Coalition for Responsible Waste Incineration

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The Coalition for Responsible Waste Incineration (CRWI) welcomes the opportunity to make the following recommendations on regulations that could be repealed, replaced, or modified to make them less burdensome as required by Executive Order 13777. CRWI is a trade association comprised of 24 members representing companies that own and operate hazardous waste combustors and companies that provide equipment and services to the hazardous waste combustion industry. Below are our specific suggestions.

RCRA

1. Modify RCRA Preparedness and Prevention rules 40 CFR 264.37 to eliminate "***arrangements*** with local authorities" and simply require "emergency preparedness coordination with local authorities as appropriate for the types and quantities of waste managed"

   The current regulations require that a facility attempt to make arrangements with local authorities and to document when/if the local authorities decline to enter into such arrangements. From a theoretical perspective, it makes sense to have this requirement. However, once you get to the practical aspects, the idea falls apart. When a facility contacts their local police or fire department about such matters, their initial response is that we already have an "arrangement;" when you call 911, we will come. When you try to further explain that this is required under RCRA, they start to get defensive and lawyers tend to get involved.

   We suggest as an alternative, modifying the requirements to make "arrangements with local authorities" to simply "require coordination with local authorities." This could be documented in a number of different ways. For example, a facility could attend and participate in local emergency

planning committee meetings. Minutes of these meetings are available to the public and the facility can show they were a part of the process. A second method would be to conduct and document emergency drills where outside authorities could participate. A third possibility would be to invite emergency personnel for a meeting and/or tour of the facility. There are likely other methods to show coordination with local authorities. We suggest that this modification could make coordination simpler.

2. Clarify under 40 CFR 264.15 (d) that the "name" of the inspector may be an initial, partial name, or other identification so long as the identity of the inspector can be demonstrated.

   40 CFR 264.15(d) requires the owner/operator to record inspections as a part of the log for that facility. This requirement includes the name of the inspector as a part of the log. The purpose for this requirement is so the facility can identify the person that made the inspection when the log is examined by a government official. Once the inspection is done, a company often will require the person doing the inspection to sign the log. At times this signature is not legible. When the government official audits the log, they can decide that the signature is not legible and declare that the facility has not met their obligation to identify the inspector. There are many different ways to identify the person that did the inspection. This could include initials, employee ID number, scanning employee ID badge, etc. However, the way the rule is currently written, the government official may not be willing to take an alternative identifier for the inspector. CRWI requests that the Agency modify this provision to make it clear that other methods are allowed to identify the person doing the inspection.

3. Establish that any 40 CFR 264.15 weekly inspection may be conducted anytime during a calendar week, and need not be conducted within 7-days since the last weekly inspection.

   Some permitting authorities interpret the requirements in 40 CFR 264.15 in a manner that creates scheduling problems and reduces operational flexibility. Typically, when a facility sets up a daily inspection schedule for an instrument, they are not required to inspect that instrument at 8:00 am every day. If the instrument is inspected each day, that is adequate. We suggest extending this concept to the weekly inspections so that each weekly inspection must be completed sometime during that calendar week. This would give the facility operational flexibility without compromising the protection of the environment. We see extending this idea to monthly inspections as long as the inspections occur in the same week each month (e.g., all widgets are inspected during the third week of each month) or the same month each year for yearly inspections.

4. While in general CRIW supports delegating as much as possible to the states, there are certain requirements that become cumbersome if each state sets its own requirements. One example is the movement of hazardous waste across state

lines. Having multiple requirements makes this process more difficult than it needs to be. We do not have any specific suggestions on this issue but only wish to remind the Agency to keep this idea in mind when delegating programs to the states.

5. For the most part, the recent import/export final rules are an improvement over previous regulations. However, it has created problems concerning maquiladora operations. We suggest the Agency make the following changes to the import/export rule.

   a) EPA notice and consent is now required for wastes generated by a maquiladora operation. This was not previously required. Mexico still does not require consent for these maquiladora wastes to be shipped back to the U.S. (even though they are regulated as hazardous waste by Mexico), and EPA should not now change policy for imports from maquiladoras to require consent by EPA only. EPA should change 40 CFR 262.84(a)(2) to the following:

      In cases where the country of export does not require the foreign exporter to submit a notification and obtain consent to the export prior to shipment, the importer ***~~must~~*** ***is not required to*** *submit a notification to EPA in accordance with paragraph (b) of this section.*

      This could alternatively be addressed by keeping the requirement as it exists, but then by also adding an exemption for wastes being imported to the U.S. as returns from maquiladora facilities in Mexico. 40 CFR 262.84(b) should be similarly modified to state that that wastes from Mexican maquiladora facilities are exempt from these requirements.

