

US EPA ARCHIVE DOCUMENT

**SUPPORTING STATEMENT FOR
EPA INFORMATION COLLECTION REQUEST NUMBER 1353.06
“LAND DISPOSAL RESTRICTIONS ‘NO-MIGRATION’ VARIANCES”**

January 12, 2000

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1. IDENTIFICATION OF THE INFORMATION COLLECTION

1(a) Title and Number of the Information Collection

This ICR is titled "Land Disposal Restrictions 'No-Migration' Variances," EPA ICR Number 1353.06.

1(b) Short Characterization

To receive a variance from the hazardous waste land disposal prohibitions, owner/operators of hazardous waste storage or disposal facilities may petition the Environmental Protection Agency to allow land disposal of a specific restricted waste at a specific site. The EPA Regional Offices will review the petitions and determine if they successfully demonstrate "no migration." The applicant must demonstrate that hazardous wastes can be managed safely in a particular land disposal unit, so that "no migration" of any hazardous constituents occurs from the unit for as long as the waste remains hazardous. (See 40 CFR 268.6.) If EPA grants the variance, the waste is no longer prohibited from land disposal in that particular unit. If the owner/operator fails to make this demonstration, or chooses not to petition for the variance, best demonstrated available technology (BDAT) requirements of 40 CFR 268.40 *et seq* must be met before the hazardous wastes are placed in a land disposal unit.

2. NEED FOR AND USE OF THE COLLECTION

2(a) Need/Authority for the Collection

The 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA) of 1976 created substantial new requirements for those who manage hazardous waste. (See 42 USC 6905, 6912(a), 6921, 6924, 6925, and 6935.) The amendments prohibit land disposal of hazardous wastes beyond specified dates unless, as provided in RCRA Sections 3004(d), (e), and (g), the owner/operator of a hazardous waste storage or disposal facility demonstrates to the Administrator of the Environmental Protection Agency (EPA) that there will be no migration of hazardous constituents from the land disposal unit for as long as the waste remains hazardous.

2(b) Use/Users of the Data

The EPA Regional Offices will review the petitions and determine if they successfully demonstrate "no migration" as specified at 40 CFR 268.6.

3. NONDUPLICATION, CONSULTATIONS, AND OTHER COLLECTION CRITERIA

3(a) Nonduplication

RCRA is the primary Federal statutory vehicle for protecting human health and the environment from the effects of contamination from hazardous waste land disposal. The requirements of RCRA thus provide the primary means for gathering information to use in determining the environmental impacts of the regulated facilities.

The statutory framework of RCRA is such that a State may take over implementation of the hazardous waste program by requesting authorization and demonstrating that the State program is equivalent but no less stringent than the Federal program. State authorization is based on clusters so that a State may implement a phased program. When a State is granted authorization for any aspect of the hazardous waste program, it replaces the corresponding portion of the Federal program. This system eliminates the need for duplicative State and Federal requirements to be imposed on any one facility.

3(b) Consultations

The rule covered by this ICR was promulgated using proper rulemaking procedures. EPA conducted extensive consultations with members of the regulated community when preparing the 1993 ICR. Currently, only one petition is active in the no-migration petition process and it is being renewed. No new petitions have been received over the last six years, so no consultations were possible for this ICR renewal. EPA has not revised this renewal's burden estimates from the 1993 ICR. Note that EPA has updated this renewal's labor, operation and maintenance, and capital costs to year 2000 levels.

3(c) Public Notice

A notice of the renewal ICR will be published in the Federal Register in January of 2000.

3(d) Effects of Less Frequent Collections

The submission of a no-migration petition is a voluntary activity. No less frequent collection is possible.

3(e) General Guidelines

EPA's collection of information under the provisions of 40 CFR 268.6 generally comply with most OMB regulations concerning Federal data requests. Most of the data necessary for the no-migration petition are already required to be collected under the regulations for permitting and design and operation of land disposal facilities at 40 CFR Parts 270 and 264. Additional

information may be obtained from the Region and States regarding the facility's most recent permit and compliance status. 40 CFR 268.6(c)(4) requires that monitoring data collected be kept on-site at the facility. Since the duration of a variance shall be no longer than the term of the permit or ten years if the facility is operating under interim status; this data would be maintained on-site at the facility in the operating record. EPA believes that maintenance of this data is essential for a continued demonstration of "no migration" during the operating life of the unit. Small entities have the same standards and requirements.

