

US EPA ARCHIVE DOCUMENT

SPECIALTY-BATCH CHEMICAL SECTOR ENVIRONMENTAL FORUM

SUMMARY OF PROCEEDINGS

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INTRODUCTION TO SUMMARY OF PROCEEDINGS

The Specialty-Batch Chemical Sector Environmental Forum was held on September 4-5, 2002. Planned and co-sponsored by the U.S. Environmental Protection Agency (EPA) and the Synthetic Organic Chemical Manufacturers Association (SOCMA), the Forum served as a vehicle for open dialogue regarding the environmental opportunities and challenges currently facing the specialty-batch chemical sector. The meeting included a series of sessions addressing topics ranging from the characteristics of the specialty-batch chemical sector, to key industry and government programs, to media-specific regulatory and compliance issues. Most sessions consisted of a presentation by one or more experts from industry or EPA, followed by comments from several designated panelists from EPA, states, and/or industry. Each session also provided ample opportunity for an open discussion of issues among all Forum participants.

Forum participants were provided binders containing information on the various sessions, including copies of all slide presentations, descriptions of key programs and initiatives, and background papers prepared by industry and/or EPA representatives describing the key challenges and opportunities corresponding to each of the six issue sessions (i.e., Compliance Management, Environmental Management Systems (EMSs), Air, TRI Chemical Reporting, Waste, and Water). Copies of these binders are available by contacting members of the Forum planning committee:

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This document serves as a record of the presentations and discussions at the Forum – its structure follows that of the Forum itself. For each session, we provide a summary of the presentation(s) and the discussion that ensued. For the six issue sessions, we also provide a brief review of the background paper developed to help frame the discussion. Key follow-up items for each session are listed at the end of each summary (where applicable).

During the closing session of the Forum, participants from EPA, states and industry expressed satisfaction at the progress made over the course of the two-day meeting. The group also discussed a list of 10 potential take-away items that could lay the groundwork for continued communication and cooperation in improving environmental performance across the specialty-batch chemical sector. These proceedings document the success achieved through open dialogue between EPA and the specialty-batch chemical sector during the Forum, and will enable this Forum to serve as a possible model for future events with this and other industry sectors.

Welcome, Introductions and Opening Remarks

September 4, 2002, 8:30 a.m.

Presenters: Tom Gibson, EPA/OPEI
Jim Edward, EPA/OECA
Ed Fording, SOCMA

OPEI

Tom Gibson opened the Specialty-Batch Environmental Forum, by welcoming industry and government representatives and thanking them for participating. He described the Forum as an opportunity to have a dialogue between regulators and industry leaders on the environmental opportunities and challenges facing the specialty-batch chemical sector.

OPEI has been working with SOCMA and other national and state trade groups in the specialty-batch chemical sector for the last several years through the Industry Sectors Program, and has built a strong working relationship grounded in a deep understanding of the sector's business dynamics, issues, and concerns. Tom noted that this Forum is one of several projects that EPA has undertaken with the specialty-batch chemical sector. EPA is currently involved in collaborative efforts to reduce barriers to the recycling of secondary materials by toll operators and to ensure maximum flexibility under its air permitting programs.

This Forum is an excellent example of government and industry working together in a partnership to pursue common goals, and Tom expressed confidence that the success of this Forum will make it a model for future forums with other industry sectors. Tom also noted that the Forum reflects how EPA is moving away from one-size-fits-all regulation and toward more tailored approaches that better reflect sector-specific circumstances.

Tom acknowledged the importance of the sector from an economic standpoint, an environmental standpoint and – as is now evident – from a security standpoint. He complimented the sector on its environmental improvements in recent years, and expressed his strong desire that the sector will continue to work with EPA to achieve further improvements in the years to come.

Tom concluded by summarizing his goals for the Forum: a better understanding of the respective environmental management challenges faced by regulators and the regulated community, as well as enhanced two-way communications and improved environmental performance over the long run.

OECA

Jim Edward delivered OECA's welcome remarks, beginning with a description of the recent reorganization within OECA to make the compliance office more fluid and responsive to the needs of both the regulated community and EPA's regulatory partners. While these needs often include compliance assistance, Jim emphasized that the opposite side of the coin – civil and criminal enforcement actions – would remain strong. He went on to express that this Forum's cooperative nature is representative of the approach EPA is hoping to take when compliance issues are discovered. It provides an opportunity for regulators to become more familiar with the nature of the

specialty-batch sector by bringing together different parts of EPA (including regions and program offices), states, and industry.

OECA has an evolving strategy for working with sectors that involves identifying compliance assistance needs and tailoring new tools to meet them. Toward this end, Jim noted the formation of Compliance Assistance Centers for 10 different industry sectors. According to the results of on-line surveys conducted this year, 85 percent of Compliance Assistance Center users reported that they were able to reduce pollution as a result of the Center; 69 percent reported achieving cost savings by using the Center. Jim suggested that the National Compliance Assistance Clearinghouse (<http://www.epa.gov/clearinghouse>) should be the first stop for compliance assistance needs. This interactive tool allows users to exchange success stories by posting information on the site, and has links to resources across EPA, trade associations, and other compliance assistance providers. These tools and approaches are part of a broader integrated strategy at OECA, where identification of a compliance problem is followed by an assessment of available tools to address the problem rather than the reaction that sometimes characterized some past situations.

Jim stressed that OECA needs feedback from industry about whether they are providing the correct incentives and whether new compliance assistance tools are needed. Program offices provide compliance assistance in the context of new rules, but OECA's role comes later in the process and involves targeting areas where there are compliance problems with existing requirements that warrant more strategic approaches, which may include innovative, beyond compliance approaches such as EMS or pollution prevention. Measurement is an important component of these strategic approaches, since OECA needs to compare the effectiveness of these compliance assistance approaches with traditional enforcement activities.

SOCMA

Ed Fording, president of SOCMA, gave the final set of welcome remarks. He expressed confidence that the next two days would see EPA and industry both gain a better understanding of the issues and challenges faced by the other. In describing the spirit of cooperation that has characterized the relationship between SOCMA and EPA, Ed cited various compliance assistance projects, the Sustainable Industries program, and the HPV testing program.

SOCMA was founded in 1921 and currently has over 300 member companies (representing more than 2,000 facilities), which are characterized by their diversity in size, products, and modes of operation. In general, SOCMA member firms are smaller and manufacture a greater variety of products than commodity producers. SOCMA members produce approximately 50,000 specialty chemicals, end products, and intermediates. Products manufactured by SOCMA companies range from cosmetics to pharmaceuticals to plastics. In the aggregate, SOCMA firms contribute about \$60 billion to America's gross domestic product.

In describing the current state of the chemical industry, Ed detailed a slow recovery from the recession conditions of the past two years. High raw material costs – including oil and natural gas – continue to plague the sector, and competition from firms in developing nations has hindered the growth of SOCMA members. Ed emphasized that costs related to the environment, health, and safety are substantial for smaller firms, and that future tightening of regulations will only serve

increase these costs. Thus, a major concern for SOCMA is how to maintain compliance in a cost-effective manner. This forum represents an opportunity to discuss challenges and opportunities related to this concern, and Ed expressed his confidence that meaningful progress would be made over the next two days.

Overview of the Specialty-Batch Chemical Sector

September 4, 2002, 9:00 a.m.

