ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[SWH-FRL 2158-1]

Hazardous Waste Management System

AGENCY: Environmental Protection Agency.

ACTION: Notice of regulatory reform actions; request for comments.

SUMMARY: In response to Executive Order 12291 and the President's Task Force on Regulatory Relief, the Environmental Protection Agency is reviewing and reassessing the hazardous waste regulations developed under the Resource Conservation and Recovery Act (RCRA). A variety of activities are underway that will simplify procedures and reduce paperwork, modify existing regulations to make them more workable and cost effective, and control new wastes and new processes. The purpose of this notice is to inform the public of these activities and invite comments on the general approaches being taken.

DATES: Comments will be accepted until February 11, 1983.

ADDRESS: Comments may be mailed to Docket Clerk (Docket: Regulatory Reform), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Eileen Claussen, Director, Office of Management, Information and Analysis, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., (202) 382-4637.

SUPPLEMENTARY INFORMATION:

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I. Background

Pursuant to Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6901 *et seq.*, EPA has, over the last 2 years, promulgated regulations that establish standards for generators and transporters of hazardous waste, and for owners and operators of hazardous waste treatment, storage, and disposal facilities (TSD's). In response to many comments and suggestions made by the public, regulated industries, and State and local governments, EPA has made a number of specific changes to these regulations resulting in more cost-effective requirements. Also, in response to Executive Order 12291 and the President's Task Force on Regulatory Relief, EPA is exploring several basic and fundamental changes to the RCRA hazardous waste management program. This notice describes the status of EPA's work in this area and sets forth some of the Agency's future plans.

Throughout this regulatory analysis process, EPA will be evaluating the application of a degree-of-hazard approach where waste management standards are based upon the inherent degree-of-hazard of the waste, the management technique being used to handle the waste, and the environmental setting. The Agency is taking this opportunity to notify the public of these efforts and to ask for comment on both the general approaches it is considering, and on the specific analytical and regulatory activities planned or underway.

Section II of this Notice describes activities that will reduce and simplify paperwork and procedural requirements. This will be accomplished through a uniform national hazardous waste manifest and class permits for TSD's.

Section III describes the development of regulatory impact analyses (RIAs) for a number of existing standards, including those for hazardous waste storage, incineration, land disposal, seismic areas, floodplains and financial responsibility. Section III also describes work that EPA has initiated that will result in new regulations that will bring under RCRA control certain wastes and practices that are not currently covered by the existing regulatory structure. These include waste oil, boilers burning hazardous wastes, and additional organic chemical wastes.

Section IV describes the Agency's plans for re-examining two specific provisions in the regulations: the small quantity generator exclusion and the requirements for the reuse, recycling, and reclamation of hazardous waste.

II. Actions to Simplify Procedures and Reduce Paperwork

A. Uniform National Manifest

On March 4, 1982, in a joint rulemaking with the Department of Transportation (DOT), EPA proposed a regulation that would require the use of a nationally uniform manifest form for transportation of hazardous waste. The goal of the uniform manifest is to standardize and simplify State and Federal regulations governing the transportation of hazardous waste. Currently, industries operating in certain States must prepare multiple State manifest forms and a DOT shipping paper for each hazardous waste shipment. The uniform national manifest will incorporate all Federal and State information requirements for the transportation of hazardous waste on a single form. Under the proposed amendments, transporters would no longer be required to carry multiple forms with similar information. Standardization of information should also simplify and facilitate inspection and enforcement actions.

Two comment periods were provided on this proposed rule, the second ending on July 20, 1982. Therefore, the Agency is not now seeking additional comments on this proposal. EPA intends to issue a final rule on the uniform national manifest in early 1983.

B. Development of Class Permits

EPA is developing a new set of procedures that would allow the Agency to issue standardized permits to entire classes of hazardous waste management facilities that share common design, operating, and management features. The class permit process would be used primarily for facilities whose operating requirements are not substantially affected by location or other site-specific features. These facilities could include those treating or storing hazardous waste in tanks or containers.

