NOTICE OF INTENT

Department of Environmental Quality

Office of the Secretary

Legal Division

Technical Amendment to Hazardous Waste Delisting - Denka Performance Elastomers LLC

(LAC 33:V.4999. Appendix E) (HW122)

 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.4999. Appendix E (HW122).

 This Rule is a technical amendment of a hazardous waste delisting of Dynawave Scrubber Effluent, which was approved and promulgated under DuPont/Dow Elastomers LLC on December 20, 1999. This rulemaking will amend the description of the wastes excluded in the Denka Performance Elastomer LLC delisting. In a previous Rule, a name change was completed for a delisting of hazardous waste. As part of public comments, the facility requested a technical change to the description of the wastes excluded. These changes were necessary because EPA has revised the waste codes since the original promulgation in 1999. LDEQ has reviewed the request to amend the waste codes and considers is justified. The basis and rationale for this Rule are to amend waste codes as appropriate. This 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.

**Family Impact Statement**

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Poverty Impact Statement**

This Rule has no known impact on poverty as described in R.S. 49:973.

**Provider Impact Statement**

This Rule has no known impact on providers as described in HCR 170 of 2014.

**Public Comments**

 All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by HW122. Such comments must be received no later than April 5, 2017, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov. Copies of these proposed regulations 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 HW122. These proposed regulations are available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

**Public Hearing**

A public hearing will be held on March 29, 2017, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 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 Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

 These proposed regulations are 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; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

 Herman Robinson

 General Counsel

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part V. Hazardous Waste and Hazardous Materials**

**Subpart 1. Department of Environmental Quality—Hazardous Waste**

**Chapter 49.** **Lists of Hazardous Wastes**

[Editor’s Note: Chapter 49 is divided into two Sections: category I hazardous wastes, which consist of hazardous wastes from nonspecific and specific sources (F and K wastes), acute hazardous wastes (P wastes), and toxic wastes (U wastes) (LAC 33:V.4901); and category II hazardous wastes, which consist of wastes that are ignitable, corrosive, reactive, or toxic (LAC 33:V.4903).]

**§4999. Appendices—Appendix A, B, C, D, E, and F**

**Appendix A.** – **Appendix D. …**

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**Appendix E. Wastes Excluded under LAC 33:V.105.M**

A. – B.3.b. …

| **Table 1 - Wastes Excluded** |
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| **BFI Waste Systems of Louisiana LLC, Colonial Landfill, Sorrento, LA** |
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| **Table 1 - Wastes Excluded** |
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| **Denka Performance Elastomer LLC, LaPlace, LA** |
| 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~~Pontchartrain CD Heels—D001, D007, D039, F001, F002, F003, 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~~. Denka Performance Elastomer LLC must implement a sampling program that meets the following conditions for the exclusion to be valid. |
| (1). TestingSample 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. |
| (1)(A). Inorganic TestingDuring the first 12 months of this exclusion, Denka Performance Elastomer LLC must collect and analyze a monthly grab sample of the Dynawave Scrubber Effluent. Denka Performance Elastomer LLC 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 Denka Performance Elastomer LLC concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(A), then Denka Performance Elastomer LLC 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. |
| (1)(B). Subsequent Inorganic TestingFollowing concurrence by the department, Denka Performance Elastomer LLC may substitute the following testing conditions for those in condition (1)(A). Denka Performance Elastomer LLC 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. Denka Performance Elastomer LLC may, at its discretion, analyze any samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous. |
| (1)(C). Organic TestingDuring the first 30 days of this exclusion, Denka Performance Elastomer LLC 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, Denka Performance Elastomer LLC shall sample and analyze for the organic constituents listed in condition (3)(B) on an annual basis. |
| (1)(D). Dioxins and Furans TestingDuring the first 30 days of this exclusion, Denka Performance Elastomer LLC 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, Denka Performance Elastomer LLC 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. |
| (2). Waste Holding and HandlingConsequent to this exclusion, the Dynawave Scrubber Effluent becomes, on generation, nonhazardous solid waste and may be managed and disposed of on the Denka Performance Elastomer LLC 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 Denka Performance Elastomer LLC 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 Denka Performance Elastomer LLC 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 Denka Performance Elastomer LLC of the corrective action needed. Denka Performance Elastomer LLC 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, Denka Performance Elastomer LLC may appeal the corrective action determined by the department. During the full period of corrective action determination and implementation, the exclusion of the Dynawave Scrubber Effluent shall remain in force unless the department notifies Denka Performance Elastomer LLC 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. |
| (3). Delisting LevelsThe 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). |
| (3)(A). Inorganic ConstituentsChromium—2.0; Nickel—2.0; Zinc—200. |
| (3)(B). Organic ConstituentsAcetone—80; Chlorobenzene—2.0; Chloroform—0.2; Chloroprene—14; Ethylbenzene—14; Methylene Chloride—0.1; Styrene—2.0; Toluene—20; Xylenes—200. |
| (3)(C). Dioxins and FuransThe 15 congeners listed in Section 1.1 of EPA Publication Number SW-846 Method 8290—Monitor only. |
| (4). Changes in Operating Conditions or Feed StreamsIf Denka Performance Elastomer LLC 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 its combustion permit, Denka Performance Elastomer LLC must notify the department in writing. Following receipt of written acknowledgement by the department, Denka Performance Elastomer LLC must collect a grab sample and analyze it for the full universe of constituents found in 40 CFR Part 264, Appendix IX—Groundwater Monitoring List (LAC 33:V.3325). If the results of the Appendix IX analyses identify no new hazardous constituents, then Denka Performance Elastomer LLC must reinstitute the testing required in condition (1)(A) for a minimum of 12 monthly operating periods. During the full period described in this 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. Denka Performance Elastomer LLC 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. |

| **Table 1 – Wastes Excluded** |
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| **Lyondell Chemical Company, Lake Charles, LA** |
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| **Table 1 - Wastes Excluded** |
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| **Marathon Oil Co., Garyville, LA** |
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| **Table 1 - Wastes Excluded** |
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| **Motiva Enterprises LLC, Norco, LA** |
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| **Table 1 - Wastes Excluded** |
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| **Syngenta Crop Protection, Inc., St. Gabriel, LA** |
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| **Table 2 – One-Time Wastes Excluded** |
| **Murphy Exploration and Production Company, Amelia, LA** |
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| **Table 2 – One-Time Wastes Excluded** |
| **Conrad Industries, Inc. (Conrad), Morgan City, LA** |
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**Appendix F-Recordkeeping Instructions**

A. – B.3, Table 2. …

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 by the Office of Environmental Assessment, LR 30:2464 (November 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:445 (March 2007), LR 33:825 (May 2007), LR 33:1016 (June 2007), LR 34:73 (January 2008), LR 34:1021 (June 2008), LR 34:1613 (August 2008), amended by the Office of the Secretary, Legal Division, LR 38:2757 (November 2012), LR 40:1692 (September 2014), amended by the Office of the Secretary, Legal Division, LR 42\*\* (December 2016), amended by the Office of the Secretary, Legal Division, LR 42\*\*