   b) In addition to the universal hazardous waste manifest (UHWM) that is required by EPA in 40 CFR 262.84(a)(5) and 40 CFR 262.84(c), a ‘movement’ document that conforms to OECD (Organization for Economic Co-operation and Development) requirements is also now required by EPA in 40 CFR 262.84(a)(4) and 40 CFR 262.84(d). This movement document is essentially redundant and not needed by EPA. Mexico already has requirements for shipping documents for wastes being sent from maquiladora facilities to the U.S. The Mexico documents (for transit in Mexico) and the EPA UHWM (for transit in the U.S) are sufficient for documenting the contents of the shipment. 40 CFR 262.84(a)(4) and 40 CFR 262.84(d) should be modified to exempt wastes being imported from maquiladoras in Mexico.

   c) The contract or equivalent arrangement requirements in 40 CFR 262.84(a)(3) and 40 CFR 262.84(f) should not be required for maquiladora imports when the maquiladora, the U.S. importer, and the TSDF that is treating or disposing of the waste are all owned/controlled by the same parent corporation. The regulation in (f)(1) requires “equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity)”. This

requirement is confusing at best (what is an "equivalent arrangement" to a contract?), and is not needed when all of the movements are within a single corporate entity. The requirement for "equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity)" in (f)(1) should be changed to exempt a corporate or legal entity when the foreign exporter, importer, and the owner or operator of the receiving facility are controlled by the same corporate or legal entity.

6. RCRA Subparts AA, BB and CC are outmoded, confusing, and, in many cases, been superseded by one or more NESHAPs regulations that have comparable requirements for the same units. These requirements are essentially identical requirements in CAA Part 61 Subpart V or Title V air permit conditions. If a facility has to comply with NESHAPs in its air permit, and Subparts AA, BB, CC in its RCRA permit for the same regulated units, this could lead to a case of "double jeopardy" should the facility receive an air violation and hazardous waste violation for the same alleged deficiency. Subparts AA, BB and CC are a classic case of redundancy.

7. There is no reason to include hazardous waste treatment, storage, and disposal facilities in any future Spill Prevention, Control, and Countermeasure type regulations because these RCRA permitted facilities already have similar requirements.

   CRWI understands that EPA is in the process of deciding which source categories to include in a rulemaking under the Clean Water Act to develop Spill Prevention, Control, and Countermeasures (SPCC) type regulations for hazardous substances other than oils.

   The purpose of SPCC type regulations is to prevent and/or contain discharges to the navigable waters of the US. RCRA permitted facilities already have similar requirements to prevent and/or contain discharges from tanks, containers, and transfers. These are contained primarily in:

   - Subpart C (Preparedness and Prevention, 40 CFR 263.30 through 264.37);
   - Subpart D (Contingency Plan and Emergency Procedures, 40 CFR 264.50 through 264.56);
   - Subpart I (Use and Management of Containers, 40 CFR 264.170 through 264.179); and
   - Subpart J (Tank Systems, 40 CFR 264.190 through 264.200).

   All of these provisions include the requirements that every treatment, storage, and disposal facility have a contingency plan and emergency procedures designed to "minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water." In fact, these requirements often go beyond what is required under a SPCC type plan.

As a result of this coverage under RCRA, we see no need for this group of facilities to be covered under the current rulemaking and suggest that it not be included as a source category in this rulemaking effort. We would also like to point out that RCRA regulations (40 CFR 264.52(b)) already allow a facility to create and use one plan should an SPCC-type plan be required for RCRA permitted units.

8. Eliminate the use of Land Disposal Requirements (LDR) notification forms (40 CFR 268.7(a)(2)). Hazardous waste treatment, storage, and disposal facilities do not need the generator to send an LDR notification with his first shipment because the facility already knows the LDR concerns from the waste profile process. Even if waste streams change or new waste streams are offered, the waste profile process will catch these changes. The costs in producing these notifications by far exceed the minimal benefits they are intended to achieve. Having the generator send one more piece of paper does nothing to protect human health and the environment.

9. Revise the RCRA 'derived-from rule to 1) allow for a new combustion residuals code, and 2) eliminate the need to retain all of the other listed codes in the combustion residuals if the incineration process eliminated the biological, physical or chemical components or compounds that made the waste an F, K, P or U waste in the first place.

   Under RCRA, waste generated from the treatment, storage, or disposal of hazardous waste remains hazardous waste unless excluded elsewhere in the regulations. This is known as the "derived-from" rule and is intended to ensure that wastes that are treated, but which may still pose a threat to human health or the environment, do not fall through the cracks of RCRA regulation.

   The regulations covering this rule are found at 40 CFR 261.3(c)-(h). The "derived-from" rule pertains to common wastes such as:

   - Sludge produced in wastewater treatment units receiving hazardous waste;
   - Spill residues of hazardous wastes;
   - Ash from incinerating hazardous wastes; and
   - The residue of any hazardous waste treated on-site, that was accumulated in containers and tanks.

