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COMMENTS OF THE CHEMICAL MANUFACTURERS ASSOCIATION ON EPA'S PROPOSED HAZARDOUS WASTE IDENTIFICATION RULE

DRAFT

EXECUTIVE SUMMARY

CMA supports the Agency's efforts to reform the hazardous waste identification program that has regulated certain wastes more stringently than necessary to protect human health and the environment. With changes, EPA's proposed Hazardous Waste Identification Rule ("HWIR")[1/] could properly identify wastes that do not meet the statutory definition of hazardous waste and prevent the over-regulation of these low risk wastes. In particular, CMA supports the immediate adoption of a concentration-based threshold for listed hazardous wastes that excludes low concentration, low risk wastes from the definition of hazardous waste. This option, called "CBEC" (Concentration-Based Exemption Criteria), could be the mechanism to avoid the over-regulation that results from EPA's mixture and derived-from rules, as EPA acknowledged in 1980 when adopting these rules.

By EPA's own estimates, its CBEC proposal would result in cost savings of $98 to $270 million per year that is being spent for Subtitle C waste management to reduce a truly minuscule level of risk. In addition, CBEC would result in a much better allocation of the scarce waste management resources, and it would facilitate remediation and waste minimization, if certain changes are made to it that result in it being more accurate and implementable. Our suggested changes to EPA's CBEC proposal -- CMA's "Preferred Option" -- follow:

1/ See 57 Fed. Reg. 21450 (May 20, 1992).

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- **Revise the CBEC levels based on corrections to the EPA model.** Currently, the model that EPA uses to estimate the risk that hazardous constituents may present to human health and the environment is based on methodological errors and overly-conservative assumptions. If EPA corrects its model in the way CMA suggests it would not increase projected exposures or risks. Rather, the corrections would result in the Agency designating listed hazardous wastes as non-hazardous wastes if they contain hazardous constituents at concentrations less than 240 times their health-based levels. In other words, the CBEC Tier 1 dilution and attenuation factor would be no less than 240.

- **Adopt more practical implementation procedures.** CBEC needs to be largely self-implementing if it is to achieve its goals. The generator should test for those constituents which it certifies to EPA as reasonably expected to be in a wastestream. EPA and the public should be given notice of a generator's reliance on a CBEC exemption and an opportunity to review the supporting documentation.

- **Exclude other low risk wastes from the hazardous waste regulatory program if they are "contingently managed" in especially protective units.** Contingent management should be adopted now. It will establish protective management standards under a continuum of control for "more risky," low risk waste and remove them from the hazardous waste program. EPA should expand the "contingent management" concept to impoundments, waste piles, tanks, and thermal units.

- **Adopt a two-pronged approach to regulating remediation wastes.** Remediation wastes being managed under a federal or state approved remediation plan should be excluded from Subtitle C. In the plan, the overseeing agency should specify the management controls for the remediation wastes. Remediation wastes that are not managed under an approved plan should be excluded from the definition of hazardous waste if they fall below the CBEC concentration levels.

- **CBEC Must Cap BDAT.** Wastes or contaminated media that are excluded from Subtitle C present minimal risk, and thus should not have to be further treated to technology-based standards under the Land Disposal Restrictions program. Such wastes and media, however, should be subject to a dilution prohibition under Part 268, not Part 261, and normal aggregation activities should not be considered dilution.

- **Allow more listed wastes to be eligible for the CBEC exemption.** EPA should allow the regulated community to use, when available, non-EPA health studies that are peer-reviewed, established non-SW-846 testing methods, and surrogate constituents.

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- **Use chemical-specific and site-specific DAFs.** EPA should derive the CBEC exemption levels from chemical-specific DAFs whenever EPA has reliable data demonstrating that a constituent will be subject to chemical or physical mechanisms, such as hydrolysis, adsorption, biodegradation, metals precipitation, or metals specialization that will limit its migration through groundwater. Site-specific factors should also be considered in developing DAFs.

- **Facilitate CBEC taking effect in authorized states.** EPA should change the way it will authorize states to administer CBEC so that it takes effect as quickly as possible.

CMA opposes pursuing the proposed Expanded Characteristic Option ("ECHO") at this time. This option, which could regulate large quantities of additional waste under RCRA Subtitle C, should not be adopted until EPA does four things: First, EPA must revise the way it estimates the risk these wastes might present – consistent with the changes we suggest for CBEC. Second, EPA should thoroughly assess the impact of ECHO on protecting human health and the environment, on the recycling of wastes, and on affected industry and Agency resources. Third, EPA must allow sufficient time for the regulated community to come into compliance with the RCRA requirements that result from newly classifying ECHO wastes as hazardous. Fourth, EPA should resolve many legal and policy questions regarding ECHO that will arise from such an action.

CMA's views on the many issues that are raised by the proposed HWIR are summarized in the Table of Contents that follows. We applaud the Agency's CBEC proposal. If EPA improves its risk assessment methodology and adopts workable implementation procedures, CBEC can identify and direct non-hazardous wastes to Subtitle D and save hundreds of millions of dollars while continuing to protect human health and the environment.

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