



**Department of Energy**  
Washington, DC 20585  
September 17, 1999

RCRA Docket Information Center  
Office of Solid Waste (5305G)  
U.S. Environmental Protection Agency  
Headquarters (EPA, HQ)  
401 M Street, S.W.  
Washington, D.C. 20460

**Docket Number F-1999-IBRA-FFFFF**

Dear Sir or Madam:

*Re: 64 [FR 32859](#), "Office of Solid Waste Burden Reduction Project"*

On June 18, 1999, the Environmental Protection Agency (EPA) published the subject Notice of Data Availability (NODA) and request for comment. The NODA solicited comments on ideas generated by EPA for reducing the burden of the current RCRA reporting and recordkeeping requirements on the States, the public, and the regulated community. Specifically, the NODA described and asked for input concerning six major burden reduction ideas.

The Department of Energy (DOE) generally supports EPA's effort to reduce the burden of RCRA regulation while protecting human health and the environment, and appreciates the opportunity to comment on EPA's burden reduction ideas. The enclosed provides specific comments related to each of the six major burden reduction ideas presented in the NODA. For clarity, each specific comment is preceded by a reference to the section of the NODA to which it applies, and a brief description is given in boldface type of the issue addressed within that section to which DOE's comment is directed.

If you have any questions or need further clarification of our comments, please contact Al Sikri of my staff at (202) 586-1879, or e-mail: [atam.sikri@eh.doe.gov](mailto:atam.sikri@eh.doe.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "T. Traceski", is written over a horizontal line.

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

Enclosure

UNITED STATES DEPARTMENT OF ENERGY  
COMMENTS ON  
OFFICE OF SOLID WASTE BURDEN REDUCTION PROJECT  
NOTICE OF DATA AVAILABILITY (64 FR 32859; June 18, 1999)

**SPECIFIC COMMENTS**

**II. Our Major Burden Reduction Ideas**

**II.A Should We Allow Facilities To Submit All Information and Keep All Records of Information Electronically**

1. **p. 32861, col. 3 - 32862, col. 1 – EPA’s long term goal is to use electronic reporting as a tool for streamlining and automating the exchanges of data among industry, environmental agencies, and the public. This would mean that members of the regulated community would not be required to keep paper RCRA records unless they prefer to do so. EPA has initiated a pilot project to test the feasibility of using Electronic Data Interchange and the Internet to automate manifesting activities, and is heavily promoting electronic reporting for the Biennial Report.**

DOE agrees that EPA must lay the groundwork as soon as possible for electronic reporting of data and information collected for demonstrating compliance with the Resource Conservation and Recovery Act (RCRA). The Department applauds EPA’s initiative in this regard. However, DOE believes that providing the regulated community with an option to report RCRA data and information electronically will actually reduce burden only if States are simultaneously willing and equipped to receive such electronic reports, since RCRA implementation in most States is conducted by a State agency, rather than EPA.

DOE supports EPA’s current approach of promoting limited electronic data pilot programs (e.g., the hazardous waste manifest automation pilot) as a first step. EPA should use such limited scope pilot programs in the near term to develop insights into crosscutting implementation issues. EPA should use these insights to establish policies and guidelines with broad application in the long term. DOE believes EPA’s appropriate role should be to establish the legal and policy framework for electronic data reporting, and to identify tools that States and the regulated community may use to implement a system by which RCRA data and information can be managed and reported accurately and securely by electronic means.

The law regarding the enforceability of electronic signatures is in its infancy. Consequently, procedures for creating the legally binding electronic equivalent of a traditional handwritten signature are not yet well proven. For this reason, DOE encourages EPA to consider establishing, through rulemaking, requirements for electronic signature identification components and controls in the context of environmental reporting. Such requirements should apply to electronic signatures accompanying environmental data and information submitted electronically under all programs implemented by EPA, not just RCRA programs. The purpose of the requirements should be to ensure that organizations choosing to submit electronic reports to EPA (or authorized State agencies) have implemented an electronic signature system that guarantees the authenticity, validity, and binding nature of any accompanying electronic signatures. DOE is aware that in 1996, EPA published an interim final notice of the Agency’s General Policy for Accepting Filing of Environmental Reports via Electronic Data Interchange (61 FR 46683 - 46694). DOE does not necessarily object to the procedures established by the interim final notice. Notwithstanding, DOE is concerned that

unless EPA creates uniform, enforceable, promulgated, Federal regulations defining the circumstances under which electronic signatures would be considered by EPA to be reliable and trustworthy, States and the regulated community may not soon embrace the use of electronic technology for environmental reporting.

