

US EPA ARCHIVE DOCUMENT

DCN PH4P023

COMMENTS Beazer East, Inc.

RESPONDER JL

SUBJECT WOOD10

COMMENT During the past several years, it has become apparent that EPA has begun to rethink its overall approach to the management of hazardous wastes. With the advent of the corrective action management unit ("CAMU") rule, EPA has begun to distinguish between wastes generated during remediation of sites ("remediation waste") and production wastes generated by on-going manufacturing facilities ("as-generated wastes"). Recognizing the vast difference between remediation wastes and as-generated wastes, initial efforts are now underway by EPA to develop independent regulatory programs for these wastes. For example, the Agency is currently drafting a proposed Hazardous Waste Identification Rule ("HWIR") designed to more realistically characterize and manage media impacted by hazardous waste. In addition, after five years in limbo, EPA has announced that an Advance Notice of Proposed Rulemaking on Subpart S regulations will be published in early 1996. Early reports indicate that the Subpart S regulations will further advance EPA's goal of providing flexibility and incentive to the regulated community conducting remedial activities at Resource Conservation and Recovery Act ("RCRA") and Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") sites. Beazer believes that these EPA initiatives may and should provide much-needed flexibility to the regulated community managing remediation waste without adverse impact to human health or the environment. This worthy EPA goal, however, will not come to fruition for the management of wood treating site remediation wastes if EPA promulgates the proposed LDRs for Hazardous Waste Nos. F032, F034 and F035 as drafted. In short, a strict application of this proposal will bring remediation of wood treating sites to a standstill. Parties conducting these remediations, such as Beazer, will be left with no workable option for implementing the remediations required by state and federal administrative orders and decrees. The proposed LDRs for wood treating wastes will thwart the progress made to date for several reasons. As discussed in greater detail below, the Agency's proposed LDR for dioxin/furan congeners (hereinafter referred to as "dioxin/furan") as constituents of F032 LDR lacks scientific justification and will create insurmountable disposal problems. For example, EPA has determined that its proposed one part per billion ("ppb") concentration limit for dioxin/furan can be achieved by incineration, without considering the

consequence of only one incinerator being licensed in the United States to accept such waste. Furthermore, EPA has intentionally, through its Draft Combustion Strategy For Combustion of Hazardous Waste, May 1993 ("Combustion Strategy"), created significant impediments to the issuance of new permits for additional hazardous waste incinerators. Moreover, as Beazer has consistently maintained in its previous comments, the public simply refuses to tolerate the risks of new incineration, particularly with respect to the more controversial substances, such as PCBs or dioxins. Under these circumstances, any thought of obtaining a new permit for an incinerator which would be used to incinerate dioxin/furan is unfathomable. Application of these LDRs will result in an EPA-created monopoly of the dioxin/furan incineration business. Because the costs of incinerating dioxin/furan-containing wastes are already beyond the reach of the regulated community for any significant amount of material, the proposed LDR for F032 will likely: (1) serve as disincentive to the regulated community to commence remediation voluntarily of media containing F032; (2) result in disruption, delay or total cessation of activities at remediation sites; and/or (3) create financial demands that will be impossible to meet for those regulated entities which are required by either a state or federal authority to excavate F032 media. Beazer believes that by requiring incineration for dioxin/furan, but only permitting one incinerator to treat dioxin/furan, EPA is placing the regulated community in an impossible situation. EPA's approach would result in F032-impacted remediation waste being caught in the Catch-22 position of not being treatable at the site due to LDRs while at the same time not being accepted for treatment/disposal by any outside commercial entity except the lone permitted incinerator, whose cost and capacity restraints will essentially rule out its use. Beazer believes that a number of alternatives to incineration can be employed at wood treating sites that are protective of human health and the environment. Another ramification of EPA's proposed LDRs involves the extremely low wastewater treatment standards for wood treating wastes. EPA's stringent wastewater treatment requirements (e.g., dioxin/furan levels of 0.00063 mg/l) will have a profound impact on the management of remediation of groundwater at sites. According to the regulation, the regulated community will be forced to expend valuable resources to design and construct wastewater treatment facilities capable of meeting these low limits for any wastewaters generated at sites where pentachlorophenol ("penta") was used. Again, these requirements will result in a shutdown of remedial actions at these sites. A

