Department of Energy
Washington, DC 20585
February 12, 1999

RCRA Docket Information Center
Office of Solid Waste (5305G)
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

Docket Number F-98-MMLP-FFFFF

Dear Sir or Madam:

Re: 63 FR 60332, Notice of Availability of Draft RCRA Waste Minimization PBT Chemical List

On November 6, 1998, the Environmental Protection Agency (EPA) published a notice of data availability and request for public comment on a list of 53 persistent, bioaccumulative and toxic (PBT) chemicals and chemical categories which may be found in hazardous wastes regulated under the Resource Conservation and Recovery Act (RCRA). The notice stated it will be used to promote voluntary waste minimization efforts which reduce the generation of PBT chemicals found in RCRA hazardous waste by at least half by the year 2005. As indicated in the Notice, comments were to be presented to EPA on or before January 9, 1999; however, EPA extended this deadline to February 16, 1999.

The Department of Energy (DOE) appreciates the opportunity to raise concerns and provide input in response to this Notice. In general, the Department supports EPA's efforts to develop a list of chemicals based on toxicity, bioaccumulative and persistent criteria and focus on the priority of reducing the use of these chemicals, the generation of waste containing these chemicals, and the release of these chemicals into the environment. However, this effort is just one of three PBT initiatives being developed by EPA and this list is just one of three. It is difficult to deal with three **priority** lists. Thus, the Department believes that EPA should consolidate the multiple PBT lists into one master list. This effort would serve to assist the regulated community in determining which chemicals they must report on and which chemicals "count" toward certain goals. We have also raised concerns about using the Toxic Chemical Release Inventory (TRI) as the method of measuring progress in this RCRA PBT initiative.

The enclosed comments are directed toward the issues EPA listed in the Notice and include viewpoints and issues identified by DOE Field Sites and Program Offices. These comments are introduced for EPA's consideration in developing the RCRA PBT initiative.

Sincerely,

Thomas T. Traceski
Director, RCRA/CERCLA Division
Office of Environmental Policy and Assistance

Enclosure

cc: N. Smith, Office of Solid Waste, Waste Minimization Branch, EPA

U.S. Department of Energy (DOE)
Comments on the Draft Resource Conservation and Recovery Act (RCRA) Waste Minimization Persistent Bioaccumulative Toxic (PBT) Chemical List
(63 FR 60332**;** November 6, 1998**)**

GENERAL COMMENTS

1. The EPA is proceeding with three initiatives that focus on chemicals which are characterized as being PBT: 1) a Draft Agency-Wide Multimedia Strategy for Priority PBT Pollutants which focuses on chemicals from the Canada/US Binational Toxics Strategy, 2) this Draft RCRA Waste Minimization PBT Chemical List, and 3) a proposed EPCRA Section 313 Rule - Lowering Reporting Thresholds for Certain PBT Chemicals. Each initiative has developed a separate PBT list. Although some chemicals appear on more than one of the lists, many chemicals do not.

The Department recommends that EPA consolidate the multiple PBT lists cited under various EPA draft rules, notices and programs into one master list that would identify the chemicals and programs under which they are being targeted. DOE believes that consolidating the lists would avoid potential confusion to facilities, particularly when EPA has plans to continue adding chemicals to the various lists. This effort would serve to assist the regulated facilities in determining which chemicals they must report on and which chemicals Acount@ toward certain goals. Consolidation of PBT lists would provide clarification just as EPA's *Title III List of Lists* was recently published to be used by facilities as a reference tool in complying with various regulations under EPCRA and the Clean Air Act.

2. EPA states that the Toxics Release Inventory (TRI) will be the primary database for measuring national PBT chemical reductions in hazardous wastes, but does not cite the specific section(s) of the TRI Form R that will be utilized. DOE has reviewed the *TRI Reporting Forms and Instructions, Revised 1997 Version,* and recommends that EPA use the sum of section 5.5.1A (Quantity of the Toxic Chemical Entering [on-site] RCRA Subtitle C Landfills) and section 6.2, (Transfers to Other Off-Site Locations). DOE believes that the resulting number would most accurately reflect only the quantity of the PBT chemical that was included in a hazardous waste.

The Notice states that EPA will primarily use the TRI to measure progress toward the national goal of reducing the generation of RCRA PBT chemicals by at least half by the year 2005, and that the primary method to achieve this goal should be source reduction. A possible source of error with this approach is the potential for TRI to overstate the current generation of RCRA PBT chemicals (chemicals generated since 1991) and thus understate progress toward the national reduction goal. For example, DOE sites conducting remediation activities could have a difficult time showing progress toward the reduction goal because these sites will be reporting to the TRI the disposal of legacy wastes (that have been generated prior to 1991) containing RCRA PBT chemicals as well as newly generated wastes containing RCRA PBT chemicals. Although newly generated wastes containing RCRA PBT chemicals are potentially amenable to source reduction activities, legacy wastes are not. Since TRI reporting does not distinguish between these two types of waste

generation, assuming all reported amounts are a result of current generation will potentially result in an overestimate of the actual current generation and an underestimate of the actual percent reduction of current generation of RCRA PBT chemicals. The Department recommends that EPA allow for the adjustment of reported TRI information to exclude RCRA PBT chemicals that were generated prior to 1991 when assessing progress toward the national generation reduction goal.

