

Utility Solid Waste Activities Group

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U S W A G

December 15, 2003

Via Electronic Submission

EPA Docket Center
Mail Stop 5305T
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: RCRA Burden Reduction Initiative; Notice of Data Availability
Docket Number RCRA-1999-031

Dear Docket Clerk:

The Utility Solid Waste Activities Group¹ ("USWAG") is pleased to submit the following comments in response to EPA's Notice of Data Availability ("NODA") on the Agency's Resource Conservation and Recovery Act ("RCRA") Burden Reduction Initiative. See 68 Fed. Reg. 61662 (October 29, 2003). These comments supplement USWAG's prior comments in response to EPA's previous NODA (64 Fed. Reg. 32859 (June 18, 1999)) and proposed rule (67 Fed. Reg. 2518 (January 17, 2002)) on RCRA burden reduction issues. See USWAG Comments dated September 20, 1999 and April 17, 2002.

USWAG has a keen interest in EPA's RCRA burden reduction proposals. Most of the proposals target requirements for either permitted or interim status RCRA treatment, storage, or disposal facilities ("TSDFs") and interim status facilities under 40

¹ USWAG is an informal consortium of approximately 80 electric utility operating companies and associations, including the Edison Electric Institute ("EEI"), the National Rural Electric Cooperative Association ("NRECA"), the American Public Power Association ("APPA"), and the American Gas Association ("AGA"). EEI is the principal national association of investor-owned electric power and light companies. NRECA is the national association of rural electric cooperatives. APPA is the national association of publicly owned electric utilities. AGA is the national association of natural gas utilities. Together, USWAG members represent more than 85% of the total electric generating capacity of the U.S., and service more than 95% of the nation's consumers of electricity and over 93% of the nation's consumers of natural gas.

C.F.R. Parts 264 and 265. It is important to note, however, that many of the TSDF and interim status requirements targeted for burden reduction are also incorporated by reference in the 90-day accumulation unit provisions in 40 C.F.R. § 262.34. As hazardous waste generators, most USWAG members avail themselves of 90-day (or 180-day) accumulation units (collectively “90-day accumulation units”) under this regulation. Accordingly, the Agency’s RCRA burden reduction proposals targeting TSDFs and interim status facilities will also reduce the burdens applicable to entities operating under the 90-day accumulation unit requirements.

In its prior comments, USWAG supported the Agency’s proposed changes to RCRA’s recordkeeping and reporting requirements. We also made a number of suggestions to improve the Agency’s burden reduction proposals. USWAG encourages EPA to move forward on these and other burden reduction proposals. USWAG’s comments to the specific burden reduction proposals in the most recent NODA are outlined below.

A. USWAG Supports Extending Container/Tank Inspection Frequency Relief to Small Quantity Generators

USWAG continues its support for EPA’s proposal to amend 40 C.F.R. §§ 265.174 & 265.195(a) to reduce the self-inspection frequency for tanks from once a day to once weekly. See, e.g., 67 Fed. Reg. at 2524 and USWAG Comments dated April 17, 2002 at pp. 3-4. USWAG also supports EPA’s recent proposal to extend the reduced weekly inspection schedule for tanks to small quantity generator facilities and to tank ancillary equipment at both small and large quantity generator facilities. See 68 Fed. Reg. at 61665. This proposal makes sense and affirms EPA’s conclusion that the additional reduction in inspection frequency will bring significant costs savings without compromising environmental protection. *Id.*

B. Further Discretionary Reductions In Container/Tank Inspection Frequency Should Not Be Limited To National Environmental Performance Track Facilities