Presenters: Bob Rosen, BASF
Chris Bagley, DanChem Technologies
Bill Allmond, NACD

Industry Presentations

Bob Rosen gave a brief overview of the specialty-batch chemical sector, abbreviating his presentation to accommodate the schedule. (A copy of his full presentation is available in the Forum binder). His presentation opened with definitions of "specialty chemical" and "batch processing," and outlined three classes of specialty chemicals: material additives, ingredients, and intermediates. Bob noted the wide variation in product applications for specialty chemicals, which range from medicine to detergents to electronics. He described four types of businesses within the specialty-batch chemical sector: (1) Contract manufacturers produce a compound, under a contract, for another company; (2) Research and development businesses specialize in a specific type of chemistry and perform R&D for other companies; (3) Pilot and development facilities test production methods and techniques on a small scale prior to commercialization; and (4) Niche chemical market companies produce small quantities of chemicals for a specific market segment.

Batch processing takes place in small reactors or kettles ranging in size from kilogram-scale containers to units up to several hundred kilograms in size. The advantages of batch processing include responsiveness to changing markets, the flexibility to allow chemists to maximize the yield of a desired compound (which reduces waste), and simplified process complexity.

Bob concluded his remarks by describing the SOCMA membership, which includes 300 companies (1700 facilities), 75% of which are small businesses. He also emphasized how important it is for representatives of industry and regulatory agencies to get to know one another through educational opportunities, and stressed the joint responsibility of regulators and industry to come together and make progress at this Forum.

Chris Bagley delivered an overview of specialty-batch manufacturing operations, beginning with a description of the types of equipment used and a regulatory snapshot of the sector. Batch facilities use a wide variety of equipment, including reactors, mix tanks, centrifuges, dryers, product washers, filters, evaporators, and grinders. He noted that most SOCMA members are indirect dischargers under the Clean Water Act, minor sources under the Clean Air Act, and small-quantity generators under RCRA. He used facility photos to illustrate how small SOCMA facilities are, in terms of both equipment size and production rates, and gave specific examples of production rates of chemicals at DanChem. The highest volume products ranged from 2.4 million pounds to 10.7 million pounds in 2001. In that year, DanChem made a total of 82 products. Of these, only nine products (10%) were made in quantities greater than one million pounds. Fifty-eight of the products (70%) were made in quantities less than 100,000 pounds. He contrasted these numbers with those at a two major continuous process plants, which produced 300 million pounds of MEK and 500 million pounds of nitrobenzene on an annual basis.

Bill Allmond concluded the presentations with an overview of the specialty-batch chemical distribution sector. His presentation began with a description of the National Association of Chemical Distributors, an international trade association representing more than 300 chemical distributors (SIC Code 5169). Descriptive statistics for the sector (year 2001) include annual sales of \$11 billion and annual distribution of 31 billion pounds. The chemical distribution sector generally takes title of products from chemical suppliers and is directly involved in their storage and marketing, repackaging/blending/mixing, and delivery to the end-user. Bill equated the sector to a "grocery store for chemicals." Environmental impacts associated with the distribution sector are minimal; they include land/surface water releases, waste generation and off-site transfer, electricity and gas consumption, and fugitive air emissions through repackaging operations.

Bill wrapped up his presentation with a brief regulatory discussion. The specialty-batch chemical distribution sector has been covered by TRI since 1998; it has been the lowest TRI industry every year since its inclusion, and accounts for 0.02 percent of all TRI emissions. Compliance for the sector is greatly facilitated by the ChemAlliance program (<http://www.chemalliance.org/>).

Discussion

Chuck Kent (OPEI) opened the discussion by asking SOCMA to compare the regulatory trends in Europe to the situation in the United States. Rick Kane (Rhodia) replied, noting that the precautionary principle is a major driver of the regulator-industry relationship in Europe, so the "guilty until proven innocent" logic often prevails. As a result, testing costs are higher in Europe. While the US regulations are more predictable, Rhodia attempts to use its European best management practices worldwide – including the US. Dave Mason (Hatco) raised the point that in addition to competing with companies in Europe, specialty-batch firms are competing with companies on other continents that have far less stringent environmental regulations than those that exist in the US. He emphasized that burdensome regulations and time-consuming permitting are sometimes the difference between winning and losing a contract. The key issue is the tempo of getting a new product to a consumer. This often requires reconfiguration of equipment, and it is important for regulatory agencies to understand and share the same sense of urgency when issuing approvals that are needed.

Ken Zarker (TCEQ) asked SOCMA how they would ideally like to be regulated, and received replies from Chris Bagley (DanChem) and Kathleen Shaver (SOCMA), each of whom stressed that what was necessary was not so much reinvention, but more of a "tweaking around the edges." The industry would like greater operational flexibility. Kathleen asked whether there is certain information that facilities can provide to regulators to ensure a faster tempo in getting products to customers. She also expressed strong support for incentive-based programs, noting the importance of being able to measure the outcomes from these innovative efforts. In response to the same question, Matt Barmasse (VanDeMark) explained that better coordination between EPA, Regions, and States could go a long way toward alleviating the regulatory burden--especially for small companies like his. He cited the differences between how state and federal programs enforce Title V as an example where better coordination is needed.

Tom Ripp (OECA) asked what percentage of the specialty-batch manufacturing sector is represented by SOCMA; SOCMA replied that it represents 30 percent of the sector if companies

that are both specialty-batch and commodity manufacturers are counted, and 60 percent of the sector if only companies that are specialty-batch manufacturers are counted.

Tom then asked Rick Kane about the costs and benefits of doing business worldwide, and whether this eases the task of doing business across states in the US. Rick replied that Responsible Care® is an important component of doing business in the specialty-batch chemical sector, and that it facilitates both international and inter-state coordination of business and manufacturing practices.

Jim Edward (OECA) asked about the role of EMSs in the specialty-batch chemical sector. Bob Rosen and Kathleen Shaver both replied that Responsible Care® is the EMS used by the sector, and plays a critical role in protecting the environment, health, and safety. Responsible Care® is implemented to different degrees at member facilities. SOCMA is exploring making its Responsible Care® program more consistent with ISO 14001. Matt Barmasse then discussed ISO 14001 and the merits of auditing and self-disclosure, noting that there is uncertainty in how self-disclosure will be treated in the context of enforcement at the federal and state levels.

Proposed Follow-up Items

No follow-up items; session was primarily informational

Overview of OPEI Initiatives and EPA Voluntary Programs of Special Interest

September 4, 2002, 10:00 a.m.

Presenters: Tom Gibson, EPA/OPEI
Tracy Mattson, EPA/OPEI
Dayna Greenberg, EPA/OPEI
Karen Chu, EPA/OPPTS
Newman Smith, EPA/OSW

EPA Presentations

Tom Gibson began the session with a description of the Office of Policy, Economics and Innovation's ongoing initiatives with the specialty-batch chemical sector. The first of these initiatives is the present Forum, which illustrates how EPA and sectors can move beyond one-size-fits-all regulation and have a dialogue to discuss industry-identified sector issues. The agenda of the Forum – jointly developed by EPA and SOCMA – is testament to that statement. The second initiative is to work with industry to overcome regulatory barriers to the environmentally sound recycling and reuse of secondary waste streams; one option being explored is a change to the definition of solid waste to allow more flexibility within industry for reuse and recycling. The third initiative involves flexible air permitting, with the goal of developing pilot Title V permits that can serve as potential national models for the specialty-batch chemical sector. Tom stressed that for the flexible air permitting initiative, EPA hopes to get stakeholders involved early in the process and keep them involved throughout. Tom asked for SOCMA's help in identifying flexible Title V permitting approaches that can be broadly applied, and proposed "smart permitting" workshops that would explore ways of improving the minor source permitting process for facilities in the specialty-batch chemical sector. EPA has established a State Innovation Fund to support innovative initiatives at the state level. The first rounds of grants have been received and permit-streamlining efforts are a top priority.

Last spring, the Administrator released a new Innovations Strategy that is designed to usher in the next generation of environmental protection. It calls for EPA to: (1) improve our relationship with States and Tribes; (2) focus on a set of priority environmental problems; (3) continue developing new tools and approaches; and (4) foster an innovation-friendly culture within the Agency.