The class permit approach would work as follows: EPA would identify a class of facilities that should be subject to similar design, operating, and management requirements. After notice and opportunity for public hearing, EPA would promulgate regulations describing application procedures and permit conditions applicable to this class of facilities. The Agency would then be able to issue a permit containing the standard terms and conditions to the owner or operator of any facility in the identified class.

Since most of the terms and conditions of a class permit would be established by a national regulation,

there should be a limited number and type of issues raised at individual permit proceedings. Matters at issue in the permit processing should be limited to (1) Whether the facility is a member of the identified class and (2) Whether the facility meets the requirements and conditions promulgated for that class. If there are any terms and conditions of a class permit that need to be developed on a site-specific basis, the permit proceedings would also have to consider these. However, by narrowing the focus of these proceedings, the issuance of class permits should be expedited.

The use of class permits should allow EPA to accelerate the issuance of permits to storage and treatment facilities. It should also reduce the time and paperwork necessary to prepare permit applications and should thereby result in cost savings to both the Agency and permit applicants. EPA intends to propose rulemaking for the first group of class permits in 1983.

III. Regulatory Impact Analyses (RIAs)

A. Analytical Approach

As required by Executive Order 12291, EPA is currently undertaking regulatory impact analyses (RIAs) on planned and existing hazardous waste regulations. Each RIA will include: developing a data base to profile existing management practices, costs, and potential health and environmental effects; defining the problem to be addressed by the regulation; identifying and selecting alternatives for dealing with the problem; assessing those alternatives; and analyzing costs, risks, benefits, and impacts.

In order to carry out the RIA's the Agency has developed and is now refining an analytical model which is designed to assess and compare the costs and risks of different waste management strategies. The model will assist EPA in continuing to revise its existing regulations and develop new regulations on a degree-of-hazard basis. The model will be used as a screening tool to identify those combinations of wastes, environmental settings and technologies that either pose a greater or lesser risk than the majority of combinations.

The degree-of-hazard model has a number of components. The first component is the inherent hazard of the wastes themselves. Eighty-three waste streams are scored on the basis of the inherent hazard of the constituents typically found in them. It should be pointed out that these waste stream scores are based in part on best scientific judgment and are useful primarily for comparative analytical purposes.

The environmental settings in which the hazardous constituents could be released are a second critical part of the model. Thirteen environmental settings are defined. The mechanisms by which the constituents move through or are affected by the environment, such as hydrolysis, biodegradation, and adsorption, are also accounted for in the model. This allows the waste streams to be assessed in terms of the likelihood of human exposure to their hazardous constituents and the severity of risk if such exposure occurs.

The third component of the model is the technologies commonly used to transport, treat, and dispose of hazardous wastes. Three types of transportation, 21 treatment technologies (e.g., filters presses, chemical precipitation, incineration at 99.99% destruction and removal efficiency), there types of landfills and surface impoundments (double-lined, single-lined, and unlined), and deep well injection are covered. Costs and release rates are determined for each of these technologies. Current availability of the technologies, their capacity and their proximity to sources of wastes are also considered.

The model could be used, for example, to identify those wastes that pose the greatest hazard when disposed of in landfills (the technologies) in areas with high potential for ground-water and surface-water contamination (the environmental setting). It could also be used to estimate the risk and costs of treating or disposing of these wastes through different technologies or in different environmental settings. If less risky and less costly technology and environmental combinations could be identified, a restriction on disposing of these wastes in landfills could be considered.

EPA recognizes that there are limitations in the methodology used in the degree-of-hazard model. We intend to use the model to guide more detailed analysis and not as the sole analytic effort supporting regulatory changes. While we recognize the limitations of the model, we feel that it will be useful in evaluating both regulations and new regulatory efforts.

The degree-of-hazard model has now been designed and completed, and a draft report describing the model is undergoing review by the Agency's Science Advisory Board. Copies of the draft report are available from the RCRA Hotline, (800) 424-9346 (toll free) or (202) 382-3000. The model is being refined, and the data to be entered into it are now undergoing extensive review. Initial results from the model are expected in the near future.