## **II.B Should EPA Reduce Reporting Requirements for Generators and Treatment, Storage and Disposal Facilities (TSDFs)?**

- 1. p. 32863, col. 1 – EPA requests comments on a methodology for deciding which of the more than 300 notifications, reports, certifications, demonstrations, and plans that the agency receives from generators and TSDFs could be dropped.**

DOE agrees that if EPA intends to eliminate requirements for generators and TSDFs to submit notifications, reports, certifications, demonstrations, or plans to the Agency, some criteria must be established for deciding which submissions are not necessary. DOE also understands that all statutory requirements to collect and submit information must be retained. For example, some statutory mandates for information to be collected and submitted are listed below.

- Information that RCRA directs regulated entities to submit, or EPA to collect, includes but is not limited to:
  - Generator's hazardous waste report every two years (RCRA 3002(a)(6)).
  - Landfill owner/operator report demonstrating placement of liquids in a permitted landfill (RCRA 3004(c)(3)).
  - Information that must be included in a permit application (RCRA 3005(b)).
  - Generator's annual waste minimization certification (RCRA 3005(h)).
  - Notification of hazardous waste activity (RCRA 3010(a)).
  - Notification of intent to export hazardous waste (RCRA 3017(c)).
  - Information requested by the responsible regulatory agency for purposes of developing or assisting in the development of any regulation or enforcing RCRA provisions (RCRA 3007(a)).
- Information that EPA must collect to comply with a statutory directive, includes but is not limited to:
  - Information needed to complete a review of the disposal of certain hazardous wastes by underground injection into deep injection wells (RCRA 3004(f)(1)).
  - Information needed to issue a final permit upon determination that the applicant complies with RCRA 3004 and 3005, or issue a permit denial (RCRA 3005(c)(2)).
  - Information needed to revoke a permit upon determination of noncompliance with RCRA 3004 or 3005 (RCRA 3005(d)).

- Information needed to study and report to the Congress on certain existing surface impoundments (RCRA 3005 (j)(7)).
- Information needed to promulgate regulations (throughout RCRA).

DOE understands that EPA has discretion with respect to the actual attributes of the information that the Agency collects to implement a statutory directive. DOE suggests that to decide whether to eliminate a discretionary information requirement, EPA should examine whether the requirement helps to protect human health and the environment. In other words, EPA should consider whether the requirement motivates either the regulated entity or the Agency to act in a way more protective of human health and the environment than would be the case if there were no requirement. If so, EPA should consider whether the cost of compliance would outweigh the benefit. In circumstances where a regulatory requirement is expected to yield a net benefit, the requirement should be retained. Otherwise, it should be eliminated.

## **II.C           Should We Lengthen the Periods Between Facility Self-Inspections?**

1. **p. 32863, col. 2 – EPA believes it might be acceptable to reduce the frequency of inspections at some facilities. Comments are requested.**

DOE agrees with EPA that inspections are a vital component of an effective regulatory system. Inspections can be instrumental as a tool in preventing releases of hazardous wastes and constituents into the environment. Inspections can also help assure continuing compliance with basic unit requirements. DOE also agrees that in many instances the length of time between self-inspections could be extended without increasing risk to human health and the environment. However, DOE believes that such instances depend on the type of unit, the chemical and physical characteristics of the waste being managed in the unit, the environmental setting, and the likely consequences of not discovering leaks or other problems within a certain period. Therefore, DOE would support regulatory changes that allow the frequency of inspections to be established on a case-specific basis as part of the RCRA permitting process, or under a special variance. DOE also believes it may be possible to change the regulations to specify reduced minimum inspection frequencies for well-defined combinations of particular wastes and unit types; or for a designated unit type, if past experience has shown the designated type to not be prone to releases or other failures that could endanger human health or the environment. The permit for a particular unit could specify more frequent inspections on a case-specific basis. In any event, DOE notes that implementing such regulatory changes may not significantly reduce the net RCRA recordkeeping and reporting burden.