The future of OPEI's sector work will be largely driven by the Innovations Strategy, which commits the Agency to working with stakeholders to lay out the direction for sector approaches. Tom outlined two key roles for OPEI's sector programs: 1) encouraging the use of EMSs; and 2) pinpointing and addressing regulatory issues that may stand in the way of better environmental performance. Overall, the sector approach provides EPA with means of setting priorities, focusing our efforts and working on meaningful issues that can lead to better results.

Tom then discussed some of the voluntary partnership and small business assistance programs underway at the Agency, including Waste Wise, EnergyStar, and Design for the Environment. He noted the impressive environmental benefits and cost savings associated with EPA's voluntary programs, and asked SOCMA to encourage its membership to explore whether these programs are suited to their operations. Tom highlighted one of EPA's newest partnership programs, the

National Environmental Performance Track, which is designed to recognize and reward top environmental performance at facilities in a way that has never before been done at the federal level. Performance Track is approaching 300 members, and Tom expressed his desire to see more specialty-batch chemical facilities in the program. He added that the application deadline for the current membership drive ends on October 31, 2002. Tom stressed the importance of all of the voluntary programs in building a case for alternative path legislation and asked industry to let EPA know if there are any barriers to participating in them.

Acknowledging that many SOCMA members are small businesses, Tom described the suite of small business assistance programs available. In addition to measures aimed at giving small businesses a greater say in EPA rulemaking activities, EPA is holding its first National Small Business Summit on November 14, 2002.

Small Business Programs

Tracy Mattson presented next, describing in greater detail EPA's activities aimed at helping small businesses. She covered four areas of focus in EPA's small business program:

- Assistance – the small business hotline receives over 1,000 calls per month;
- Communication – EPA maintains a small business website, publishes a monthly Small Business Ombudsman Update, and provides email notification of new rules;
- Leadership – the Small Business Division partners with other divisions and program offices in developing compliance guides and fact sheets, looking for ways to mitigate small business impacts of rules that fall below the SBREFA trigger, and assisting in dispute resolution; and
- Outreach – the Small Business Division participates in meetings with the Deputy Administrator, Assistant Administrators and small businesses, develops new tools for small businesses, and is convening a National Summit on Small Business and the Environment on November 14, 2002.

In the aggregate, these four focus areas provide a means through which small businesses can obtain compliance assistance and information, as well as have real input into decisions that affect their everyday operations. The table below summarizes some of the key resources available to small businesses.

KEY SMALL BUSINESS RESOURCES		
PROGRAM / TOOL	DESCRIPTION	RESOURCES
Small Business Ombudsman Homepage	Main website for EPA SBO	http://www.epa.gov/sbo
Small Business Ombudsman Hotline	Compliance Assistance Hotline	(800) 368-5888 (National) (202) 566-2855 (Local)
Small Business Ombudsman Update	Newsletter (monthly)	http://www.epa.gov/sbo/newslet.htm http://www.smallbiz-enviroweb.org
Small Business Environmental Homepage	Pollution prevention and environmental compliance information	http://www.smallbiz-enviroweb.org

<i>Discover, Disclose, Correct: Using EPA's Small Business Policy</i>	Plain language guide to EPA's small business compliance policy	http://www.epa.gov/sbo/rep2.htm
<i>Opening Doors for America's Small Businesses</i>	Pamphlet detailing EPA's efforts aimed at small businesses	http://www.epa.gov/sbo http://www.smallbiz-enviroweb.org
<i>A Resource Directory of Small Business Environmental Assistance Providers</i>	Pamphlet with information on federal, state, and private resources available to small businesses	http://www.smallbiz-enviroweb.org/html/pdf/Small_Business_Assistance_Directory.pdf http://www.epa.gov/sbo
National Summit on Small Business and the Environment	Upcoming conference date to be announced; Washington, D.C.	http://www.epa.gov/sbo/newslet.htm http://www.smallbiz-enviroweb.org

Performance Track

Dayna Greenberg presented an overview of Performance Track, EPA's voluntary public/private partnership that is designed to recognize and reward top environmental performers and provide incentives for facilities to commit to future environmental achievements. The entry requirements for the program include: 1) a functional EMS; 2) community outreach; 3) a history of sustained compliance; and 4) a commitment to continuous future environmental improvement. Benefits of Performance Track membership include low priority for inspection, exclusive regulatory changes, as well as public recognition, networking opportunities, and state-specific incentives. Current activities within the program include accepting new applications, the recently proposed incentives rule (August 13, 2002), implementation of Memoranda of Agreement (MOAs) with four states, and the development of Performance Track for companies. Further information is available on the program's main website (<http://www.epa.gov/performance-track>) or by calling the Performance Track Information Center at (888) 339-7875.

Green Chemistry, Green Engineering, and Design for the Environment

Karen Chu of the Economics, Exposure and Technology Branch of the EPA followed with a presentation that covered EPA's Green Chemistry, Green Engineering, and Design for the Environment programs. Green Chemistry is an EPA partnership program focused on the design of chemical products that reduce or eliminate the use and generation of hazardous substances. It explores "the chemistry of pollution prevention." Green Engineering is aimed at the process level, focusing on the design, commercialization and use of processes/products that are feasible and economical while minimizing harm to human health and the environment. Design for the Environment (DfE) targets pollution prevention at the product/technology level, promoting and integrating cleaner, cheaper, and smarter solutions into everyday business practices. DfE is currently working in six sectors and is looking for new partners. Resources associated with these programs are listed below:

- Green Chemistry: <http://www.epa.gov/greenchemistry/>
- Green Engineering: <http://www.epa.gov/oppt/greenengineering/>
- Design for the Environment: <http://www.epa.gov/opptintr/dfe/>

Waste Minimization Partnership

Newman Smith concluded the presentations with a description of the National Waste Minimization Partnership (<http://www.epa.gov/epaoswer/hazwaste/minimize/>). Through this new program, EPA develops voluntary partnerships with industrial and commercial organizations, and government agencies that are hazardous waste generators to find ways to reduce the amount of waste they generate. Entities that enroll set non-binding goals to reduce waste. There are five charter members that will be announced on September 9, 2002. He noted that this program could serve as a "ladder" to Performance Track membership, given its potential role as one of the commitments to future environmental performance improvements required for membership in Performance Track.

Discussion

Dave Mason (Hatco) noted that it was difficult for companies to commit resources to voluntary programs when the mandatory aspects of environmental regulations already stretch them thin. Tom Gibson acknowledged Dave's concern, emphasizing that EPA is working on increasing the incentives available to Performance Track members. For example, the recently proposed Performance Track Incentives Rule would provide for 180-day storage of hazardous waste on-site. There will be a second rule with additional incentives. These incentives will be designed to alleviate some of the pressure of in-place regulations, freeing up resources for attention to innovative pollution prevention efforts.

Kathleen Shaver (SOCMA) asked about the size of Performance Track and the extent of participation from small businesses. Roughly 25 out of the current 275 Performance Track members are small businesses. Jeff Gunnulfsen (SOCMA) asked about how Memorandums of Agreement (MOAs) with states would affect members interested in joining Performance Track. Chuck Kent (OPEI) responded that the MOAs should simplify the application process by enabling facilities to apply jointly to a state program and Performance Track. The MOAs will also provide a stronger basis for states and EPA to work cooperatively, improving their ability to develop and implement incentives for program members.

Ken Zarker (TCEQ) then asked Newman Smith about how the Waste Minimization program will deal with definition of solid waste issues. Newman replied that the program wants to focus on dialogue about engineering rather than DSW reform. Jeff then asked Newman to discuss the list of priority chemicals that will be announced for the Waste Minimization program. Newman explained that companies wouldn't be limited to considering priority chemicals when setting their waste reduction goals.