third critical impact of promulgating such stringent LDRs is that EPA will effectively exclude all innovative technologies from consideration at such remedial sites. Such action is in direct contravention of RCRA and CERCLA, 42 U.S.C. § 6902(a)(9) and 42 U.S.C. § 9621, and will require expenditures at sites that are wholly disproportionate to the environmental benefit. Moreover, the exclusion of non-incineration alternative technologies to treat impacted wood preserving remediation waste to LDR standards will result in bringing the remediation process to an abrupt halt. As such, EPA's proposed LDRs for F032 are arbitrary, capricious and an abuse of discretion. For these reasons and others discussed in these comments, Beazer believes that the Agency must give careful consideration to the necessary integration of the proposed LDRs (designed to protect the land from dumping of primarily untreated as-generated wastes) into RCRA and CERCLA's critical cleanup programs (designed to remediate the land to acceptable conditions). Rather than depart from its emerging policy to promote and facilitate remediation, the Agency must clearly state in the final rule that the LDRs apply to as-generated wastes only (in keeping with its position that as-generated wastes and remediation wastes differ significantly) and that the management of remediation waste (including the application of LDRs) will be governed exclusively by the HWIR upon promulgation, as modified by the new Subpart S rule. By excluding remediation wastes from the current LDR rulemaking, EPA will continue to facilitate remediation activities. Moreover, no adverse environmental effects would be expected as a result of this exclusion because the risks associated with management of these materials will be addressed on a site-specific basis. By utilizing a risk-based approach for remediation waste management (as we understand will be proposed in the HWIR and Subpart S rules), non-incineration technologies will likely be available to the regulated community for treating remediation waste at wood preserving sites, and, where adequately protective of human health and the environment, these remediation-generated materials can remain on-site and be managed accordingly. Should EPA fail to exclude remediation waste from the instant rulemaking, then EPA must, as a matter of course and without imposing protracted regulatory hurdles, allow the use of CAMUs at all wood treating sites managing remediation wastes after the proposed capacity variance terminates and until the HWIR rule's impact on remediation is manifested. Otherwise, entities will be forced to undergo the exhaustive variance petition process for exclusion from the LDR regime - a process which is not only difficult to navigate successfully but will

result in the unnecessary commitment of the Agency's and the regulated community's time and money. This comment package addresses the technical and legal shortcomings of the proposed LDRs for wood treating wastes, including its associated analytical problems, questionable science and capacity shortfalls and the impact of this Proposed Rule on future rulemakings. For organizational purposes, the technical and practical shortcomings of the Proposed Rule are discussed in Section II and, based upon a number of the points discussed in Section II, the more global aspects of the proposed LDRs and how they will affect site cleanups are addressed in Section III. Beazer requests that EPA give its full consideration to these comments. EPA's failure to incorporate the recommendations discussed in these comments amounts to arbitrary Agency action, which is in violation of and reviewable under RCRA and the Administrative Procedure Act, 5 U.S.C. § 706.

## RESPONSE

The commenter is concerned with the potential impact the proposed treatment limits for the regulation of PCDD and PCDF constituents in wastewater and nonwastewater forms of F032 can have on remedial activities taking place at wood preserving sites. The commenter has raised various arguments that the commenter believes should persuade EPA to withdraw the proposed regulation of PCDD and PCDF in F032 or that may persuade EPA to delay applying the proposed limit to contaminated media at wood preserving sites. The commenter believes that the proposed treatment limits for regulating PCDD and PCDF in nonwastewater and wastewater forms of F032 will be unachievable and will discourage the excavation of soils/debris/sediments or the pump and treat of surface water, leachate, and groundwater.

EPA acknowledges the commenter concerns and agrees that the promulgated limits can impact ongoing remediation activities at wood preserving sites and that compliance with the treatment limits promulgated today can potentially shift the focus of remedial activities away from ex-situ to in-situ or to close in place (e.g. capping ) remedies. EPA also agrees that there might be instances where the promulgated treatment limits may be determined by EPA to be "inappropriate" or "unachievable" by some contaminated media at wood preserving sites. And EPA may do so, on a case-by-case basis pursuant to EPA's authorities under CERCLA and RCRA. However, it would be illegal for EPA to delay or withdraw the regulation of hazardous media contaminated with F032 because F032 is a newly listed waste prohibited from land disposal. In addition, EPA is not persuaded that the concentrations of PCDD and PCDF in F032 or in contaminated media with F032 do not warrant regulation under the LDRs. (See Final BDAT Background Document for Wood Preserving Wastes (F032, F034, and F035) for EPA's rationale for regulating F032 in hazardous wastes and contaminated media, and response to comments under Wood 4 issues.)