USWAG has consistently supported EPA’s proposal to allow facilities, on a case-by-case basis, to further reduce inspection frequencies for tanks, containers and containment buildings from weekly to at least monthly, if a facility can demonstrate sound environmental management practices and a sustained environmental compliance record. See USWAG Comments dated April 17, 2002 at p. 4. However, USWAG questions the value of EPA’s proposal to limit the availability of this inspection flexibility *solely* to facilities that are members of EPA’s National Environmental Performance Track (“NEPT”) program. USWAG agrees that, if a facility is approved by EPA to participate in the NEPT program, it can be presumed that the facility has demonstrated sustained superior environmental performance. USWAG recommends, however, that such facilities not simply be eligible to *apply* to conduct monthly inspections, but rather

should *automatically* qualify as a “sustained environmental performer,” and thus eligible for the reduced inspection frequency option.²

USWAG also questions the usefulness of EPA’s proposal to effectively bar all other companies with strong environmental compliance programs from being able to apply to EPA or a delegated state program for monthly inspection flexibility. If a facility can demonstrate sustained commitment to environmental compliance,³ there is no reason to exclude it from the benefit of applying for a discretionary reduction in inspection frequency.

In short, USWAG submits that a flexible approach, allowing NEPT facilities to *automatically* qualify for further reduced inspections and allowing other good environmental performers to *apply* for such relief, would meet EPA’s RCRA burden reduction goals *and* its desire to encourage and reward participation in the NEPT. The reduced inspection frequency would lessen RCRA recordkeeping and reporting burdens while maintaining protection of human health and the environment. 68 Fed. Reg. at 61664. Moreover, the fact that a NEPT facility is *automatically* eligible for the inspection frequency reduction based on its participation in the NEPT program is a strong incentive to join NEPT.

C. USWAG Supports EPA’s Proposals To Reduce Overlap In RCRA/OSHA Emergency Response Training

USWAG supported EPA’s original proposal to eliminate a number of the personnel training record keeping requirements currently set forth in 40 C.F.R. § 265.16, which are incorporated by reference into the 90-day accumulation unit provisions. See 67 Fed. Reg. at 2523 and USWAG Comments dated April 17, 2002 at p. 3. USWAG continues to support EPA’s proposal to (1) replace specific training components set forth in § 265.16(a)(3) with more comprehensive OSHA requirements, and (2) eliminate requirements under §§ 265.16(d)(1)-(3) to keep records of job titles, job descriptions, and the types and amounts of training provided to employees. 67 Fed. Reg. at 2523. USWAG affirms EPA’s conclusion that OSHA requirements are more extensive than RCRA emergency response training requirements. 68 Fed. Reg. at 61666. Moreover, we concur with EPA’s proposal to allow a facility owner/operator to choose whether to follow the OSHA or RCRA requirements (thereby recognizing that

² In other words, we recommend that EPA presume that an NEPT facility meets the “sustained environmental compliance” prerequisite for further reduced monitoring. Such facilities may still need to certify other prerequisites for reduced monitoring (*i.e.*, use of automatic monitoring devices; and low risks associated with the type of waste being managed at the facility). See 68 Fed. Reg. at 61665.

³ For example, by demonstrating factors such as (1) facility management commitment to sound environmental practices, (2) as sustained record of compliance, (3) continued environmental improvement, (4) a strong public outreach program, (5) use of automatic monitoring devices; and (6) low risks associated with the type of waste being managed at the facility. See 68 Fed. Reg. at 61665.

some facilities subject to RCRA emergency response requirements may not be subject to all OSHA training requirements). *Id.* EPA's proposal is a common-sense approach that allows for efficient compliance with the federal emergency response training requirements in a manner that reduces the burdens of EPA/OSHA regulatory overlap.

