

US EPA ARCHIVE DOCUMENT

CHAPTER FIVE

SOIL-RELATED COMMENTS FROM PHASE II LDR PROPOSAL

5.A EPA'S DEFERRAL OF SOIL TREATMENT STANDARDS AND APPLICATION OF THE CONTAINED-IN POLICY TO CONTAMINATED MEDIA (See Sections 5.B and 5.C)

- "Comprehensive and Consistent Policy for Environmental Media

This Rule proposes to codify the contained-in policy; an action that would bring all hazardous waste-impacted environmental media under Subtitle C jurisdiction. EPA states that "it is not possible to predict at this time precisely how, or if, the Agency may attempt certain hazardous soils from Subtitle C in future actions, or how these exemptions (if such exemptions are developed) might compare with the LDR treatment standards proposed here for contaminated soils." 58 Fed. Reg. 48123.

The Agency is proceeding concurrently with redevelopment of a proposed Hazardous Waste Identification Rule (HWIR) and implementation of Corrective Action Management Unit (CAMU) regulations. One of the HWIR's objectives is to establish exit levels at which hazardous waste will no longer be subject to RCRA Subtitle C.

Should the proposed codification of the contained-in policy take effect, a generator would have to seek a formal determination from the Regional administrator to determine whether the previously contaminated media still contained hazardous waste. Thus, the only exit available from this characterization would be a detailed formal process that would significantly limit expedient cleanup and closure. Much of the same media that this proposed rule will affect may ultimately be excluded by the HWIR upon its promulgation in 1994. Since EPA is not under any mandate to issue these specific LDRs at this time, AWPI recommends that the Agency wait until the HWIR is promulgated and consider the impact of that rule and the CAMU regulations on this proposed rule. The benefits of such an action would include consistent regulatory policy." (American Wood Preservers Institute, CS2P-00047)

- "MPA also endorses EPA's recent decision to defer action on the proposed rule as it relates to the remediation of contaminated soils until the Agency completes the Hazardous Waste Identification Rule ("HWIR") for contaminated media. See 58 Fed. Reg. 59976 (Nov. 12, 1993). The HWIR rulemaking process has been evaluating risk-based approaches to cleanup that will avoid the imposition of overly-conservative cleanup requirements that favor one type of remediation (e.g., incineration) over another (e.g., containment). In this context, adoption of the proposed universal treatment standards would represent a step backwards in the Agency's on-going evaluation of alternate, risk-based standards. Accordingly, MPA recommends that adoption of the proposed universal treatment standards for EMA and MMA be delayed

pending completion of the HWIR rulemaking, and that the proposed standards be

revised to take into account risk-based HWIR principles....

For all these reasons, MPA strongly recommends that EPA delay adoption of the proposed universal treatment standards for EMA and MMA and that the Agency adjust the proposed standards based on health and risk related criteria. Ample toxicology data are available to undertake such an exercise. Use of this approach holds the promise of rationalizing the permitting and remediation approach taken for EMA and MMA. Pushing forward with the proposed standards, on the other hand, could undermine the Agency's initiative in identifying technologically-neutral, health-based standards for remediating hazardous wastes that are "contained in" contaminated media." (Methacrylate Producers Association, CS2P-00056)

- "API believes that EPA's plans to impose standards on those contaminated soils is premature and unnecessary, as well as inconsistent with EPA's own acknowledgment of the distinct difference between the management of contaminated soils and wastes. In addition, imposition of LDR standards on such soils by July 1994 would make it virtually impossible for EPA to coordinate those standards with revisions to the hazardous waste identification rules (HWIR) that will not be promulgated before October 1994. API urges EPA to reconsider its announced intention, and to postpone LDR standards for contaminated soil until EPA has time to adequately consider comments on that matter and to coordinate those rules with the anticipated 1994 HWIR." (American Petroleum Institute, CS2P-00061)
- "In addition we urge, as discussed below, the extension of this coordination of HWIR to universal treatment standards (UTSs) and to treatment standards at levels below the characteristic.