Proposed Follow-up Items

EPA/SOCMA:

- Continue working on RCRA recycling and flexible air permitting initiatives
- Create a menu of EPA voluntary programs; cross-walk the best opportunities for this sector

EPA

- Convene a National Summit on Small Business and the Environment

Compliance Management Session

September 5, 2002, 11:15 a.m.

Presenters: Chris Bagley, DanChem Technologies
Tom Ripp, EPA/OECA
Panelist: Rosemarie Kelley, EPA/OECA

Issue Paper

SOCMA's issue paper discusses the fact that specialty-batch chemical facilities are competitively disadvantaged by regulatory and compliance obligations that disproportionately affect small operations lacking extensive staff or resources. There is an economy of scale that favors larger companies or facilities, which may employ additional staff just to keep up with rules and regulations. Given the prevalence of small businesses in the specialty-batch chemical sector, EPA's compliance assistance efforts are of paramount importance. SOCMA recommends that compliance assistance tools be concise and made available in concurrence with new rules.

SOCMA Presentation

The presentation by Chris Bagley began by outlining the management challenges faced by all companies: staffing, information, and operational flexibility. He proposed that these challenges weigh most heavily upon small companies, citing the staffing challenges of having environmental personnel wear multiple hats. These personnel are confronted with a major challenge in keeping up with rules and regulations, but have too little guidance information in some areas and too much information in others. When combined with the lack of corporate support that often characterizes small companies, environmental personnel are spread thin. SOCMA's final area of concern lies in operational flexibility: given the variable nature of products and waste streams, the regulatory burden upon small companies is large. He cited an example of a firm with 110 employees that is subject to over 150 regulations and submits almost 40 reports annually.

Chris then described SOCMA's compliance assistance efforts, including workshops, written guides, and online training tools. Joint EPA-SOCMA efforts have ranged from PTE Guidance to TSCA 101 workshops, and have proven very successful. Chris emphasized that despite past success, it remains important to continue to identify compliance assistance needs through better dialogue between SOCMA and Federal, Regional, and State agencies. He noted plain language guidance and enforcement advice as areas where small companies could benefit from EPA assistance. Given the sector's entrepreneurial nature, Chris suggested allowing more leeway for the sector to develop alternative compliance methods that continue to protect the environment.

To overcome impediments to compliance, Chris proposed that EPA issue Compliance Assistance Manuals in a more timely fashion, and recognized that industry must learn to trust EPA for true progress to be made. He hopes that increased dialogue will aid in this, as many companies' only interactions with regulators are limited to inspections. In terms of expanded dialogue, Chris suggested DSW, HPV, and MON as areas where better communication would be beneficial to all parties.

EPA Presentation

Tom Ripp (OECA) described the mission of OECA, the role it plays within the Agency, and the methods by which it identifies and responds to needs for compliance assistance. He noted that OECA focuses primarily on existing regulations when designing compliance assistance tools, targeting efforts on industries having difficulty meeting requirements. He stressed that OECA does not provide relief from the duty to comply, but that it works with the regulated community to address compliance issues, often at the sector level. Tom described OECA's approach to identifying compliance problems and developing integrated strategies for addressing them, noting that OECA needs help from industry to target its compliance assistance efforts. He encouraged industry representatives to use the existing tools -- e.g., the clearinghouse (<http://www.epa.gov/clearinghouse>); compliance assistance centers (<http://www.epa.gov/compliance/assistance/centers/index.html>); and sector notebooks. In addition, he stressed the benefits of taking advantage of EPA's audit and small business compliance policies, noting that violations will be more costly when they are discovered by inspectors.

Panelist

Rosemarie Kelley (ORE) began the discussion by describing ORE's audit policy, and stated that efforts were made to resolve all cases quickly, often with gravity penalties waved (90% of the time this is the case). She gave an example of a company for which a \$1 million gravity penalty was waived; a \$30,000 fine remained. Rosemarie also observed that fewer companies are coming in under the audit policy, and more companies are using the small business compliance policy.

Discussion

- Dave Mason (Hatco) made the point that when companies conduct voluntary audits and violations are found, it deems them ineligible for Performance Track. This is a disincentive to perform audits. Tom Ripp replied by noting that OECA looks very favorably upon companies that are performing such audits and self-correcting any problems found. Chuck Kent concurred, and noted that the Performance Track program has worked very closely with OECA to ensure that audits continue to be encouraged and efforts to fix any problems found are rewarded. Tom added that the Performance Track entry criteria allow for a small number of civil violations and that EPA is perhaps even more concerned in looking at those facilities that haven't been inspected in the past three years (i.e. sites that EPA knows little about).
- Matt Barmasse (VanDeMark) brought up the point that even when gravity penalties are waved, the remaining penalties--which still apply--can still be burdensome to small businesses. He commented that the OSHA Voluntary Protection Program is more favorable to small businesses in this respect -- it provides for no penalties and no inspections while coming into compliance with problems found during self-audits. Chuck Kent asked Matt to read closer into the EPA audit policies, noting that they are similar to OSHA's. He also noted that EPA's small business policy (pamphlet distributed) has a potential for 100% gravity reduction and a potential waiver for civil penalties. Both the audit and small business policies are discussed in the EPA's July 2002 Small Business Update (<http://www.epa.gov/sbo/july02nl.pdf> – page 39).

- SOCMA inquired about the forthcoming changes to EPA's new source review program and whether anything has gone through OMB. OECA could not comment on NSR issues, but stated that nothing has gone through OMB yet.
- SOCMA suggested developing literature stressing the need for companies to read and understand their permits. This is especially important given the high rate of staff turnover in the industry between 1997 and the present; responsible personnel don't know what is in their permits because they weren't around when the permits were originally written
- Kathleen Shaver (SOCMA) noted that EPA should look ahead at the rules being worked on and develop compliance assistance materials as the rule is being drafted. Then, use the sector program to communicate the guidance.
- Bob Benson (OPEI) began by posing the question: how large is the environmental footprint of the specialty-batch chemical sector? He commented that the regulatory requirements imposed on this sector may not be proportional to its environmental impacts. It seems that while the environmental footprint for the specialty-batch chemical sector is relatively small, it is being subjected to the same intensity of regulation as "dirtier" sectors (e.g., petrochemical sector). He suggested that industry make efforts to better define this sector's environmental footprint. Joe Bania (Bedoukian Research) made the point that while the environmental footprint of the specialty-batch chemical sector as a whole is small, individual plants may have a large footprint relative to the local areas in which they operate. TRI data could be a useful source of information to help answer this question.

Proposed Follow-up Items

SOCMA:

- Fully utilize existing compliance assistance tools, including EPA's clearinghouse, compliance assistance centers, sector notebooks.
- Assist EPA in targeting its compliance assistance efforts
- Perform research to better define the sector's environmental footprint.

EPA:

- Continue developing compliance assistance tools
- Try to coordinate the issuance of compliance assistance materials with the promulgation of new rules.

Overview of Responsible Care® and the Responsible Distribution ProcessSM

September 4, 2002, 12:45 p.m.

Presenters: Melissa Hockstad, SOCMA
 Bill Allmond, NACD

During the working lunch session, representatives of SOCMA and NACD gave presentations on the codes of management practice that these two trade associations have implemented. These programs represent significant commitments to promoting continuous improvements in environmental, health, and safety performance among member companies.

Melissa Hockstad opened the working lunch with a presentation on Responsible Care®. This program is based on 10 Guiding Principles and six Codes of Management Practice. A major component of its ethic is to exceed both the letter and the spirit of the law. More information on the history, culture, and benefits of Responsible Care® is available in the slide presentation contained in the Forum binder and at: <http://www.socma.com/ResponsibleCare/index.htm>.