   As such, under the derived-from rule, wastes that are produced as the result of the treatment, storage, or disposal of a listed hazardous waste must continue to be regulated as that listed waste code (F, K, P, or U). This makes no sense if the treatment process eliminated the biological, physical or chemical components or compounds that made the waste an F, K, P or U waste in the first place. Residuals from a hazardous waste treatment process should only be assigned 'listed' waste codes if these F, K, P or U components or compounds are actually still contained in the treatment residuals themselves.

Air

1. Modify the 40 CFR Part 63 ZZZZ RICE NESHAP rule to exempt all emergency/standby engines and all engines <500 hp, without conditions.

2. The elimination of the startup, shutdown, and malfunction (SSM) exemption places industry in a situation where it is impossible to comply 100% of the time. Legitimate SSM circumstances normally occur in regulated industrial operations. Removal of the exemption places a regulated entity in potential violation when it has no control over a malfunction. We believe that the Agency has wrongly interpreted the 2008 Sierra Club decision and should stop removing SSM plans from the regulations in future rulemakings. We believe that EPA has at least two options on developing alternative methods for handling these events.

   a. Continue using work practices for startup and shutdown but modify the current policy to allow the use of work practices for malfunctions; or

   b. Allow facilities to develop and follow a site-specific SSM plan. This plan should be implemented in the same manner as operating and maintenance plans (referenced by the Title V and can be changed without invoking a permit modification).

   We urge the Agency to re-evaluate their SSM policies and welcome the opportunity to work with EPA in developing a more practical policy.

3. Revise EPA “once in, always in” policy as stated in the 1995 Seitz memo.

   In a May 16, 1995, memo to the Regions, John Seitz, then Director of the Office of Air Quality and Standards, EPA adopted a policy that a Part 63 affected unit at a major source remains an affected major source unit even if the facility subsequently reduces emissions and becomes an area source. In January 2007, EPA proposed to revise that policy and allowed area source requirements to apply to those sources that attain area source status regardless of previous status (70 FR 69, January 3, 2007). However, the Agency failed to finalize that rule and the 1995 "once in, always in" policy remains in place.

   CRWI believes that this policy results in disincentives to significant HAP emission reductions. As an analogy, if a hazardous waste large quantity generator decides to reduce or stop generating hazardous waste so that it does not need to continue complying with the large quantity requirements, there is no ‘once in, always in’ requirement that prohibits this. If that facility can reduce their waste to the point they become a small quantity generator, they are rewarded with fewer requirements. Likewise, if a facility install air pollution control equipment and no longer has the potential to emit above a major source threshold, then it should be credited with a minor source classification. EPA’s faulty logic that this could entice a facility to stop using the air pollution control equipment does not make sense.

That is why we have air emission monitoring, testing, inspections, recordkeeping and reporting requirements.

We believe it is time to review that policy and come up with an approach that will provide incentives for facilities to reduce emissions while still being protective of the environment.

TSCA

1. TSCA PCB Rules – Un-manifested waste and the generator responsibility. Transfer, storage, and disposal facilities are unfairly getting caught up as "generators" when re-manifesting wastes that are later determined upon testing at the treatment facility to contain PCBs. This leads to unfair EPA enforcement actions.

   It is common practice for a generator to ship waste materials to a storage and transfer facility. Transfer operation's Part B permits do not require sampling. As such, the waste containers are not opened or sampled but simply re-manifested to a treatment or destruction facility. The receiving facility will sample and analyze the waste based on their waste analysis plan. On occasion, the receiving facility will detect the presence of PCBs. Under the current regulations in 40 CFR 761.207, this then leads to the creation of an un-manifested TSCA waste report being submitted to EPA.

   In some of these cases, EPA has then proceeded to issue Notice of Violations to the storage and transfer facility because they are now listed as the "generator" of the waste and improperly offered PCBs into commerce. In fact, the storage and transfer facility had no reason to believe that there were PCBs in the waste since the original generator did not indicate PCBs on the waste profile. (Violation cites the manifest requirements in 40 CFR 761.207 not being followed).

   CRWI requests that the TSCA rules be modified to differentiate between the original generator that first caused the waste to be produced (and who has the obligation to identify the presence of PCBs) and a transfer facility that simply re-manifested the waste.

Others

1. Eliminate the ECHO database for hazardous waste facilities. The database is faulty, inaccurate, not kept up-to-date and subject to frequent misinterpretation by the public.

2. Eliminate Toxic Release Inventory reporting for the commercial hazardous waste industry. These requirements are intended for manufacturers and production facilities that have a stake in reducing their toxic releases. Commercial hazardous

waste facilities are in the business of properly managing toxic waste. There are no benefits to this reporting.