3(f) Confidentiality

The information collected is not of a personal nature nor is it subject to the Privacy Act of 1974 or Office of Management and Budget Circular A-108. EPA expects that owners and operators may wish to maintain the confidentiality of certain information. Provisions for confidentiality are found in Section 3007 (b) of RCRA and in 40 CFR Part 2, which establishes EPA's general policy regarding public disclosure of information. Provisions for confidentiality have also been included in 40 CFR Part 260, the general rule of the RCRA hazardous waste management system.

3(g) Sensitive Questions

No questions of a sensitive nature have been included in this information collection.

4. THE RESPONDENTS AND THE INFORMATION REQUESTED

4(a) Respondents/NAICS Codes

Facilities in the following NAICS codes may be affected by this effort:

- . 321 Wood Product Manufacturing
- . 324 Petroleum and Coal Products Manufacturing
- . 325 Chemical Manufacturing

4(b) Information Requested

Under 40 CFR 268.6, a facility may apply for a no-migration variance to the prohibitions on land disposal of untreated hazardous waste. This section describes the data items and respondent activities associated with such an application.

(i) Data Items

- . Petitioner's name and address;
- . Name, address, and EPA identification number of the facility storing or

- . disposing of the waste;
 - . Name and phone number of contact at the facility;
 - . Description of the specific waste and specific unit for which the demonstration will be made;
 - . Waste analyses to describe the chemical and physical characteristics of all wastes managed in the unit;
 - . Comprehensive characterization of storage or disposal unit, including an analysis of background air, soil, and water quality;
 - . Historic and current saturated and unsaturated zone monitoring data;
 - . Saturated and unsaturated zone modeling results;
 - . Saturated and unsaturated zone monitoring plans;
 - . Air modeling and monitoring results;
 - . Quality assurance/quality control plans;
 - . Certification that disposal unit is in compliance with other Federal, State, and local requirements;
 - . Uncertainty analyses required under 40 CFR 268.6(b)(5) - includes an analysis of the consequences of predictable future events, such as earthquakes, floods, severe storm events, droughts, or other natural phenomena; and
 - . Certification of truth and accuracy required under 40 CFR 268.6(g).
- (ii) Respondent Activities
- . Read the regulations and guidance manual;
 - . Prepare and gather information and present it in written form. EPA estimates that each petitioner will perform the following activities. The activities correspond to the data items listed above, including:
 - Compiling administrative information;
 - Description of the specific waste and specific unit for which the

demonstration will be made;

- Performing waste analyses to describe the chemical and physical characteristics of the waste;
- Preparing a comprehensive characterization of storage or disposal unit, including an analysis of background air, soil, and water quality;
- Presentation of historical and current saturated and unsaturated zone monitoring results;
- Performing saturated and unsaturated zone modeling and presentation of results;
- Preparation of saturated and unsaturated zone monitoring plans;
- Performing air modeling and monitoring and presentation of results;
- Evaluating modeling/monitoring results;
- Providing quality assurance/quality control plans;
- Certifying that disposal unit is in compliance with other Federal, State, and local requirements;
- Performing uncertainty analyses;
- Certifying truth and accuracy, as required under 40 CFR 268.6(g); and
- Compiling and transmitting three copies of the no-migration petition to EPA.

5. THE INFORMATION COLLECTED--AGENCY ACTIVITIES, COLLECTION METHODOLOGY, AND INFORMATION MANAGEMENT

5(a) Agency Activities

Agency activities include reviewing the no-migration petition and evaluating it in terms of demonstrating "no migration" as specified at 40 CFR 268.6. The Agency may also conduct site visits for each facility from which it receives a petition. Finally, EPA notifies the petitioner of a tentative decision to approve or deny, and publishes the proposed decision in the Federal Register. After analysis of public comments, final decisions are also published in the Federal Register.

5(b) Collection Methodology and Management

In reviewing and analyzing the information submitted by petitioners seeking to obtain a no-migration variance, EPA Regional staff use personal computers and applicable software, when appropriate. Hard copies of the petitions are received and filed by the Regional Offices.

5(c) Small Entity Flexibility

RCRA is the primary Federal statutory vehicle for protecting human health and the environment from the effects of contamination from the hazardous waste land disposal facilities for which the no-migration variance option is provided. EPA believes that the data to be collected by respondents are the minimum needed to meet its statutory requirements under RCRA.