B. Existing Rules and Regulations

Regulatory impact analyses are being conducted for the following existing standards: land disposal, storage in tanks and containers, incineration, seismic areas and floodplains, and financial responsibility. Improving the Agency's existing data base through data collection is one of the most important tasks in the RCRA regulatory impact analysis process. The results of these data collection efforts will be analyzed in considerable detail, and will assist the Agency both in developing a more sophisticated understanding of the nature and scope of the hazardous waste problem, and in attempting to develop more cost-effective rules. To better assess existing practices, health and environmental effects, and costs for the analysis of existing rules, the Agency is conducting 236 site visits and mailing questionnaires to over 13,000 handlers of hazardous wastes.

The following discussions summarize the Agency's RIA efforts for existing regulations.

1. *Land Disposal Standards.* On July 26, 1982, EPA issued technical standards for landfills, surface impoundments, waste piles, and land treatment facilities. In the preamble to that rule, the Agency stated that it would continue to explore means of tailoring these standards to better suit specific waste management situations. To help identify opportunities for tailoring these standards, EPA is performing a study to assess the risks associated with alternative stringency levels for various classes of land disposal facilities. This analysis would differentiate facilities by type (landfill, surface impoundment), the hazards posed by the waste stream, location and size. Evaluating the costs and risks of various requirements in this framework will help the Agency identify changes that could yield a more cost effective regulation of land disposal facilities. The Agency has already identified several areas where refinement of its current standards would reduce regulatory burdens while assuring adequate protection of human health and the environment.

One area of refinement is the tailoring of standards for situations which pose either a lesser or greater risk of ground-water contamination. The Agency has identified two types of facilities, monofills and neutralization surface

impoundments,[1] from which the potential for migration of significant concentrations of hazardous constituents to ground water appears to be extremely low. The Agency believes that some of the existing land disposal standards may not be necessary for these facilities. The Agency expects to propose special standards for monofills and neutralization surface impoundments in 1983.

Study is also underway to identify specific wastes which, based on their potential hazard, should not be disposed of in landfills, or should only be disposed in landfills under specific conditions. The Agency anticipates publishing an advance notice of proposed rulemaking on this subject in 1983 identifying wastes which could be subject to such restrictions. Potential candidates are wastes that are highly persistent, mobile, or toxic in the environment.

Tailoring of standards based on locational characteristics is also being studied. As part of this effort, the Agency will determine the risks of locating land disposal facilities in particular hydrogeologic settings. This analysis should help determine whether the disposal of certain wastes in certain hydrogeological settings should be restricted, or whether design and operating standards should be relaxed for facilities in certain favorable locations.

The Agency is also evaluating the relative performance of clay vs. synthetic liners at land disposal facilities. The goal here is to identify whether there are specific situations in which the use of different types of liners will provide protection of human health and the environment in the most cost-effective manner.

2. *Storage in Tanks and Containers.* On January 12, 1981, EPA published regulations governing the storage of hazardous waste in tanks and containers. The tank storage requirements contain general operating standards and requirements for design of tanks, waste analysis, inspections, closure, and handling of reactive, ignitable, and incompatible wastes. The container requirements include general operating procedures and specific standards for containment, compatibility, and closure as well as a general performance standard for the condition of containers.

The first task in the RIA for storage in tanks and containers, profiling the existing universe, has largely been completed. The Agency has found that the majority of these facilities are operated by generators and are small in size.

The Agency is also evaluating the risks to human health and the environment from facilities of various configurations and waste types. Through the study of damage cases the Agency has discovered that the majority of spills are caused by ancillary equipment (pipes, valves, pumps, etc.) and operator error.

In evaluating the impact of waste type, the Agency has found that handling hazards (e.g., fires and explosions) can be distinguished from contamination hazards. For example, corrosive, ignitable, and reactive wastes present the greatest risks in handling, while the major risk from toxic wastes is the potential for ground-water contamination if a spill occurs. These findings will be used in determining the feasibility of tailoring standards on the basis of waste type. Revised regulations for storage and treatment facilities will be proposed in 1983, probably in the form of class permit standards for certain storage and treatment operations.

3. *Incineration Standards.* The incineration standards promulgated on January 23, 1981 and June 24, 1982 require all incinerators to meet a performance standard of 99.99% destruction and removal efficiency (DRE) for designated hazardous constituents, and establish performance limits for HC1 and particulates.

