

August 26, 1996

EPA RCRA DOCKET #F-96-MHWP-FFFFF
Office of Solid Waste
Mail Code 5305W
U.S. Environmental Protection Agency Headquarters
401 M Street, S.W.
Washington, D.C. 20460

Dear Sir/Madam:

On April 29, 1996, the U.S. Environmental Protection Agency (EPA) published a proposed rule titled, "Requirements for Management of Hazardous Contaminated Media (HWIR-Media)" in the Federal Register, (61 FR 18780). EPA solicited public comment regarding this proposed rule to be addressed to Docket #F-96-MHWP-FFFFF, by August 28, 1996.

The purpose of this letter is to provide EPA with comments concerning this proposed rule, as prepared by the HWIR Contaminated Media Task Force of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO). These comments reflect the views of the state hazardous waste management program offices represented on the ASTSWMO Task Force. Hereafter, we will refer to these state waste management program offices by the short form "states," unless otherwise noted. Although this letter does not provide a comprehensive scan of all-state views on the proposal, it does convey states' experience with program implementation and thus provides a valuable perspective on the rule's overall utility.

The Task Force would first like to express our appreciation to EPA for allowing the states to be fully involved as co-regulators in the development of the HWIR Media proposal. We applaud EPA's effort to improve and make more flexible the RCRA Subtitle C requirements that apply to media contaminated with RCRA listed or characteristically hazardous wastes.

This letter conveys states' preference for which of the two proposed options should be finalized. In addition, this letter addresses six key issues Task Force members believe to be critical elements of a final HWIR media rule. These key issues include: rule scope, treatment provisions, content of Remedial Management/Action Plans (RMPs/RAPs), public participation requirements, state authorization, and interstate shipments. Although there are other significant points raised by this proposal that are of interest to individual states, we believe these six issues are most germane to our efforts to craft a new regulatory system for cleaning up and managing media containing RCRA hazardous wastes, regardless of the rule option EPA chooses to finalize.



Option Preference

States strongly support the Unitary approach rather than the Harmonized approach. Although we recognize EPA's effort to address issues of interest to states (e.g., permits, LDRs, land placement) with the Harmonized approach, we believe the overall proposal is too complex and does little to promote the efficient and appropriate management of cleanup wastes. In addition, Task Force members fear that the use of the "bright line" would disrupt ongoing cleanups by introducing additional sampling and analysis requirements and spurring the need for separate management regimes for different classes of waste (e.g., "hazardous" contaminated media above the bright line and "non-hazardous" contaminated media below the bright line).

Instead, we support the finalization of a more unified approach that would exempt from RCRA Subtitle C all cleanup wastes managed under an enforceable Remedial Action Plan (RAP). This type of system would be simpler, more flexible, and allow the overseeing agency to implement cleanup decisions and management standards that are tailored to the needs of individual sites. In short, we believe the Unitary approach best meets states' need to have a regulatory framework that is holistic in nature and that recognizes state knowledge and experience in overseeing successful cleanups.

The following sections provide states' views on how EPA might best address key areas of the rule to ensure its successful implementation by states.

Rule Scope

The Task Force believes the rule's proposed waste universe is too narrow in that the definition of media does not include many types of wastes typically encountered at remediation sites (e.g., sludges, debris, abandoned containers, etc.). Limiting the rule scope in the manner outlined in the proposed rule would require facilities to segregate wastes at individual sites and apply different management standards to each type. The Task Force would instead prefer a rule that establishes a broad definition of media, including all remediation wastes. This approach would allow cleanups to be more appropriately focused on developing a holistic site remediation plan, rather than on classifying wastes simply to determine which set of regulations apply.

Treatment Provisions

State cleanup programs, whether using state or federal cleanup authorities, have sufficient treatment selection requirements that often make additional federal regulatory requirements unnecessary. For this reason, the Task Force supports the finalization of a unitary-type approach without a requirement for mandatory treatment of "hot spots." In our opinion, such a provision would unduly constrain the remedy selection process and limit the overseeing agency's ability to make appropriate cleanup decisions based on site-specific factors. If EPA believes it is necessary to

promulgate a final rule that addresses the issue of mandatory treatment of "hot spots," the Task Force recommends that EPA consider outlining treatment provisions in the form of guidance.

Content of Remedial Management/Action Plans (RMPs/RAPs)

States generally believe that the proposed informational components of RMPs/RAPs are appropriate as national minimum standards, given the current RCRA statutory requirements. We also appreciate that the rule provides the flexibility to include additional, site-specific informational requirements, as needed. However, as discussed further below, many Task Force members believe the public participation requirements associated with the approval of RMPs/RAPs may be overly prescriptive in some cases.

Public Participation Requirements

States believe that public awareness of and involvement in local cleanup actions is very important. Because of this, many states have developed detailed public participation requirements and/or procedures as a part of their own cleanup rules. The Task Force therefore urges EPA to recognize the ability of states to adequately implement public participation procedures that meet the intent of RCRA, without necessarily mandating specific procedural requirements that may, in certain cases, be overly prescriptive (i.e., for quick response or small-scale cleanup sites). Such an approach would provide an opportunity for states to use and/or develop procedures that best fit the needs of each site and community, resulting in a more flexible and, we believe, ultimately more effective and efficient public participation process.

State Authorization

State authorization has traditionally been an issue of critical importance to states. States appreciate that the HWIR media rule attempts to put forth a streamlined state authorization process that could be applicable to many other hazardous waste rulemakings, as well as this one. We have grave concerns, however, that the proposed approach represents a "business as usual" approach to state authorization and will offer no real simplification to the complex and burdensome authorization process most states have experienced to date. In fact, the Task Force fears that EPA equivalency determinations focusing on an evaluation of "essential elements" may, in actuality, result in new complications and delays to the authorization process as these "essential elements" are defined.

States therefore oppose the tiered state authorization process proposed in the HWIR Media rule. We strongly encourage EPA to re-focus its efforts on the development of a highly streamlined self-certification approach to state authorization, building off the significant work states contributed to this effort during the rule development process. We believe it is essential that EPA recognize states' ability to successfully implement cleanups. EPA should fulfill its commitment to streamlining the authorization process and promulgate such a self-implementing approach.

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Interstate Shipments

States acknowledge that the issue of interstate shipments of cleanup wastes may be problematic. However, we have concerns that the proposed procedures for addressing interstate issues will be very difficult to implement. Based on these concerns, as well our observation that remediation waste is virtually always managed in-state, we believe that the issues associated with interstate shipments may be better served if the rule is silent on the subject. If EPA feels compelled to address this issue in a final rule, the Task Force urges that a simple notification to the receiving state be the extent of any national requirements.

Again, we have appreciated the opportunity to work with EPA in the development of this rule, and look forward to continuing to assist the Agency as the rule is finalized.

Sincerely,

Catherine Sharp (AP)

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