Bill Allmond followed with an overview of NACD's Responsible Distribution ProcessSM. RDP is a condition of membership in NACD. It is structured around 12 Codes of Management Practice, and includes a requirement for third-party verification of the policies and procedures of each company's RDP program. Further information regarding RDP is available in the background paper included in the Forum binder and at: <http://www.nacd.com/rdp/>.

Environmental Management Systems Session

September 4, 2002, 2:15 p.m.

Presenter: Chuck Kent, EPA/OPEI
Panelists: Art Gillen, First Environment
Ken Zarker, State of Texas CEQ
Bill Allmond, NACD

Issue Paper

EPA's issue paper describes the Agency's position statement on EMS, which outlines a set of principles and commits EPA to the promotion and successful implementation of EMSs. EPA stresses the "plan-do-check-act" model, and emphasizes the benefits of EMS, which include improved environmental performance, cost savings, and positive public image. EPA identifies a series of opportunities and challenges for the specialty-batch chemical sector in the realm of EMSs, stressing that the Agency's most important concern is improved environmental performance, not merely having an EMS on paper.

EPA Presentation

Chuck Kent described EPA's EMS-related activities from a policy perspective. EPA views EMSs as a tool for "footprint management" and encourages industry to develop EMSs with the following key components: commitment to compliance, pollution prevention through source reduction, communication with stakeholders, and continual improvement. EPA's position statement on EMS encourages: (1) wide spread use of EMSs; (2) stakeholder input on development of an EMS; and (3) building on recognized environmental management frameworks, such as ISO 14001. Chuck emphasized that all EMSs do not need to strictly adhere to ISO 14001, but it is nonetheless important that they be robust. In addition, EPA is committed to working collaboratively with key partners in implementing its EMS strategy, and to leading by example (i.e., implementation of EMSs at over 50 of its facilities).

Chuck applauded the specialty-batch chemical sector's efforts to date at increasing EMS use at its facilities and noted that EPA is prepared to help in furthering these efforts. He also challenged trade associations to engage non-members in the EMS effort, potentially using the benefits of EMSs as a recruiting tool to attract new members. He noted the many common elements between Responsible Care®, the Responsible Distribution ProcessSM, and Performance Track, and stressed that a successful EMS will simultaneously result in beyond-compliance performance and cost savings. Given the high degree of overlap, Chuck urged industry members to strive for Performance Track membership, noting that EPA's efforts to date at expanding incentives and increasing recognition are a "down payment" on future initiatives.

Discussion

Art Gillen (First Environment) began the discussion by noting that all facilities have an environmental management system of some sort; the "plan-do-check-act" model merely formalizes the structure and eases verification. He added that business decisions are governed, more often than

not, by a cost-benefit analysis, and that EPA's shift toward innovative approaches must be matched by equivalent abandonment of traditional attitudes and constraints on the part of industry. It will take a while for the impact of the recent Performance Track incentives rule to percolate through industry and reach higher levels in the management chain. But he suggested taking a closer look to determine the additional steps that need to be taken for more specialty-batch chemical members to join Performance Track, including developing additional incentives (e.g. waive gravity-based penalties).

Ken Zarker (TCEQ) began his comments by pointing out that the strongest relationships between regulators and facilities often occur at the state level. He noted that the biggest challenge is often to provide real incentives and states are experimenting with performance-based regulations. He cited legislation in Texas (House Bill 2997) that requires TCEQ to promote EMS and provides a mandate for the agency to develop incentives (e.g., accelerated access to information and revisions in enforcement policy to allow for reduced penalties if a facility has had an EMS for at least one year). Bill Allmond (NACD) inquired about the benefits of implementing EPA's vision of an EMS as opposed to industry's, and noted one current Performance Track incentive – decreased inspection priority – that may not be much of an incentive for chemical distribution facilities, many of which are small enough that they are already a low priority for inspections.

Bob Rosen (BASF) asked whether EPA had developed any specific EMS performance metrics for its facilities. Chuck Kent replied that it is too early for EPA to discuss the metrics it is developing, but noted that several EPA staff are working on the technical issue of performance measurement. Two staff members within OPEI working on this issue are Carl Koch of the Sector Strategies Division and Susan McLaughlin with the Performance Track program.

Jeff Gunnulfsen (SOCMA) complemented EPA's work on the Performance Track program and on the incentives included in the proposed rule. He asked about the possibility of having rolling admissions for the program. Chuck responded that there are administrative constraints that prevent this, but there are two three-month application periods each year. Jeff was also curious about whether it might be possible to develop a separate Performance Track program tailored to the needs of small businesses. Chuck Kent noted that there are a number of small businesses already in the program and that EPA would prefer to keep a single program and find additional incentives to make it more attractive to small businesses.

Karen Chu (DfE) commented that it can be difficult to find federal regulatory incentives for small businesses who fall below regulatory thresholds and asked whether there are other types of benefits that would be desirable – e.g., green chemistry or other incentives that meet educational and compliance assistance needs. Bob Rosen replied, noting that hands-on assistance in permitting would be of great benefit to the specialty-batch chemical sector. Chuck then made the point that a major issue in developing incentives is striking the appropriate balance between providing the best incentives (e.g. permitting assistance) to the best performers versus providing incentives to the ones who need it most (the worst performers).

Dave Mason (Hatco) asked whether EPA has considered outsourcing Performance Track to SOCMA for implementing the program within its membership. Chuck noted that states posed a similar question to EPA, and that EPA couldn't do it, because one objective of Performance Track is

to build a strong, credible program with an EPA stamp. He then stressed the need for states and industry to work very closely with EPA in implementing the program.

Barry Elman (OPEI) concluded the session by pointing out that SOCMA's Responsible Care® program and NACD's Responsible Distribution ProcessSM appear to be very close to meeting the EMS criteria of Performance Track. He encouraged both associations to work with EPA to complete a cross-walk between their programs and Performance Track, so that their members would know exactly what additional EMS elements, if any, they would need to implement in order to qualify for Performance Track. Further, given that SOCMA is now considering possible revisions to its Responsible Care® program, Barry stressed that this was a good time for EPA and SOCMA to work towards a possible convergence of their respective programs

Proposed Follow-up Items

EPA/SOCMA:

- Explore how to use the Responsible Care® program and the Responsible Distribution ProcessSM to promote EMS and feed seamlessly into Performance Track.

EPA:

- Continue to develop EMS performance metrics for its facilities and broader performance measures for all voluntary programs.

Air Session

September 4, 2002, 3:15 p.m.

Presenter: Seth Levine, Cambrex
Panelists: Randy McDonald, EPA/OAQPS
Marcia Mia, EPA/OECA

Issue Paper

The overarching theme of SOCMA's issue paper is that the variable nature of specialty-batch chemical operations necessitates greater EPA flexibility in its air programs. Specific issues covered include the rapid rate at which new MACT standards are being issued (at least 10 draft standards have been released so far this year); the applicability of multiple MACT standards to a single facility; the "once-in, always-in" requirements of MACT rules; the tight timeframe for section 112(j) compliance; and the lack of operational flexibility within Title V permits.

SOCMA Presentation

The presentation by Seth Levine (Cambrex) began by detailing the challenges facing the specialty-batch chemical sector, which are particularly pronounced in this area and include the frequently changing products and processes associated with specialty-batch operations. Specialty-batch facility permitting is thus complicated by the difficulty in knowing what a facility will be producing in the future. Also complicating the regulation of the specialty-batch chemical sector is the potential applicability of multiple MACT standards to the same facility; this becomes especially complex when new MACT rules are being issued fairly frequently, as is now the case. In this area, SOCMA proposes excluding operations with *de minimis* HAP concentrations, and allowing for a single MACT to apply for all operations at a facility in cases where multiple MACTs apply.

