



pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Bureau of Waste Management

Draft Final Rulemaking: MAX Delisting Rule

Solid Waste Advisory Committee

December 15, 2022

Tom Wolf, Governor

Ramez Ziadeh, Acting Secretary

Background

- What is a Delisting Petition?
 - A request to exclude waste generated by a particular facility from the list of hazardous wastes under the federal Resource Conservation and Recovery Act of 1976 (RCRA) and the Pennsylvania Solid Waste Management Act (SWMA).

Authority to Delist

- Under 40 CFR §§ 260.20 and 260.22, a person may petition to remove waste from hazardous waste control by excluding the waste from the lists of hazardous wastes in 40 CFR §§ 261.31 and 261.32.
- Federal regulations are incorporated by reference under 25 Pa. Code § 260a.1.

Facility Information

- MAX Environmental Technologies, Inc.
 - Bulger Facility
 - Yukon Facility
- Each facility has executed a COA with DEP to manage Wastewater Treatment Plant sludge as an F039 hazardous waste.
 - F039 – Multisource leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under Subpart D (Lists of Hazardous Wastes)

Delisting Petitions

- DEP received Delisting Petitions for the F039 Leachate Treatment System Sludge from the Bulger and Yukon Facilities on May 2, 2019.
- Under Pennsylvania's hazardous waste regulations at § 260a.20, these petitions were submitted to the Environmental Quality Board and analyzed by DEP in accordance with the procedures established in the Board's Petition Policy at 25 Pa. Code Chapter 23.

Delisting Petition Timeline

- June 18, 2019: DEP recommended that the EQB accept each Petition for further study. The EQB voted unanimously to accept this recommendation.
- July 2019 – April 2020: DEP analyzed each petition in accordance with the EPA RCRA Delisting Program Guidance Manual for the Petitioner and prepared individual evaluation reports.
 - For both facilities, sampling and analysis indicated that each sludge does not meet the criteria for listing as an F039 hazardous waste as defined in 40 CFR § 261.31.

Delisting Petition Timeline

- June 16, 2020:
 - DEP recommended that the sludge generated in the leachate treatment system at the MAX Bulger facility and the MAX Yukon facility both be delisted as an F039 waste.
 - The EQB approved both petitions for proposed rulemaking.

Proposed Rulemaking

- Amend Chapter 261a Appendix IXa, Table 1a (relating to wastes excluded from nonspecific sources) to provide a specific ***conditional*** delisting of the wastewater treatment sludge filter cake at the MAX Bulger and MAX Yukon facilities.

Delisting Levels

- Table 1a (1) – The proposed exclusion for MAX Bulger and MAX Yukon would not apply until MAX completes verification sampling on the treated waste to verify it does not exhibit any hazardous waste characteristics.
- Includes testing parameters for verification testing and the delisting levels established by using the more conservative of health-based values calculated by DRAS or toxicity characteristic regulatory levels.

Verification Testing Schedule

- Table 1a (2) requires MAX to collect and analyze representative samples of the treatment sludge at both MAX Bulger and Yukon at a frequency of one sample per every 20 cubic yards of material to be shipped or disposed.
- Maximum volume of waste that can be shipped or disposed:
 - Yukon: May not exceed 20 cubic yards per three-month period
 - Bulger: May not exceed 150 cubic yards per three-month period

Verification Testing Schedule

- Prior to sample verification, MAX Bulger and Yukon would continue to manage and store the sludge material as a hazardous waste as outlined in Table 1a (2)(iii).
- Sampling must be completed in accordance with the approved Sampling and Analysis Plan.
- All sampling data must be submitted to DEP Southwest Regional Office and certified.

Verification Testing Schedule

- Each composite sample must be analyzed for the predetermined list of constituents in Table 1a (1):
 - If the level of any constituent measured in the sample of the sludge equals or exceeds the prescribed levels, then the waste is hazardous and must be managed in accordance with Subtitle C of RCRA.
 - If the sampling meets the conditions of the verification testing, the sludge would be excluded from the hazardous waste regulations and would then be managed as a residual waste under the Department's Residual Waste Regulations at 25 Pa. Code Article IX.

Changes in Operating Conditions

- Table 1a (3) - If MAX changes their treatment process from what is described in the Delisting Petitions, the treatment sludge generated from the new process would not be eligible to be managed under this exclusion until:
 - MAX demonstrates that the new waste meets the specified delisting levels;
 - MAX demonstrates that no new hazardous constituents listed in Appendix VIII of 40 CFR part 261 have been introduced into the treatment process; and
 - MAX obtains written approval from the Department to manage the waste under this exclusion.

Reopener

- Table 1a (4) – If MAX discovers that a condition at MAX Bulger or Yukon or an assumption related to the disposal of the excluded waste that was modeled or predicted in the Delisting Petitions does not occur as modeled or predicted, then MAX must report any information, in writing, to the Department within 10 days of the discovery of that condition.
- Upon receiving this information, regardless of its source, the Department will determine whether the reported condition requires further action, such as repealing or modifying the exclusion.

Proposed Rulemaking Timeline

- SWAC passed a motion to concur with Department's recommendation to proceed to proposed rulemaking at its September 10, 2020, meeting.
- Proposed rulemaking was adopted by the EQB at its September 21, 2020, meeting.
- Proposed rulemaking published in the *Pennsylvania Bulletin* on January 8, 2022.

Public Participation

- Publication opened a 45-day public comment period from January 8, 2022, through February 22, 2022.
- Three (3) virtual public hearings were held on January 19, 2022, January 20, 2022, and January 26, 2022.

Comments

- Comments received were sorted into categories.
- The two main topics were:
 - Historic acceptance of Oil and Gas Industry waste and its possible contamination by TENORM, Radium 226 and Radium 228; and
 - Compliance history of MAX Environmental Technologies.

Changes to Proposed Rulemaking

- Not substantive; changes made were for the purposes of clarification.
 - All sample results need to be submitted to DEP regardless of whether results are less than, meet or exceed delisting levels
 - Samples results need to be submitted to DEP within 15-days of receipt by MAX Environmental
 - Reference to where delisted waste may be disposed of was deleted
 - Terminology agreement
 - Citation clarification/formatting

Outreach

- DEP has developed a Community Information webpage to share information related to this proposed rulemaking - [MAX Yukon and Bulger Delisting \(pa.gov\)](https://www.pa.gov)
- Information includes:
 - An explanation of the delisting process
 - Links to the delisting petitions and associated documents
 - Frequently Asked Questions

Requested Action

DEP respectfully requests that the Committee concur with DEP's recommendation to advance the draft final rulemaking to the Environmental Quality Board for its consideration.



pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Bureau of Waste Management

Questions?

Tom Mellott

mtmellott@pa.gov

717-783-3390