Based on the review of wastewater management practices available at the wood

preserving industry and on data describing treatment the performance of technologies that can facilitate the ex-situ remediation of contaminated media at wood preserving sites; EPA believes that these treatment limits are feasible and that they also shall apply to contaminated media. EPA also believes that two or more technology trains may be necessary to meet the treatment limits promulgated today. First, wood sites contaminated with PCP has relied on combustion technologies to destroy PCP, PCDD, PCDF, and other organic contaminants, generally, for the destruction of "hot spots". The treatment of contaminated groundwater or surface water via physical/chemical (P/C) treatment followed by biological treatment or followed by carbon adsorption are also being practiced; extensively, by the wood preserving industry and in the remediation of groundwater and surface waters at wood preserving sites. For instance, treatment trains are used at remedial sites to collect Non-Aqueous Phase Liquids and to concentrate, recycle, or subsequently destroy the concentration of PCP oils which also may show significant concentrations of PCDD and PCDF constituents. Wastewaters from these P/C process may undergo biological treatment or just undergo carbon adsorption prior to an outfall discharge under a National Point Discharge Elimination System permit or to an onsite re-injection to the groundwater. In addition, EPA disagrees with the commenter that the treatment limits set today for PCDD and PCDF in wastewater forms of F032 are so "stringent" that extensive wastewater treatment processes will have to be installed to meet the treatment limits promulgated today. This is because EPA believes that properly pretreated wastewaters (e.g. removal of PCP oils and colloids via API sludge removers followed by dissolved air flotation ) followed by activated carbon adsorption (ACA) can meet the promulgated treatment limits. Activated carbon adsorption is a technology routinely used to remove the concentrations of hydrophobic constituents such as PCDD and PCDF from groundwaters, surface waters, and industrial wastewaters and ACA is routinely used for such purposes at wood preserving sites. Based on data describing the performance of these technologies, EPA believes that combustion (soils/debris), and P/C treatment followed by activated carbon adsorption (wastewaters, groundwater, and surface waters) can be optimized to meet the treatment limits promulgated today.

Also, EPA believes that 268.44 (h) can readily allow the commenter to meet alternative treatment limits when a particular treatment technology train is unable to treat contaminated soils, debris, or media to the treatment limits promulgated today or for media which EPA determines the treatment limits are inappropriate. (See Final BDAT Background Document for Wood Preserving Wastes and appropriate EPA guidance cited in the Final BDAT Background document. ) EPA also disagrees that the pursuance of treatment alternatives under 268.44(h) may be an undoable burden to the industry. First, some members of the regulated community, remedial vendors, and presumably the commenter itself, has already gained experience with the procedures for soliciting from the EPA Regional Administrator treatability variances. This is because the industry has already dealt with other remedial wastes contaminated with wood preserving wastes already prohibited from land disposal, e. g. K001 and characteristic wastes. Also, EPA believes that the treatability variance process can be readily incorporated; as it is normally done for other wastes prohibited from land disposal, into the scope of feasibility studies conducted under CERCLA or RCRA. In fact, feasibility studies are often an integral part in scoping out the alternative treatment limits to be achieved under 268.44 (h). (See, generally, LDR Guidance 6A and 6 B, and the Final BDAT Background Document for Wood Preserving

Wastes (F032, F034, and F035)). EPA believes, therefore, that the marginal cost for pursuing a treatability variance, generally, can be minimized.