Unocal joins API in urging EPA to revise its approach to UTSs by using a risk based approach in developing UTSs. It would be redundant to promulgate technology based UTSs when, at the same time, the HWIR committee is addressing the risk issue for treatment of residues and waste mixtures. EPA has recognized the importance of coordinating the contaminated media and debris LDRs with the HWIR effort by granting both a four month extension of the comment period for this issue and a two year national Capacity Variance for contaminated media and debris in this proposed rule." (Unocal Corporation, CS2P-00074)

- "GE supports EPA's deferment on that portion of the rule concerning the development of soil treatment standards and application of the contained-in principle to contaminated soil. Far from demonstrating, or even addressing, the risks posed by contaminated soil and how the proposed regulations would substantially reduce those risks, EPA had mechanically proposed to impose standards designed for the prospective regulation of as-generated wastes on the management of contaminated media without any apparent evaluation of the environmental, practical, and economic impact of its proposal. Also,

EPA's proposed approach to codify the "contained-in" interpretation using a mini-delisting scheme would have imposed unreasonable burdens on industry and diverted already limited agency resources from programs that address actual risks to human health and the environment. Moreover, to address these issues in the proposed rule would have only undermined the progress achieved by the HWIR Federal Advisory Committee process on these issues.....

EPA should defer action on all aspects of the proposed rule concerning hazardous soil and other media until completion of the HWIR dialogue.....

IV. EPA Should Defer Action on the Proposed Soil Treatment Standards

In light of the progress made in the HWIR dialogue, GE supports EPA's deferment on the proposed treatment standards for hazardous soil. The HWIR process has resulted in substantial agreement among all the participants that many Subtitle C requirements are appropriate for most hazardous soils. EPA's proposed treatment standards thus are a step in the wrong direction and, if finalized, may threaten the progress in the HWIR dialogue." (GE, CS2P-00076)

- "The U.S. EPA has been working for a number of months in the context of a chartered Federal Advisory Committee on the Hazardous Waste Identification Rule (HWIR) to define how to provide greater flexibility during the remediation of contaminated media at hazardous waste sites. In response to these deliberations, the U.S. EPA is beginning to develop proposed rules for contaminated media, including hazardous soils using the so-called "Harmonized Approach" and will involve States on key issues through a newly formed State/U.S. EPA Advisory Committee. The interrelationships between these proposed LDR rules for hazardous soils and the HWIR contaminated media rule under development are very difficult to discern. We have found it difficult to meaningfully comment on the proposed treatment standards for hazardous soils without a clear understanding of the overall regulatory framework which will apply to hazardous soils under RCRA, and CERCLA as well (we are told that it is being considered). Accordingly, we recommend that action on the LDR treatment standards for hazardous soils be postponed and reconsidered within the context of the HWIR contaminated media rule under development. This sequence would facilitate the U.S. EPA and the States developing an internally consistent regulatory approach for the management of hazardous soils at remediation sites. We also recommend that all U.S. EPA contaminated media related policies, regulations and standards be evaluated and integrated in a consistent manner. Only then will a rational and effective way of dealing with contaminated media be established." (Association of State and Territorial Solid Waste Management Officials, CS2P-00091)
- "Amoco supports the deferral of LDRs for centralized wastewater management systems

and contaminated soils.

With respect to contaminated soils, EPA has proposed three different approaches to setting treatment standards. EPA is also developing a proposal for contaminated media (including soil) in the context of the Hazardous Waste Identification Rule (HWIR) Roundtable. Establishing LDRs for contaminated soil also involves a number of complex technical and regulatory issues that require detailed study. Therefore Amoco supports EPA's decision to extend the comment period for the portions of this proposed rule related to contaminated soils and the contained-in rule.

