

# memorandum

DATE: November 30, 1999

REPLY TO  
ATTN OF: Office of Environmental Policy and Assistance (EH-413):Fortune:6-7302

SUBJECT: EPA Notice of Proposed Rulemaking: Mixture and Derived-From Rules and Hazardous Waste Identification Rule (HWIR)

TO: Distribution

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**Purpose of this Memo**

[1] To notify DOE elements that, on November 19, 1999 (64 FR 63382), the U.S. Environmental Protection Agency (EPA) published a *notice of proposed rulemaking (NPRM)* under the Resource Conservation and Recovery Act (RCRA) that:

- Proposes to amend and retain the “mixture” and “derived-from” rules.
- Discusses an *implementation framework* for establishing risk-based, chemical-specific exemption levels, which would be used to identify listed hazardous wastes that could be safely exempted from hazardous waste regulations -- known as the Hazardous Waste Identification Rule (HWIR).
- Discusses the possibility of replacing technology-based land disposal restriction (LDR) treatment standards with risk-based treatment standards.

[2] To request that DOE elements review and provide comments in response to this NPRM.

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**Separate Comment Periods**

Be aware that this NPRM involves *two* comment deadlines that relate to separate sets of preamble sections.

- A 90-day comment period is provided for the components of the NPRM that propose to amend and retain the mixture and derived-from rules [i.e., Sections I-IV, Sections XXI-XXVI (as applicable), and proposed regulatory language].
- A 180-day comment period is provided for the remaining components of the NPRM.

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**Mixture and Derived-From Rules**

Retaining the Rules. EPA proposes to retain the mixture and derived-from rules (with certain revisions) to ensure that hazardous wastes that are mixed with other wastes or that result from the treatment, storage, or disposal of hazardous wastes do not escape regulation, and thereby pose a risk to human health and the environment.

Proposed Revisions to the Rules. Currently, 40 CFR 261.3(a)(2)(iii) specifies that a *mixture* of any listed hazardous waste, which was listed solely because it exhibits the characteristic(s) of ignitability, corrosivity, and/or reactivity, is no longer a hazardous waste if the mixture does not exhibit a hazardous characteristic. However, the current regulations contain no parallel provisions for *decharacterized listed wastes* (that still meet the original listing descriptions), or for nonhazardous *derivatives* resulting from treatment, storage, or disposal of such listed hazardous wastes. Thus, EPA proposes:

- To delete the existing 40 CFR 261.3(a)(2)(iii), which addresses only mixtures; and

- To add exclusions from the definition of hazardous waste in 40 CFR 261.3(g) for:
  - (1) any hazardous waste listed solely because it exhibits the characteristic(s) of ignitability, corrosivity, and/or reactivity, if the waste no longer exhibits any hazardous characteristic;
  - (2) any *mixture* of a solid waste and a hazardous waste listed solely because it exhibits the characteristic(s) of ignitability, corrosivity, and/or reactivity, if the *mixture* no longer exhibits any hazardous characteristic; and
  - (3) any solid waste generated from treating, storing, or disposing of a hazardous waste listed solely because it exhibits the characteristic(s) of ignitability, corrosivity, and/or reactivity, if the waste does not exhibit any hazardous characteristic.

EPA also proposes to require that wastes, mixtures, and derivatives excluded from the definition of hazardous waste in 40 CFR 261.3(g) must comply with the LDR regulations, even if they are nonhazardous at the point of land disposal.

In addition, EPA proposes to conditionally exempt certain low-level mixed wastes from the mixture and derived-from rules.<sup>1</sup>

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**HWIR  
Exemption  
Framework**

The NPRM discusses an *implementation framework* for two HWIR exemption options. Under these options, wastes that have been designated as listed hazardous wastes (or are mixed with, derived-from, or contain listed hazardous wastes) would no longer be subject to RCRA Subtitle C hazardous waste management requirements, if the wastes meet chemical-specific exemption levels. The two options include:

- The "generic" HWIR exemption; and
- The "landfill-only" HWIR exemption.

The NPRM also describes and requests comments on the risk assessment approach used to develop these two HWIR exemption options.

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**"Generic"  
HWIR  
Exemption  
Option**

Under the generic HWIR exemption option, a listed hazardous waste would no longer be regulated as hazardous once the following conditions were met:

- The waste no longer contains any HWIR exemption chemical in excess of the generic HWIR exemption level;
- Specified testing and retesting of the waste (only for the HWIR exemption chemicals reasonably expected to be present in the waste) has been performed

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<sup>1</sup> EPA issued a separate NPRM on 11/19/99 (64 FR 63464) that proposes to conditionally exempt certain mixed wastes from various RCRA hazardous waste regulations. See EH-41 memorandum dated November 23, 1999, subject: EPA Notice of Proposed Rulemaking: Storage, Treatment, Transportation, and Disposal of Mixed Waste.

according to a sampling and analysis plan, and such testing and retesting documents compliance with the generic HWIR exemption levels;

- The waste does not exhibit any hazardous waste characteristics; and
- The responsible regulatory agency has been notified that the waste is being managed according to the generic HWIR exemption, and confirmation that the notification was received has been obtained.