Finally, the commenter believes that in order to lessen the regulatory burden that LDRs may impose at wood preserving sites, the EPA should grant CAMUs to all wood preserving sites managing remediation wastes without delay, once the National Capacity Variance has expired. EPA believes that although a CAMU can be one of several options available to wood preserving sites, such an option can only be made available, on a site specific basis and in accordance with the applicable regulations under the 40 CFR 264 Part S. Although EPA expects, however, the HWIR media and generated waste proposal to put to rest most of the issues raised by the commenters, EPA believes that the interim guidance for granting treatability variances under 268.44 (h) can address and minimized must of the concerns raised by Beazer. (See, for example, memorandum titled: Use of Site-Specific Land Disposal Restriction Treatability Variances Under 40 CFR 268.44(h) During Cleanups, from Michael Shapiro, Director , Office of Solid Waste and Steve Luftig, Director, Office of Emergency and Remedial Response, to RCRA/CERCLA Senior Policy Mangers, Region I-X, dated January 8, 1997.)

DCN PH4P023

COMMENTS Beazer East, Inc.

RESPONDER JL

SUBJECT WOOD10

COMMENT III. FUTURE RULEMAKINGS AND POLICY FORMATION AFFECTING

REMEDICATION MUST BE CONSISTENT AND PRACTICAL. A. The Proposed

LDRs for Wood Treating Wastes as Drafted Will Negatively Impact

the HWIR For Media. 1. The proposed LDRs will limit the HWIR

treatment alternatives. The proposed HWIR for media is part of

the Clinton Administration Regulatory Reform Initiative to

exempt certain impacted media from regulation as hazardous waste

and to establish media-specific treatment standards for those

impacted media which are not exempted from regulation. By

establishing a management program for impacted media outside

Subtitle C, EPA is acknowledging the fundamental difference

between process waste and remediation waste. EPA is expected to

establish "Bright Line" concentrations of hazardous waste

constituents in media. Media with constituent levels below the

"Bright Line" will no longer be considered to "contain"

hazardous waste. Media which contain hazardous waste

constituents above the "Bright Line" will require treatment

prior to land disposal. EPA has indicated that these treatment

standards will include various options such as (1) treatment to

10% of the original constituent concentration, (2) use of

certain qualified innovative technologies, and (3) treatment to

ten times the EPA UTS for the regulated constituents. As

discussed above, the Agency's proposed LDR for F032 will make

the third option cost prohibitive because the dioxin/furan LDRs,

as proposed, are so stringent that the regulated community will

be provided little relief even if the LDRs are multiplied by a

factor of 10. With regard to the second option (the use of

innovative technologies), EPA's recognized alternatives

described in the Proposed Rule are not implementable in the

field for F032. Also, development of such technologies will be

unlikely given the lack of development and permitting unless EPA

accepts the results of the innovative technology in advance of

full scale pilot studies and does not require further treatment.

Thus, the treatment options expected to be set forth in the

final HWIR may realistically be limited to only one when applied

to wood treating sites where penta was used: reduction of the

original constituent concentration by 90%. This option may also

be cost prohibitive for media impacted by F032. Therefore, if

EPA sets the LDRs for dioxin/furan as proposed, no options will

exist for treatment of penta wastes other than incineration. At

a remediation site, this means that media cannot be disturbed



without violating LDRs. Thus, remediations will simply stop and will be replaced with all the subsequent legal wrangling necessary for protection of the parties from civil and stipulated penalties and drawn out battles over the meaning of force majeure clauses and other impossibility defenses. To the extent that media is already disturbed or the Agency insists on requiring media management, the only practical solution may be to place the impacted media in an on-site unit that meets RCRA minimum technology requirements. After placing the regulated community in this Catch-22 situation, EPA should not be heard later to criticize or challenge the regulated community's inability to meet LDRs. Timing may play a critical role in the inter-relationship of the HWIR and the LDRs for wood preserving wastes. The LDRs for wood preserving wastes are expected to be promulgated far in advance of the HWIR rulemaking. As such, these "process waste" LDRs will apply to remediation wastes. Although EPA is considering a national capacity variance for a period of two years in the Proposed Rule (which Beazer wholly supports), it is impossible to predict how long it will take EPA to promulgate the HWIR rulemaking, especially considering that the Subpart S rule was first proposed in 1990 and is not expected to be even re-proposed until 1996. Even assuming that EPA would appropriately draw a "Bright Line" that does not characterize media as a Subtitle C hazardous waste, compliance with the LDRs during the interim period will result in unnecessary expense and delay. As stated in the Proposed Rule: for some of the wastes at issue in this rule it may not be feasible to ship wastes off site to a commercial facility. In particular, facilities with large volumes of wastewaters may not readily be able to transport their waste to treatment facilities. Alternative treatment for these wastes may need to be constructed on site. 60 Fed. Reg. 43685, footnote 4. The example of groundwater further underscores the point. There are not enough resources anywhere to extract groundwater for off-site treatment to LDRs. And, the time and costs associated with permitting and construction of individual treatment facilities to meet the impossibly low UTSs for groundwater have not been even considered by EPA. These additional expenses must be addressed under the Regulatory Impact Analysis to give the regulated community a fair idea of the true costs of this action. RECOMMENDATION:

#### RESPONSE

EPA agrees with the commenter that the proposed treatment standards can have a chilling

effect on ongoing remedial activities under RCRA, offsite remedial activities under CERCLA, and new or modified onsite Record of decisions under CERCLA. EPA agrees, further, that in many instances, the cost to comply with such treatment standards may be prohibited. EPA emphasizes, however, that HSWA prohibits EPA from taking into account cost considerations when setting treatment standards that implement RCRA 3004(m) provisions. EPA points out, however, that although HWIR media and HWIR regulatory efforts are still on the horizon and such regulatory frame works are more appropriate, generally, for remedial activities; EPA cannot adopt the commenter's proposed option that media contaminated with wood preserving wastes are exempted from the LDRs. EPA's promulgation of such suggested option will be illegal since F032, F034, and F035 are newly listed wastes and EPA is mandated by HSWA to ban all and newly listed RCRA hazardous wastes from land disposal practices. As a result, treatment standards are needed to implement such restrictions. (See HSWA Section 3004(m) and 3004 (g)(4); Chemical Waste Management v. EPA , 869 F. 2d, D.C. Cir. 1989)

EPA also points out that the promulgated treatment limits may be determined by EPA to be "inappropriate" or "unachievable" by some contaminated media at wood preserving sites. And EPA may do so, on case-by-case basis pursuant to EPA's authorities under CERCLA and RCRA. EPA believes that although HWIR media and HWIR waste will put most of the commenter concerns to rest, EPA believes --that in the interim-- the RCRA regulatory option under the 40 CFR 268.44 (h) can address the commenters concerns. EPA notes that EPA's constructs of 300(m) allows EPA to set technology or risk based treatment standards and in today's final rule, EPA has selected a technology based approach. EPA points out, further, that such interpretation also has been extended to variances granted under the 40 CFR 268.44(h). (See memorandum titled: Use of Site-Specific Land Disposal Restriction Treatability Variances Under 40 CFR 268.44(h) During Cleanups, from Michael Shapiro, Director , Office of Solid Waste and Steve Luftig, Director, Office of Emergency and Remedial Response, to RCRA/CERCLA Senior Policy Mangers, Region I-X, dated January 8, 1997.) EPA has discussed other potential waivers or variances from the treatment standards promulgated today in the Final BDAT Background Document for Wood Preserving Wastes (F032, F034, and F035).

DCN PH4P023

COMMENTS Beazer East, Inc.

RESPONDER JL

SUBJECT WOOD10

COMMENT B. The Proposed LDRs Are Contrary to EPA's Goals for Corrective Action. On July 27, 1990 (55 Fed. Reg. 30798), EPA proposed regulations governing corrective action implementation. Of these proposed regulations, only the sections addressing CAMUs and temporary units were finalized. 58 Fed. Reg. 8658 (February 16, 1993). The remainder of the 1990 proposal, however, has been used routinely by states and EPA regions as guidance as these entities implement corrective action programs. Under the corrective action program, the facility owner/operator is responsible for conducting the remedial activities. EPA has informally indicated that it believes that there has been general reluctance on the part of facility owners and operators to undertake voluntary actions at RCRA sites. As a result, EPA is looking for opportunities to create incentives to the use of voluntary activity. As part of its re-proposed Subpart S rulemaking, it is expected that EPA will introduce several mechanisms to increase flexibility under the corrective action process under RCRA. The HWIR-media rule discussed above is considered to be complimentary to EPA's corrective action program because it provides state and EPA regions with a mechanism to tailor requirements for management of contaminated media to the risk posed by any given media and the circumstances at any given corrective action site. However, the HWIR rule is also expected to rescind the CAMU rulemaking. Without the availability of CAMUs, the LDRs will play a dominant role in the management of remediation wastes. Unless EPA excludes remediation wastes from the wood preserving waste LDRs, the regulated community will refrain from voluntary cleanup activities. Moreover, the available remedial alternatives will be drastically decreased. Decisions regarding corrective action at wood treating sites will be made based on whether the remediation wastes can be disposed of in accordance with the LDRs in a manner that is not cost prohibitive. As discussed in the 1990 Subpart S proposal, the Agency believes that many potential remedies will meet the threshold criteria proposed for corrective measures selection and in such a situation, cost is an important consideration in choosing the remedy which most appropriately addresses the circumstances at the facility, and which uses the resources of the facility owner and operator most efficiently. 55 Fed. Reg. 30798, 30825, Col. 1, (July 27, 1990). Under such a scenario, corrective measures at sites