In the area of "once-in, always-in" challenges, SOCMA recommends regulatory relief when reducing HAPs below applicability thresholds by way of process modifications, pollution prevention measures, or material substitutions. SOCMA also proposes that reducing HAPs before control (for true minor sources) should not be subject to regulation, and post-control reductions (for synthetic minor sources) should be able to petition for an exclusion. With regard to 112(j), SOCMA is concerned about the fact that EPA's rule extending the final hammer deadline to 2004 is under litigation and therefore facilities are at risk of being required to develop site-specific MACT standards with their state regulators in an impossibly short timeframe. In the area of Title V permitting, SOCMA stresses the need for operational flexibility and encourages permitting authorities to use existing tools to develop simple, smart, flexible permits with minimum reopenings.

SOCMA's overarching recommendations are to look broadly for areas where flexibility and integrated strategies could benefit the regulators and regulated community alike, and to engage industry in joint efforts to develop guidance before final rules are promulgated.

Discussion

Randy McDonald (OAQPS) discussed the MON rulemaking scheduled for publication in August 2003, noting that the rule is process based, which thus raises the potential for overlap with other MACTs. He noted that one option being considered as a fix to this is the use of the "primary product" MACT as the MACT for the entire facility. It was noted that MACT floors are sometimes based upon incompatible databases. The Consolidated Air Rule (which condenses multiple prior regulations applying to synthetic organic chemical manufacturers) was discussed briefly, and compliance with Subpart uu of the Clean Air Act was explored as it relates to compliance with Subpart bb of RCRA (both pertain to leak detection and repair). In the area of "once-in, always-in," Randy discussed potential rulemaking that would allow for facilities to escape the normal monitoring, record keeping and reporting provisions, as well as the specific technology requirements of MACT standards by using pollution prevention to make equivalent reductions to those attainable by MACTs.

Marcia Mia (OECA) discussed innovative compliance plans, including a flexible permitting program that is being developed. Current thought is to use the pharmaceutical MACT as a springboard to explore how flexible permits might work, focusing on how alternate monitoring might be tailored to suit facility-specific needs. One concern raised about this was the potential for alternative monitoring to complicate inspections. Seth Levine (Cambrex) asked about obtaining examples of alternative monitoring decisions, and Marcia confirmed that some were available for review. Marcia also noted that training materials were available on pre-compliance reports, located on the website of the National Enforcement Training Institute. Marcia's final proposal was to conduct meetings with ACC, SOCMA, and other industry groups to explore overlap of the PAI and MON MACTs as they pertain to specific facilities.

Larry Weinstock (OAR) expressed OAR's commitment to real NSR reform. In response to a question from Dave Mason (Hatco) regarding more performance-based measures for the air program, Larry acknowledged the need for greater EPA flexibility, including Plant-wide Applicability Limits (PALs) and Green Building permits. He also referred to upcoming meetings with specialty-batch chemical sector representatives to develop flexible air permits for use as a potential model for broad application within the sector.

Bob Benson concluded the session with a review and synthesis. He noted that many of the issues discussed in the session had been the subject of dialogue between EPA and industry for quite some time. Randy noted that the Pollution Prevention in Permitting Program (P4) pharmaceuticals pilot has not yet led to broad scale use of flexible permits by that industry. He asked whether it would be possible to successfully develop a flexible permit for multi-purpose batch processing. Barry Elman (OPEI) noted that the sector strategy division within OPEI and the air permitting group within OAR are exploring the possibility of conducting a project to develop a flexible permit and road test it with a specialty-batch chemical facility. The goal of the sector strategy division in pursuing this project would be to develop a permitting approach that can be widely used across the specialty-batch chemical sector. Larry then noted that EPA is completing an evaluation of P4 and other flexible permits that have been piloted to date, and that once the evaluation is completed, OAR is likely to encourage broader use of such approaches.

Proposed Follow-up Items

EPA:

- MON rulemaking scheduled for August 2003.
- Explore potential rulemaking to alleviate industry issues with the "once-in, always-in" component of MACT.
- Use the pharmaceutical MACT as a springboard to test flexible permitting.
- Work with ACC, SOCMA, and other industry groups to explore overlap of the PAI and MON MACTs as they pertain to specific facilities.
- Explore increased use of Plant-wide Applicability Limits (PALs) and Green Building permits.

EPA/SOCMA

- Continue joint efforts to develop a flexible permitting project that will broadly benefit the specialty-batch chemical sector.
- Disseminate examples of alternative monitoring decisions.

TRI Chemical Reporting Session

September 4, 2002, 4:30 p.m.

Presenter: Roberta Smith, Honeywell
Panelist: John Dombrowski, EPA/OEI

Issue Paper

SOCMA's issue paper covers three main issues related to current TRI reporting. First, SOCMA raises concerns about the manner in which TRI data are aggregated into a single figure for total releases. The paper goes on to propose that TRI data, as currently reported, are not necessarily an accurate metric of environmental performance for the specialty-batch chemical sector. Finally, SOCMA outlines its position that EPA's burden estimates for TRI reporting underestimate the effort involved in developing annual reports, specifically the time invested in information gathering.

SOCMA Presentation

Roberta Smith gave SOCMA's presentation on TRI issues. She began with a process diagram of a typical specialty-batch chemical facility, illustrating that all TRI chemicals that cross the fence line are considered a "release" for the purposes of TRI reporting. Roberta noted that this doesn't accurately reflect how much of a toxic pollutant is actually released to the environment; some materials are recycled or treated off-site. She then showed a second process diagram to demonstrate how TRI reporting could be changed to reflect the *net release* to the environment instead of the current gross release metric. Changes in the Form R could reflect the net release by subtracting POTW releases, off-site energy recovery, and other recycling and treatment from the releases that simply cross the fence line.

Discussion

John Dombrowski (OEI) opened the discussion by giving an update on activities within the TRI program. Rules in development include: mandating the use of NAICS codes as part of TRI reporting, which would allow for integration of US release data with that of Canada and Mexico; TEQ reporting for releases of dioxins (full weight of releases would still be reported). John briefly updated the group on *National Mine Association v. EPA*, a case addressing the reporting of releases related to extraction and beneficiation processes.

Next, John briefed attendees on current petitions, including: Environmental Technical Council, which proposes to have transfers to off-site Subtitle C facilities reported as "off-site transfers" instead of "off-site releases;" adding airports to the list of industries reported under TRI; adding incineration to the list of acceptable methods for off-site energy recovery; inclusion of consolidated material in the definition of "overburden;" several additions/deletions of chemicals reported under TRI. John also noted improvements for the TRIME software slated for this fall, as well as the potential to solicit and receive feedback and position papers electronically. John discussed the elements of the electronic stakeholder process that will begin in the fall. Stakeholders will have the opportunity to submit position papers and other feedback on the following topics: identification of

compliance assistance needs; data collection, processing, and management; and public data release (PDR) reports.

In responding to Roberta's presentation, John first acknowledged Roberta's points about the Form R, explaining that EPA has looked at the issue of reporting on different types of releases, but the rulemaking has been slowed by lack of resources at the Agency. Regarding the definition of a "release," John explained that the definition was set by Congress and thus is very difficult to change. This definition is the basis for the numbers reported in TRI. However, John noted that in addition to presenting aggregate information on releases, EPA does break down this information by category of releases. He could not comment on the PDR reports now, but assured the group that the stakeholder process would provide a forum for industry input. John Mason (OECA) made the point that any efforts to assist the regulated community in understanding the 313 requirements might be of equal benefit to the public. It is important for the public to understand the TRI information, why it is collected, and what it means. John Dombrowski added that the TRI program already has a document that explains the factors to consider when drawing conclusions from TRI data, which could be a good starting point for looking at this issue.