3. It is unclear if the intent of the Notice is to reduce the **presence** of PBT chemicals in waste through treatment or recycling of the PBT chemicals or to reduce the **generation at the source** of PBT chemicals in waste through source reduction, or to do both. This confusion is compounded by EPA's plan to use the Toxic Chemical Release Inventory (TRI) to "measure reductions of chemical quantities found in wastes…", since TRI does not measure waste generation. The Department recommends that EPA clearly define "generation at the source" and provide some examples of what kinds of activities would constitute "reducing the generation of PBT chemicals found in RCRA hazardous wastes".

SPECIFIC COMMENTS

IV.B. SPECIFIC ISSUES FOR PUBLIC COMMENT (63 FR 60343)

1. Banned Chemicals

EPA requests comment on whether it is appropriate to eliminate chemicals from consideration for the draft RCRA PBT List because they are no longer in production or generated in hazardous waste, or are generated in very limited quantities from very few production processes.

The Department believes that it is appropriate to eliminate chemicals from consideration which were banned prior to the baseline year of 1991, because any PBT chemical no longer produced is not a candidate for future reduction. However, DOE believes that chemicals that were banned after the baseline year should be included because the reductions in use and production while being a direct effect of regulations banning them, are still true reductions and should be counted. Regulations often drive the necessity for source reduction.

2. Waste Minimization Feasibility

EPA requested comment on whether PBT chemicals contained in hazardous waste for which there are few feasible waste minimization options available should be eliminated from consideration, or whether they should be considered research and development incentives.

The Department believes that EPA should not eliminate these PBT chemicals because regulations often drive the necessity for action and that includes research and development(R&D). As a voluntary program there will be no detrimental effects associated with not being able to show

reductions for these specific chemicals. At the same time the need to find source reduction techniques will be established, spurring the R&D of new, more feasible techniques.

3. "Non-measurable" Chemicals

EPA requests comment on whether it is appropriate to include chemicals on the RCRA PBT list for which TRI or other annual chemical-specific data are not readily available.

The Department believes that if no means exist to track PBT chemical specific reductions, this subset of PBT chemicals should not be included in the RCRA PBT list. Adding chemicals not currently tracked will require additional funding to establish tracking mechanisms. This may not be cost effective based on the amounts of those chemicals used at the facility. However, the Department believes these chemicals should be evaluated at a later date when additional tracking mechanisms become available to see if they warrant inclusion.

EPA states in the Notice of Availability (63 FR 60334) that the RCRA Biennial Reporting System (BRS) A...will be used for supplemental analysis in cases for chemicals which are on the RCRA PBT list, but which are not reported in the TRI.@ The BRS provides waste stream volumes, rather than chemical-specific data. DOE questions the value of using the BRS, as it would not generate comparable, chemical-specific data.

4. Chemicals with Very High P, B, and/or T Values

EPA requests comment on whether chemicals with very high data values for persistence, bioaccumulation potential, human toxicity, and/or ecological toxicity be considered for additions to the RCRA PBT List, even though TRI data are not available for tracking progress.

The Department believes, as in issue number three, that inclusion of chemicals with high P, B, or T values should only happen if those chemicals can be tracked to show actual reductions. A goal must be measurable to be valid. If the chemicals cannot be tracked then they should not be included. However, the Department believes these chemicals should be evaluated at a later date when additional tracking mechanisms become available to see if they warrant inclusion.

5. Chemicals with Low Reported Quantities

EPA requests comment on whether a specific quantity cutoff should be used in the development of the RCRA PBT List.

The Department does not believe a specific quantity cutoff should be used in the RCRA PBT List development process. EPA has stated that reduction goals will be set and tracked annually using the TRI. The quantity generated of a specific chemical does not preclude tracking, as long as a TRI

reporting threshold has been met. As a voluntary program, facilities generating small quantities of hazardous waste containing a specific PBT chemical can determine their ability to minimize its production.

6. Priorities Identified by Other Organizations

EPA requests comment on whether EPA should add State or other organization's priority chemicals to the RCRA List.

The Department believes that allowing the automatic addition of other organizations' priority chemicals could very easily turn the RCRA PBT list into a laundry list for special interests, which would adversely impact the goal of reducing PBT chemical waste generation. Other states and agencies should be able to request EPA evaluation of suggested chemicals for addition to the RCRA PBT list. If suggested chemicals meet the listing criteria, then those chemicals should be added to the list.

7. Recycled Wastes

EPA requests comment on whether EPA should include recycled quantities, or measure chemicals only at the point of generation when determining the quantities of chemicals associated with hazardous wastes in developing the RCRA PBT List.

The Notice refers to source reduction and recycling as methods of reducing the amounts of RCRA PBT chemicals in hazardous waste. The Department believes that if recycling is intended to be a method of reduction (in keeping with the preference of recycling over treatment and disposal) then the recycled amounts should not be counted when scoring the chemicals for preference on the List. The inclusion of the recycled amounts of PBT chemicals will only provide false reductions when the recycled amounts are counted as reductions. EPA should measure chemicals only at their point of generation as the focus stated in the Notice is to reduce the PBT chemical generation at the source. However, as stated in General comment #3, EPA may not be able to do this by tracking through the TRI.