Incineration RIA efforts to date have focused on profiling the universe of existing facilities and verifying the achievability and cost of the current DRE standard for existing facilities. The findings of the first task indicate that most incineration facilities are small. Initial dispersion modeling suggests that the potential for adverse environmental impact from these small facilities is less than that for larger facilities, which represent most of the existing incinerator capacity. Test burns and case studies are now being conducted as part of the second task.

The Agency is also evaluating the costs and risks associated with alternate DRE levels, using dispersion models and health effects data for substances emitted from stacks. The Agency will use these findings to determine whether the current standards should be further tailored to reduce regulatory burdens while assuring adequate protection to human health and the environment.

EPA proposed a variance procedure as a part of the January 23, 1981 rule (45 FR 7634) because the DRE performance standard does not account for site-specific factors such as waste characteristics, incinerator design, and location. As a result, the DRE performance standard may be either more or less stringent than necessary for protecting human health and the environment. In its June 24, 1982 notice (47 FR 27518), EPA stated that it expected its RIA to provide valuable information on the extent to which its current performance standard is over protective or under protective. EPA intends to use this information to tailor the standards or to develop a variance procedure to provide appropriate levels of performance for different classes of facilities.

4. *Seismic Areas and Floodplains.* On January 12, 1981, EPA published regulations that addressed location of hazardous wastes in 100-year floodplains snd in holocene fault seismic areas. The seismic regulation specifies that *new* hazardous waste facilities must not be located within 200 feet of designated faults. Under the floodplain standard, new and existing facilities located in a 100-year floodplain must be designed, constructed and operated to prevent washout by a 100-year flood.

As a result of its RIA efforts, the Agency has found that less than 3 percent of all hazardous waste facilities are located with 200 feet of holocene fault; however, a significant percentage of facilities are located within a 100-year floodplain. Through the RIA for floodplains, the Agency will determine whether it is feasible to further tailor the floodplain standard to account for different waste types, facility sizes, and waste management configurations.

As part of the RIA for seismic areas, the Agency is evaluating whether ground shaking and ground failure events, which are not currently addressed by the seismic area standard, could damage hazardous waste management facilities, and if so, what are the associated risks to human health and the environment. To this end, the Agency is currently conducting analyses of damage probabilities, to be followed by a determination of exposure pathways and risks. The Agency will consider amending the seismic area standard to cover these events if the findings of this study indicate such control is necessary.

5. *Financial Responsibility Regulations.* The current regulations require owners and operators of hazardous waste management facilities to submit evidence of financial responsibility for the proper closure and post-closure care of the facility. They also require owners or operators to

[1] These facilities are described in greater detail in the preamble to the July 26 land disposal standards. See 47 *FR* 32280 (July 26, 1982).

submit evidence of liability coverage for sudden accidental occurrences. Owners or operators may choose from a variety of methods to demonstrate compliance with these requirements.

The Agency is evaluating several changes to the financial responsibility regulations to make them more flexible. The options under investigation include:

- Average vs. Maximum Closure Cost Estimate: Under the present regulations, estimated closure costs (for which financial responsibility must be shown) must be based on the cost of closure at the "maximum extent of active operations" at the facility. Study is underway to determine the risks and benefits of allowing assurances based on "average extent of active operations."
- Financial Test for Small Owners and Operators: The current regulations include a financial test which is useable only by large companies. Firms which pass the financial test are not required to obtain one of the other financial instruments (e.g., trust funds, surety loans, letters of credit) in order to demonstrate financial responsibility. The Agency is examining the feasibility of devising an effective financial test for smaller companies.
- Computer Financial Test Data Systems: In an effort to reduce the amount of information owners or operators must submit to use the financial test, the Agency is considering use of a computerized system that draws on data submitted by the owner or operator to the Securities and Exchange Commission. Use of such a system could provide the Agency with more current information and enable it to monitor compliance with the financial regulations more efficiently.
- De Minimis Exemption from Closure Financial Assurance: Some facilities may have such low closure cost estimates and may pose such a low risk if closure is delayed that the costs for these facilities of financial assurances for closure may be disproportionately high. The Agency is undertaking a study which will analyze the range of cost estimates and evaluate whether a category of facilities with cost estimates below a cut-off point can be identified as posing a de minimis risk.
- Risk Retention Groups: Some trade associations and other groups form insurance pools to cover risks. The Agency is examining the obstacles to and advantages and disadvantages of formation of such pools by owners and operators to cover third-party and other liabilities. Such risk retention pools may involve considerable savings, particularly for smaller operators.