Amoco submits, however, the EPA should not receive separate comments on those portions of this rule, but should re-propose contaminated soil LDRs in the context of the HWIR proposal. EPA and commenters could then review a more complete and coordinated regulatory approach to contaminated media and simultaneously address related questions such as when contaminated media should be managed as a hazardous waste, whether a tiered management approach is appropriate, and whether concentration-based exit criteria should be equivalent to the LDRs. Such a coordinated approach will result in a more effective review and comment process." (Amoco Corporation, CS2P-00097)

- "EPA should adopt reasonable, risk-based treatment standards for hazardous soils. However, resources and energy should be directed towards the development of self implementing, risk based exit criteria, such as those under discussion at the Hazardous Waste Identification Rule roundtable, rather than being dissipated in redundant rule makings." (Rohm and Haas Company, CS2P-00114)

Response: All of the commenters in the preceding section supported deferral of a decision on LDR treatment standards for contaminated soil to the Agency's Hazardous Waste Identification Rule for Contaminated Media (HWIR-Media) rulemaking process. In consideration of these comments, the Agency did defer a decision on soil treatment standards to the HWIR-Media rulemaking and proposed modified soil treatment standards as part of the HWIR-Media proposal. Comments responding to the soil treatment standards proposed in HWIR-Media are addressed in the HWIR-Media response to comments document, included in the docket for today's rulemaking.

- **"Treatment Standards for Hazardous Soils (Section VII)**

CMA supports EPA's decision to extend the comment period for the hazardous soil standards.

CMA understands that EPA has decided to extend for several months the comment period on the contained-in policy and hazardous soil standards. CMA appreciates having the opportunity to gather data to determine whether and how EPA's proposed

standards can actually be met. Meanwhile, CMA urges EPA not to apply the proposed UTS as applicable to soils contaminated with hazardous wastes.” (CMA, CS2P-0122) [Note: Uniroyal Chemical Company, Inc., CS2P-00140, also supported CMA’s petition to EPA to extend the comment period on soil standards and the contained-in policy.]

- “Conoco appreciates the extension EPA has granted on the hazardous soils portion of this proposed rulemaking, including the soil standards, contained-in determinations and capacity variances. Conoco encourages EPA to incorporate the soil LDRs into the broader context of the Hazardous Waste Identification Rule(HWIR). A separate soil LDR rulemaking in advance of the HWIR will only lead to confusion and regulatory conflict. Conoco plans to comment further on these issues during the extension period.” (Conoco, CS2P-00126)
- “First, EPA has been working for a number of months in the context of a chartered Federal Advisory Committee on the Hazardous Waste Identification Rule (HWIR) to define how to provide greater flexibility during the remediation of contaminated media at hazardous waste sites. In response to these deliberations, EPA is beginning to develop proposed rules for contaminated media, including hazardous soils, using the so-called “Harmonized Approach” and will involve states on key issues through a newly formed State/EPA Advisory Committee. The interrelationships between these proposed LDR rules for hazardous soils and the HWIR contaminated media rule under development are very difficult to discern. We have found it difficult to meaningfully comment upon the proposed treatment standards for hazardous soils without a clear understanding of the overall regulatory framework which will apply to hazardous soils under RCRA. Accordingly, we recommend that action on the LDR treatment standards for hazardous soils be postponed and reconsidered within the context of the HWIR contaminated media rule under development. This sequence would facilitate EPA and the States and the States developing an internally consistent regulatory approach for the management of hazardous soils at remediation sites.” (TNRCC, CS2P-00145)
- “On May 20, 1992 (57 FR 21450) EPA proposed an extensive overhaul of the RCRA hazardous waste identification rules (HWIR) that would address the issue of media (including soils and ground water) containing hazardous wastes. BN believes that the issues addressed in May, 1992 are similar to those addressed in September, 1993 and that any attempt to pursue these issues piecemeal is not productive. The whole problem of contaminated media must be addressed as a single issue and the proposed attempt to define treatment standards without addressing the basic issue of the “contain in” rule as a whole is not productive. BN encourages EPA to address the treatment standards for contaminated media concurrently with the HWIR for those same materials.” (Burlington Northern Railroad, CS2P-00148)
- “NPRA strongly supports EPA’s action to include this rulemaking on land disposal