Several options for lengthening the period between facility self-inspections are presented in the Notice of Data Availability (NODA). These options include establishing a variable schedule based on unit size, or a phased schedule based on successful operation, as evidenced from previous investigations. DOE would not support variable inspection schedules based on unit size alone because, as was explained above, there are many factors other than unit size that influence the risk to human health and the environment created by a hazardous waste management unit. Notwithstanding, DOE believes that phased inspection schedules that become less frequent over time, contingent upon evidence of past successful operation could be acceptable, if waste type and environmental setting are considered.

## **II.D Should We Change RCRA Personnel Training Requirements?**

- 1. p. 32864, col. 1 – EPA requests comment on whether to either eliminate all recordkeeping for RCRA personnel training and replace it with a one-time certification that all employees have been properly trained, or eliminate all training and recordkeeping that duplicates training required by OSHA.**

RCRA is among the most complex Federal environmental laws. Consequences of noncompliance could be quite serious, leading to injury, death and severe impact to the environment. Therefore, employees responsible for compliance need to be trained to implement RCRA in a safe and effective manner. DOE believes that established hazardous waste training programs are essential for ensuring protection of human health and the environment and compliance with RCRA requirements. EPA puts forth two alternatives for reducing the reporting and recordkeeping requirements associated with training. The first option entails replacing RCRA personnel training recordkeeping requirements with a one-time certification that employees are and will continue to be adequately trained. The second alternative entails eliminating RCRA training requirements that overlap with those established by the Occupational Safety and Health Administration (OSHA). DOE notes that these actions are not mutually exclusive alternatives, as both may be implemented in parallel. Notwithstanding, they are discussed separately below.

While DOE believes replacing the existing documentation requirements with a one-time certification has some appeal for reducing recordkeeping requirements, DOE does not favor this alternative if it would mean complete elimination of the requirement to have a RCRA training plan. DOE would prefer revising the regulations specifying the content of the training plan so that preparing and maintaining the plan would be less onerous. For example, DOE suggests that facilities be required to keep records of the job titles, but not necessarily the job descriptions, responsible for managing hazardous waste. Additionally, DOE suggests that facilities be required to (1) confirm (by name) the individuals who have been trained, (2) record the date on which the training occurred, (3) describe the scope of the training, and (4) identify the job title held at the time of training by each individual trained.

One alternative discussed in the NODA is to reduce the duplicative training requirements of OSHA and RCRA. As part of the record for this NODA, EPA prepared a document detailing the overlap between RCRA and OSHA training requirements. The document demonstrates that there is a substantial amount of overlap between the two programs. However, there are also areas under RCRA that are not addressed by OSHA, and the opposite situation exists as well. Therefore, DOE supports EPA's plan to work with OSHA to reduce duplicative requirements, and encourages EPA and OSHA to jointly define the components necessary for a single training program that complies with both OSHA and RCRA training requirements. The underlying intent of OSHA is to protect workers; the underlying intent of RCRA is to protect human health and the environment. In most cases, the training needed to protect the worker will also be protective of human health and the environment, but this may not always be the case.

## **II.E Should We Streamline the LDR Paperwork Requirements?**

- 1. p. 32864, col. 3 – EPA requests comment on whether the requirement in 40 CFR 268.7 for generators to determine whether their waste must be treated before it can be land disposed, and to provide certain notifications and certifications to the treatment, storage, or disposal facility, should be eliminated.**

The NODA indicates that if the generator of a waste determines, as required by 40 CFR 262.11, that the waste is hazardous, and the treater obtains a detailed chemical and physical analysis, as required by 40 CFR 264.13, this should be sufficient to decide whether the waste meets the applicable LDR treatment standards contained in 40 CFR 268.40. DOE disagrees. LDR treatment standards are not always assigned simply by waste code, which is all the generator is required by 40 CFR 262.11 to determine. Some waste codes have been divided into waste code treatment subcategories for the purpose of assigning LDR treatment standards. In such cases, wastes having the same waste code have different LDR treatment standards. For example, the waste code P092 (phenyl mercuric acetate) has five waste code treatment subcategories, each of which has its own LDR treatment standard. Furthermore, the waste code treatment subcategories do not depend entirely on factors that can be determined by testing the waste itself. Typically, one or a combination of the following factors defines a waste code subcategory:

- The source of the waste (e.g., nuclear fuel rod reprocessing, emergency response actions involving explosives, incineration, etc.); and
- The content of the waste (e.g., high mercury, high total organic carbon, lead-acid batteries, etc.).