In addition to these possible areas of reform of existing financial responsibility regulations, the Agency is also considering the need to establish financial instruments to assure funds for any corrective action required to be taken to comply with the ground-water protection standards promulgated on July 26, 1982, as part of the land disposal standards. The Agency has previously requested comments on this issue. (47 FR 32274, July 26, 1982.)

C. Regulation of New Wastes and Processes

In addition to its review of existing hazardous waste regulations, the Agency is also conducting RIA's in a number of areas which may lead to the regulation of several new wastes and processes not currently covered by the hazardous waste standards. These new areas include the burning of hazardous waste in boilers, control of waste oil, and listing and control of additional organic chemical and other wastes.

As with the RIA's for the existing rules, one of the major tasks associated with the RIA's for new wastes and processes will be the collection of data to aid the Agency in defining existing practices and identifying areas where regulation is appropriate. This data collection effort will include site visits and questionnaires.

The Agency anticipates that, as a result of the RIA's for these new areas, additional regulatory controls will be proposed. Where possible, these controls will be tailored to specific waste management situations. The major focuses of the RIA's for new wastes and processes are discussed below.

1. *Waste Oil.* Nationwide, waste oil is generated by thousands of sources, and is collected, processed, and sold or used by at least 1000 firms, many of which are small businesses. Under the Used Oil Recycling Act, EPA is required to promulgate regulations for the control of waste oil. EPA is conducting a regulatory impact analysis in order to investigate the risks posed by waste oil management, evaluate the need for waste oil regulations, and consider various regulatory approaches tailored to deal with specific problems. The Agency expects to complete this analysis by the end of 1983.

Specifically, EPA is evaluating the following waste oil management methods:

- Burning for fuel, particularly in small boilers such as those found in apartment and office buildings. EPA is sponsoring a series of test burns in these types of boilers to charcterize the resulting emissions and their impact on air quality when waste oil is used as fuel.
- Use as a dust suppressant (e.g., road oiling). Some adulterants found in waste oil are ignitable, and may pose a fire hazard during road oiling; others are volatile and toxic and may present health risks. As part of the RIA effort, the Agency is gathering additional information on road oiling practices, existing State laws and regulations, and past damage incidents.
- Improper storage, transportation, and disposal. EPA is performing risk analyses on the environmental problem associated with improper handling of waste oil and the potential for ground-water and surface-water contamination.

2. *Boilers.* Although hazardous waste is exempt from RCRA regulation when being legitimately recycled for energy recovery purposes, the burning of some hazardous wastes in certain boilers could result in unacceptable levels of hazardous emissions.

The RIA for boilers will define the waste types (or constituents) and boiler types (by size, design, etc.) that require regulatory control, and the most appropriate type of control. As part of the RIA process, the Agency is testing a variety of boiler and waste combinations to determine the actual performance (degree of waste destruction) of boilers burning hazardous waste. The Agency expects to find significant variation based on differences in temperature, residence time, and turbulence.

After the testing of stack emissions is completed, dispersion models and health effects data will be used to define the relative risks posed by various boilers burning hazardous wastes. This will lead to comparison of the costs and benefits of possible alternative tailored regulatory approaches. The Agency expects to complete the RIA for boilers by early 1984.

3. *Listing and Control of Organic Chemical and Other Wastes.* EPA is conducting a program of detailed industry analyses aimed at identifying hazardous wastes that are currently not regulated. The first industries to be analyzed are primarily components of

the organic chemicals industry, the source of roughly 60 percent of the Nation's hazardous waste. Specific industry components under study are: pesticide production; dyes and pigments production; chlorinated organics production; other organic chemicals production; and, outside the organic chemicals industry, lead acid battery production.

