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U.S. Environmental Protection Agency (EPA, HQ)
401 M Street, SW
Washington, D.C. 20460

To Whom It May Concern:

I am writing in response to the request for comments from the U.S. Environmental Protectio Agency regarding its Project XL site-specific proposed rule for three universities in EPA Region 1.

The value of this proposed rule is reflected only in the extraordinary and genuine commitment of the three universities who will follow this rule, to seek a better way to manage waste generated in laboratories than is allowed by current RCRA regulations. I commend the individuals a these three institutions and their colleagues who supported this effort for both their hard work and perseverance, and their willingness to follow through with a four-year period to demonstrate the efficacy of their proposal. The academic laboratory community can benefit from the experience that will be gained by implementing this specific rulemaking proposal. However, I urge the U.S. Environmental Protection Agency to consider augmenting the proposed rule in ways that will allow a more thorough assessment of the value of a regulatory approach based on an environmental management plan for replacing the current RCRA regulations for laboratories. My comments that follow address this issue.

The proposed rule provides little flexibility with regard to the current RCRA regulations, and gives no discretionary authority to the participating universities to make further improvements in regulatory methods during the development of the environmental management plan. These shortcomings will prevent this project from demonstrating how more substantive changes in current RCRA regulations might enable laboratories to excel in safeguarding human health, protecting the environment, and preventing pollution. For example, some of the proposed flexibility in this rule--such as having environmental health and safety professionals make hazardous waste determinations, and common sense flexibility regarding closed containers for in-line automated and manual collection of certain wastes--are currently in operation in states in other EPA regions. Their value is already clear. No flexibility in the area of treatment is proposed. This is unfortunate because a plan could provide a reasonable mechanism for developing safe and efficacious treatment strategies appropriate for laboratory use. In its comparison of the proposed minimum performance criteria with current RCRA regulations, EPA correctly concludes that in most cases the performance criteria are more restrictive than comparable provisions in the current RCRA regulations. And there are many new requirements that are not included in the current RCRA regulations such as requirements for regular inspections of waste containers, training, and those related to the performance of the environmental management plan.

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I encourage EPA to make the following changes in the Minimum Performance Criteria:

- 262.104. The senior management should be granted some authority to make changes in performance criteria.

- 262.104(a). Replace "chemical name and general hazard class" with "chemical waste or with other words that identify the contents and general hazard class." This change will allow more discretion in developing the plan.

- 262.104(b) & (d). Some discretion should be provided to exceed these amounts when approved by senior management. This may be necessary when a participating university wishes to describe a laboratory to mean all laboratory modules under the control of a single investigator.

- 262.104(e)(1). The "in-line waste collection" interpretation should be allowed to augment the closed container rule for certain repetitive manual operations. The senior management should be granted discretionary authority to grant such interpretations.

- 262.104(e)(4). Eliminate the inspection requirement.

- 262.104(I). In the first sentence of this section, change "may only" to "should only" and add to the end of the sentence "unless it is determined by the senior management that it is prudent to transfer the laboratory waste directly to an authorized TSD facility." This discretion may be necessary in unusual circumstances.

I encourage EPA to make the following changes in the Laboratory Management Plan:

- Less procedural detail and record keeping will result in more innovative, useful and relevant plans for the laboratory management of wastes. This plan should not be considered only a regulatory compliance tool, but a system that promotes the desire for and practice of excellence in achieving the goals for protecting human health and environmental quality. The universities participating in this project should be given the option to propose a simpler plan to achieve the minimum performance criteria and the promotion objective mentioned above. The requirements of the plan as currently proposed will likely prove more burdensome than beneficial.

- The plan should provide some mechanism by which the scientific community within the university can propose innovative strategies for treating hazardous wastes that are generated during the conduct of laboratory protocols.

Without more flexibility and some discretionary authority, this rule may fail to demonstrate the value of an environmental management plan for protecting "human health and the environment from hazards associated with the management of laboratory wastes and from the reuse, recycling or disposal of such materials outside the laboratory." An equally disturbing outcome would be that EPA concludes that the requirement for an environmental management plan is an essential element for ensuring that academic laboratories comply with current RCRA regulations. This would be most unfortunate.

Kindest regards.

W. Emmett Barkley