



**Department of Energy**  
Washington, DC 20585  
December 15, 2003

EPA Docket Center  
Mailcode: 5305T  
Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**Attention Docket ID No. RCRA-1999-0031**

Dear Sir or Madam:

Re: *Resource Conservation and Recovery Act Burden Reduction Initiative; Notice of Data Availability*

On October 29, 2003, the U.S. Environmental Protection Agency published a notice of data availability (68 *FR* 61662) requesting additional comment on ideas for reducing the recordkeeping and reporting burden imposed on the states, the public, and the regulated community under the Resource Conservation and Recovery Act (RCRA). The U.S. Department of Energy (DOE) appreciates the opportunity to comment on the burden reduction ideas published in the *Federal Register* notice.

The enclosed DOE comments are divided into two sections: general and specific. The general comment addresses DOE's overall support for the burden reduction initiative. The specific comments address particular sections of the notice. For clarity, each specific comment is preceded by a reference to the section of the notice to which it applies and a brief description of the issue to which DOE's comment is directed.

If you have any questions or need further clarification of our comments, please contact Steven Woodbury of my staff at 202-586-4371, or [steven.woodbury@eh.doe.gov](mailto:steven.woodbury@eh.doe.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "T. Traceski".

Thomas T. Traceski  
Director  
Office of Pollution Prevention  
and Resource Conservation

Enclosure



**UNITED STATES  
DEPARTMENT OF ENERGY**

**Comments On  
*RESOURCE CONSERVATION AND RECOVERY ACT  
BURDEN REDUCTION INITIATIVE***

**NOTICE OF DATA AVAILABILITY  
(68 FR 61662; October 29, 2003)**

*December 15, 2003*

**UNITED STATES DEPARTMENT OF ENERGY  
COMMENTS ON  
RESOURCE CONSERVATION AND RECOVERY ACT  
BURDEN REDUCTION INITIATIVE**

**NOTICE OF DATA AVAILABILITY  
(68 FR 61662; October 29, 2003)**

**GENERAL COMMENT**

The U.S. Department of Energy (DOE) appreciates the opportunity to review and comment on the U.S. Environmental Protection Agency (EPA or the Agency) notice of data availability requesting additional comment on ideas for reducing the recordkeeping and reporting burden imposed on the states, the public, and the regulated community by the Resource Conservation and Recovery Act (RCRA) implementing regulations. In general, DOE supports EPA's effort to reduce this burden and urges EPA to expeditiously finalize the burden reduction rule.

**SPECIFIC COMMENTS**

**III. Discussion of Additional Items for Comment**

**III.B Further Reduced Inspection Frequencies for Performance Track Facilities**

- 1. p. 61665, col. 2 – Because of the burden that evaluating compliance might impose on authorized States, EPA is reconsidering making the opportunity to decrease the inspection frequencies for containers, containment buildings, and tanks available to all generators. Accordingly, the Agency solicits comment on whether to limit this opportunity to member companies of the National Performance Track Program. In addition, EPA solicits comment on whether the relief should be granted only to member companies of the National Performance Track Program if this opportunity were extended to areas subject to spills.**
- a. DOE supports giving all facilities the opportunity (on a case-by-case basis) to decrease the inspection frequencies for containers, containment buildings, and tanks. As previously indicated in *Comments on Resource Conservation and Recovery Act Burden Reduction Initiative Notice of Proposed Rulemaking* (Letter to RCRA Docket No. F-1999-IBRA-FFFFF, April 17, 2002, Specific Comments on Preamble, II.C.1), DOE believes this approach would provide facilities with incentives for establishing more protective designs, environmental management systems, and compliance practices. However, if only National Performance Track Facilities are eligible for the decrease in inspection frequencies, the benefits of the approach would be diminished. Accordingly, DOE would prefer that the opportunity not be limited at the federal level to National Performance Track Facilities. Having said this, DOE wishes to express its support for providing additional meaningful incentives for participants in the National Performance Track Program, when appropriate. But, such additional incentives should not necessarily be provided at the expense of more widespread burden reduction.

DOE acknowledges the potential burden on authorized states from case-by-case reviews of inspection programs. However, states would not be required to become authorized for this program and also would have the option to adopt a more stringent approach, including limiting eligible facilities within their boundaries to National Performance Track Facilities. Thus, it should not be necessary to limit the proposed relief at the federal level.

- b. DOE supports extending the opportunity for a decrease in inspection frequency on a case-by-case basis to areas subject to spills. As previously indicated in *Comments on Resource Conservation and Recovery Act Burden Reduction Initiative Notice of Proposed Rulemaking* (Letter to RCRA Docket No. F-1999-IBRA-FFFFF, April 17, 2002, Specific Comments on Preamble, I.E.1.a), DOE believes this would be justified because activities that may cause spills usually allow for the spills to be easily detected and quickly cleaned up. More frequent inspections are unlikely to result in quicker spill detection. Also, for the reasons stated in item III.B.1.a, above, DOE suggests that EPA not limit this element of the burden reduction initiative to members of the National Performance Track Program.