The industry studies effort consists of a waste characterization component and a waste management assessment component. Waste characterization involves the sampling and analysis of waste streams from particular industries or industry segments to determine whether additional wastes should be listed as hazardous wastes. Currently, only a portion of organic chemical industry wastes that may be hazardous are listed. The second component—waste management—is directed toward compiling and analyzing waste management alternatives for wastes studied under the waste characterization effort. This work will include analysis of the risks and benefits of particular control strategies for the wastes in question. This will allow the Agency to determine how these new wastes should be controlled. The Agency also hopes to identify treatment options that will reduce the hazards posed by management of these wastes.

The Agency has completed waste characterization for chlorinated organics and expects to complete pesticide characterization early in 1983. Characterization is underway on a number of other segments, and will continue, at least through 1984. The waste management assessment for chlorinated organics will be completed during 1983.

4. *Volatile Emissions From Hazardous Waste Disposal Units.* The Agency has not yet promulgated RCRA standards for volatile air emissions from hazardous waste disposal facilities. However, in the preamble to the July 26, 1982 land disposal standards, the Agency stated that it is exploring the need for volatile emissions standards. As part of this effort the Agency will be reviewing past damage incidents, conducting field sampling, and using dispersion modeling techniques to determine the circumstances in which volatile emissions from hazardous waste disposal units pose a threat to human health or the environment. The results of these studies will be used in determining the need for additional regulatory action to control air emissions from such facilities.

IV. Evaluation of Specific Provisions

A. Reuse, Recycling, and Reclamation

The present regulations divide "recycled hazardous wastes" into two classes. Those which are listed in the regulations (40 CFR 261.31 and 261.32) or are sludges are regulated for storage and transportation only. Those which are neither sludges nor listed wastes are currently excluded from regulation.

The definition of solid waste and the management standards for recycled hazardous waste are being revised to overcome some of the gaps and ambiguities in the existing regulations. In general, the revised solid waste definition will include those materials (and waste management activities) which fall within EPA's authority under RCRA. The new solid waste definition will also encompass, and thus regulate, recycling activities where the materials will be:

- Used in a manner constituting disposal;
- Used as a component of, or as fuel;
- Reclaimed off-site;
- Accumulated in large quantities without sufficient amounts being recycled; or
- Accumulated in speculation of future recycling.

Waste management standards will be proposed for some recycled hazardous wastes. Other recycling activities will be excluded; however, these may be subject to future regulatory action. Specific management standards will be developed for particular recycling activities, including those involving use constituting disposal. EPA plans to issue a proposed rule revising the definition of solid waste as it pertains to recycling by early 1983.

B. Small Quantity Generators

In May 1980, EPA promulgated a regulation exempting small quantity generators (generating less than 1000 kilograms per month) of hazardous waste from certain parts of the RCRA program. At that time, the Agency expressed its intention to examine this issue in greater detail. The Agency is now initiating a study which will lead to the identification of alternative schemes for regulating small generators' wastes.

The Agency will begin by studying selected industries which are representative of small quantity generators, evaluating the type and quantity of waste produced and number of generators. The Agency will then profile selected industries to identify current waste managememt practices (including treatment and use, re-use, recycling, and recovery practices), and waste management costs. These profiles will also indicate the extent to which small quantity generators are already complying with full RCRA controls. The next step will be to assess the hazards posed by management of waste generated by small quantity generators within certain industries, focusing on what types of risks are associated with which wastes.

The Agency will also examine the experiences of States that have reduced their exemption level for small generators below the 1000 kilograms per month level now in force in the Federal RCRA program. Specifically, the Agency will look at the administrative feasibility of monitoring and enforcing a lower exemption level and whether the small generator program in these States reduces the effectiveness of efforts to control larger generators.

The information collected through these tasks will be used to identify a range of regulatory options for controlling small generators' wastes and assessing the risks and benefits of these options.

V. Request for Comments

Except where indicated, EPA invites comments on all aspects of the activities described in this Notice.

VI. Compliance with Executive Order 12291

This notice was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Dated: December 7, 1982.

John W. Hernandez Jr.,

Acting Administrator.

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