Hazardous Waste

EPA PREPARING GUIDANCE FOR USE IN APPROVING PCB DISPOSAL FACILITIES

Guidance to assist Environmental Protection Agency regional administrators in approving disposal sites for polychlorinated biphenyls (PCBs) under marking and disposal regulations which became effective April 18 (Current Report, February 17, p. 1754) is being developed by the agency's Office of Solid Waste.

The draft guidance requires the regional administrators to approve all incinerators and chemical waste landfills used for disposal of PCBs. Site approval coordinators are appointed to handle applications from facilities wishing to dispose of PCBs.

Facilities must notify the coordinators if they intend to continue disposing of PCBs or begin disposing of them in the future. If EPA decides the facility requires agency approval, the facility must then submit a technical report, which is equivalent to an application.

A draft of the guidance, portions of which appear in the Full Text section of this report, includes several checklists that coordinators can use for determining if a facility requires EPA approval and for evaluating the technical reports submitted by facilities.

Technical Support Team

The draft guidance informs the regional administrators that a Headquarters Laboratory Technical Support Team (TST) is available to provide "support and guidance" in inspecting and approving the facilities.

This TST aid may consist of: (1) a complete site evaluation including review of the technical report, (2) monitoring of trial burns carried out by incinerators, (3) expertise to the Region on individual subjects such as hydrogeology.

Two Approval Alternatives

In evaluating a facility for PCB disposal, the EPA regional administrator may choose one of two alternatives in conducting site approval: the evaluation may be performed in-house using regional personnel or TST support, or EPA can accept state certification of the facility, thereby removing the need for any EPA investigation.

The draft guidance addresses this second option and discusses the state's role in certifying and approving facilities for PCB disposal.

The draft guidance also discusses public comment in the approval process, and the need to insure that public participation does not disrupt this process.

For facilities now disposing of PCBs, "it is imperative that approvals (or denial) be granted as soon as possible to prevent the dangerous buildup on backlogs of waste. Thus, a formal hearing procedure is probably precluded for these facilities," the draft guidance says.

Regional staff are advised to accept written comments during a 30-day comment period during which the technical evaluation is being conducted.

Approval Process Temporary

According to the draft guidance, the separate permitting system for PCB disposal will continue until procedures under the Resource Conservation and Recovery Act are proposed. After that, "it seems expeditious to fold consideration of the site approval process of the PCB marking and disposal regulations into the whole RCRA implementation process," the draft guidance says.

Pesticides

EPA TO RESCIND CONTESTED REGULATION INTERPRETING FIFRA REPORTING REQUIREMENTS

The Environmental Protection Agency is planning to rescind its regulation outlining the agency's interpretation of pesticide registrant reporting requirements under Section 6(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act -- a regulation that has been contested by two chemical trade organizations.

An EPA attorney told Chemical Regulation Reporter May 11 that the agency is filing a brief with the U.S. District Court for the District of Columbia advising that the Chemical Specialties Manufacturers Association's and National Agricultural Chemists Association's lawsuit challenging the regulation be dismissed as moot because of EPA's decision to rescind the rule.

CSMA and NACA filed suit against EPA last year charging that the portion of the FIFRA Section 3 reporting regulations interpeting registrant reporting requirements under Section 6(a)(2) of the Act is unlawful and invalid because of the regulation's omission of the words "factual" and "unreasonable" -- wording used in the statutory language (Current Report, December 16, p. 1417). The trade groups recently filed a motion and memorandum supporting summary judgment on the suit which also cited the "inconsistency" of the FIFRA Section 6(a)(2) requirements with the agency's policy for reporting substantial risk information under Section 8(e) of the Toxic Substances Control Act (May 5, p. 167).

Edward Gray, of the EPA Office of General Counsel, said that the agency has concluded that its current regulation interpreting Section 6(a)(2) is "not very informative" and has decided to revoke that particular part of the Section 3 reporting regulations and issue a new rule that states the agency's policy "more clearly and comprehensively."

According to an action memorandum on the issue from EPA General Counsel Joan Z. Bernstein to Administrator Douglas M. Costle, EPA finds itself "in the posture of trying to argue the Congress' inclusion of the two words was without any purpose, in order to support an argument upholding the validity of a regulation which is supposed to give guidance, but instead merely raises questions."

The memorandum, which was signed by Costle May 10, notes, however, that EPA's decision to revoke the regulation does not mean that the agency agrees with CSMA's and NACA's views of the meaning of Section 6(a)(2). "If we are to litigate with industry on the meaning of this section of the statute, we believe it is preferable to litigate that issue directly, after we have clearly stated our understanding of it," the memorandum says.

The memorandum directs the EPA staff to prepare two Federal Register documents -- one revoking the current Section 6(a)(2) regulation, and the other providing a General Counsel's opinion on the agency's interpretation of the section.

Arsenic

FIVE COMPANIES PETITION FOR REVIEW OF STANDARD; NO DECISION MADE ON STAY

Five smelting companies May 3 filed a petition for review of the Occupational Safety and Health Administration's permanent standard for arsenic.

The petition was filed in the U.S. Court of Appeals for the Ninth Circuit, San Francisco, Calif., by the American

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