Any burden on small businesses would be voluntary because facility owner/operators are not required to petition for a variance to the land disposal restrictions. This voluntary burden is a function of the threat of contamination and is not sensitive to the size of the organization. In addition, most small businesses rely on commercial land disposal facilities rather than disposing waste on-site. The petition requirements are considered the minimum acceptable.

5(d) Collection Schedule

Since submittal of a no-migration petition is voluntary, no collection schedule is applicable.

6. ESTIMATING THE BURDEN AND COST OF THE COLLECTION

6(a) Estimating Respondent Burden

EPA estimated respondent burden hours associated with all of the requirements covered in this ICR in Exhibit 1. The exhibit estimates the number of hours required to conduct each individual information collection activity and the cost associated with that activity. The exhibit also shows the total annual respondent burden and cost for conducting all activities.

6(b) Estimating Respondent Costs

Labor Costs

EPA estimates an average hourly respondent labor cost (including overhead) of \$108.00 for legal staff, \$77.00 for managerial staff, \$57.00 for technical staff, and \$29.00 for clerical staff. To arrive at these estimates, EPA consulted the Handbook of U.S. Labor Statistics, Second

Edition¹, which summarizes the unloaded (base) hourly rate for various labor categories in U.S. firms. EPA then applied an overhead factor of 2.3 for non-legal staff and 3.0 for legal staff to derive their loaded hourly rates.²

Capital Costs and Operation and Maintenance Costs

EPA estimates that facilities may incur annual capital and operations and maintenance (O&M) costs associated with specific activities. In general, capital costs include equipment required to collect information required for reports submitted to EPA. For purposes of this ICR, EPA assumes that a petitioner would not need to purchase any new equipment for collecting information required in developing the petition. Rather, the equipment would already be required by the petitioner's Part B permit or interim-status requirements. EPA assumes that the only new purchase would be for a file cabinet to maintain the petition at the facility.

EPA further estimates that a petitioner will incur O&M costs, such as copying costs (assuming a no-migration petition can be up to seven, three-ring binders) and submitting information to EPA (i.e., postage). EPA also assumes the petitioner would use a contractor to perform a number of activities (e.g., preparing monitoring plans and analytical results).³

¹ The book was edited by Eva Jacobs, and was published in 1998 by Bernan Press. EPA used the labor rates in the 1998 publication and then updated them to year 2000 levels using an annual employment cost index of 3.0.

²Based on the report Estimating Costs for the Economic Benefits of RCRA Noncompliance. The report was authored by U.S. EPA, RCRA Enforcement Division, Office of Regulatory Enforcement, and was published in February 1997.

³ Note that Exhibit 1 does not distinguish between respondent burden hours and contractor burden hours for developing the petition. Rather, Exhibit 1 combines the burden hours for respondents and their contractors in order to derive a total burden hour estimate for each respondent activity.