Other complications arise if the waste is a complex waste that falls into a category for which EPA has promulgated alternative LDR treatment standards, such as lab packs, or if the waste is a characteristic hazardous waste.

Under 40 CFR 268.7(a), generators are now required to notify the receiving facility of the waste code subcategory and, in the case of a characteristic hazardous waste, of the underlying hazardous constituents. If 40 CFR 268.7(a) were to be eliminated, generators would no longer be required to determine such information, or submit it to treatment, storage, or disposal facilities. It is unclear as to what waste handling problems would be created by eliminating the requirement that generators determine and submit such information to treatment, storage, and disposal facilities. However, it is clear that before treatment and disposal facilities can determine applicable LDR treatment standards for certain wastes, and demonstrate that the treated wastes meet those standards, such facilities will require more information from the generator than a waste code determination.

**2. p. 32865, col. 1 – EPA requests comment on whether the requirement in 40 CFR 268.9(a) for generators to determine the underlying hazardous constituents in their characteristic hazardous waste should be eliminated.**

The comment in item 1, above, applies to a larger number of characteristic hazardous wastes than listed hazardous wastes. Furthermore, in the case of characteristic hazardous wastes that fall into waste code subcategories for which the LDR treatment standard involves treatment of underlying hazardous constituents (UHCs), an additional issue arises. UHCs are defined by 40 CFR 268.2(i) as being any constituent listed in 40 CFR 268.48, Table UTS—Universal Treatment Standards, except fluoride, selenium, sulfides, vanadium, and zinc, *which can reasonably be expected to be present at the point of generation of the hazardous waste* at a concentration above the constituent-specific UTS level. There are several hundred constituents listed on Table UTS. DOE believes that generators are in a better position to evaluate which of these several hundred constituents can reasonably be expected to be present at the point of generation than are treaters and disposers. Therefore, the overall burden on the regulated community (generators, treatment facilities, storage facilities, and disposal facilities) should be less if generators continue to be responsible for determining the underlying hazardous constituents in their characteristic

hazardous wastes than for the treatment and disposal facilities at risk of having to analyze every characteristic hazardous waste for the entire universe of possible UHCs to verify that all are below the UTS levels.

- 3. p. 32865, col. 2 – EPA requests comment on whether the requirement in 40 CFR 268.9(d) for generators and treaters to send to EPA or the authorized State a notification and certification that a characteristic waste has been treated so it no longer exhibits a characteristic should be eliminated.**

DOE would support eliminating the requirement for generators and treaters to submit notifications and certifications to EPA or the authorized State under 40 CFR 268.9(d) if EPA is satisfied, based on information collected so far, that subtitle D treatment and disposal companies are being adequately informed in situations involving decharacterized wastes that still require treatment of UHCs at the point of disposal (see 59 FR 47980,48016, col. 3; September 19, 1994).

## **II.F Should We Reduce Amount of Data Collected by the Biennial Report?**

- 1. p. 32865, cols. 2 & 3 – EPA is evaluating whether to remove some or all of the optional data elements from the Biennial Reporting System, and whether to eliminate reporting of hazardous wastes that are managed in units exempt from RCRA permitting.**

EPA is considering reducing the amount of data and information required by the Biennial Report. In the NODA, EPA specifically asks if some of the optional data elements should be removed from the report forms. DOE urges EPA to remove all optional data elements from the Biennial Report forms.

EPA also asks if waste streams managed in units that are regulated under environmental laws other than RCRA should be removed from the Biennial Reporting requirements. These units include those subject to the Clean Water Act, as well as those regulated under the Safe Drinking Water Act. EPA notes that waste streams managed in such units are high volume. DOE believes that reporting of waste streams managed in non-RCRA units should be continued under the RCRA program. At least in part, the Biennial Report provides information on the quantities of hazardous wastes being generated and the availability of treatment, storage, and disposal capacity to manage them. Since high volumes of hazardous wastes are being managed in exempt units, DOE believes it may be useful for EPA to continue monitoring such activity so that if availability of treatment capacity becomes threatened, the situation might be identified in a timely manner.