### III.C RCRA/OSHA Overlap in Emergency Response Training

1. **p. 61666, col. 1 – In 2002, EPA proposed to eliminate the RCRA emergency response training requirements in favor of the Occupational Safety and Health Administration (OSHA) requirements. A number of commenters suggested that the Agency provide additional flexibility to this change by allowing the facility owner/operator to determine whether to follow the RCRA or OSHA requirements. Comments on this alternative approach are requested.**

As was stated in *Comments on Resource Conservation and Recovery Act Burden Reduction Initiative Notice of Proposed Rulemaking* (Letter to RCRA Docket No. F-1999-IBRA-FFFFF, April 17, 2002, Specific Comments on Proposed Regulatory Text, 1), DOE supports the goal of modifying the RCRA personnel training requirements to eliminate overlap with the OSHA regulations that establish training requirements for emergency response personnel. DOE agrees that this goal would be accomplished by allowing the facility owner/operator to determine whether to follow the RCRA or OSHA requirements (as opposed to the proposed approach of requiring facilities to follow the OSHA regulations). Furthermore, the more flexible approach of allowing the facility owner/operator to decide whether to follow the RCRA or OSHA requirements would address the concern raised in DOE's April 17, 2002 comment regarding potential misinterpretation of EPA's proposed regulatory text for §§ 264.16(a)(3)(i) and 265.16(a)(3)(i).

Specifically, DOE expressed concern that the phrase, "Have received training *required* by the Occupational Safety and Health Administration at 29 CFR 1910.120(p)(8) or 1910.120(q) as applicable" [emphasis added], which appeared in the proposed regulatory text, might be misinterpreted as not applicable to some DOE contractors. This concern arose because, under a 1992 Memorandum of Understanding between DOE and the Department of Labor, OSHA requirements do not apply directly to many DOE contractors. DOE suggested that the quoted phrase be modified as follows (redline = addition; strikeout = deletion): "Have received training ~~required~~ **defined** by the Occupational Safety and Health Administration at 29 CFR 1910.120(p)(8) or 1910.120(q)."

### III.D Professional Certifications

1. **p. 61666, col. 2 through p. 61667, col. 3 – In its 2002 notice of proposed rulemaking (NPRM) regarding RCRA burden reduction, EPA proposed to allow Certified Hazardous Materials**

**Managers to certify the effectiveness of the design and operation of certain hazardous waste treatment units, in addition to “independent, qualified, registered professional engineers” (who, along with registered geologists for some requirements, are the only professionals allowed to do such certifications under existing regulations). Based on comments in response to the NPRM and discussions with the States, EPA is now considering allowing professionals credentialed by a program meeting the requirements of ASTM E1929-98, “Standard Practice for the Assessment of Certification Programs for Environmental Engineers: Accreditation Criteria,” (rather than just Certified Hazardous Materials Managers) to perform RCRA certifications, but limiting the certifications such professionals may do to three: drip pad evaluations, drip pad inspections, and BIF direct transfer equipment assessments. The Agency solicits comments on whether the ASTM standard is appropriate; whether the right choices were made about which certifications must be conducted by qualified professional engineers (as opposed to persons that are credentialed by accredited programs meeting the ASTM standard); and whether the existing requirement for “independent, qualified, registered professional engineers” to conduct certifications should be modified to require certifications by “qualified professional engineers.”**

- a. In general, DOE agrees that the RCRA regulations should dictate that each required certification must be performed by a *qualified* hazardous waste management professional. If a hazardous waste management professional other than a licensed engineer can be demonstrated to have the qualifications necessary to perform a required RCRA certification, DOE supports finalizing regulatory language that would allow it.
- b. DOE concurs with EPA’s conclusion that the regulations should require individuals performing RCRA certifications to be qualified, but need not require them to be independent.

### **III.F Groundwater Monitoring Requirements**

1. **p. 61668, cols. 1 and 2 – EPA reports on changes to the groundwater monitoring requirements that were suggested in three comments received by the Agency in response to the 2002 NPRM regarding RCRA burden reduction. The Agency notes that two of these suggested changes appear reasonable. Comments are requested on the merits of the third suggested change.**
  - a. DOE supports removing inconsistency in the regulations by revising the detection monitoring requirements in 40 CFR 264.98(d) such that facilities will have flexibility to request the Regional Administrator’s approval for alternate sampling procedures, in the same manner as already is provided in the general groundwater monitoring requirement in 40 CFR 264.97(g)(2).
  - b. DOE supports changing the language in the groundwater detection and compliance monitoring requirements to say that repeat sampling, in the event a facility finds Appendix IX compounds in groundwater, must occur either within one month of the sampling that revealed the presence of the Appendix IX compounds or within a different time frame approved by the EPA or an authorized state.

- c. DOE supports making changes in 40 CFR 264.100(g) to maintain consistency with the changes in 40 CFR 264.113(e)(5) that were proposed in the 2002 NPRM. As modified, these regulatory sections would require an annual instead of semi-annual corrective action report.

### **III.H Permit Modifications**

1. **p. 61668, col. 3 – EPA requests comment on allowing permitted facilities to use the Class 1 permit modification procedure, with prior Agency approval, to implement the changes arising from the final burden reduction rule. In addition, EPA requests comment on whether the Class 1 permit modifications should be allowed without prior Agency approval.**

DOE supports allowing permitted facilities to use the Class 1 permit modification procedures to implement any permit modification prompted by the final burden reduction rule. In addition, DOE generally supports not requiring prior Agency approval for such Class I permit modifications. However, for permit modifications that would implement provisions in the final burden reduction rule that provide for site-specific flexibility, such as the frequency with which system inspections or groundwater sampling events must be conducted at a particular facility, DOE would not object to a requirement for prior Agency approval.