Proposed Follow-up Items

EPA:

- Make improvements in TRIME software.
- TRI electronic stakeholder process to begin in the fall.
- Provide internet link to document referenced by John Dombrowski that discusses factors and caveats associated with TRI data.
- Follow through with rulemaking activities and responding to current petitions, as resources allow.

Waste Session

September 5, 2002, 8:30 a.m.

Presenters: Pat Nevrintean, FMC Corp.
Bill Turetsky, ISP Corp.
Panelists: Charlotte Mooney, EPA/OSW
Jim Berlow, EPA/OSW
Richard Lashier, EPA/OSW
Teena Wooten, EPA/OSW

Issue Paper

SOCMA's issue paper uses the sector's defining characteristics (variable processes, variable waste streams) to frame an argument for regulatory changes that would increase reuse/recycling opportunities and decrease the reporting burden on industry. Toward this end, SOCMA proposes a national conditional exemption from the definition of solid waste (DSW) for certain materials generated and recycled by toll manufacturers, a measure that would provide economic incentive for reuse/recycling of secondary materials. Further, SOCMA proposes that future EPA rules providing for such exemptions on same-industry recycling should use the broader 3-digit NAICS code rather than the narrower 4-digit code. This would facilitate recycling opportunities within the diverse specialty-batch chemical sector. The paper also recommends a doubling of the waste accumulation time, from 90-days to 180-days, which would allow for sufficient waste accumulation for economical removal from the facility. Finally, SOCMA expresses support in the paper for EPA's RCRA Burden Reduction Initiative, citing duplicative training requirements, LDR paperwork, and TSD unit certification as areas where EPA streamlining could be beneficial to the specialty-batch chemical sector.

SOCMA Presentation

Bill Turetsky (ISP Corp.) delivered a presentation that focused on a real example to illustrate situations where EPA regulations serve to hinder reuse/recycling. In this example, a hazardous waste generator (NAICS 3254) has four options for disposal of its waste product. Option 1, off-site Clean Fuels disposal, approximates a net cost of \$573,000 per year, a value largely driven by the lost opportunity cost of the value of potentially recovered product. Option 2, reclamation under RCRA Part B, comes at a cost of \$1.3 million per year, largely driven by the high reclamation cost. Option 3, the current management option, is off-site incineration at a cement plant, which costs \$739,000 per year. This price is the result of high transportation and disposal costs, and the opportunity cost of the value of potentially recovered product. The exception among these management options is Option 4, reclamation of product at an off-site, non-permitted plant. This option reuses the waste material rather than disposing of it -- and generates a \$282,000/year profit in doing so -- but is not currently feasible under RCRA. Bill explained that an exemption for tolling operations from RCRA's DSW would allow for such reuse/recycling to occur. Alternatively, the current redefinition of solid waste effort, informally known as the ABR (Association of Battery Recyclers) rule, uses a 4 digit NAICS code to define industry would not facilitate this type of recycling and reuse.

Pat Nevrinean (FMC) discussed the economic burden associated with the 90-day accumulation limit for hazardous waste. Currently, facilities are forced to ship partial loads of waste because of the 90-day accumulation period. She explained the benefits of an extended 180-day accumulation time, which include the increased efficiency of shipping full loads (as well as the fact that fewer shipments mean there are fewer chances for on-road incidents), and an increased time period during which to coordinate reuse/recycling efforts. The extension of accumulation time would also contribute to EPA's Burden Reduction initiative by essentially halving the paperwork related to accumulation of hazardous waste. Other suggested burden reduction improvements include the elimination of duplicative training requirements and the streamlining of LDR paperwork and TSD unit certification.

Discussion

Jim Berlow (OSW) first discussed the status of the burden reduction rulemaking slated for March 2003. He mentioned anticipated state objections about proposed reductions in tank/container inspection frequency, and noted that over 2,000 comments were received in response to the proposed broadening of allowable qualifications for hazardous waste certification. EPA staff also pointed out that the recently proposed Performance Track Incentives Rule (August 13, 2002) includes a 180-day accumulation period.

Charlotte Mooney and Teena Wooten (OSW) discussed the upcoming DSW rulemaking, the first draft of which should be sent to the workgroup for review at the end of September. They stated that while the initial proposed rule will likely be grounded in the 4-digit NAICS code, no final decision on this matter has been made and the comment period will allow for industry's views on the 3-digit NAICS code to be heard.

Charlotte thanked Bill for his portion of the SOCMA presentation and emphasized that his example was extremely helpful in helping to understand how the current RCRA regulations affect specialty-batch operations. She added that these types of examples are often the most effective way for the regulated community to make its case to regulators. Jim Berlow added that specific examples allow EPA to fine tune its rules to avoid unintended negative consequences. Matt Straus (OSW) emphasized the importance of examples and asked SOCMA to develop examples that quantify the costs and benefits (in dollar value) of alternatives being considered in the development of the proposed RCRA changes (e.g., defining industries by 4-digit vs. 3-digit NAICS codes).

Proposed Follow-up Items:

EPA:

- Continue with burden reduction and Performance Track incentive rulemakings.
- Continue with DSW rulemaking process.

SOCMA:

- Develop additional examples of regulatory challenges related to waste regulations.

Water Session

September 5, 2002, 9:30 a.m.

Presenter: Ken Wood, DuPont
Panelists: Jan Pickrel, EPA/OW
Mahesh Podar, EPA/OW
George Jett, EPA/OW

Issue Paper

SOCMA's issue paper covers four issues. SOCMA first cites overlapping or inconsistent requirements with respect to effluent guidelines and pretreatment standards, and recommends further guidance for permit writers and pretreatment authorities. SOCMA next describes issues related to EPA's streamlining of several provisions in the general pretreatment requirements. Its third issue is that pretreatment removal credits are not sufficiently available to an extent that makes the program workable. SOCMA's final issue deals with the complexity of Subpart YYY (NSPS standards). SOCMA feels that understanding and properly implementing its requirements presents an undue burden for small specialty-batch facilities with variable operations.

SOCMA Presentation

Ken Wood's presentation began with a general description of wastewater generation at SOCMA facilities, going into detail about its sources and eventual discharge recipients. He provided some background about the regulations that apply to specialty-batch facilities, noting that SOCMA is generally less engaged in issues related to surface water regulations and NPDES permitting compared to pretreatment and indirect discharge issues. Ken then proceeded to describe four primary challenges for SOCMA.

Overlap of Effluent Guidelines and Point Source Categories

Ken gave a specific example of a SOCMA facility that manufactures multi-use products that are sold for use as pharmaceutical active ingredients. Because of this, the facility is subject to both the pharmaceutical effluent guidelines and the Organic Chemicals, Plastics, and Synthetic Fibers Effluent Guidelines. EPA fixed the problem by granting an exclusion from the pharmaceutical effluent guidelines if flow from pharmaceutical products is less than 50 percent of the total process wastewater regulated by Part 414. While this solution worked well in this case, Ken noted other cases where it might not: multi-purpose batch facilities where product mix and relative percentage of wastewater flow is highly variable; plants that manufacture pesticide products covered by part 455 as well as chemicals under Part 414; and plants with low wastewater flow that could otherwise be considered "Non-Significant Industrial Users." Ken recommended further guidance for control authorities that regulate small, specialty-batch chemical plants, as well as guidance for permit writers at multiple-category facilities.

