sludge. The terms of the delisting also provide procedures for waste handling prior to verification sampling and provides procedures for changes in operations or reopeners should that need arise. However, even with the added laboratory expenses from the monitoring and coordination required as part of the regulation, MAX Environmental would still realize a financial savings for both the MAX Bulger and MAX Yukon facilities of approximately \$950,000 annually due to the reduced transportation and disposal costs.

As such, the proposed regulation would allow MAX Environmental to appropriately manage the filter cake from their Bulger and Yukon facilities while the sampling and recordkeeping components of the proposed rule ensure continued protection of public health and the environment.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Based on the cost data provided by MAX Environmental, the proposed rulemaking will result in savings for the company of approximately \$950,000 annually if the wastewater treatment sludge filter cake generated at the MAX Bulger and MAX Yukon facilities are found to be non-hazardous after sampling is completed as outlined in the proposed regulation and disposed of accordingly.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The proposed rulemaking is not expected to have an impact on local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The proposed rulemaking is not expected to have any significant impact on state government. No additional recordkeeping, inspection, report review, etc., beyond what is currently required by regulation, is anticipated.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The proposed rulemaking includes a section on data submittal by the petitioner as a condition of the delisting. The company currently maintains similar but more extensive data and reports, including manifests, for the filter cake waste generated at the petitioner's facility that must be managed as hazardous wastes. The proposed rulemaking provides the sampling criteria and delisting levels that

must be met in order to meet the conditions of the exclusion. Further, the proposed rulemaking outlines verification testing frequency and sets volume maximums. Upon sample analysis, sample results will be submitted to the Department for verification, inclusive of a certification as to the truth and accuracy of that data. Also, as noted, the management of the sludge is to be maintained as a hazardous waste until verification analyses is complete.

(22a) Are forms required for implementation of the regulation?

There is no specific form for the submission of the data required as a condition of the delisting.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

N/A

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	<b>Current FY 2021/22</b>	<b>FY +1 2022/23</b>	<b>FY +2 2023/24</b>	<b>FY +3 2024/25</b>	<b>FY +4 2025/26</b>	<b>FY +5 2026/27</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	946,060	946,060	946,060	946,060	946,060	946,060
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Savings</b>	946,060	946,060	946,060	946,060	946,060	946,060
<b>COSTS:</b>						
<b>Regulated Community</b>	32,460	32,460	32,460	32,460	32,460	32,460
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Costs</b>	32,460	32,460	32,460	32,460	32,460	32,460
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Revenue Losses</b>	0	0	0	0	0	0



(23a) Provide the past three-year expenditure history for programs affected by the regulation.

<b>Program</b>	<b>FY -3 2018/19</b>	<b>FY -2 2019/20</b>	<b>FY -1 2020/21</b>	<b>Current FY 2021/22</b>
RCRA Grant	\$4,740,000	\$4,740,000	\$4,703,028	\$4,666,344
State Match (HSCA)	\$1,580,000	\$1,580,000	\$1,567,676	\$1,555,448

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.

The proposed regulation will not impact small businesses. The proposed rulemaking is for wastes excluded from specific sources and will therefore only be applicable to the MAX Bulger and MAX Yukon facilities.

- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

The proposed regulation will not impact small businesses. The proposed rulemaking is for wastes excluded from specific sources and will therefore only be applicable to the MAX Bulger and MAX Yukon facilities. Recordkeeping and administrative costs would only be borne by MAX Bulger and MAX Yukon. These costs are already being incurred and represent no significant change in activity.

- (c) A statement of probable effect on impacted small businesses.

The proposed regulation will not impact small businesses. The proposed rulemaking is for wastes excluded from specific sources and will therefore only be applicable to the MAX Bulger and MAX Yukon facilities.

- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The proposed rulemaking is the less intrusive method of handling the wastewater treatment sludge versus current handling methods. The proposed regulation would minimize cost to the facility while also minimizing transportation costs.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

Due to the site-specific nature of the proposed regulation, no special provisions are necessary.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory process was considered. The petition process as outlined in the Hazardous Waste Regulations is allowed by the EPA. (See response in paragraph 10.)

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

This proposed rulemaking only effects the MAX facilities and will not have any adverse impact on small businesses.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

See attached data. All files in PDF except for links to delisting guidance and petitions. Files include:

- 1) EPA RCRA Delisting Program, Guidance Manual for the Petitioner (March 23, 2000), [https://archive.epa.gov/region6/6pd/rcra\\_c/pd-o/web/pdf/delist23.pdf](https://archive.epa.gov/region6/6pd/rcra_c/pd-o/web/pdf/delist23.pdf)
- 2) Bulger SAP Complete – October 2017
- 3) MAX Bulger Facility – F039 Delisting Petition 05-02-19, [http://files.dep.state.pa.us/PublicParticipation/Public%20Participation%20Center/PubPartCenterPortalFiles/Environmental%20Quality%20Board/2019/June%202018/02\\_HW\\_Delisting\\_Petitions/MAX%20Bulger%20Facility%20-%20F039%20Delisting%20Petition.pdf](http://files.dep.state.pa.us/PublicParticipation/Public%20Participation%20Center/PubPartCenterPortalFiles/Environmental%20Quality%20Board/2019/June%202018/02_HW_Delisting_Petitions/MAX%20Bulger%20Facility%20-%20F039%20Delisting%20Petition.pdf)
- 4) MAX Bulger Delisting Evaluation Report
- 5) Yukon SAP Complete – October 2017
- 6) MAX Yukon Facility – F039 Delisting Petition 05-02-19, [http://files.dep.state.pa.us/PublicParticipation/Public%20Participation%20Center/PubPartCenterPortalFiles/Environmental%20Quality%20Board/2019/June%202018/02\\_HW\\_Delisting\\_Petitions/MAX%20Yukon%20Facility%20-%20F039%20Delisting%20Petition.pdf](http://files.dep.state.pa.us/PublicParticipation/Public%20Participation%20Center/PubPartCenterPortalFiles/Environmental%20Quality%20Board/2019/June%202018/02_HW_Delisting_Petitions/MAX%20Yukon%20Facility%20-%20F039%20Delisting%20Petition.pdf)
- 7) MAX Yukon Delisting Evaluation Report

(29) Include a schedule for review of the regulation including:

- |   |                       |
|---|-----------------------|
| A. The length of the public comment period:   | <u>45 days</u>        |
| B. The date or dates on which any public meetings or hearings will be held:                   | <b>TBD (3)</b>        |
| C. The expected date of delivery of the final-form regulation:                                | <u>Quarter 4 2022</u> |
| D. The expected effective date of the final-form regulation:                                  | <u>Quarter 4 2022</u> |
| E. The expected date by which compliance with the final-form regulation will be required:     | <u>Quarter 4 2022</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u>            |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

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. The sludge material would continue to be managed as a hazardous waste until to sample verification. 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 at 25 Pa. Code Article IX.