EXHIBIT 1 ANNUAL RESPONDENT BURDEN FOR NO-MIGRATION VARIANCES

ACTIVITY	Hours per Petition				Total	O & M Costs per Petition	Annual Capital Startup Costs ¹	Number of Respondents per Year	Total Hours per Year	Total Cost per Year
	Legal Hours \$108.00	Managerial Hours \$77.00	Technical Hours \$57.00	Clerical Hours \$29.00						
No-Migration Variance Petitions -- Prepare and Gather Information/ Present in Written Form										
Read Regulations and Guidance Manual	0	10	80	0	90	\$0.00	\$0.00	0.33	30	\$1,758.90
Legal Counsel	300	0	0	0	300	\$0.00	\$0.00	0.33	99	\$10,692.00
Compiling Administrative Information	0	40	350	0	390	\$0.00	\$0.00	0.33	129	\$7,599.90
Description of Specific Wastes and Units	0	80	500	0	580	\$0.00	\$0.00	0.33	191	\$11,437.80
Performing Waste Analyses	0	140	1300	0	1440	\$0.00	\$0.00	0.33	475	\$28,010.40
Performing Unsaturated and Saturated Zone Monitoring	0	150	1300	0	1450	\$0.00	\$0.00	0.33	479	\$28,264.50
Comprehensive Characterization of Site	0	80	550	0	630	\$0.00	\$0.00	0.33	208	\$12,378.30
Presentation of Waste Analyses, Monitoring, and QA/QC Results	0	25	200	0	225	\$0.00	\$0.00	0.33	74	\$4,397.25
Preparing Monitoring Plans (Waste and Unstaurated/Saturated Zones)	0	35	200	0	235	\$0.00	\$0.00	0.33	78	\$4,651.35
Performing Unsaturated/Saturated Zone Modeling	0	40	300	0	340	\$0.00	\$0.00	0.33	112	\$6,659.40
Interpretation & Presentation of Unsaturated and Saturated Zone Modeling and Monitoring Results and Conclusions	0	20	150	0	170	\$0.00	\$0.00	0.33	56	\$3,329.70
Performing Air Modeling	0	40	370	0	410	\$0.00	\$0.00	0.33	135	\$7,976.10
Preparing Air Monitoring Plan	0	20	150	0	170	\$0.00	\$0.00	0.33	56	\$3,329.70
Performing Air Monitoring Program	0	200	1600	0	1800	\$0.00	\$0.00	0.33	594	\$35,178.00
Interpretation & Presentation of Air Modeling and Monitoring Results and Conclusions	0	40	370	0	410	\$0.00	\$0.00	0.33	135	\$7,976.10
Performing Uncertainty Analyses	0	20	150	0	170	\$0.00	\$0.00	0.33	56	\$3,329.70
Preparing Quality Assurance and Quality Control Plans	0	30	250	0	280	\$0.00	\$0.00	0.33	92	\$5,464.80
Certifying Compliance with all Applicable Laws	0	5	50	0	55	\$0.00	\$0.00	0.33	18	\$1,067.55
Certification of Truth and Accuracy	0	1	10	0	11	\$0.00	\$0.00	0.33	4	\$213.51
Compilation/Transmittal of Three Copies of the Petition	0	0	0	350	350	\$161.30	\$18.00	0.33	116	\$3,420.73
Total	300	976	7880	350	9506	\$161.30	\$18.00	0.33	3,137	\$187,135.69

¹Capital startup costs have been annualized over ten years at a 7 per-cent annual discount rate.

6(c) Estimating Agency Burden and Cost

EPA estimates annual Agency burden and costs associated with all of the requirements covered in this ICR in Exhibit 2. Based on a year 2000 GS pay schedule for the Federal government, EPA estimates an average hourly Regional labor cost of \$59.70 for legal staff, \$55.83 for managerial staff, \$40.93 for technical staff, and \$16.44 for clerical staff. The labor costs were based on the following GS levels and steps: legal labor rates were based on GS Level 15, Step 1, managerial labor rates were based on GS Level 14, Step 4, technical labor rates were based on GS Level 12, Step 5, and clerical labor rates were based on GS Level 5, Step 1.⁴ To derive hourly estimates, EPA divided annual compensation estimates by 2,080, which is the number of hours in the Federal work-year. EPA then multiplied hourly rates by the standard government overhead factor of 1.6.

6(d) Estimating the Respondent Universe and Total Burden and Costs

EPA expects that no more than one facility will prepare and submit a no-migration petition to the Agency during the three-year effective life of this ICR renewal.⁵ This assumption is reflected in Exhibit 1. [Note that the exhibit presents annual burden and costs over the three-year effective life of the ICR. The exhibit calculates the burden and cost of one-time activities by dividing the total number of respondents by three (1 facility / 3 years = approximately 0.33 facilities per year that will submit a petition).]

In total, the respondent burden imposed by the no-migration petition is estimated to be approximately 9,506 hours for a facility requesting a variance. As described previously, this is an optional activity. However, as noted earlier, the duration of a variance shall be no longer than the permit term or ten years if the facility is operating under interim status. At the end of the variance term, a no-migration petition renewal will need to be submitted. The detailed calculation of burden hours for each respondent facility as estimated below in Exhibit 1 does not take into account subsequent requests for a no-migration variance. Costs associated with the collection of data already collected, as a part of the RCRA permit or interim status requirements, are not double counted.

⁴ These GS levels and steps are based on the Supporting Statement for EPA Information Collection Request No. 1573.06, "Part B Permit Application, Permit Modification, and Special Permits," October 27, 1999. EPA believes that the technical experience and skills of EPA staff reviewing a Part B permit application would be similar to those of EPA staff reviewing a no-migration petition. As such, EPA believes that the GS levels used in the Part B ICR are adequate for estimating the GS levels in this ICR renewal.