General Pretreatment Streamlining

SOCMA has previously submitted comments to EPA on several issues related to pretreatment streamlining. The first of these is the prohibition of discharges below pH 5.0 to POTWs not "specifically designed to accommodate" such flow. SOCMA supports an approach that would

allow for such discharges when supported by a technical evaluation. The next pretreatment streamlining issue is related to discharge reporting, for which concentration limits are required to be converted to mass. EPA has proposed (and SOCMA supports) a provision that allows for equivalent concentration limits for facilities where flow is highly variable. SOCMA also supports EPA's proposed modifications to the definition of "categorical industrial user," to allow POTWs to exempt "non-significant" categorical dischargers from the definition of "significant industrial user." SOCMA is concerned, however, that the proposed flow ceiling of 100 gpd will provide virtually no relief to dischargers. SOCMA recommends that the flow ceiling be raised to a point that will exempt small batch plants that have negligible impact upon their POTWs.

Removal Credits

Ken then proposed that the current situation – with removal credits virtually impossible to obtain and limited to very few pollutants – stands in opposition to Congress' intention of using credits to promote efficient use of overall removal capabilities and avoid redundant treatment of wastewater discharged to POTWs. He also expressed concern over EPA's current direction, in which streamlining of the removal credit process has taken a backseat to the placement of further restrictions on the availability of removal credits, as a result of legal challenges.

Wastewater NSPS (Subpart YYY)

The complexity of Subpart YYY imposes a burden on SOCMA members, many of whom are small businesses with highly variable wastewater composition and relatively low potential VOC emissions from wastewater. SOCMA has recommended alleviating the burden by exempting small volume producers and allowing *de minimis* levels in terms of annual production and test batches of SOCMI chemicals. Ken also described the burden of calculating annual average emissions for multi-purpose batch processes, proposing instead that a single representative batch cycle be used for calculations of organic wastewater compound emissions and mass emissions increases. In these calculations, the definition of "standard batch" would be borrowed from the pharmaceutical MACT regulation. Ken concluded by expressing SOCMA's concern that, given the timeline for a late 2002/early 2003 rule promulgation, EPA may not address SOCMA's concerns.

Discussion

Mahesh Podar opened the discussion with an update on EPA's position on effluent trading, which is one option being considered in its revisions to the *Local Limits Guidance*. He explained that a draft framework for trading was under development, and noted that material on the framework was available electronically. There also is an EPA report detailing the Passaic Valley pretreatment effluent trading program (No. EPA 231-R-98-003) that might be of interest to industry representatives.

Jan Pickrel confirmed that EPA is working on edits to the *Local Limits Guidance*, noting that EPA will include information on effluent trading in the edits. She mentioned an EPA initiative that would prevent the anti-backsliding issue from applying to pretreatment. She also stressed the importance of making preamble language that appears in the *Federal Register* more widely available to keep industry and the public informed. Jan noted that final rulemaking on pretreatment streamlining is currently receiving less attention due to lack of staff and competing priorities within

the Agency. While still on the table, Jan could offer no timeline for when such rulemaking would be promulgated.

George Jett noted that the bulk of SOCMA's problems seem to be related to implementation. He requested additional examples of specific problems, as well as explicit recommendations on how SOCMA would like to see these problems solved. He emphasized that EPA can better prioritize SOCMA's concerns if it has a clearer understanding of them. Toward that end, he recommended convening an informal workshop to better explore problems associated with effluent guidelines, and recommended a website with more information. Tom Ripp (OECA) concurred on creating an informal workgroup, and further recommended that the sector approach be used to establish workgroups for different media to identify further examples and make program offices aware of industry concerns

Proposed Follow-up Items

EPA:

- Convene informal workgroup to explore issues related to effluent guidelines.
- Disseminate available information related to water issues:
 - Information on the draft framework for effluent trading.
 - Passaic Valley effluent trading report.
 - Internet link to website referenced by George Jett that contains information on effluent guidelines.
 - Edits/updates to *Local Limits Development Guidance Manual*, *Guidance Manual for the Use of Production-based Pretreatment Standards*, and *Combined Waste Stream Formula*.
- Make preamble language more widely available

SOCMA:

- Develop additional examples of specific regulatory and compliance challenges.

Closing Remarks

September 5, 2002, 10:30 a.m.

Forum facilitator John Lingelbach began the session by restating the Forum's aim: to promote dialogue between regulators and members of the specialty-batch sector, and to explore issues without the inherent pressure of finding solutions by day's end. The session was structured around a set of proposed take-away items that was derived from discussions over the course of the Forum. The take-away items were presented by Bob Benson (OPEI), and followed by comments from SOCMA and OECA, as well as a general discussion.

Take-away Items for Joint Follow-up Action

- (1) Create a menu of EPA voluntary programs; cross-walk the best opportunities for this sector; facilitate information flow between Forum participants.
- (2) Identify industry-specific compliance assistance needs; create an integrated strategy and joint tools.
- (3) Assess this industry's barriers (real and perceived) to greater use of EPA's audit and small business policies.
- (4) Explore how to use Responsible Care® and the Responsible Distribution ProcessSM to promote EMS and feed seamlessly into Performance Track.
- (5) Develop and test a replicable air permit model or other approaches that can provide greater operational flexibility.
- (6) Create plain language guidance for the industry's TRI requirements.
- (7) Define simple metrics of the sector's environmental "footprint" to create a performance baseline and a tool for tracking future progress.
- (8) Prepare a meeting summary to capture follow-up actions.
- (9) Compile more Definition of Solid Waste examples.
- (10) Convene an informal working group to discuss water effluent guidelines issues.

Additional Discussion

Participants in the Forum expressed strong support for all ten of the potential take-away items presented. Bob Rosen (BASF) agreed with the list and emphasized the value of educational materials, including compliance interpretations and guidance, in helping specialty-batch chemical facilities continuously improve their environmental performance. He encouraged efforts to compile existing resources and to develop new materials. Consistent with Take-away Item # 4, he proposed further exploration of potential linkages between membership in trade associations with codes such as Responsible Care® and EPA's regulatory and voluntary programs. He also suggested that EPA and SOCMA consider forming small workgroups to drill down to the next level in the target areas identified in the Take-away Items, and that we develop a mechanism for communicating the progress made to the larger group that participated in the Forum. Finally, Bob talked about the need

to further define or refine the sector's footprint for purposes of identifying opportunities and clarifying future direction.

Kahleen Shaver (SOCMA) stressed the need to maintain the momentum of the Forum by having continued meetings of the planning committee in the coming weeks. She proposed that site visits could lead to enhanced openness and information sharing with Agency staff, and emphasized the need for feedback from the Forum and the site visit to the FMC facility in Baltimore. Kathleen also emphasized that the time is right for a dialogue between EPA and the specialty-batch chemical sector on how to strengthen the linkages between current or evolving industry environmental codes and Performance Track. Ed Fording (SOCMA) emphasized his commitment to constructive follow-up to the ideas raised during the Forum.

Ken Zarker (TCEQ) thanked EPA for its commitment to working with states on these issues, and stressed the need for these activities to be sustained. He asked EPA for continued support of state participation in these dialogues (e.g., travel funding), and asked that other key states be included in future meetings between EPA and the specialty-batch sector.

Tom Ripp (OECA) expressed agreement with the ten Take-away Items, and indicated a willingness to work with the sector to identify and address compliance challenges. He suggested that future efforts focus on more specific compliance issues now that the broad framework for working together has been set by this meeting. John Mason (OECA) stressed the need for better metrics for measuring the environmental outcomes of innovative policies, which often lack the traditional hard numbers available to measure the impacts of command and control approaches (e.g., number of enforcement actions or fines assessed). He also noted that, since SOCMA doesn't represent all members of the specialty-batch sector, it is important to think about ways to reach beyond SOCMA membership and ensure that compliance assistance tools are useful and available to non-member specialty-batch chemical facilities.