where penta was used will be driven by cost. As stated above, due to the exorbitant cost of incinerating dioxin/furan wastes and the lack of alternative technologies, either cleanups will cease or not be undertaken voluntarily. RECOMMENDATION:

## RESPONSE

EPA agrees with the commenter that the proposed treatment standards can have a chilling effect on ongoing remedial activities under RCRA, offsite remedial activities under CERCLA, and new or modified onsite Record of Decisions under CERCLA. EPA agrees, further, that in many instances, the cost to comply with such treatment standards may be prohibited. EPA emphasizes, however, that HSWA prohibits EPA from taking into account cost considerations when setting treatment standards that implement RCRA 3004(m) provisions. EPA points out, however, that although HWIR media and HWIR regulatory efforts are still on the horizon and such regulatory frame works are more appropriate, generally, for remedial activities; EPA cannot adopt the commenter's proposed option that media contaminated with wood preserving wastes are exempted from the LDRs. EPA's promulgation of such suggested option will be illegal since F032, F034, and F035 are newly listed wastes and EPA is mandated by HSWA to ban all and newly listed RCRA hazardous wastes from land disposal practices. As a result, treatment standards are needed to implement such restrictions. (See HSWA Section 3004(m) and 3004 (g)(4); Chemical Waste Management v. EPA , 869 F. 2d, D.C. Cir. 1989)

EPA points out that the promulgated treatment limits may be determined by EPA to be inappropriate or unachievable by some contaminated media at wood preserving sites. And EPA may do so, on case-by-case basis pursuant to EPA's authorities under CERCLA and RCRA. (See Citgo determination, 61 FR 55718, October 28, 1996.) EPA believes that although HWIR media and HWIR waste will put most of the commenter concerns to rest, EPA believes --that in the interim-- the RCRA regulatory option under the 40 CFR 268.44 (h) can address the commenters concerns. EPA notes that EPA's constructs of 300(m) allows EPA to set technology or risk based treatment standards and in today's final rule, EPA has selected a technology based approach. EPA points out, further, that such interpretation also has been extended to variances granted under the 40 CFR 268.44(h). (See memorandum titled: Use of Site-Specific Land Disposal Restriction Treatability Variances Under 40 CFR 268.44(h) During Cleanups, from Michael Shapiro, Director , Office of Solid Waste and Steve Luftig, Director, Office of Emergency and Remedial Response, to RCRA/CERCLA Senior Policy Mangers, Region I-X, dated January 8, 1997.) EPA has discussed other potential waivers or variances from the treatment standards promulgated today in the Final BDAT Background Document for Wood Preserving Wastes (F032, F034, and F035).

DCN PH4P023

COMMENTS Beazer East, Inc.

RESPONDER JL

SUBJECT WOOD10

COMMENT C. EPA's Selection of Incineration as BDAT for F032 Is Contrary to Its Presumptive Remedy for Wood Treating Sites.