D. Use of Other Qualified Professionals In Lieu of Independent, Qualified, Registered Professional Engineers

USWAG supports EPA's proposal to drop the current requirement that a qualified professional engineer be "independent" and "registered" to perform certain tank structural integrity, installation review, and operating inspections. See, e.g., 40 C.F.R. §§ 265.191(a) & (b)(5)(ii), 265.192(a), & 265.192(b). We agree that "qualified professional engineers" that perform these functions should not be limited to independently employed professionals, but rather should include professional engineers who are employed by the regulated facility. 68 Fed. Reg. at 61666-61667. Accordingly, we concur with the Agency's proposal to drop the requirement that a "qualified professional engineer" be "independent." Likewise, USWAG also agrees with EPA that the terms "registered" and "professional" are redundant and thus the requirement to be "registered" should also be dropped. *Id.*

E. Clarification of Reduced Record Retention Requirements For RCRA Permitted and Interim Status Facilities

On behalf of USWAG members that may have RCRA TSDf permits or interim status, USWAG supported EPA's 2002 proposed change to 40 C.F.R. §§ 264.73(b) & 265.73(b) to reduce the retention period for certain records at permitted and interim status facilities from life of the facility to three years. 67 Fed. Reg. at 2524 and USWAG Comments dated April 17, 2002 at pp. 7-8. We also support the Agency's recent proposal to modify to these regulations to: (1) confirm that a TSDf or interim status facility need only maintain the latest estimates of closure and post closure costs (without respect to any time period) pursuant to 40 C.F.R. §§ 264.73(b)(8), 264.142(d), 264.144(d) & 265.73(b)(8); and (2) extend the three-year retention period to hazardous waste incinerators, which are also currently subject to life-time record retention requirements. 68 Fed. Reg. at 61667. USWAG agrees with EPA that these changes effectively address inconsistencies in the regulations and streamline records retention requirements without any negative impact to environmental protection.

F. USWAG Supports Continued Streamlining Of Groundwater Monitoring Requirements

USWAG has consistently supported EPA's burden reduction proposal to allow owners/operators of RCRA facilities to report on the effectiveness of groundwater monitoring on an *annual* basis rather than the current semi-annual basis required by 40 C.F.R. §§ 264.113(e)(5) & 265.113(e)(5). 67 Fed. Reg. at 2530 and see USWAG Comments dated April 17, 2003 at p. 8. USWAG has also supported related EPA proposals to: (1) allow groundwater monitoring plans and reports to be kept at a facility;

and (2) allow a facility conducting compliance monitoring under 40 C.F.R. § 264.99(g) to sample a subset of the wells and analyze samples for a subset of the Appendix IX constituents as opposed to the current requirement of annual analysis of all Appendix IX constituents from samples of all monitoring wells. *Id.*

USWAG agrees with EPA's recent proposal to expand these groundwater monitoring burden reductions proposals to include: (1) an amendment to 40 C.F.R. § 264.98(d) (which currently requires at least four samples from each well semi-annually) to allow facilities, with Administrator approval, to use alternative sampling procedures; (2) a similar amendment to 40 C.F.R. § 264.98(f)(3) to allow for approval of an alternative resampling schedule when Appendix IX constituents are detected (versus mandatory one month period); and (3) a clarification that the proposed change to annual monitoring would also allow for the submission of an annual (versus as semi-annual) corrective action report under 40 C.F.R. § 264.100(g). See 68 Fed. Red. at 61668. In addition to these changes, USWAG also recommends that facilities, with Administrator approval based on site-specific factors, be allowed to modify the number of Appendix IX constituents that must be collected during groundwater sampling.

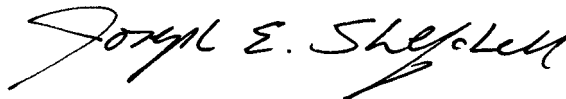
G. Permit Modifications To Implement Burden Reduction Proposals

USWAG supports EPA's proposal to allow permitted facilities to implement RCRA Burden Reduction through the streamlined Class 1 permit modification process rather than the potentially lengthy Class 2 process. *Id.* USWAG agrees that this approach is consistent with EPA's goal to have final burden reduction measures implemented as quickly as possible. *Id.*

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We appreciate the opportunity to provide EPA with these comments. If you have any questions, or if we can be of further assistance, please contact USWAG counsel, Paul Ackerman (202/861-3908) or Douglas H. Green (202/861-3847).

Respectfully submitted,



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Chairman,
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