There would be no limitations regarding where an HWIR exempted waste could be managed and disposed under this option (except for those required by State regulations applicable to nonhazardous industrial wastes).

**"Landfill-Only" HWIR Exemption Option**

Under the landfill-only HWIR exemption option, a listed waste would have to meet a different set of HWIR exemption levels (i.e., based on risks associated with disposal of this waste in State-regulated, nonhazardous waste landfills). This HWIR exemption option would be subject to all the same implementation conditions and requirements that are described above for the generic HWIR exemption. In addition, the landfill-only exemption would include the following conditions and requirements:

- The waste would have to be disposed in a landfill.
- The waste could not be placed on the land, prior to disposal in a landfill (e.g., temporary placement in a waste pile would not be allowed).
- Shipments of waste would be subject to certain tracking and recordkeeping requirements to ensure arrival of the waste at a landfill.

**Both HWIR Exemption Options**

The following items apply to both proposed HWIR exemption options:

- The two options would be self-implementing.
- Failure to meet any condition would render the waste hazardous once again, making it immediately subject to the RCRA Subtitle C regulations.
- If a listed hazardous waste is reasonably expected to contain an HWIR exemption chemical for which EPA does not develop an HWIR exemption level, the waste would not be eligible for the exemption.
- LDR treatment standards would have to be met before disposal of the HWIR exempt waste, unless at the point of generation all HWIR exemption chemicals reasonably expected to be present in the waste were at concentrations below the exemption levels.

**HWIR Risk Assessment**

The NPRM requests comment on the HWIR risk assessment approach, which EPA developed to estimate chemical-specific potential risks to human and ecological receptors living in the vicinity of industrial nonhazardous waste sites that could manage HWIR exempt wastes. The Agency hopes to use such risk estimates, along with other information, to define chemical-specific exemption levels for one or more of the HWIR exemption options.

**Possible  
Revision to  
LDR  
Treatment  
Standards**

Proposed implementation of possible risk-based LDR treatment standards:

- *If HWIR exemption level is less stringent than existing LDR level:* The generic HWIR exemption level for a chemical would replace that chemical's existing LDR numerical treatment standard. Meeting the HWIR exemption level would simultaneously satisfy LDR treatment requirements for those chemicals.
- *If HWIR exemption level is more stringent than existing LDR level:* the existing LDR treatment standard would not be replaced by the HWIR level. If the waste meets the LDR treatment standards but not the HWIR exemption levels, the LDR requirements would be satisfied, but the waste would remain hazardous.

**Availability  
of NPRM**

The NPRM was published in the *Federal Register* at 64 FR 63382-63461, and can be accessed via the Internet at:

<http://www.epa.gov/epaoswer/hazwaste/id>

**Action  
Items**

[1] *Input regarding the component of the NPRM proposing amendment and retention of the mixture and derived-from rules [Sections I-IV of the preamble, Sections XXI-XXVI (as applicable) of the preamble, and proposed regulatory language amending 40 CFR 261]:*

- DOE elements are requested to provide their comments (and available supporting information) to the Office of Environmental Policy and Assistance (EH-41) **on or before Friday, January 21, 2000**. In providing your input, please refer to the specific sections of the NPRM to which each item pertains.

Input may be submitted (with a signed hard copy to follow) to:

FAX (202) 586-3915  
E-Mail [william.fortune@eh.doe.gov](mailto:william.fortune@eh.doe.gov)

[2] *Input regarding the components of the NPRM that address the HWIR exemption options, HWIR risk assessment, and possible revision to the LDR treatment standards [Sections V-XX and Sections XXI-XXVI (as applicable) of the preamble]:*

- Please review and begin developing comments in response to these components of the NPRM. By way of a separate memorandum, EH-41 will identify the requested time line for submitting comments on these remaining sections.

Based on the input from DOE elements, an internal analysis, and collaboration with the HWIR Focus Group, EH-41 will develop two separate consolidated Departmental responses to the NPRM (i.e., relating to the two separate comment periods recognized above).

**Contact** If you have questions regarding the NPRM or this request for comments, please contact Bill Fortune at (202) 586-7302.

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(for) Raymond P. Berube  
Acting Director  
Office of Environmental Policy and Assistance