Several years ago, the Superfund program began the "presumptive remedy" initiative to streamline site investigations and facilitate the selection of remedies by utilizing past experience at similar sites. Presumptive remedies are preferred technologies for common categories of sites, based on historical patterns of remedy selection and EPA scientific and engineering evaluation of performance data on technology implementation. See, Presumptive Remedies: Policy and Procedures, EPA 540-F-93-047, September 1993. EPA believes that once presumptive remedies are selected, they are to be used at all appropriate sites, including RCRA sites. Id. The Agency is currently in the process of drafting a presumptive remedy for wood treating sites. This presumptive remedy will incorporate EPA's Technology Selection Guide for Wood Treater Sites, EPA 540-F-93-020, May 1993. Beazer has provided comments and has met with EPA regarding the presumptive remedy for wood treating sites and expects the presumptive remedy to include bioremediation, incineration for limited hot spot areas, and stabilization for metals. The Agency's proposed LDRs for wood treating wastes are inconsistent with these presumptive remedies. Ex-situ biotreatment of wood treating wastes will be eliminated by virtue of the proposed LDR regulations because any F032 remediation wastes which are excavated will require incineration to meet the 1 ppb standard for dioxin/furan. The proposed LDR for F035 is also inconsistent with the Technology Selection Guide for Wood Treater Sites which calls for stabilization of CCA, not vitrification. RECOMMENDATION: EPA cannot continue to promulgate conflicting regulatory programs that apply to the same groups of remediation wastes. Nor can EPA continue to promulgate regulations that are intended to apply to only process waste and yet not clearly exclude remediation wastes from their jurisdiction. The Agency is under a statutory mandate to provide the regulated community with consistent regulatory programs. Beazer believes that EPA should ensure that the proposed LDRs meet that mandate. IV.

CONCLUSION In conclusion, Beazer requests that the Agency give full consideration to the foregoing comments. We are prepared to discuss any of these issues further with you upon request.

## RESPONSE

EPA agrees with the commenter that the proposed treatment standards can have a chilling effect on ongoing remedial activities under RCRA, offsite remedial activities under CERCLA, and new or modified onsite Record of Decisions under CERCLA. EPA agrees, further, that in many instances, the cost to comply with such treatment standards may be prohibitive. EPA emphasizes, however, that HSWA prohibits EPA from taking into account cost considerations when setting treatment standards that implement RCRA 3004(m) provisions. EPA points out, however, that although HWIR media and HWIR regulatory efforts are still on the horizon and such regulatory frameworks are more appropriate, generally, for remedial activities; EPA cannot adopt the commenter's proposed option that media contaminated with wood preserving wastes are exempted from the LDRs. EPA's promulgation of such suggested option will be illegal since F032, F034, and F035 are newly listed wastes and EPA is mandated by HSWA to ban all and newly listed RCRA hazardous wastes from land disposal practices. As a result, treatment standards are needed to implement such restrictions. (See HSWA Section 3004(m) and 3004(g)(4); Chemical Waste Management v. EPA, 869 F. 2d, D.C. Cir. 1989.)

EPA is not persuaded by the commenters arguments that the concentrations of PCDD and PCDF in F032 or in remedial soils/groundwaters do not warrant treatment standards under the LDRs. EPA has determined that these constituents are toxic and hazardous and that they are also carcinogenic constituents in F032 warranting treatment standards under the LDRs. EPA's rationale for setting treatment standards for these constituents can be found in the Final BDAT Background Document for Wood Preserving Wastes (F032, F034, and F035) and in other portions of this Response to Comments document, and thus it is not repeated here.

EPA also points out that the promulgated treatment limits may be determined by EPA to be "inappropriate" or "unachievable" by some contaminated media at wood preserving sites. And EPA may do so, on case-by-case basis pursuant to EPA's authorities under CERCLA and RCRA. EPA believes that although HWIR media and HWIR waste will put most of the commenter concerns to rest, EPA believes --that in the interim-- the RCRA regulatory option under the 40 CFR 268.44 (h) can address the commenters concerns. EPA notes that EPA's construction of 300(m) allows EPA to set technology or risk based treatment standards and in today's final rule, EPA has selected a technology based approach. EPA points out, further, that such interpretation also has been extended to variances granted under the 40 CFR 268.44(h). (See memorandum titled: Use of Site-Specific Land Disposal Restriction Treatability Variances Under 40 CFR 268.44(h) During Cleanups, from Michael Shapiro, Director, Office of Solid Waste and Steve Luftig, Director, Office of Emergency and Remedial Response, to RCRA/CERCLA Senior Policy Managers, Region I-X, dated January 8, 1997.) EPA has discussed other potential waivers or variances from the treatment standards promulgated today in the Final BDAT Background Document for Wood Preserving Wastes (F032, F034, and F035).