⁵ Based on the experience of EPA Headquarters and Regional staff who have reviewed previous no-migration petitions.

**EXHIBIT 2
ANNUAL AGENCY BURDEN FOR NO-MIGRATION VARIANCES**

ACTIVITY	Hours per Petition				Total	O & M Costs per Petition	Annual Capital Startup Costs	Number of Respondents per Year	Total Hours per Year	Total Cost per Year
	Legal Hours \$59.70	Managerial Hours \$55.83	Technical Hours \$40.93	Clerical Hours \$16.44						
No-Migration Variance Petition										
Preliminary Evaluation of Petition	0	25	225	0	250	\$0.00	\$0.00	0.33	83	\$3,500.00
Site Visit	0	25	25	0	50	\$0.00	\$0.00	0.33	17	\$798.31
Technical Review	0	150	600	0	750	\$0.00	\$0.00	0.33	248	\$10,868.68
Tentative Decision/Notice	0	100	200	50	350	\$0.00	\$0.00	0.33	116	\$4,815.33
Final Review and Decision	0	100	200	50	350	\$0.00	\$0.00	0.33	116	\$4,815.33
Total	0	400	1250	100	1750	\$0.00	\$0.00	0.33	578	\$24,797.66

In addition, operations and maintenance costs were calculated by estimating that a no-migration petition can be up to seven three-ring binders. Therefore, copying costs were assumed to average \$113, and seven packages were assumed to be mailed at a total postage cost of \$48.30 for seven binders.⁶ This amounts to \$161.30 in total O&M costs for the petition.

Further, EPA estimates that a four-drawer, letter-size file cabinet would cost \$125 and would be sufficient to maintain the petition over its effective life (i.e., 10 years).⁷ EPA annualized the \$125 purchase price over the petition's expected 10-year effective life, to derive an \$18 annual cost to the petitioner.⁸

Note that the total respondent cost for petition submission was verified for the 1993 ICR, in communication with Exxon Corporation's Baytown, Texas Refinery, Conoco Oil Company's Billings, Montana Refinery, and three independent consultants familiar with the preparation of no-migration petitions. In developing this current ICR renewal, EPA simply updated these costs to year 2000 levels.

6(e) Estimating Bottom Line Burden Hours and Costs

Respondent Tally

EPA estimates that the total annual respondent burden for all information collection activities will be approximately 3,137 hours, at an annual cost of \$187,136. This is reflected in Exhibit 1. The bottom line burden over the three-year period covered by this ICR is approximately 9,506 hours, at a cost of \$567,078.

Agency Tally

EPA estimates that the total annual agency burden for all information collection activities will be approximately 578 hours, at an annual cost of approximately \$24,798. This is reflected in Exhibit 2. The bottom line burden over the three-year period covered by this ICR is approximately 1,752 hours, at a total cost of \$75,144.

⁶ Postage costs were calculated based on a representative three-ring binder that was submitted as part of a no-migration petition from the U.S. Department of Energy's Waste Isolation Pilot Plant. Postage costs reflect year 2000 postage rates.

⁷ Based on a price quote from Office Depot, January 2000.

⁸ Based on an OMB-recommended annual discount rate of 7.0 percent.

6(f) Reasons for Change in Burden

This ICR renewal's total annual respondent burden estimate has changed from the previous ICR's estimate (#1353.05). The previous ICR estimated a total annual burden of approximately 9,506 hours, whereas this ICR renewal estimates a total annual burden of approximately 3,137 hours. The number of hours has decreased because of an adjustment in the annual number of respondents expected to submit a petition. In the previous ICR, EPA estimated that one no-migration petition would be received by the Agency in each year of the ICR's three-year effective life. In this current ICR renewal, EPA estimates that no more than one no-migration petition will be received during the ICR's three-year life (annualized at 0.33 petitions per year). Note that EPA has not revised its estimate of the per-respondent burden hours needed to prepare and submit a petition to the Agency.

6(g) Burden Statement

The public reporting burden is estimated to average 9,506 hours per petition (see Exhibit 1). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503, Attention: Desk Officer for EPA. Include the EPA ICR number and the OMB control number in any correspondence.